

## RESOLUTION NO. 69-2022

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA APPROVING A SECOND AMENDMENT TO THE FRANCHISE AGREEMENT WITH RECOLOGY OF THE COAST TO EXTEND THE TERM AN ADDITIONAL TEN YEARS, WITH AN OPTION TO EXTEND AN ADDITIONAL FIVE YEARS, APPROVE THE RATE SCHEDULE SET BY RECOLOGY FOR SINGLE FAMILY RESIDENTIAL AND COMMERCIAL RATES FOR 2023, REVISE CITY FEES TO COMPLY WITH APPLICABLE LAW AND OTHER VARIOUS AMENDMENTS; FINDING APPROVAL OF THE SECOND AMENDMENT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT**

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**WHEREAS**, the City is responsible for the protection of the public health and safety of the residents and businesses of the City and solid waste handling services must be provided in a manner consistent with the exercise of City's duty to protect the public health and safety; and

**WHEREAS**, in February 2010, the City of Pacifica entered into a franchise agreement with Recology of the Coast ("Recology") for Recyclable Materials, Organic Materials, and Solid Waste Collection Services; and

**WHEREAS**, the City and Recology executed a First Amended Franchise Agreement on March 11, 2013 ("Agreement"); and

**WHEREAS**, on October 24, 2016, the City Council adopted Resolution No. 67-2016 extending the term of the Agreement for an additional five years until December 31, 2022; and

**WHEREAS**, the City requires additional services related to Senate Bill 1383 and mandatory organic waste disposal; and

**WHEREAS**, Recology has the demonstrated experience, responsibility and qualifications to provide consistent recyclable, organic and solid waste collection services throughout the City in a safe and responsible manner and has been satisfactorily meeting the City's requirements since 2010; and

**WHEREAS**, Recology has extensive knowledge of the City's needs and has formed important relationships within the community in order to perform their waste hauling services and has the correct equipment to provide the City collection services; and

**WHEREAS**, to the extent that this amendment results in the imposition of any fees, rates, or charges for services or facilities in connection with the City's solid waste system, those charges are adopted pursuant to California Health and Safety Code section 5471; and

**WHEREAS**, the City Council of the City of Pacifica considered the City Manager's recommendation to approve the Second Amendment to the Agreement between the City of Pacifica and Recology on October 10, 2022 and determined it is in the best interest of the public health, safety and well-being to enter into a Second Amendment to the Agreement with Recology, without competitive bidding, to extend the Agreement so that Recology can continue to be responsible for the collection, transportation and recycling or disposal of solid waste.

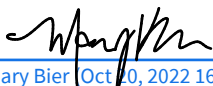
**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Pacifica as follows:


1. The above recitals are true and correct and material to this Resolution.
2. In making its determination, the City Council relied upon and hereby incorporates by reference all correspondence, staff reports, and other related materials submitted to the Council for consideration of the Second Amendment.
3. The approval of the Second Amendment to the Agreement would be exempt under the California Environmental Quality Act ("CEQA") Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility approval and execution of the Second Amendment would cause a significant effect on the environment. The Second Amendment to the Agreement will not change the operation of solid waste collection services provided to the City.
4. The City Council hereby approves the Second Amendment to the Agreement with Recology, in the form attached hereto as Exhibit A and all Attachments attached thereto.
5. The City Manager is hereby authorized to execute the Second Amendment, in the form attached hereto as Exhibit A, with minor revisions that may be approved by the City Manager and the City Attorney, and to execute any other necessary documents to effectuate the terms of the Second Amendment to the Agreement.

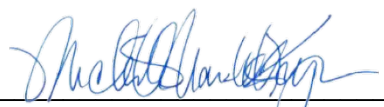
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**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on held on the 10<sup>th</sup> day of October 2022, by the following vote:

**AYES**, Councilmembers: Beckmeyer, Bier, Bigstyck, O'Neill, Vaterlaus.  
**NOES**, Councilmembers: n/a.  
**ABSENT**, Councilmembers: n/a.  
**ABSTAIN**, Councilmembers: n/a

  
 Mary Bier Oct 10, 2022 16:22 PDT  
 \_\_\_\_\_  
 Mary Bier, Mayor

ATTEST:  
  
 \_\_\_\_\_  
 Sarah Coffey, City Clerk

APPROVED AS TO FORM:  
  
 \_\_\_\_\_  
 Michelle Kenyon, City Attorney

# **EXHIBIT A**

## SECOND AMENDMENT TO FRANCHISE AGREEMENT

This **SECOND AMENDMENT** to the Franchise Agreement (“Second Amendment”) hereinafter referenced is entered into and effective as of October 10, 2022 between the City of Pacifica, a California municipal corporation (“City”), and Recology of the Coast, a California corporation (“Contractor”). City and Contractor may be referred to individually or collectively referred to as “parties.”

**WHEREAS**, in February, 2010, the City and Contractor entered into a Franchise Agreement Between the City of Pacifica and Recology of the Coast for Recyclable Materials, Organic Materials and Solid Waste Collection Services; and

**WHEREAS**, on March 11, 2013, the City and Contractor entered into a First Amended Franchise Agreement for Recyclable Materials, Organic Materials, and Solid Waste Collection Services (the “Agreement”) effective March 12, 2013; and

**WHEREAS**, on October 24, 2016 the City Council adopted Resolution No. XXX, extending the term of the Agreement for an additional five years until December 31, 2022; and

**WHEREAS**, the parties wish to amend the Agreement as set forth herein, to extend the term of the Agreement and make other revisions pursuant to the terms and exhibits provided herein.

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Second Amendment and for other good and valuable consideration, City and Contractor agree as follows:

1. The foregoing recitals are true and correct and are incorporated as terms into this Second Amendment.
2. The Agreement is hereby amended to delete all references to “Plant Materials” and replace all references within the Agreement to “Organic Materials or Plant Materials” with “Organic Materials”.
3. Section 3.03 (Extension of Term) of the Agreement is hereby amended to delete and replace that section in its entirety to read as follows:

### “3.03 Extension of Term

City has the sole option to extend the Term of this Agreement for an additional period of five (5) years (“Extension Term”). If the City wishes to extend this Agreement it shall provide written notice to Contractor no less than one (1) year prior to the end of the Term.

The City has exercised its right to extend the Term of the Agreement as follows:

On October 24, 2016, for an additional five years until December 31, 2022; and

On October 10, 2022, for an additional ten years until December 31, 2032. The City and Contractor may mutually agree in writing to extend the Term for an additional five years no less than one (1) year prior to December 31, 2032.

During the Extension Term all provisions of the Agreement, as amended, shall apply.”

4. The third sentence of Section 5.02.D.4 (Solid Waste Collection; City Facilities; Public Litter Receptacles), which reads “These Collections will be made between one (1) and six (6) Days per week, as determined by the City” of the Agreement is hereby amended to delete and replace that sentence in its entirety to read as follows:

“These Collections will be made between one (1) and seven (7) Days per week.”

5. Section 5.03.A.2 (Targeted Recyclable Materials Collection; Single-Family Dwelling; Used Motor Oil and Used Motor Oil Filters) of the Agreement is hereby deleted in its entirety. Contractor and City mutually agreed prior to the Effective Date of this Second Amendment to eliminate Curbside Collection of Used Motor Oil and Used Motor Oil Filters based on environmental concerns. These items are accepted by Contractor at the drop-off facility pursuant to the terms of Section 5.14 of the Agreement.

6. The second sentence of Section 5.03.D.1 (Targeted Recyclable Materials Collection; City Facilities; General) of the Agreement, which reads “Such service shall be either Single-Stream or Source Separated Collection, as selected by City” shall be deleted in its entirety. Contractor and City mutually agreed prior to the Effective Date of this Second Amendment that all Targeted Recyclable Materials Collection Services shall be on a Single-Stream basis.

7. Section 5.05 (Residential On-Call Curbside Bulky Item Collection Service) of the Agreement is hereby amended as follows:

(a) Section 5.05.A (General) is hereby amended to delete Section 5.05.A and replace it in its entirety to read amended to read as follows:

“A. **General.** Contractor shall provide three (3) separate On-Call Curbside Collection Service pick-ups to each Single-Family Dwelling Residential Premises annually upon Owner or Occupant’s request. Contractor will schedule the On-call Bulky Item Collection Service pick-up on the regularly scheduled Solid Waste Collection Day for Single-Family Dwellings, no more than ten (10) Business Days after the Owner or Occupant’s request. Notwithstanding the foregoing, On-Call Curbside Bulky Item Collection Service shall only be provided to Customers that are not delinquent on their service payments.

Contractor will allow the scheduling of On-Call Bulky Item Collection Service from January 1 through December 10 of each Rate Year. Contractor may provide additional On-Call Bulky Item Collection Service for a Customer beyond three (3) pick-ups per Rate Year, and shall be entitled to bill Customer as specified in Attachment N. Customer allotted On-Call Curbside Collection Service pick-ups do not carry over from year to year and Contractor shall allow Customers to schedule up to three (3) pick-ups for the same date if requested by Customer. Contractor is required to notify Customer if they have already received the annually allocated three (3) Collection events within one (1) Business Day of Customer request. If Contractor fails to notify Customer that they have received the annually allocated three (3) Collection events, Contractor shall provide the service and is not entitled to additional Contractor's Compensation from Customer or City for the third or subsequent On-Call Bulky Item Collection Service event."

(b) Section 5.05.B (Accepted Materials) is hereby amended to delete Section 5.05.B and replace it in its entirety to read as follows:

**"B. Accepted materials.** Collection of any of the following shall constitute one (1) pick-up and Contractor shall accept only the following materials as part of its On-Call Bulky Item Collection Service:

1. Major Appliances – One (1) Major Appliance (e.g. washing machine or clothes dryer).
2. Bulky Items – One (1) large Bulky Item (e.g. reusable furniture, mattresses, four tires).
3. E-Scrap – One (1) item (e.g., a computer, computer monitor or television).
4. Miscellaneous. Up to five (5) thirty-two (32) gallon bags of Solid Waste.

Contractor shall reject: refrigerators or freezers; Construction and Demolition Debris; Hazardous Waste; Infections Waste; ashes; dirt; Organic Materials; or Targeted Recyclable Materials. Contractor may reject any individual item that weights more than one-hundred (100) pounds unless Customer has paid, or has agreed in advance to pay an additional fee for service."

(c) Section 5.05.E (Collection and Processing Methods) is to hereby amended to delete Section 5.05.E and replace it in its entirety to read as follows:

**"E. Collection and Processing Methods.** All materials collected under this Section 5.05 will be collected by a flatbed truck and the items will be

segregated in the recycling yard for (1) reuse or Recycling or (2) Disposal, prior to their transport for processing.”

8. Section 5.10 (Coats for Kids Program) of the Agreement is hereby deleted in its entirety and replaced with “**5.10 RESERVED**”.

9. Section 5.14 (Drop-Off Facility) of the Agreement is hereby amended as follows:

(a) Section 5.14.A is hereby amended to delete Section 5.14.A and replace it in its entirety to read as follows:

“A. General. Contractor shall operate a facility in City accepting the drop-off of the materials listed in subsection B below from residents of City, provided that such materials were generated at Residential Premises and not as a result of Commercial activity. If such materials are Recyclable Materials, Contractor shall handle them as such; otherwise, Contractor shall dispose of them as Solid Waste or handle them as Hazardous Waste, as the case may be. The facility’s hours of operation will be 8:00 a.m. to 4:00 p.m. Tuesday and Thursday. Contractor may establish limits on the volume and weight of materials that a resident may deliver to the drop-off facility that are consistent with the amount of waste normally generated at Residential Premises, provided that any limit on volume of material not be less than one (1) cubic yard per resident.”

(b) Section 5.14.B. is hereby amended to delete Section 5.14.B and replace it in its entirety to read as follows:

“**B. Acceptable Materials.** Residents of the City may deliver and Contractor shall accept at the drop-off facility the following types of materials: used motor oil, used motor oil filters, automotive batteries, mattresses, box springs furniture, Major Appliances, non-commercial size refrigerators and freezers (for an additional fee) unpainted and untreated wood only (not including plant materials), miscellaneous metals (white metal goods, etc.), Targeted Recyclable Materials, tires for an additional fee (i.e., four (4) per Customer removed from rims, no commercial tires), Universal Waste, and E-Scrap. Contractor shall be allowed to reject: liquids or sludge (not otherwise listed as acceptable materials); Construction and Demolition Debris; cement; dirt; asphalt; concrete; Plant Materials; Hazardous Waste; Infections Waste; Contaminated Targeted Recyclable Materials; and Organic Materials.”

10. The first paragraph of Section 7.02.A (Customer Service; Local Office) of the Agreement is hereby amended to delete Section 7.02.A and replace it in its entirety to read as follows:

“Contractor shall operate a local office at 2305 Palmetto Avenue, Pacifica. Contractor shall be responsible for ensuring that a qualified representative is available at the local office on Tuesdays and Thursdays, from 7:30am to 4:30pm, exclusive of Holidays to communicate with the public and accept non-cash Bill payments from Customers. The local office and customer service telephone number(s) shall be a local or toll free call.”

**11.** The third and fourth sentences of Section 7.02.B (Customer Service; Customer Service Call Center and Staffing) of the Agreement which reads “In addition, the Customer service call center will offer contracting with a service to provide bilingual capacity for other languages including Spanish, Cantonese, Mandarin, and Vietnamese. Contractor shall provide immediate access to interpreters for over one-hundred and seventy-five (175) languages through the use of Language Line service, or a similar service” are hereby deleted in their entirety from Section 7.02.B.”

**12.** The phrase “or Source Separated” is hereby deleted from Section 7.05.A.1 (Multi-Family Recycling Promotion; Multi-Family Dwelling Promotion; Site Assessments) of the Agreement. Contractor and City mutually agreed prior to the Effective Date of this Second Amendment that all Collection Services of Targeted Recyclable Materials shall be done on a Single-Stream basis.

**13.** Section 8.01.A. (Collection Hours and Schedules) of the Agreement shall be amended to read as follows:

(a) Section 8.01.A.1 shall be deleted and replaced it in its entirety to read as follows:

“1. Residential. Residential Solid Waste, Targeted Recyclable Materials, and Organic Materials (including all such services provided to SFD and Multi-Family Dwelling Premises) shall be collected on weekdays (i.e., Monday through Friday) between 5:00 a.m. and 6:00 p.m. exclusive of Holidays.”

(b) Section 8.01.A.2 shall be deleted and replaced it in its entirety to read as follows:

“2. Commercial. Commercial and City Facilities Solid Waste, Targeted Recyclable Materials, and Organic Materials shall be Collected on weekdays (i.e., Monday through Friday) between 4:30 a.m. and 7:00 p.m. and weekends (i.e., Saturday and Sunday) between 6:00 a.m. and 5:00 p.m., exclusive of Holidays. The City may restrict or require modifications to hours for Collection from Commercial Premises and City Facilities to resolve noise Complaints, and, in such case, the City Manager may restrict the allowable operating hours.”



(c) Section 8.01.A.3 shall be deleted and replaced in its entirety to read as follows:

“3. Commercial Exception. Collection from Commercial Premises that are one hundred (100) feet or less from Residential Premises shall only occur between the hours of 5:00 a.m. and 7:00 p.m., Monday through Saturday and all such operations shall be in accordance with permissions provided to Contractor by City. The City may restrict or require modifications to hours for Collection from Commercial Premises and City Facilities to resolve noise Complaints, and, in such case, the City Manager may restrict the allowable operating hours.”

**14.** In line 8 of Section 8.05.B (Containers; New SFD Carts) and line 4 of Section 8.05.C (Containers; Commercial and Multi-Family Containers) of the Agreement, “20” is hereby deleted. Contractor no longer provides twenty (20) gallon Solid Waste Carts as part of its offerings for Solid Waste Carts.

**15.** Section 10.01 (Franchise and Regulatory Fees) of the Agreement is hereby deleted and replaced in its entirety to read as follows:

#### “10.01 Franchise and Service Fees

City and Contractor acknowledge that an exclusive franchise is a special agreement that has been negotiated between City and Contractor. The exclusive franchise that has been granted through this Agreement is intended to allow Contractor to use City property to provide Collection services. City has previously imposed or may impose other fees, which are intended to recover the City’s costs associated with providing services and administering regulatory programs related to solid waste management and recycling and organic materials collection. In consideration of the exclusive franchise granted to Contractor by this Agreement, Contractor shall pay to City the following fees, irrespective of the amount of Contractor’s Gross Receipts:

A. Franchise Fee. Contractor shall pay to City a Franchise Fee in the amount of \$200,000 annually. This fee was negotiated between the Contractor and City in good faith and at arms-length. The fee does not exceed the fair market value of City property used by Contractor pursuant to this Agreement and the property rights granted to Contractor by this Agreement, including, but not limited to, access for ingress and egress of the north eastern portion of the City yard at 2212 Beach Boulevard with access off of Palmetto Avenue for a total area of 40,000 square feet and the right to place Containers in public streets, sidewalks, and right-of-ways.

B. Franchise Administrative Services Fee. This fee is equal to the City’s costs of providing services related to this Agreement and Contractor’s Collection services for a total of \$183,790 annually.

C. Frontierland Park Remediation Fee. The City has an ongoing obligation to remediate Frontierland Park for matters related to the closed landfill site at that location. Remediation efforts focus on minimizing or resolving health, safety and public nuisance problems that may adversely affect the quality of life for citizens of the City. The remediation fee also provides funding for improvements to Frontierland Park facilities. The Frontierland Park remediation fee monies are used by the City to fund the remediation efforts. Contractor shall pay to City a Frontierland Park remediation fee in the amount of \$6,250 per month, which totals \$75,000 annually. The Frontierland Park remediation fee does not exceed the City's annual costs to remediate Frontierland Park.

D. AB 939 Fee. The Act (AB 939) requires the City to plan, implement and monitor programs that will reduce the amount of Solid Waste Disposed by residents and businesses and report annually to the State. Programs include recycling and organics programs, public education and outreach efforts, franchise monitoring, etc. The AB 939 fee is used to fund these mandated efforts. Contractor shall pay to City an AB 939 fee in the amount of \$2,500 per month, which totals \$30,000 annually. The AB 939 fee does not exceed the City's costs to comply with AB 939.

E. City Vehicle Impact Fee. Contractor shall pay City a refuse vehicle impact fee of \$421,210 annually to compensate the City for the additional expenses it incurs to repair and address the impact to the City's public streets caused by Contractor's Collection vehicles while performing Collection services.”

**16.** Sections 10.02 (Time and Method of Payment) and section 10.03 (Adjustments to Fees; Additional Fees) of the Agreement are hereby amended to delete the phrase “Regulatory Fee(s)” and replace it with “Service Fee(s)”.

**17.** Section 11.02. (Rate-Setting Process) is hereby deleted and replaced in its entirety to read as follows:

“A. New Rates. The City shall approve the maximum allowable Rates that reflect the Rate adjustments provided for in this Article 11 and Attachment K. If at any time during the Term of this Agreement, Contractor determines the need for a Rate that does not appear on the City-approved Rate schedule in Attachment N, Contractor shall immediately notify the City and request establishment of such a Rate. For example, if Contractor wishes to introduce Collection of a fifteen (15) cubic yard Compactor five (5) times per week, and the City-approved Rate schedule does not include a Rate for this service, Contractor must request that the City approve such a Rate.

B. Initial Rates. The maximum allowable Rates for Rate Year Fourteen, January 1, 2023 through December 31, 2023, shall be the Rates set forth in Attachment N.

C. [Reserved].

D. Subsequent Rate Adjustments. The Rates for subsequent Rate Years shall be determined based on annual adjustments in accordance with this Article 11 and Attachment K as follows: (i) seventeen, twenty, and twenty-three shall be Cost-Based Adjustment Years and (ii) Rate Years fifteen, sixteen, eighteen, nineteen, twenty-one, and twenty-two shall be Index-Based Adjustment Years.

E. Rate Structure. The Contractor may change the relationship of individual Rates in comparison with other Rates. Any such changes would occur in conjunction with the annual Rate adjustment process described in Section 11.02.D or in conjunction with a Rate adjustment resulting from a Special Rate Review in accordance with Section 11.04.”

**18.** Section 11.03 (A) (Annual Rate Application Process; Application Date and Content) of the Agreement is hereby amended to add a new subsection (3) to read as follows:

“(3) Maximum Rate Adjustment Factor.

The Rate Adjustment Factor calculated pursuant to Sections 11.03.A.1(iii) and 11.03.A.2.(v) of this Agreement, may not exceed six percent (6.0%). In the event that the Rate Adjustment Factor calculation exceeds six percent (6.0%), the percentage exceeding six percent (6.0%) shall be carried forward to the following year, and so on until all excess amounts are applied or the Agreement terminates. Notwithstanding the foregoing, the City shall not be required to compensate Contractor for any cumulative “roll-over” amounts remaining at the end of the Agreement Term, including extensions.

In the event that the calculated Rate Adjustment factor results in a negative Rate Adjustment Factor, the City reserves the right to “roll-under” the Rate reduction, such that there is no Rate adjustment in the Rate Period for which the negative Rate Adjustment Factor was calculated, but the calculated Rate reduction may be deferred to the following Rate Period, as a credit against future Rate increases.”

**19.** Section 11.03 (B) (Annual Rate Application Process; City Review and Approval) of the Agreement is hereby deleted and replaced in its entirety to read as follows:

“B. City Review and Approval

City shall review Contractor’s Application for accuracy and consistency with the applicable Rate adjustment procedures specified in this Article 11 and Attachment K. Within thirty (30) days after Contractor’s submission of the Application, City shall notify Contractor of any factual or calculation errors that City has identified in the Application, and Contractor shall have the opportunity to revise the Application.

In connection with City’s review of Contractor’s Application, Contractor shall provide all information reasonably requested by City to evaluate the Application (it being understood that information regarding Permitted Related Party Transactions need not be provided). Upon request, Contractor shall

provide information from Related Party Entities regarding any financial transactions between Contractor and such Related Party Entities (other than Permitted Related Party Transactions) relating to this Agreement, to the extent reasonably necessary to evaluate Contractor's Application.

The City Council shall review and approve Maximum Rates to reflect the adjustments required by Section 3 of Attachment K or Section 4 of Attachment K, as the case may be, and Section 11.03, if applicable subject to potential Rate constraints described in Section 11.07. City and the City Council shall use their reasonable best efforts and act in good faith to approve annual Rate adjustments to be effective on or before January 1 of the Rate Year following the year in which the Application was submitted."

**20.** Section 11.04 (G) (Special Rate Review; Expenses of Review) of the Agreement is hereby deleted and replaced in its entirety to read as follows:

**"G. Expenses of Review.** Contractor shall reimburse City for City's reasonable costs incurred in participating in any special Rate review, up to a maximum of \$35,000. For special Rate reviews initiated by City pursuant to Section 15.12, or special Rate reviews initiated by Contractor arising from events described in Sections 11.04.B.1, 11.04.B.2 or (if the Change in Law is initiated by City) 11.04.B.4., Contractor shall be entitled to recover the cost of such reimbursement through the Rate adjustment mechanism (as an Eligible Cost or otherwise); otherwise, such reimbursement shall be a Non-Allowable Cost."

**21.** Section 2.04 (No Conflict with Applicable Law or Other Documents) of the Agreement is hereby amended to add the following paragraph:

"The Parties agree that if there is any Change in Law that affects a Parties rights, obligations or liabilities under this Agreement the Parties shall meet and confer in good faith regarding the Change in Law and shall re-negotiate the terms of this Agreement to the extent necessary to address the Change in Law."

**22.** Attachment A of the Agreement is hereby amended to delete and replace the following definitions:

**"Bulky Items'** means large items including, but not limited to, Major Appliances, furniture, carpets, mattresses, and other oversize materials whose large size precludes or complicates their handling by normal collection. Bulky items do not include abandoned automobiles, large auto parts, trees, refrigerators, or freezers."

**"Business Days'** means days (i.e. Monday through Friday) during which Contractor's Customer Service hotline is staffed to do business with the public."

**"Designated Processing Facility'** means the Green Waste Recovery recycling plant located at 625 Charles Street, San Jose , which is

owned and operated by Green Waste Recovery, and which will process Targeted Recyclable Materials.”

“**Holiday Schedule**’ means the modified service schedule for the days following a Holiday. Customer will receive advance written notification of which weekend day their pick up will be scheduled following a holiday.”

“**On-Call Service**’ means Collection service provided by Contractor that is not regularly scheduled or is scheduled more than twenty-four (24) hours in advance. On-Call service is initiated by Customer by calling or emailing Contractor to request the service.”

“**Organic Materials**’ means those materials that will decompose and/or putrefy and that the City permits, directs, or requires Generators to separate from Solid Waste and Targeted Materials for Collection in specially designated Containers for Organic materials Collection. Organic Materials include Plant Materials, Food Scraps, and uncoated paper contaminated with Food Scraps in accordance with Pacifica Municipal Code section 6-5.701 et seq. No Discarded Material shall be considered Organic Materials, unless such material is separated from Solid Waste and Targeted Recyclable Material.”

All other definitions not identified in Attachment A shall remain unchanged.

**23.** Attachment E of the Agreement is hereby deleted and replaced in its entirety with Attachment E (SB 1383 Matters) attached hereto and hereinafter incorporated by reference.

**24.** Attachment K of the Agreement is hereby deleted and replaced in its entirety with Attachment K (Rate Setting Methodology) attached hereto and hereinafter incorporated by reference.

**25.** Attachment N of the Agreement is hereby deleted and replaced in its entirety with Attachment N (Rate Schedule).

**26.** Attachment Q of the Agreement is hereby deleted in its entirety.

**27.** Except as expressly modified by this Second Amendment, all terms and conditions of the Agreement shall remain unchanged and in full force and effect. Capitalized terms used but not defined herein shall have the meanings given to them in the Agreement. All references in this Second Amendment to Articles, Sections and Exhibits refer to articles, sections and exhibits of the Agreement.

**[Signatures on Next Page]**

**IN WITNESS WHEREOF**, the duly authorized representatives of the parties have executed this Second Amendment to Franchise Agreement as of the date first written above.

City of Pacifica

Recology of the Coast

By: \_\_\_\_\_  
Kevin Woodhouse, City Manager

By: \_\_\_\_\_  
Salvatore M. Coniglio  
Chief Executive Officer

ATTEST:

\_\_\_\_\_  
Sarah Coffey, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

# ATTACHMENT K

## RATE-SETTING METHODOLOGY

### 1. DEFINITIONS

In addition to the terms defined in Attachment A of this Agreement, the following terms are defined as follows:

1.1 “CPI-U” means the Consumer Price Index, All Urban Consumers, All Items, Not Seasonally Adjusted, San Francisco-Oakland-San Jose Metropolitan Area (Series Id: cuura422sa0), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

1.2 “CPI-W” means the Consumer Price Index, Urban Wage Earners and Clerical Workers, All Items, Not Seasonally Adjusted, San Francisco-Oakland-San Jose Metropolitan Area (Series Id: cwura422sa0), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

1.3 “PPI - Fuel Pricing Index” means the Producer Price Index, Commodities, Not Seasonally Adjusted, No. 2 Diesel Fuel (Series Id: wpu057303), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

1.4 “Motor Vehicle Maintenance and Repair Index” means the Consumer Price Index, All Urban Consumers, Motor Vehicle Maintenance and Repair, Not Seasonally Adjusted, U.S. City Average (Series Id: cuur0000setd), compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

1.5 “Annual Percentage Change” means (1) the annual percentage change in any of the indices calculated as described below in this paragraph, or (2) six percent (6% or 0.06), whichever is less, with the exception that the six percent (6% or 0.06) cap shall not apply in the case of the PPI – Fuel Pricing Index. The Annual Percentage Change in an index is calculated as the Average Index Value for the 12-month period ending April 30 of the then-current Rate Year, minus the Average Index Value for the 12-month period ending April 30 of the prior year, and dividing the result by the Average Index Value for the 12-month period ending April 30 of such prior year. The Annual Percentage Change shall be rounded to the nearest hundredth of one percent (e.g., a calculated value of 0.02636 (2.636%) would be rounded to 0.0264 (2.64%)).

1.6 “Average Index Value” for a twelve (12) month period means the sum of the published monthly index values for such period divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values for such period divided by 6 (in the case of indices published bi-monthly).

1.7 “Organics Processing Fee” for a given period means the highest per-ton fee payable by Contractor during such period for the processing of Organic Materials at the Designated Composting Facility net of any revenues from Compost Product. So long as the Designated Composting Facility is owned by an Affiliate of Contractor, the Organics Processing Fee shall equal \$48.77 per ton for Rate Year Fourteen, and shall thereafter increase by the Annual Percentage Change in the CPI-U and changes in regulatory fees pursuant to Sections 3.3.9 and 4.3.9.

1.8 “Disposal Fee” for a given period means (i) if Contractor or City has entered into an agreement with the operator of the Designated Disposal Facility applicable

## ATTACHMENT K RATE-SETTING METHODOLOGY (cont.)

to such period, the per-ton fee payable by Contractor pursuant to such agreement (including the Regulatory Fee Component) for Disposal of Solid Waste at the Designated Disposal Facility; and (ii) otherwise, a fee of \$63.11 per Ton, for Rate Year Fourteen, which fee shall thereafter increase by the Annual Percentage Change in the CPI-U (except that the Regulatory Fee Component of such fee shall increase based on actual changes in regulatory fees at the Designated Disposal Facility).

1.9        “Transfer Station (Load-Out) Fee” or “Transfer Station Fee” for a given period means the highest per-ton fee payable by Contractor during such period for the transfer of Recyclable Materials and Organic Materials at the Designated Transfer Facility to cover costs related to receipt of materials in Collection vehicles and loading such materials into long-haul transfer vehicles. So long as the Designated Transfer Facility is owned by an Affiliate of Contractor, the Transfer Station Fee shall equal \$8.41 per ton for Recyclable Materials for Rate Year Fourteen and , and shall thereafter increase by the Annual Percentage Change in the CPI-U and changes in regulatory fees pursuant to Sections 3.3.7, 3.6.1, 4.3.7, and 4.6.1.

1.10       “Organics Transport Fee” for a given period means the per-ton cost for such period for the transportation of Organic Materials from the Designated Transfer Facility to the Designated Composting Facility. The Contractor does not currently transfer Organic Materials at the Designated Transfer Facility owned by an Affiliate of Contractor. Contractor and City shall negotiate a reasonable Organic Transport Fee in the event that Contractor is to begin transferring Organic Materials at the Designated Transfer Facility at any point during the term of this Agreement.

1.11       “Recyclables Transport Fee” for a given period means the per-ton cost for such period for the transportation of Recyclable Materials from the Designated Transfer Facility to the Designated Processing Facility. So long as the Designated Transfer Facility is owned by an Affiliate of Contractor, the Recyclables Transport Fee shall equal \$32.02 per ton for Rate Year Fourteen, and shall thereafter increase by the Annual Percentage Change in the CPI-U and changes in regulatory fees pursuant to Sections 3.6.2 and 4.6.2.

1.12       “Base Component” means, with respect to a given fee, the portion of such fee that represents Contractor’s charge for transfer station, transport, processing, composting, or disposal and includes all Contractor’s expenses, but excludes the Regulatory Fee Component.

1.13       “Regulatory Fee Component” means, with respect to a given fee, that portion of such fee that represents amounts payable by Contractor for all federal, State, and local fees applied to transfer, transport, processing, composting, or disposal.

If an index is discontinued, the successor index with which it is replaced will be used for subsequent calculations. If no successor index is identified by the Bureau of Labor Statistics, the index published by the Bureau which, in the reasonable opinion of City after conferring with Contractor, is most comparable will be used.



# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

### 2. COST COMPONENTS

Both index-based and cost-based Rate adjustments are effected by applying various adjustment factors as described herein to the following categories of costs and other amounts, which are referred to herein as “Cost Components” or “Components”:

2.1 “CBA Labor Costs” for a given period means the direct and indirect costs incurred by Contractor during such period for Contractor’s employees, who are governed by a collective bargaining agreement, including without limitation: (1) wage costs including costs for regular, overtime, holiday, vacation, and sick wages; (2) health and welfare costs; and (3) pension/retirement benefit costs, but excluding Workers Compensation and Payroll Taxes.

2.2 “Non-CBA Labor Costs” for a given period means the direct and indirect costs incurred by Contractor during such period for Contractor’s employees, including supervisory personnel, who are not governed by a collective bargaining agreement, including without limitation: (1) wage and salary costs including costs for regular, overtime, holiday, vacation, and sick wages; (2) health and welfare costs; and (3) pension/retirement benefit costs, but excluding Workers Compensation and Payroll Taxes.

2.3 “Workers Compensation” for a given period means the costs incurred by Contractor during such period for workers compensation insurance premiums.

2.4 “Payroll Taxes” for a given period means the costs incurred by Contractor during such period for payroll taxes.

2.5 “Vehicle-Related Costs” for a given period means direct and indirect costs incurred by Contractor during such period associated with maintenance, repair, licensing and registration of Contractor’s vehicles and equipment, but excluding Fuel Costs and Lease Costs.

2.6 “Fuel Costs” for a given period means the costs incurred by Contractor during such period for fuel.

2.7 “Organics Transfer Station (Load-Out) Costs” or “Organics Transfer Station Costs” for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Organics Transfer Station Fee) of costs incurred by Contractor during such period for the transfer of Organic Materials at the Designated Transfer Facility.

2.8 “Organics Transport Costs” for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Organics Transport Fee) of costs incurred by Contractor during such period for the transport of Organic Materials from the Designated Transfer Station to the Designated Composting Facility.

2.9 “Organics Processing Costs” for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Organics Processing Fee) of fees incurred by Contractor during such period for the processing of Organic Materials at the Designated Composting Facility.

## ATTACHMENT K RATE-SETTING METHODOLOGY (cont.)

2.10 “Lease Costs” for a given period means the costs incurred by Contractor during such period for leases of facilities, vehicles and equipment (including Containers) leased from Affiliates of Contractor. Contractor’s lease costs include: (1) lease costs of \$153,614 per year for all Rate Years for lease of the vehicle parking and maintenance facility located at 2305 Palmetto Avenue, Pacifica, from Recology Properties Inc.; and, (2) lease costs of \$597,611 for new and used vehicles and containers for Rate Year Fourteen (adjusted in subsequent rate years as set forth below).

Lease costs for new and used vehicles and containers described in 2.10(2) above shall be adjusted based on a reconciliation of the actual lease costs and the projected lease costs included in the Contractor’s Application for the most recently completed Rate Year, and shall be adjusted further by any other written, mutually agreed-upon adjustments between City and Contractor. The difference between those amounts, which may be positive or negative, shall be added to or subtracted from the Contractor’s projected lease costs for the forthcoming Rate Year for which Contractor’s compensation is being calculated.

Leases for new vehicles and equipment (including Containers) shall fully amortize Contractor’s acquisition cost over a 7-year period, and leases for used vehicles and equipment (including Containers) shall fully amortize Contractor’s acquisition cost over a 5-year period, in each case based on the date the vehicles or equipment are put into service, and assuming equal monthly payments over the life of the lease. After the 5- or 7-year amortization period, the lease costs shall not be included in subsequent Rate Years. Lease rates shall be calculated at a rate equal to 1.9% plus the rate (as of the date the asset is put into service by Contractor) for Treasury bonds of constant maturity having the same term as the lease term (e.g., 7-year bonds for a 7-year lease term), as such rate appears on the web site of the Federal Reserve Board (<http://www.federalreserve.gov/releases/H15/data.htm>).

The specific Lease Costs set forth above (other than the 2305 Palmetto lease) reflect the leasing of the vehicles and equipment listed in Attachment P (the “Capital Requirements Schedule”). In connection with the Rate adjustment process for each Cost-Based Adjustment Year the Capital Requirements Schedule shall be adjusted by (1) deleting from the schedule vehicles and equipment no longer in use, and (2) adding to the schedule new and replacement vehicles and equipment approved by City in connection with City’s consideration of Contractor’s Application for such Cost-Based Adjustment Year. Lease terms and rates for new and replacement vehicles and equipments shall be as set forth in the preceding paragraph unless otherwise agreed by City.

2.11 “Start-Up Costs” shall be fixed at \$0.00 per Rate Year for Rate Years Two through Eight and shall not be annually adjusted, and shall be zero in any subsequent Rate Year unless the Parties mutually agree to a different amount.

2.12 “Other Costs” for a given period means all costs reasonably incurred by Contractor during such period in connection with or arising from Contractor’s performance of its obligations under this Agreement, other than (i) costs attributable to the Cost Components set forth in Sections 2.1 through 2.11 above, (ii) Pass-Through Costs, (iv) Calculated Profit, and (v) Non-Allowable Costs.

2.13 “Total Annual Cost of Operations” means the sum of the Cost Components set forth in Sections 2.1 through 2.12 above. Total Annual Cost of Operations is used as a basis for determining Calculated Profit.

## ATTACHMENT K RATE-SETTING METHODOLOGY (cont.)

2.14 “Calculated Profit” means an estimate of Contractor’s profit based on the Operating Ratio of 0.90. Contractor’s profit margin with respect to a given amount (e.g., the Total Annual Cost of Operations) is calculated by dividing the given amount by the Operating Ratio, and subtracting from the result the given amount.

2.15 “Other City Fees” means an estimate of the amount of the fees other than the Franchise Fee payable by Contractor to City pursuant to Section 10.03 of this Agreement, used for purposes of determining Total Calculated Costs. To the extent that Other City Fees are determined as a percentage of Gross Receipts or other variables (as opposed to being fixed dollar amounts), the Other City Fees Component does not in any way guarantee the actual fees that will be paid by Contractor to City. Other City Fees shall be Pass-Through Costs.

2.16 “Calculated Franchise Fee” means an estimate of the amount of the Franchise Fee payable by Contractor to City pursuant to Section 10.02 of this Agreement, used for purposes of determining Total Calculated Costs. The Calculated Franchise Fee does not in any way guarantee the actual fee that will be paid by Contractor to City, which is based on Gross Receipts. The Franchise Fee shall be a Pass-Through Cost.

2.17 “Recyclables Transfer Station (Load-Out) Costs” or “Recyclables Transfer Station Costs” for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Recyclables Transfer Station Fee) of costs incurred by Contractor during such period for the transfer of Recyclable Materials at the Designated Processing Facility. Recyclables Transfer Station Costs shall be Pass-Through Costs.

2.18 “Recyclables Transport Costs” for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Recyclables Transport Fee) of costs incurred by Contractor during such period for the transport of Recyclable Materials from the Designated Transfer Station to the Designated Processing Facility. Recyclables Transport Costs shall be Pass-Through Costs.

2.19 “Recyclables Commodities Sales Offset” shall be negative \$269,300 for Rate Years Two through Eight, and any subsequent Rate Years if the Term is extended. The Recyclables Commodities Sales Offset reflects net revenues from the sale of Recyclables; therefore, the costs of processing Recyclable Materials are not included in the Rate adjustment process.

2.20 “Disposal Costs” for a given period means the total dollar amount (e.g., number of Tons multiplied by the per-Ton Disposal Fee) of fees incurred by Contractor during such period for the disposal of Solid Waste at the Designated Disposal Facility. Disposal Costs shall be Pass-Through Costs.

2.21 “Total Calculated Costs” means the sum of the Cost Components set forth in Sections 2.13 through 2.20 above. Total Calculated Costs is used as a basis for determining the Rate Adjustment Factor under the index-based and cost-based Rate adjustment methodologies. Total Calculated Costs does not reflect or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by Contractor.

# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

2.22 “Pass-Through Costs” means the Franchise Fee, Other City Fees, Disposal Costs, Recyclables Transfer Station Costs, Recyclables Transport Costs and Other Pass-Through Adjustments.

### 3. INDEX-BASED RATE ADJUSTMENT METHODOLOGY

3.1 **Summary.** The index-based Rate adjustment methodology involves the application of the Annual Percentage Change in various price indices to certain categories of Contractor’s Total Annual Cost of Operations for the current Rate Year; the calculation of profit; and the calculation of Other City Fees and Franchise Fees. The difference (measured as a percentage) between Total Calculated Costs for the coming Rate Year and Total Calculated Costs for the current Rate Year is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Rates to determine the Rates for the coming Rate Year.

3.2 **Determination of Contractor’s Costs.** With respect to the Cost Components that comprise Total Annual Cost of Operations, the starting point for the adjustment calculations referred to in Section 3.1 is the value of each Cost Component for the Rate Year in which Contractor’s Application is submitted (i.e., the current year), as determined in the previous Rate adjustment process. For purposes of Contractor’s Application submitted in Rate Year Two to determine the Rates that will take effect on January 1 of Rate Year Three, the Cost Components that make up Total Annual Cost of Operations will be based on a pro forma financial statement prepared by Contractor that served as the basis for adjusting Rates for Rate Year Two, the form of which shall be in accordance with that presented in Attachment P.

3.3 **Calculation of Adjustments to Cost Components.** Each of the Cost Components will be adjusted as follows:

3.3.1 **CBA Labor Costs.** CBA Labor Costs for the coming Rate Year shall be determined by adjusting CBA Labor Costs for the current Rate Year in accordance with the procedures described in the then-current collective bargaining agreement.

3.3.2 **Non-CBA Labor Costs.** Non-CBA Labor Costs for the coming Rate Year shall equal Non-CBA Labor Costs for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-W.

3.3.3 **Workers Compensation.** Workers Compensation for the coming Rate Year shall equal Workers Compensation for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U.

3.3.4 **Payroll Taxes.** Payroll Taxes for the coming Rate Year shall equal (i) Payroll Taxes for the current Rate Year multiplied by (ii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the coming Rate Year, determined in accordance with Sections 3.3.1 and 3.3.2, respectively, and divided by (iii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the current Rate Year.

# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

3.3.5 **Vehicle-Related Costs.** Vehicle-Related Costs for the coming Rate Year shall equal Vehicle-Related Costs for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index.

3.3.6 **Fuel Costs.** Fuel Costs for the coming Rate Year shall equal the approved Fuel Costs that are reflected on Contractor's Application for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the PPI - Fuel Pricing Index, plus the difference between the most-recently completed Rate Year's projected fuel costs that appear on Contractor's Application for such year and including any other written mutually agreed-upon adjustments between City and Contractor, with the most-recently completed Rate Year's actual fuel costs.

3.3.7 **Organics Transfer Station (Load-Out) Costs.** Organics Transfer Station Costs for the coming Rate Year shall equal (i) the Base Component of the Organics Transfer Station Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Organics Transfer Station Fee, multiplied by (ii) the total Tons of Organic Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

3.3.8 **Organics Transport Costs.** Organics Transport Costs for the coming Rate Year shall equal (i) the Base Component of the Organics Transport Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees in the Regulatory Fee Component of the Organics Transport Fee, multiplied by (ii) the total Tons of Organic Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

3.3.9 **Organics Processing Costs.** Organics Processing Costs for the coming Rate Year shall equal (i) the Base Component of the Organics Processing Fee for the current Rate Year multiplied, which shall be \$48.77 for 2023, by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees, multiplied by (ii) the total Tons of Organic Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

3.3.10 **Lease Costs.** Lease Costs for the coming Rate Year shall be determined in accordance with Section 2.10 above.

3.3.11 **Start-Up Costs.** Start-Up Costs for the coming Rate Year shall equal the applicable amount set forth in Section 2.11 above.

3.3.12 **Other Costs.** Other Costs for the coming Rate Year shall equal Other Costs for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U.

3.3.13 **Total Annual Cost of Operations.** Total Annual Cost of Operations for the coming Rate Year shall equal the sum of the amounts calculated in Sections 3.3.1 through 3.3.12 above.

# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

**3.4 Calculated Profit.** Calculated Profit for the coming Rate Year will be calculated by dividing the Total Annual Cost of Operations for the coming Rate Year (the value calculated in Section 3.3.13 above) by an operating ratio (0.90) and subtracting from the result the Total Annual Cost of Operations for the coming year.

### **3.5 City Fees (For Which No Profit Shall be Added)**

**3.5.1 Franchise Fee.** Contractor shall pay to City a Franchise Fee in the amount of \$200,000 annually.

**3.5.2 Frontierland Park Remediation Fee.** The annual remediation fee for Frontierland Park for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

**3.5.3 AB 939 Fee.** The annual AB 939 fee for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

**3.5.4 Franchise Administrative Services Fee.** The annual franchise administrative services fee for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

**3.5.5 City Vehicle Impact Fee.** The annual City vehicle impact fee for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

**3.5.6 Total City Fees.** The Total City Fees for the coming Rate Year shall equal the sum of the costs calculated in items 3.5.1 through 3.5.5 above; provided, however, that any adjustment in any such fee will be a Pass-Through Cost and reflected in the Total City Fees.

**3.6 Other Pass-Through Adjustments.** Other Pass-Through Adjustments for the coming Rate Year shall equal (i) the sum of the costs calculated in items 3.6.1 through 3.6.5 below, plus (ii) any amounts (actual or reasonably estimated) not included in Total Annual Cost of Operations for which Contractor is entitled to reimbursement through the Rate adjustment mechanism, plus (iii) any other amounts mutually agreed by City and Contractor to be "Other Pass-Through Adjustments" hereunder.

**3.6.1 Green Waste Adjustment.** Rates for Rate Year Two shall include a negative adjustment in the amount of \$56,250 to provide for the recapture by City and its residents of the certain amounts relating to Previous Contractor's disposal of green waste and allocation of costs to its Affiliate, Sea Coast Disposal Company. Such adjustment shall not continue beyond Rate Year Two; and accordingly, for purposes of Contractor's Application submitted in Rate Year Two to determine the Rates that will take effect on January 1 of Rate Year Three, the Green Waste Adjustment shall equal zero.

# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

As a result, the green waste adjustment shall be zero for Rate Years Three through Eight and any extension of the Term.

**3.6.2 Recyclables Transfer Station (Load-Out) Costs.** Recyclables Transfer Station Costs for the coming Rate Year shall equal (i) the Base Component of the Recyclables Transfer Station Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transfer Station Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30 (except that, for purposes of Contractor's Application submitted in Rate Year One to determine the Rates that will take effect on March 1 of Rate Year Two, the Recyclables Transfer Station Fee for the current Rate Year shall equal \$6.20 per Ton, and the total tons of Recyclable Materials Collected shall be calculated as the Tonnage Collected over the period from September 1, 2010 through October 15, 2010 divided by 1.5 months and multiplied by 12 months).

**3.6.3 Recyclables Transport Costs.** Recyclables Transport Costs for the coming Rate Year shall equal (i) the Base Component of the Recyclables Transport Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transport Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

**3.6.4 Recyclables Commodities Sales Offset.** The Recyclables Commodities Sales Offset for the coming Rate Year shall equal the amount set forth in Section 2.19 above.

**3.6.5 Disposal Costs.** Disposal Costs for the coming Rate Year shall equal the per-Ton Disposal Fee at the Designated Disposal Facility for the coming Rate Year multiplied by the total Tons of Solid Waste Collected by Contractor for the most-recently completed 12-month period ending April 30.

**3.7 Total Calculated Costs.** The Total Calculated Costs for the coming Rate Year shall equal the sum of the Total Annual Cost of Operations for the coming Rate Year (as calculated in Section 3.3.13 above), Calculated Profit for the coming Rate Year (as calculated in Section 3.4 above), Total City Fees for the coming Rate Year (as calculated in Section 3.5.6 above), and Other Pass-Through Adjustments for the coming Rate Year (as calculated in Section 3.6 above).

**3.8 Adjustment of Rates.** The Rate Adjustment Factor for the coming Rate Year shall equal Total Calculated Costs for the coming Rate Year (as calculated in Section 3.7 above) divided by Total Calculated Costs for the current Rate Year, which shall be rounded to the nearest thousandth. Each then-effective Rate, as set forth on Attachment N, shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Year. The adjustment to each Rate shall be rounded to the nearest cent.

# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

3.9 **Example.** The estimated costs for Rate Year Two, which are included in Attachment P (but which are subject to adjustment as provided in Section 11.02.C), present an example of the index-based adjustment method.

### 4. COST-BASED RATE ADJUSTMENT METHODOLOGY

4.1 **Summary.** The cost-based Rate adjustment methodology involves: review of Contractor's actual, allowable and allocated Total Calculated Costs from Contractor's most recently completed Fiscal Year; allocation of those costs to the Cost Components that comprise Total Annual Cost of Operations; the application of the Annual Percentage Change in various price indices to those Cost Components to reflect a 2-year increase (i.e., the period from the most recently completed Fiscal Year to the coming Rate Year); the calculation of Calculated Profit for the coming Rate Year based on Total Annual Cost of Operations; the calculation of the Calculated Franchise Fee for the coming Rate Year based on Total Annual Cost of Operations plus Calculated Profit plus Other City Fees and Other Pass-Through Adjustments; and the pass-through of Other City Fees and other actual or reasonably expected changes in costs, if any, to determine Total Calculated Costs for the coming Rate Year. The difference (measured as a percentage) between Total Calculated Costs for the coming Rate Year and Total Billings for the most-recently completed twelve (12) month period ending April 30 (adjusted to reflect the most recent Rate adjustment) is the Rate Adjustment Factor. The Rate Adjustment Factor is applied to the current Rates to determine the Rates for the coming Rate Year. If the Rate Adjustment Factor is nine percent (9%) or more, then City may divide the Rate adjustment over two Rate Years, with nine percent (9%) of the Rate adjustment occurring in the coming Rate Year, and the remainder of the Rate adjustment being carried over to the following Rate Year and added to the Rate adjustment that would otherwise take effect in such Rate Year and, if necessary, carried over an additional Rate Year so that no adjustment in a given Rate Year exceeds nine percent (9%).

4.2 **Determination of Contractor's Costs.** Contractor's actual, allowable and allocated Total Calculated Costs from Contractor's most recently completed Fiscal Year shall be derived from Contractor's audited financial statements for such Fiscal Year, in accordance with the following steps:

4.2.1 **Allocation Across Franchises.** First, Contractor shall allocate its costs as set forth in such financial statements among the different jurisdictions to which Contractor provided services during the Fiscal Year. The amount of costs allocated to this Agreement shall be determined for each cost component described in Section 2 using one of the following allocation factors:

(a) Route allocation factor - Percentage of routes attributable to the City compared to total routes operated by Contractor, which shall be calculated as the number of routes Contractor operates to serve the City divided by the total routes Contractor operates to serve all jurisdictions, multiplied by 100.

(b) Single-Family Customer allocation factor - Percentage of Single-Family Customers in the City compared to the total Single-Family Customers served by the Contractor, which shall be calculated as the total number of Single-Family



## ATTACHMENT K RATE-SETTING METHODOLOGY (cont.)

Customers served by Contractor under this Agreement, divided by the total number of Single-Family Customers served by Contractor in all jurisdictions, multiplied by 100. If Contractor expands its services to other areas in addition to Pacifica, Montara, and Granada, the City reserves the right to request that the Single-Family Customer allocation factor be modified to an allocation factor based on the total Customers including residential and commercial Customers.

(c) Tonnage allocation factor – Percentage of Tonnage of Solid Waste, Recyclable Materials and Organic Materials Collected by Contractor from City, compared to total Tonnage of Solid Waste, Recyclable Materials and Organic Materials, respectively, Collected by Contractor, which shall be calculated as the total number of Tons of the applicable materials type Collected by Contractor from City, divided by the total number of Tons of such materials type collected by Contractor from all jurisdictions, multiplied by 100.

(d) Drop box hauls allocation factor – Percentage of drop box hauls from City, compared to total hauls, which shall be calculated as the total number of hauls by Contractor from City, divided by the total number of hauls by Contractor from all jurisdictions, multiplied by 100.

The route allocation factor will be applied to all costs with the exception of (i) Other Costs, which shall be allocated using the Single-Family Customer allocation factor, (ii) Disposal Costs, which shall be allocated using the Solid Waste Tonnage allocation factor, (iii) Recyclables Transfer Costs and Recyclables Transport Costs, which shall be allocated using the Recyclables Tonnage allocation factor, and (iv) Organics Transfer Costs, Organics Transport Costs and Organics Processing Costs, which shall be allocated using the Organics Tonnage allocation factor.

The allocation factors shall be calculated using the then-current route information, Customer account data and tonnage information. Based on such allocations, Contractor shall prepare a pro forma financial statement which reflects Contractor's costs of performing its obligations under this Agreement for such Fiscal Year.

4.2.2 **Removal of Non-Allowable Costs.** Second, Contractor shall adjust such pro forma financial statement by excluding therefrom all Non-Allowable Costs. "Non-Allowable Costs" means the following:

(a) Labor costs attributable to Contractor's employees who are governed by a collective bargaining agreement resulting from adjustments to wages, health and welfare, and pension/retirement costs that are in excess of the adjustment made in accordance with the procedures described in the then-current collective bargaining agreement.

(b) Payments to directors and/or owners of Contractor, unless paid as reasonable compensation for services actually rendered.

(c) Travel expenses and entertainment expenses (above \$5,000 annually in total), unless authorized in advance by City.

## **ATTACHMENT K RATE-SETTING METHODOLOGY (cont.)**

- (d) Payments, not covered by insurance, to repair damage to property of third parties or City for which Contractor is legally liable.
- (e) Fines for penalties of any nature.
- (f) Liquidated Damages assessed under this Agreement.
- (g) Federal or State income taxes.
- (h) Charitable or political donations.
- (i) Lease costs in excess of those determined in accordance with the preapproved methods described in Section 2.10.
- (j) Attorney's fees and other expenses incurred by Contractor in any court proceeding in which City and Contractor are adverse Parties, unless Contractor is the prevailing Party in such proceeding.
- (k) Attorney's fees and other expenses incurred by Contractor arising from any act or omission of Contractor in violation of this Agreement.
- (l) Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or willful misconduct are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed.
- (m) Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for City derived from the action of its citizens or ratepayers (such as in a CERCLA lawsuit) unless Contractor is found not liable in such claims.
- (n) Payments to Related Party Entities for products or services in excess of (1) in the case of transactions other than Permitted Related Party Transactions, the cost to the Related Party Entity for those products or services, or (2) in the case of Permitted Related Party Transactions, the applicable amounts set forth in this Agreement for such transactions (such as the Transfer Station Fee, the Organics Transport Fee, the Recyclables Transport Fee, the Organics Processing Fee, and Lease Costs.
- (o) Goodwill.
- (p) Costs of the Contractor's Employee Stock Ownership Plan.
- (q) Depreciation and interest expenses because Contractor plans to lease equipment rather than purchase.
- (r) Corporate and regional overhead costs greater than five and seven tenths percent (5.7%) of Total Annual Cost of Operations for the most-recently completed twelve (12) month period ending April 30. This cap on costs applies to the sum

## ATTACHMENT K RATE-SETTING METHODOLOGY (cont.)

total of the following line item expenses in the pro forma provided in Attachment P: regional accounting fees, regional management fees, corporate accounting, IT fee, environmental compliance, human resources fee, corporate management, and public relations.

(s) Bad debt write-offs in excess of three percent (3.0%) of Gross Receipts for the most-recently completed twelve (12) month period ending April 30 with the exception that bad debt write-offs in excess of two percent (2.0%) of Gross Receipts shall not be allowable for Rate Year Two.

**4.2.3 Allocation to Cost Components.** Third, Contractor shall allocate the costs set forth in the adjusted pro forma financial statement prepared pursuant to Section 4.2.2 to each of the 12 Cost Components that make up Contractor's Total Annual Costs of Operations (taking into account the fact that Lease Costs are determined as set forth in Section 2.10).

**4.3 Calculation of Adjustments to Cost Components.** Calculated Total Cost for the coming Rate Year shall be derived from the Cost Components that make up Contractor's Total Annual Cost of Operations for the Fiscal Year as determined in Section 4.2.3, in the manner set forth below:

**4.3.1 CBA Labor Costs.** CBA Labor Costs for the coming Rate Year shall be determined by adjusting Allowable CBA Labor Costs for the previous Fiscal Year determined in accordance with Section 4.2 above adjusted in accordance with the procedures described in the then-current collective bargaining agreement, for the two (2) year period from the previous Fiscal Year to the coming Rate Year. All CBA Labor Costs shall be as determined in accordance with the procedures of this Section 4.3.1 or increased six percent (6%), which ever is less except health and welfare costs shall not be subject to the six percent (6%) cap.

**4.3.2 Non-CBA Labor Costs.** Non-CBA Labor Costs for the coming Rate Year shall equal Allowable Non-CBA Labor Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the CPI-W, and multiplying the result by (ii) the same number used in clause (i).

**4.3.3 Workers Compensation.** Workers Compensation for the coming Rate Year shall equal Allowable Workers Compensation for previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the CPI-U, and multiplying the result by (ii) the same number used in clause (i).

**4.3.4 Payroll Taxes.** Payroll Taxes for the coming Rate Year shall equal (i) Allowable Payroll Taxes for the previous Fiscal Year determined in accordance with Section 4.2 above, multiplied by (ii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the coming Rate Year, determined in accordance with Sections 4.3.1 and 4.3.2, respectively, and divided by (iii) the sum of CBA Labor Costs and Non-CBA Labor Costs for the previous Fiscal Year.

## **ATTACHMENT K RATE-SETTING METHODOLOGY (cont.)**

4.3.5 **Vehicle-Related Costs.** Vehicle-Related Costs for the coming Rate Year shall equal Allowable Vehicle-Related Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the Motor Vehicle Maintenance and Repair Index, and multiplying the result by (ii) the same number used in clause (i).

4.3.6 **Fuel Costs.** Fuel Costs for the coming Rate Year shall equal Allowable Fuel Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the PPI - Fuel Pricing Index, and multiplying the result by (ii) the same number used in clause (i), adjusted further as set forth below.

The Fuel Costs calculated above shall be adjusted further based on a reconciliation of the actual fuel costs for the most recently completed Rate Year with the projected fuel costs included in Contractor's Application and including any other written mutually agreed-upon adjustments between City and Contractor, for such Rate year. The difference, which may be positive or negative, shall be added to or subtracted from the Contractor's projected fuel costs for the forthcoming Rate Year for which Contractor's compensation is being calculated.

4.3.7 **Organics Transfer Station (Load-Out) Costs.** Organics Transfer Station Costs for the coming Rate Year shall equal (i) the Base Component of the Organics Transfer Station Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Organics Transfer Station Fee, multiplied by (ii) the total Tons of Organic Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

4.3.8 **Organics Transport Costs.** Organics Transport Costs for the coming Rate Year shall equal (i) the Base Component of the Organics Transport Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Organics Transport Fee, multiplied by (ii) the total Tons of Organic Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

4.3.9 **Organics Processing Costs.** Organics Processing Costs for the coming Rate Year shall equal (i) the Base Component of the Organics Processing Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees, multiplied by (ii) the total Tons of Organic Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

4.3.10 **Lease Costs.** Lease Costs for the coming Rate Year shall be determined in accordance with Section 2.10 above.

4.3.11 **Start-Up Costs.** Start-Up Costs for the coming Rate Year shall equal the applicable amount set forth in Section 2.11 above.

# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

4.3.12 **Other Costs.** Other Costs for the coming Rate Year shall equal Allowable Other Costs for the previous Fiscal Year determined in accordance with Section 4.2 above multiplied by (i) one (1) plus the Annual Percentage Change in the CPI-U, and multiplying the result by (ii) the same number used in clause (i).

4.3.13 **Total Annual Cost of Operations.** Total Annual Cost of Operations for the coming Rate Year shall equal the sum of the amounts calculated in Sections 4.3.1 through 4.3.12 above.

4.4 **Calculated Profit.** Calculated Profit for the coming Rate Year shall equal Total Annual Cost of Operations for the coming Rate Year (as calculated in Section 4.3.13 above) divided by the Operating Ratio, and subtracting from the result Total Annual Cost of Operations for the coming Rate Year.

### 4.5 City Fees

4.5.1 **Franchise Fee.** Contractor shall pay to City a Franchise Fee in the amount of \$200,000 annually.

4.5.2 **Frontierland Park Remediation Fee.** The annual remediation fee for Frontierland Park for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

4.5.3 **AB 939 Fee.** The annual AB 939 fee for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

4.5.4 **Franchise Administrative Services Fee.** The annual franchise administrative services fee for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

4.5.5 **City Vehicle Impact Fee.** The annual City vehicle impact fee for the coming Rate Year shall be the fee for the then-current Rate Year multiplied by one plus the Annual Percentage Change for the CPI-U or an amount specified by City in accordance with Article 10.

4.5.6 **Total City Fees.** The Total City Fees for the coming Rate Year shall equal the sum of the costs calculated in items 4.4.1 through 4.4.5 above; provided, however, that any adjustment in any such fee will be a Pass-Through Cost and reflected in the Total City Fees.

4.6 **Other Pass-Through Adjustments.** Other Pass-Through Adjustments for the coming Rate Year shall equal (i) the sum of the costs calculated in items 4.6.1 through 4.6.5 below, plus (ii) any amounts (actual or reasonably estimated) not included in Total Annual Cost of Operations for which Contractor is entitled to reimbursement through the

# ATTACHMENT K

## RATE-SETTING METHODOLOGY (cont.)

Rate adjustment mechanism, plus (iii) any other amounts mutually agreed by City and Contractor to be "Other Pass-Through Adjustments" hereunder.

4.6.1 **Green Waste Adjustment.** The green waste adjustment shall be the amount described in Section 3.6.1.

4.6.2 **Recyclables Transfer Station (Load-Out) Costs.** Recyclables Transfer Station Costs for the coming Rate Year shall equal (i) the Base Component of the Recyclables Transfer Station Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transfer Station Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

4.6.3 **Recyclables Transport Costs.** Recyclables Transport Costs for the coming Rate Year shall equal (i) the Base Component of the Recyclables Transport Fee for the current Rate Year multiplied by one (1) plus the Annual Percentage Change in the CPI-U plus the sum of the then-current (or known future) Regulatory Fees of the Regulatory Fee Component of the Recyclables Transport Fee, multiplied by (ii) the total Tons of Recyclable Materials Collected by Contractor for the most-recently completed 12-month period ending April 30.

4.6.4 **Recyclables Commodities Sales Offset.** The Recyclables Commodities Sales Offset for the coming Rate Year shall equal the amount set forth in Section 2.19 above.

4.6.5 **Disposal Costs.** Disposal Costs for the coming Rate Year shall equal the per-Ton Disposal Fee at the Designated Disposal Facility for the coming Rate Year multiplied by the total Tons of Solid Waste Collected by Contractor for the most-recently completed 12-month period ending April 30.

4.7 **Total Calculated Costs.** Total Calculated Costs for the coming Rate Year shall equal the sum of Total Annual Cost of Operations for the coming Rate Year (as calculated in Section 4.3.13 above), Calculated Profit for the coming Rate Year (as calculated in Section 4.4 above), Total City Fees for the coming Rate Year (as calculated in Section 4.5.6 above), and Other Pass-Through Adjustments for the coming Rate Year (as calculated in Section 4.6 above).

4.8 **Adjustment of Rates.** The Rate Adjustment Factor for the coming Rate Year shall equal Total Calculated Costs for the coming Rate Year (as calculated in Section 4.7 above) divided by Total Billings for the most-recently completed twelve (12) month period ending April 30, which shall be rounded to the nearest thousandth. Each then-effective Rate, as set forth on Attachment N, shall be multiplied by the Rate Adjustment Factor to calculate the effective Rate for the coming Rate Year. The adjustment to each Rate shall be rounded to the nearest cent.

## Attachment N

	2022 Rates	2023 Adjustment Factor	2023 Rates
<b>Single-Family Residential Service</b>			
One time additional 32 gallon bag	9.61	5.80%	10.17
Each additional gallon over 32 per pick up	1.68	5.80%	1.78
Mini can 20 gallons or less (20 gallon can)	27.58	5.80%	29.18
32 gallon Cart	42.57	5.80%	45.04
48 gallon Cart	63.30	5.80%	66.97
64 gallon Cart	84.07	5.80%	88.95
96 gallon Cart (acknowledged by City)	125.56	5.80%	132.84
Extra Recycling Cart	3.92	5.80%	4.15
Extra Organic Materials Cart	3.92	5.80%	4.15

Residential service rates are for solid waste container sizes and include costs for recyclables and organics materials collection service.

### **Commercial Solid Waste Bin Collection Service**

#### Commercial container rentals

1 cubic yard	72.15	5.80%	76.33
2 cubic yards	84.13	5.80%	89.01

#### Commercial container pick up for Solid Waste

1 cubic yard	66.14	5.80%	69.98
2 cubic yards	96.20	5.80%	101.78

#### Compacted commercial container pick up for Solid Waste

1 cubic yard	97.36	5.80%	103.01
2 cubic yards	167.40	5.80%	177.11

#### Commercial container pick up for Organics

1 cubic yard	108.19	5.80%	114.47
2 cubic yards	185.97	5.80%	196.76

### **Commercial Can/Cart Solid Waste Pick Up**

Each additional gallon over 32	2.45	5.80%	2.59
32 gallon Cart	48.08	5.80%	50.87
48 gallon Cart	72.09	5.80%	76.27
64 gallon Cart	91.04	5.80%	96.32
96 gallon Cart	144.20	5.80%	152.56

### **Commercial Can/Cart Organics Pick Up**

32 gallon Cart	43.27	5.80%	45.78
48 gallon Cart	64.90	5.80%	68.66
64 gallon Cart	86.53	5.80%	91.55
96 gallon Cart	129.79	5.80%	137.32

	2022 Rates	2023 Adjustment Factor	2023 Rates
<b>Debris Box Solid Waste and Construction and Demolition</b>			
<b>Debris Collection</b>			
14 yard container (7 days)	610.66	5.80%	646.08
Each additional day	50.15	5.80%	53.06
20 yard container (7 days)	786.74	5.80%	832.37
Each additional day	70.42	5.80%	74.50
<b>Miscellaneous Single-Family Services</b>			
Service from side or rear of house	7.01	5.80%	7.42
Return pick up charge	12.13	5.80%	12.83
Special call for large items	charge by volume		charge by volume
<b>Extra charge for collection private driveways:</b>			
1 to 30 feet	no charge		no charge
Over 30 feet (for every 10 feet or part thereof)	7.01	5.80%	7.42
Life line rates (available only for 20 gallon Cart Customers)	25.89	5.80%	27.39
Single Family return trip charge (i.e. provision of collection service after the regularly scheduled collection day) per event	19.62	5.80%	20.76
<b>Miscellaneous Commercial and Multi-Family Services</b>			
Recycling services provided to commercial and multi-family customers	no charge		no charge
<b>Distance charge for MFD and commercial accounts for container size of 3 cubic yards or less:</b>			
Within fifty (50) feet of access by Contractor's collection vehicle	no charge		no charge
51 feet or more from access by Contractor's collection vehicle	no charge		no charge
<b>Distance charge for MFD and commercial accounts for container size larger than 3 cubic yards or less:</b>			
0 to fifty (50) feet of access by Contractor's collection vehicle	no charge		no charge
51 feet or more from access by Contractor's collection vehicle	no charge		no charge
Extra pick up charge for MFD and commercial customers (charge per collection event)	charge by volume		charge by volume
Lock purchase fee (one time charge; replacement at no additional charge)	22.25	5.80%	23.54
Key service (unlock and relock bin). Monthly charge based on once per week service	12.43	5.80%	13.15
Container steam cleaning (or clean container exchange) Bin or debris box	111.23	5.80%	117.68
Fee to collect contaminated Targeted Recyclable Materials or Organic Materials (per container)	27.97	5.80%	29.59



## ATTACHMENT E

### SB 1383 RELATED MATTERS

1. Definitions. All terms used herein shall be defined as set forth in Pacifica Municipal Code section 6-5.702. For the purposes of this Agreement, the term “segment” as used in Pacifica Municipal Code section 6-5.702.JJ shall mean regularly scheduled route to be performed by one collection vehicle providing regularly scheduled Solid Waste, Recyclable material or Mixed Organics collection services (not on-call or Bulky Item), excluding compactor collection services, within the Service Area.
2. Container Colors.
  - 2.1. General Requirement. Contractor shall ensure that each Container that it newly purchases after January 1, 2022 and provides to a Customer for regularly scheduled collection under this Agreement conforms to the following color scheme: Gray Containers for collection of Solid Waste, Blue Containers for collection of Recyclable Materials, and Green Containers for collection of Organic Materials. In addition, Contractor shall ensure that all Containers it uses to provide such services to Customers serviced under the Agreement conform to such color scheme by January 1, 2036.
  - 2.2. Specific Material Types. Paper products and printing and writing paper, each as defined in the SB 1383 Regulations, may be placed in either the Blue Container or the Green Container.
3. Container Labels.
  - 3.1. General Requirement. Contractor shall ensure that each Container (or Container lid) that it newly purchases after January 1, 2022 and provides to a Customer for regularly scheduled collection under this Agreement shall be labeled or imprinted with language and/or graphics that clearly indicates the primary items accepted and the primary items that are Prohibited Container Contaminants for that Container type. Contractor may comply with this section by using model labeling provided by CalRecycle.
4. Route Reviews.
  - 4.1. General Requirement. At least once annually, beginning in 2022, Contractor shall conduct a Route Review for each Hauler Route. For each Route Review of a Hauler Route, Contractor shall inspect a number of Containers equal to 2% of the number of Customers on the Hauler Route (rounded down to the nearest whole number), or 25 Containers, whichever is less. Only one (1) Container per Customer shall be counted towards the above threshold. For example, if an Organic Materials Hauler Route has 2,000 Customers, Contractor would inspect one (1) Organic Materials Container each for 25 Organic Materials Customers on that Hauler Route. Contractor may, but shall not be required to, inspect more than the above number of Containers. Each inspection shall involve observing the contents of the Container (whether by lifting the lid, using a camera, or other method deemed appropriate by Contractor), but shall not require Contractor to

disturb the contents or open any bags. Contractor may select the Containers to be inspected at random, or (if mutually agreed with City) by any other method not prohibited under the SB 1383 Regulations. For the avoidance of doubt, Contractor shall not be required to annually inspect every Container on a Hauler Route. Contractor shall include the results of each Route Review in its reports to City, as required by Section 7.

4.2. Notice of Contamination. If Contractor finds Prohibited Container Contaminants in a Container during a Route Review, Contractor shall notify the Customer of the violation in writing. The written notice shall include information regarding the Customer's requirement to properly separate materials into the appropriate Containers. The notice may be left on the Customer's Container, gate, or door at the time the violation is discovered, and/or be mailed, e-mailed, electronically messaged or delivered personally to the Customer. Contractor may dispose of the contents of any Container found to contain Prohibited Container Contaminants. The notice shall be provided in English and Spanish.

5. Compliance Reviews.

5.1. General Requirement. At least once annually, beginning in 2022, Contractor shall review the records of its Commercial and Multi-Family Customers in City that are subscribed for at least two (2) cubic yards per week of combined Solid Waste, Organic Materials and Recyclable Materials service, to determine whether such Customers are subscribed for Organic Materials collection service or have an applicable waiver. Contractor shall include the results of each compliance review in its reports to City, as required by Section 7.

6. Education & Outreach.

6.1. Prior to February 1, 2022, and annually thereafter, Contractor shall provide the following to all its Organic Materials Customers under the Agreement:

6.1.1. Information on the Organic Materials Customer's requirements to properly separate materials in appropriate containers.

6.1.2. Information on methods for: the prevention of Organic Materials generation, recycling Organic Materials on-site, sending Organic Materials to community composting, and any other local requirements regarding Organic Materials.

6.1.3. Information regarding the methane reduction benefits of reducing the landfill disposal of Organic Materials, and the methods of Organic Materials recovery contemplated by the Agreement.

6.1.4. Information regarding how to recover Organic Materials.

6.1.5. Information related to the public health and safety and environmental impacts associated with the landfill disposal of Organic Materials.

6.2. The above information will be provided, at a minimum, through print and/or electronic media, and may also be provided through workshops, meetings and/or on-site visits.

6.3. Educational materials provided pursuant to the above shall be translated into Spanish.

7. Reporting.

7.1. Beginning January 1, 2022, Contractor shall provide the following information to City on at least a quarterly basis:

7.1.1. For information provided by Contractor pursuant to Section 6 above:

- (a) Copies of all such information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, mass emails, and other mass electronic messages).
- (b) The date the information was disseminated or the direct contact made. For website and social media postings, this shall be the date posted.
- (c) To whom the information was disseminated or the direct contact made. For mass distributions such as mailings or bill inserts, Contractor may provide the type and number of accounts receiving the information, rather than listing each recipient individually.
- (d) Notwithstanding any other provision, Contractor shall not be required to track or provide copies of emails, texts, or other electronic communications with individual Customers (e.g. if a CSR answers a customer question).

7.1.2. For Route Reviews and Compliance Reviews:

- (a) The date the review was conducted.
- (b) The name and title of each person conducting the review.
- (c) For Route Reviews, (i) a description of each Hauler Route reviewed, including Contractor's route number and a description of the Hauler Route area, (ii) a list of the account names and addresses where Container inspections were performed, and (iii) the results of such review (i.e. the addresses where any Prohibited Container Contaminants were found).
- (d) For Compliance Reviews, the results of such review (i.e. Contractor's findings as to whether the Customers reviewed are subscribed for Organic Material collection service, have an applicable waiver, or neither), and any relevant evidence supporting such findings (e.g. a spreadsheet based on Contractor's account records summarizing the reviewed Customers' service levels and waiver status).
- (e) Copies of any educational materials issued pursuant to such reviews (other than notices of Prohibited Container Contaminants, which are covered below).

7.1.3. Documentation relating to observed Prohibited Container Contaminants, whether observed during Route Reviews or otherwise:

- (a) Copies of the form of each notice issued by Contractor to Customers for Prohibited Container Contaminants, as well as, for each such form, a list of the Customers to which such notice was issued, the date of issuance, the Customer's name and service address, and the reason for issuance (if the form is used for multiple reasons).
- (b) The number of times notices were issued to Customers for Prohibited Container Contaminants.
- (c) The number of Containers where the contents were disposed due to observation of Prohibited Container Contaminants.
- (d) For the avoidance of doubt, the notices of Prohibited Container Contaminants referred to in this subsection include both the notices issued during Route Reviews under Section 4 above, as well as the notices issued by drivers for excessive contamination issued under Section 6.07 of the Agreement.

7.1.4. A description of Contractor's process for determining the level of Container contamination under the Agreement.

8. Contractor shall assist City in City's preparation of the Implementation Record described in Section 18995.2 of the SB 1383 regulations by providing non-confidential information and documents that are in the possession of Contractor and as requested by the City.

9. In addition to the foregoing, Contractor shall comply with the requirements for "Haulers" as set forth in Pacifica Municipal Code section 6-5.708.










# For Signature: ResolutionNo69-2022\_Recology FranchiseAgreementAmendment-Approved

Final Audit Report

2022-10-20

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By:	Sarah Coffey (scoffey@pacifica.gov)
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