

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