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

Memorandum of Understanding
For
Refuse Collection
Between the
City and County of San Francisco and Recology Sunset Scavenger Company, Recology Golden Gate and Recology San Francisco

This Memorandum of Understanding, hereinafter referred to as "Contract" or "Agreement", is made this 1st day of December, 2014, in the City and County of San Francisco, State of California, by and between: Sunset Scavenger Company, Golden Gate Disposal & Recycling Company, and Recology San Francisco, hereinafter referred to collectively 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" 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 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 Agreement;

WHEREAS, approval for this Agreement was obtained when the Board of Supervisors approved Contract number **[insert BOS Reso number]** on **[insert date of BOS action]**; 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 Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Each Contractor's 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 the termination of this Agreement except to the extent that such obligations are otherwise specifically limited by the provisions of this Agreement.

Nothing in this Section 1 or elsewhere in this Agreement shall affect the obligations of the City and the Companies as may otherwise be provided by law, ordinance or agreement except as to matters specifically governed by this Agreement.

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from **December 1, 2014 to November 30, 2020, (the "Term")**.

3. Effective Date of Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds in connection with the initial year (or such lesser period if appropriate) of the term of this Agreement and the Contractors have been notified in writing of such certification.

4. Services Contractor Agrees to Perform.

a. Services. The Companies jointly and severally agree to perform the services as provided for in Appendix A (hereinafter referred to as "Services") attached hereto and incorporated by reference as though fully set forth herein. Notwithstanding any other provision of this Agreement, the Companies shall not be required to perform any Services unless the City has appropriated funds for the provision of such Services. The Services as set forth in Appendix A may be modified from time to time as agreed to in writing by the Parties. Except as specifically provided in this Agreement, the Contractors shall secure, provide, supply and maintain all labor, materials, supplies and equipment necessary to perform the Services, including without limitation, containers and trucks.

b. Other Agreements. This Agreement shall supersede all other outstanding contracts between the Companies and any City Department with regard to the provision of the Services, except for (i) the 1988 Facilitation Agreement between the City and Sanitary Fill Company (now Recology San Francisco Recycling & Disposal Company, Inc.) and (ii) the 1987 Waste Disposal Agreement among the Oakland Scavenger Company, the City and Sanitary Fill Company, (now Recology San Francisco).

5. Compensation.

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the City, in its reasonable discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Forty Four Million Dollars ($44,000,000)**. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by The Office of Contract Administration as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

a. Rate Structure. The Parties agree that, subject to Section 5(b) below, the rates charged by Contractors for the Services will be based on the Uniform Commercial Rates (defined in Section 5(d) below). The current Uniform Commercial Rates are set forth in Appendix A1. The Parties understand and agree that the Uniform Commercial Rates are subject to change, and generally increase on July 1st of each year. Notwithstanding the foregoing, the fees payable to Contractors by City are subject to adjustment as set forth in Section 5(b) below.

b. Adjustments to Charges. Notwithstanding the foregoing, the compensation payable by City for the Services will be adjusted as follows:

1) COLA: The total annual compensation charged to City shall also increase annually on July 1st by a COLA as provided in this Section. No later than May 20 of each year of the Term, the Companies shall notify the City of the amount of the COLA increase and the City shall verify such amount. The COLA increase will become effective July 1 of each year over the life of this Agreement and any extensions. The COLA will be determined using the following formula:

COLA Factor	**Source/Index**	**Weight**
Fixed Labor	As per CBAs	42.34%
Variable Labor	San Francisco-CPI (U)	25.93%
Variable H & W	Mercer Analysis	11.83%
Biodiesel Fuel	Weekly California No. 2 Diesel Retail Prices	2.84%
CNG Fuel	PG&E Series G-NGV1	0.71%
Capital	No Inflation	9.12%
Pensions	Weighted Pension Increase Towers Watson	7.23%

2) Recycling Incentive Program: The Parties desire to encourage recycling and increased diversion of waste generated by City Departments. Accordingly, the Parties agree to work together to utilize a Uniform Commercial Rate Structure (as defined in Section 5(e)) and implement the Recycling Incentive Program (as defined in Section 5(e)) undertaken by the Companies pursuant to the 2014 Rate Order. 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, the Companies will apply service fee caps to allow time for the City Departments to transition to the Uniform Commercial Rate Structure. 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.

3) Fee Cap: Beginning December 1, 2014, the fees charged by Contractors to City for the Services will be subject to a service fee cap (the "Service Fee Cap") to limit the total amount of any increase in fees during the Term of this Agreement. For purposes of calculating the Service Fee Cap, the base rate ("Monthly Fee Cap Base Rate") will equal the average monthly

aggregate charges billed to City for the Services from July 1, 2013 to June 31, 2014, or $471,996.00.

The Service Fee Cap during the following months of the Term are set forth below:

Applicable Months	Service Fee Cap Calculation
December 2014 – June 2015	(Monthly Fee Cap Base Rate)
July 2015 – June 2016	(Monthly Fee Cap Base Rate x 1.0285) + COLA
July 2016 – June 2017	(Monthly Fee Cap Base Rate x 1.0570) + COLA
July 2017 – June 2018	(Monthly Fee Cap Base Rate x 1.086) + COLA
July 2018 – June 2019	(Monthly Fee Cap Base Rate x 1.114) + COLA
July 2019 – June 2020	(Monthly Fee Cap Base Rate x 1.114) + COLA
July 2020 – December 2020	(Monthly Fee Cap Base Rate x 1.114) + COLA

For services existing at the time the agreement was signed, if aggregate charges in a month exceed the Service Fee Cap, the Companies will discount the amount by which the monthly aggregate charges exceed the Service Fee Cap. The discount shall be calculated and applied to the refuse bill on a monthly basis by department. Notwithstanding the foregoing, changes in City's scheduled service will result in adjustments to the total Service Fee Cap by adjusting the gross monthly billing for the change in services provided to City. The amount of the discount to reach Monthly Fee Service Cap will be reallocated to all departments with the exception of Rec and Park. Rec and Park, which represents 26.1% of the gross billings, will have a constant Monthly Fee Service Cap discount of $38,514, equal to 26.1% of the total Monthly Service Fee Cap. Adjustment to gross billings for Rec & Park will result in adjustments to their Monthly Service Fee Cap on a 1 for 1 basis. Appendix C attached hereto provides examples of how a change in scheduled service will result in changes to the allocation of the discount and the Monthly Fee Service Cap. The Service Fee Cap shall not be applied to increases resulting from equipment lease charges, equipment service contracts, equipment repairs, new service and or increased service frequency.

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

d. Liability for Late Payment. In no event shall City be liable for interest or late charges for any late payments resulting from the actions or inactions of the Companies.

e. Description of Terms. As used in this Section 5, the following terms are described as set forth in this Section:

A uniform commercial rate structure (the "Uniform Commercial Rate Structure") has been implemented by the Companies for purposes of reflecting the City's planned migration to zero (0%) waste, and incentivizing customers to help the City reach those diversion goals. The rates charged for all refuse and recycling collection services are based on a single set of rate tables that do not differentiate between the types of collection services, (such rates, the "Uniform Commercial Rate"). The Uniform Commercial Rate Structure includes a base rate and a variable service rate. The base rate covers certain system fixed costs that do not include the direct costs for refuse, recycling and organics service, while the variable rate is based on the service volume for refuse, recycling and composting collection.

The recycling incentive program (the "Recycling Incentive Program") is the mechanism whereby the Companies in good faith determine the actual Diversion rates on an account or location specific basis. Upon determining the diversion rate, a calculation is performed to provide for a recycling incentive based upon the calculated diversion rate. The service charges for each account are calculated using the container charges in the Rate Books/Schedules. Ninety percent of the charges for container service are eligible for a diversion discount based on recycling and composting volume. Charges for premium services (e.g. key, distance, and elevation) are not subject to a discount. The diversion discount is equal to the percentage of recycling and composting service volume relative to total service volume less 10%, up to a maximum discount of 75%.

6. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse any of the Contractors for Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

Notwithstanding any other provision of this Section 6, the City agrees to pay the Companies for any Services specifically requested by any City Department or City agency, including variable services, extension of services, unforeseen services and any new services agreed to be provided to the City by the Companies; provided: (1) that, this Agreement has been modified in accordance with Section 49 to cover such Services; and (2) the Controller has certified the amount of funds for the purpose and period covered by the modification.

7. Payment; Invoice Format.

a. Invoices furnished by each Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. If feasible, a

single blanket Purchase Order will be used for all of the Services and the Contractors will bill Services to the individual City Departments (e.g. Department of Public Works, Public Utilities Commission, Parks and Recreation, Port of San Francisco) under the blanket Purchase Order. The Contractors shall invoice individual City Departments and include the following information in a manner specified by this Agreement:

i) Frequency of collection (collection day(s))

ii) Size of each collection container

iii) Type (recyclables, compostable or trash)

iv) Quantity of each collection container type

v) Charges associated with container service each

vi) Any premium services (e.g. key, heavy, distance) and associated charges

vii) The individual service volume of trash, recyclables and compostables and the resulting diversion rate and discount by volume

viii) For roll-off containers (compactors and debris boxes), the Companies shall include the number of times each roll-off container was collected in the reporting period (pulled) and associated charges.

b. All amounts paid by City to the Companies shall be subject to audit by the City. The City is exempt from Federal taxes except for articles for resale. The Contractor will enter State and local sales or use taxes and other excise taxes, if applicable, on invoices; provided that, the City shall pay no more than the amounts set forth in Section 6 and provided further that any such taxes charged to the City shall be included in the guaranteed maximum cost under Section 6. Payment shall be made by City to each Contractor at the address specified in Section 26 or to such other addresses as shall be specified by the applicable Contractor upon written notice to the City.

8. 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.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca. 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.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor; provided, however, that in the event that a sales or similar tax is levied on a provision of any Service by the Contractor, the Contractor may collect from the City the amount of any such sales or similar tax.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

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

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

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by any of the Contractors, shall in no way lessen the liability of each Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of the Contractor or any of their affiliates. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement. Each Contractor shall, at all times, adhere to all applicable local, state and federal health and safety requirements concerning workers in its employ.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by each Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. Upon written notification from the City, each Contractor shall promptly repair, at no cost to the City, any damage that the City and the Contractor reasonably determine that the Contractor has caused to property of the City. Nothing in this Section 13 shall limit the Contractor's obligations under Section 16.

14. Independent Contractor; Payment of Taxes and Other Expenses

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

b. **Payment of Taxes and Other Expenses.** Should City, in its reasonable discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that any Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by that Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by any Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to such Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, none of the Contractors shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this section.

15. Insurance

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

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

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

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

d. All policies shall provide thirty days' advance written notice to the City of a material reduction or nonrenewal of coverages or cancellation of coverages for any reason intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the "Notices to the Parties" section.

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

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

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

h. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

16. Indemnification. Each Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from such Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to each Contractor's obligation to indemnify City, each Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to such Contractor by City and continues at all times thereafter. Each Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF

WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left blank by agreement of the parties. (Liquidated Damages)

20. Liability of the Companies. EACH COMPANY SHALL ONLY HAVE THE LIABILITIES UNDER THIS AGREEMENT FOR THE SERVICES PROVIDED BY SUCH COMPANY AND SHALL NOT BE OBLIGATED FOR A VIOLATION OF THIS AGREEMENT BY ANY OTHER COMPANY; PROVIDED THAT, A TERMINATION OF THIS AGREEMENT WITH REGARD TO ONE COMPANY SHALL BE A TERMINATION OF THE ENTIRE AGREEMENT WITH REGARD TO EACH COMPANY. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AMOUNT OF DAMAGES PAYABLE BY EACH CONTRACTOR PURSUANT TO THIS AGREEMENT, INCLUDING PURSUANT TO SECTIONS 16 AND 17, SHALL NOT EXCEED THE TOTAL AMOUNT OF COMPENSATION RECEIVED OR TO BE RECEIVED BY SUCH CONTRACTOR FOR THE PROVISION OF SERVICES UNDER THE TERMS OF THIS AGREEMENT.

21. Default; Remedies

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

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

8.	Submitting False Claims; Monetary Penalties.	38.	Drug-free workplace policy
10.	Taxes	54.	Compliance with laws
15.	Insurance	58.	Protection of private information
25.	Proprietary or confidential information of City		
31.	Assignment		

2) Any Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of fifteen (15) days after written notice thereof from City to such Contractor.

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

4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to each Contractor

or with respect to any substantial part of each Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of each Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement upon 15 days' prior written notice to Contractors (except in the event of an uncured breach of Section 15 (Insurance)) or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of each Contractor any Event of Default; each Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to each Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from such Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

22. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, upon 30 days' written notice during the term hereof, for convenience and without cause. City shall exercise this option by giving the relevant Contractor or Contractors written notice of termination. The notice shall specify the date on which termination shall become effective. The parties hereto agree that if the City elects to terminate this Agreement pursuant to this Section 22, the parties may each assert their rights, if any, under the San Francisco Refuse Collection and Disposal Ordinance of 1932, and the execution of this Agreement shall not be deemed to have been a waiver of any such rights.

b. In the event that this Agreement is terminated for any reason at any time other than at the end of the Agreement Term, upon receipt of the notice, each Contractor shall commence and perform, with diligence, all actions necessary on the part of each Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

3) Terminating all existing orders and subcontracts.

4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall

have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

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

6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

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

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

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

2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

d. In no event shall City be liable for costs incurred by each Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced

amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

23. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8.	Submitting false claims	25.	Proprietary or confidential information of City
10.	Taxes		
11.	Payment does not imply acceptance of work	29.	Audit and Inspection of Records
13.	Responsibility for equipment	49.	Modification of Agreement.
14.	Independent Contractor; Payment of Taxes and Other Expenses	50.	Administrative Remedy for Agreement Interpretation.
15.	Insurance	51.	Agreement Made in California; Venue
16.	Indemnification	52.	Construction
17.	Incidental and Consequential Damages	53.	Entire Agreement
18.	Liability of City	57.	Severability
20.	Liability of the Companies	58.	Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Notwithstanding any other provision of this Section 23, following the termination of this Agreement, 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 the termination of this Agreement except to the extent such obligations are otherwise specifically limited by the provisions of this Agreement. The City's obligation for post-termination services shall be pursuant to Section 21. This subsection shall survive termination of this Agreement.

24. Conflict of Interest. Through its execution of this Agreement, each Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

25. Proprietary or Confidential Information of City. Each Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, each Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Each Contractor agrees that all proprietary or confidential information disclosed by the City to the Contractor shall be held in confidence and used only in performance of the Agreement. Each Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor

would use to protect its own proprietary data. Information will not be, or will cease being, proprietary or confidential information of City if or when (i) it enters the public domain other than by any Contractor's breach of this Section 25, (ii) it is rightfully communicated to a Contractor free of any obligation of confidentiality, or (iii) it is independently developed by a Contractor without use of any proprietary or confidential information of City

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

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

with a copy to: City Administrator
City Hall, Room 362
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
oca@sfgov.org

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

with a copy to:
Maurice Quillen
mquillen@recology.com

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

Maurice Quillen
Vice President and General Manager
Sunset Scavenger Company
Golden Gate Disposal & Recycling Company
900 7th Street
San Francisco, CA 94107

Any notice of default must be sent by registered mail. Parties shall provide ten days notice to each other if the address for the receipt of notice has changed.

27. Left Blank by Agreement of the Parties (Ownership of Results).

28. Left Blank by Agreement of the Parties (Works for Hire).

29. Audit and Inspection of Records. Each Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records

relating to its work under this Agreement. Each Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Each Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after a final audit, that commenced during such five year period, has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

30. Subcontracting. Each Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

31. Assignment. The services to be performed by the Companies are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Companies unless first approved by City by written instrument executed and approved in the same manner as this Agreement. The City shall not sell, assign, subcontract or transfer this Agreement or any part hereof, or any obligation hereunder, without the written consent of the Companies. Consent by any Party to assignment may not be unreasonable withheld.

32. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter. The acceptance of any monies which become due under this Agreement shall not be deemed to be a waiver of any pre-existing provision of this Agreement.

33. Consideration of Criminal History in Hiring and Employment Decisions.

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

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

conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

34. Left Blank by Agreement of the Parties (Local Business Enterprise Utilization; Liquidated Damages)

35. Nondiscrimination; Penalties

a. **Contractor Shall Not Discriminate.** In the performance of this Agreement, each Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges,

services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. **Subcontracts.** Each Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Any Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** Each Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, each Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C 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. Each Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, each Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against such Contractor and/or deducted from any payments due such Contractor.

36. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

37. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to

import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

38. Drug-Free Workplace Policy. Each Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Each Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

39. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by any Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

40. Compliance with Americans with Disabilities Act. Each Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Each Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Each Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of each Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

41. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

42. Left blank by agreement of the parties (Public Access to Meetings and Records)

43. Limitations on Contributions. Through execution of this Agreement, each 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 the board of a state agency 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. Each 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. Each 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, each Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Each Contractor further agrees to provide to City the names of each person, entity or committee described above.

44. Left blank by agreement of the parties. (Requiring Minimum Compensation for Covered Employee)

45. Requiring Health Benefits for Covered Employees

Each 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, each Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If a 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 a 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. The Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify a 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, such Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, such 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 a 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. Each 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 a Contractor based on the Subcontractor's failure to comply, provided that City has first provided the Contractor with notice and an opportunity to obtain a cure of the violation.

e. No Contractor shall discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to a 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. Each 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. Each 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. Each Contractor shall keep itself informed of the current requirements of the HCAO.

i. Each 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. Each 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. Each 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.

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

m. If any 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.

46. 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, subject to the exclusion in the San Francisco

Administrative Code Section 83.14 for existing labor agreements and the Collective Bargaining Agreement with Teamster Local 350, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

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

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

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

6) Set the term of the requirements.

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

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

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

c. **Hiring Decisions**

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

d. **Exceptions**

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

e. **Liquidated Damages.**

Contractor agrees:

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

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

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

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

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

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

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

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

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.

47. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, the Contractors may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Each Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event any Contractor violates the

provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, in accordance with Section 21, and (ii) prohibit the Contractors from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

48. Preservative-treated Wood Containing Arsenic. The Contractors may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Contractors may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Contractors from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

49. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Notwithstanding the other provision of this Agreement, the Appendices to this Agreement shall be modified by the Parties, from time to time, and in the manner provided in this Section 49 to conform to the 2014 Rate Order or any other applicable San Francisco Rate Order applicable to the Companies, to include changes in rates that are required by the provisions of this Agreement and as may be agreed to by the Parties. In addition, the Services to be performed and the locations and other operational matters set forth in the Appendices to this Agreement may be amended from time to time in the manner provided in this Section 49 by the Parties to reflect the actual operations at such time. The Parties, as applicable, shall provide each other with revised Appendices from time to time to reflect any changes in rates, Services or locations. Any appropriately revised Appendix shall be incorporated by reference into this Agreement as though fully set forth herein and shall supersede any Appendix that it may replace. The Contractors shall cooperate with Department to submit to the Director of Contract Monitoring Division (CMD) any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

50. Administrative Remedy for Agreement Interpretation. Administrative Remedy for Agreement Interpretation.

a. Negotiation; Alternative Dispute Resolution. The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

53. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 49, "Modification of Agreement."

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

55. Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractors, will be paid unless the provider received advance written approval from the City Attorney.

56. Left Blank by agreement of the parties. (Supervision of Minors)

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

58. Protection of Private Information. Each Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Each Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement in accordance with Section 21, bring a false claim action against such Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar such Contractor.

59. Left blank by agreement of the parties. (Graffiti Removal)

60. Food Service Waste Reduction Requirements. Each Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, each Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

61. Left blank by agreement of the parties. (Slavery Era Disclosure)

62. 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.

63. Prevailing Rate of Wages Required

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

Enforcement

If a Contracting Officer determines that the Contractor or a Subcontractor may have violated the Prevailing Wage requirements of this section, the Contracting Officer shall send written notification to the Contractor or Subcontractor of the possible violation. In addition to and without prejudice to any other remedy available, the Contracting Officer

may terminate the Contract, in which case the Contractor shall not be entitled to any additional payment unless within 30 days of receipt of the violation notice the Contractor has either (1) cured the violation or (2) established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which shall be attested to by affidavit, proof of compliance with the provisions of this section.

Where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to employees, the Contractor shall have "cured" the violation once the Contractor or Subcontractor reimburses employees by paying each individual the balance of what he or she should have earned in accordance with the requirements of this section.

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

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

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

CITY

Recommended by:

_____

Naomi Kelly
City Administrator

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
John White
Deputy City Attorney

Approved:

_____

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

CONTRACTOR

The undersigned read and understood paragraph 36, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Sunset Scavenger Company

_____

Michael J. Sangiacomo
President and CEO

City vendor number: 17929
Federal Tax ID # 940910600

Golden Gate Disposal & Recycling Company

_____

Michael J. Sangiacomo
President and CEO

City vendor number: 08401
Federal Tax ID # 940844930

Recology San Francisco

_____

Michael J. Sangiacomo
President and CEO

City vendor number: 15452
Federal Tax ID # 940840895

Appendices

A: Scope of Refuse Collection and Recycling Services for the City Departments
A1: Rate Book for General Fund and Non-General Fund Accounts (except Parks & Recreation)
Rate Book for Parks and Recreation
A2: Schedule and Locations for Collections
A3: Department Designees

C: Example of Monthly Bill - New City Rates

Appendix A

Scope of Refuse Collection and Recycling Services for the City Departments Services to be provided by Contractors

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

Definitions

1. For the purpose of this Appendix A, the following terms shall apply:

(a) "Administrator" means the City Administrator or his or her designee; provided that, the Companies have been notified in writing concerning such designee.

(b) "Composting" means processing materials into a product through controlled biological decomposition of organic wastes. "compostables" means any material that is offered for collection that is capable of being composted in San Francisco's programs, including, but not limited to: food scraps, food-soiled paper, yard and wood wastes.

(c) "Department Designee" means a person delegated by the Administrator within each department or building where departments share a building that has authority for collection locations under her or his jurisdiction as specified in this Agreement. Appendix A3 is a list of the Department Designees. The Administrator shall have sole discretion to revise the list and shall provide written notice in accordance with Section 25 of the Agreement, to Purchaser and the Companies of any changes.

(d) "Disposal" means the final deposition of refuse onto land. Disposal shall not include deposition of composted materials onto land.

(e) "Diversion" means activities that reduce the disposal of trash in the landfill.

(f) "License" means a refuse vehicle license as defined by the San Francisco Refuse Collection and Disposal Ordinance of 1932, as amended from time to time (the "1932 Ordinance").

(g) "Mixed paper" means paper that consists of miscellaneous office records, including without limitation: file folders, correspondence records, manila envelopes, obsolete forms and files, junk mail, chipboard, newspaper, magazines, colored paper, white and computer printout, and various other types of paper. Mixed paper may contain paper clips, staples and other small fasteners and up to five (5) percent by net weight of various contaminants.

(h) "Prohibited Waste" means hazardous waste, universal waste, designated waste, medical waste or sewage sludge as those terms are defined under State law and the January 1987 Waste Disposal Agreement ("WDA") among the Oakland Scavenger Company, the City and Sanitary Fill Company (now known as Recology San Francisco).

(i) "Rate Order" means the 2006 San Francisco Rate Order applicable to the Contractors or any subsequent San Francisco Rate Order applicable to the Contractors.

(j) "Recycling" means sorting, cleansing, treating and reconstituting materials that would otherwise be disposed of, and returning them to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards necessary for use in the marketplace. Recycling does not include incineration, pyrolysis, distillation, gasification or other high-temperature conversion. "Recyclables" means any material offered for collection that is capable of being recycled in San Francisco's programs, including but not limited to mixed paper, bottles and cans.

(k) "Refuse" means all discarded materials –recyclables, compostables, and trash - collected from all facilities, office buildings, institutions and parks.

(l) "Trash" means refuse other than recyclables or compostables.

Scope

2. The Companies shall consolidate, collect, transport and handle all Refuse generated by the City Departments on a scheduled basis as specified herein and in Appendix A2. Additional locations may be added or deleted by the Department Designee, or the Department of the Environment with the agreement of Department Designee, and shall be charged the applicable collection rate for similar services as shown in Appendix A1.

3. Consistent with the WDA and the 1988 Facilitation Agreement between the City and Sanitary Fill Company (now known as Recology San Francisco), the Companies shall use reasonable efforts to prohibit and prevent the collection and Disposal of Prohibited Waste in any manner inconsistent with applicable laws. At the Department of the Environment's request, the Companies will provide a copy of the Companies' program for identifying Prohibited Waste and complying with federal, state and local laws and regulations dealing with Prohibited Waste.

Equipment and Containers

4. Except for compactors, balers, pallet jacks and other specialized waste equipment which are purchased, rented or leased by the City through separate agreements, the Companies shall provide to the collection locations specified in Appendix A2, no later than the effective date of this Agreement, at no cost to the City, exterior collection containers for trash, recyclables, and compostables. The containers shall be of sufficient sizes to contain trash, recyclables and compostables generated between collections. The Companies shall provide to the designated location, at no cost to the City, additional requested exterior collection containers as requested by the Department Designee, or the Department of the Environment with the agreement of the Department Designee, within three (3) calendar days of written notice.

5. At the direction of the Department Designee or the Department of the Environment with the agreement of the Department Designee, the Companies, without cost to the City, shall purchase, store and deliver on an as needed basis recycling and composting bins for indoor use (e.g., Rubbermaid slimjims or Toter slimlines, 7-gallon deskside recycling containers, etc) and corresponding stickers and posters. The number of bins and other items to be provided by the Companies shall be limited to the number that the Companies reasonably determine are necessary in accordance with past experience. The City Departments will purchase their own indoor trash containers.

6. All containers shall be appropriate for the intended use as specified by Department Designee, or the Department of the Environment with the agreement of the Department Designee. All containers provided by the Companies shall be non-absorbent and leak-resistant and must be constructed to prevent loss during collection or transportation. If the Companies fail to provide sufficient and/or adequate containers, the City may purchase and place into service the necessary containers and deduct the cost of such containers from any amounts owed to the Companies.

7. The Companies shall deliver the containers and other items specified in Sections 4 and 5 of this Appendix A throughout the term of the Agreement. Unless originally owned or purchased by the City or a third party and such purchase price is not directly or indirectly reimbursed by the Companies, all containers and other equipment delivered by the Companies remain the Companies' property. Any containers or other necessary items that are purchased by the City or a third party, but that the Companies directly or indirectly pay for, including by deducting the costs of such items from amounts owed to the Companies, shall be the property of the Companies.

8. All exterior collection containers shall be marked by the Companies with the name and phone number of the Collection Company servicing the container.

9. The Department Designee, or the Department of the Environment with the agreement of the Department Designee, may request specific additional materials to facilitate recycling and composting, such as specialized collection equipment, recyclables consolidation services, etc. The Contractor shall charge such additional materials to respective City Departments as a separate line pass-through item in the invoice. Any charges for such materials shall be included under the overall cap on the contract price.

10. Left blank by agreement of the Parties.

A. Cleanliness

11. The containers delivered by the Companies shall be clean and graffiti free. The City agrees to reasonably maintain all exterior containers for cleanliness and appearance. The Companies agree to exchange containers, in accordance with their ordinary course of business, if such containers become old or dirty.

12. The Companies shall be responsible for leaving all containers, equipment, collection locations and the City facilities served in a safe condition, reasonably clear of fluid or debris and reasonably free from residue resulting from spillage. All releases or spillage from exterior containers, equipment or vehicles will be cleaned up by the Companies in accordance with the Companies' ordinary course of business.

B. Time and Manner of Collection

13. Trash, recyclables and compostables shall be removed from the collection locations designated in Appendix A2, Monday through Sunday, other than those holidays on which the Companies do not generally provide service, in a systematic and timely manner as specified in Appendix A2. Changes to collection frequency, day(s) or location(s) may be made by phone or in writing by the Department Designee, or the Department of the Environment with the agreement of the Department Designee, or by the Companies only with the prior written approval of the Department Designee or the Department of the Environment; provided, however, that the Companies must approve any such changes, including all changes to the provisions of Section 15 of this Appendix A, that would materially affect the cost of providing any Services.

14. Title to all refuse passes to the Companies when it is loaded into the Companies' containers and/or vehicles.

15. Except as provided in Appendix A2:

(a) The Companies shall collect all containers containing refuse that are subject to putrefaction at least once per week. The Companies shall collect all other containers at least once per month.

(b) Locations where volume requires a collection less often than once per month have been designated as "Roll-Off" in Appendix A2. When collection is required, the Department Designee for these locations shall contact the Companies for service by email or phone and the Companies shall provide collection within twenty-four (24) hours of such notice.

16. The Companies shall collect recyclables and compostables in ways that minimize the level of contaminants and maximize the ability to cycle these materials back into reuse or industrial feedstock. The term "contaminant," as used herein, means any materials that are either unacceptable or problematic when intermixed with mixed paper, compostables, bottles and cans or other recyclables. The Companies shall immediately notify the Department Designee when containers for recyclables or compostables are grossly contaminated (to the point that the container must be designated as trash and sent to the landfill). Grossly contaminated recyclables shall be billed at rates for trash and shall not be subject to any incentives applicable to recyclables. Grossly contaminated compostables shall be billed at rates for trash and shall not be subject to any incentives applicable to compostables.

17. Upon email or phone notice of a partial or missed collection of trash, recyclables or compostables by the Department Designee or the Department of the Environment, the Companies shall complete the collection on the day or following day notification was made. If the Companies do not complete the collection of the trash, recyclables~~,~~ or compostables within 24 hours of the notification, the cost of the partial or missed collection shall be deducted from any amounts the City owes the Companies for the quarter when the missed or partial collection occurred. In the case of a missed collection of recyclables or compostables, the cost of a trash container of the same volume will be deducted from the invoice for that period.

18. The Department Designee for the site, or the Department of the Environment with the agreement of the Department Designee, may initiate emergency, off-hour and additional on-call collections by email or phone notice to the Companies. Such additional collections will be billed at the regular collection rates applicable for the day that the emergency service is provided (e.g., if a Service is provided on a Sunday, Sunday rates will apply). The Companies shall make an on-call collection within twenty-four (24) hours of the City's notice.

19. The Contractor shall retain the ARC of San Francisco or another work-assistance program for the disabled to provide recycling and/or composting consolidation services at specific City locations. The Contractor shall charge for these services to respective City Departments as a separate line pass-through item in the invoice. Any charges for such services shall be included under the overall cap on the contract price.

20. In the event of a holiday occurring on a scheduled collection date, collection shall be made on the next business day.

Vehicles

22. The Companies shall utilize only licensed vehicles when required by the 1932 Ordinance in the performance of services and shall maintain a sufficient number of vehicles to perform the work required herein. All vehicles used in the performance of this Agreement shall have the name of the Collection Company and the license prominently displayed. All vehicles and equipment used in the performance of this Agreement shall meet applicable state and local standards and shall be operated and maintained in a safe and sanitary condition.

23. The Companies shall make a reasonable effort to use environmentally-preferable fuels, such as biodiesel, natural gas biomethane from anaerobic digestion or refuse derived fuel, in a manner consistent with the Rate Order.

Delivery and Processing

24. Disposal of trash by Contractor is governed by the WDA.

25. The Companies shall make all possible efforts to deliver compostables and recyclables to permitted recycling or composting facilities.

26. Left blank by agreement of the Parties.

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

Zero Waste Requirements

28. The Contractors shall work with the City to identify opportunities to reduce the level of trash service and eliminate secondary charges (i.e., distance and elevation charges) to reduce costs to departments and improve collection efficiency. These opportunities may include, but are not limited to, increasing recycling and composting, reducing the number of trash container sizes or the frequency of trash collection when excess capacity is noted.

29. The Contractors shall work with the City Departments to maximize landfill diversion by offering the full range of recycling and composting services and requiring pre-authorization from the Department of the Environment when additional trash service is requested. The Companies should notify department designees and the Department of the Environment when they have identified opportunities to increase recycling and composting so that the Department of the Environment can work with the Department Designee to maintain high landfill diversion rates and identify ways for departments to save money on refuse charges.

30. The Contractors shall use their reasonable efforts to recycle or compost the maximum amount of material collected pursuant to this Agreement that is recyclable or compostable. Trash collected by the Companies that contains compostables or recyclables may be processed by the Companies to recover these materials. The Contractors shall work with the City to encourage compliance with the Mandatory Recycling and Composting Ordinance and help meet the goal of diverting 100% of the materials we generate from the landfill by 2020.

Duty to Maintain Records; Right to Examine Records

31. On a monthly basis, the Companies shall provide electronically a report similar in format to Appendix A2 but with applicable service charges and discounts and structured in accordance with the Rate Order for services provided at every collection location to the Office of Contract Administration, City Administrator, the Director of the Department of Public Works, and Director of the Department of the Environment or to each Department Designee for his or her department(s). The City reserves the right to inspect the Companies' records to verify the information provided in the reports. The monthly report shall include the following information:

(a) Itemized services and charges by location. Itemizing shall include the frequency of collection (collection day(s)), size of each collection container, type (recyclables, compostables or trash), quantity of each collection container type, (number and size of containers for each material type), containers charges associated with each and any premium service charges (e.g., key , heavy, distance) for the collection of refuse.

i. The individual service volume of trash, recyclables and compostables and the resulting volumetric diversion rate and associated discount shall be stated for each location.

ii. For roll-off containers (compactors and debris boxes), the Companies shall itemize the number of times each roll-off container was collected in the reporting period (pulled). Detailed weight information for Roll-Off containers will be provided as requested by the Department Designee or the Department of the Environment.

(b) Notification of any permanent or temporary change in service, made pursuant to this Appendix A including the reduction or increase in service levels and special on call collections as requested by the Department Designee or the Department of the Environment.

(c) Notification of any significant ongoing contamination of recycling and composting containers by location.

(d) Notification of opportunities to reduce the level of trash service and/or increase the amount of recycling and composting.

The timely and complete submission of all reports is a necessary and material term and obligation of this Agreement.

32. The Companies shall maintain a proper set of books and records in accordance with the Generally Accepted Accounting Principles, except that any unaudited financial statements need not contain the notes required by Generally Accepted Accounting Principles, accurately reflecting the business done by it under this Agreement.