

SECOND AMENDMENT TO
2015 FRANCHISE AGREEMENT

This SECOND AMENDMENT TO 2015 FRANCHISE AGREEMENT (Amendment) is made and entered into by and among COUNTY OF SANTA CLARA, a political subdivision of the State of California (County), and RECOLOGY SOUTH BAY, a California corporation (Grantee). County and Grantee may be collectively referred to herein as the Parties and individually as a Party, unless specifically identified otherwise. This Amendment shall take effect on the Effective Date specified below. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement (as defined below).

RECITALS

WHEREAS, the Parties entered into the *2015 Franchise Agreement Between Recology South Bay and the County of Santa Clara for Garbage Collection District East*, effective dated July 1, 2015, and amended on December 8, 2015, as subsequently modified, amended, and/or extended (Agreement), for the collection and removal of Garbage, Recyclable Materials, Yard Waste, Food Waste, and Rubbish within Collection District East; and

WHEREAS, the Agreement allowed County, at its sole discretion, to extend the Agreement on the same terms for one (1), two (2), or five (5) additional years by providing Grantee with notice not less than thirty (30) days before the expiration of the Agreement; and

WHEREAS, the Parties desire to extend the Agreement for a term of five (5) years;

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent and warrant as follows:

1. **Amendment to Sections 1(n) of the Agreement**. Section 1(n) of the Agreement is hereby deleted in its entirety and replaced with the following:
 - n. **“Curbside Clean-ups”** means Residential Service Recipients can request up to two (2) curbside collections per calendar year at no additional cost. Curbside collections can either be two (2) “On-call” curbside collections, or two (2) Bulky Item pickups per calendar year, or one of each in a calendar year. “On-call” curbside collections include normal household waste that is containerized not to exceed 70 pounds, must be manageable by one person, and be no larger than 6 feet x 6 feet x 6 feet. Dirt, rock, concrete, Freon-containing appliances, paint, and/or other hazardous materials shall not be collected. Each Bulky Item Pick up can include up to two large items such as washer/dryers, sofas, mattresses, furniture, or other household items placed at curbside, which can be safely handled by

one person. Curbside Clean-ups that are not used by the residential Service Recipient during the calendar year shall not be accumulated.

2. **Addition of Section 1(gg) and Section 1(pp) to the Agreement.** Section 1(gg) and Section 1(pp) will be added to the Definitions section, and subsequent sub-sections will be re-ordered after these additions:

pp. “Recycling and Waste Reduction Division Program Manager” means the Program Manager overseeing Unincorporated Solid Waste Contract Management functions in the Consumer and Environmental Protection Agency, or duly authorized designee.

In every instance where the Agreement references the term “Recycling and Waste Reduction Division Manager”, the term “Recycling and Waste Reduction Division Program Manager” shall be used instead.

qq. Scout Truck refers to Collection vehicles that must be used in hard to collect service areas due to street width, corner angles, or extreme slope. These smaller, lighter-weight trucks can be used for up to 20% of the collection under this Agreement, and may also be used on private roads, where truck traffic is allowed. The scout truck shall be a 2008 Labrie Splitbody 3 axle short wheelbase of 216 inches, or similar.

3. **Amendment to Section 3 of the Agreement.** Section 3 of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION 3. TERM OF AGREEMENT. The term of this Agreement for Collection District East shall be from July 1, 2015 through June 30, 2025.

Extension of the franchise shall not result in an increase in Service Rates, except as provided for in Section 7 of the Agreement. Rates shall continue to be reviewed and adjusted annually as described in Section 6 and Section 7 of the Agreement.

4. **Amendment to Section 6 of the Agreement.** Section 6 of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION 6. SCHEDULE OF RATES AND COUNTY SURCHARGES.

Grantee has the privilege of collecting and receiving from Service Recipients within Collection District East the rates as set forth in Exhibit A, entitled “Schedule of Monthly Residential Service Rates”, and Exhibit B, entitled “Schedule of Monthly Commercial Service Rates”, attached hereto and incorporated herein by reference. The schedules of monthly rates in Exhibits A & B include HHW surcharge collected on behalf of the County as outlined below. Neither the County nor any of its officers or employees shall be liable for the non-payment of any Service Rates or charges due Grantee for performing services within Collection District East. Attachment A:

County of Santa Clara Recology Emergency Service Rates, is also included to outline the rates that the County shall pay to Grantee for emergency services.

- a. **County of Santa Clara Recology Emergency Service Rates.** In emergency situations, where the Grantee and County mutually agree to the use of Grantee services, the County shall pay the Grantee based on the rates outlined in Attachment A: County of Santa Clara Recology Emergency Service Rates.
- b. **Residential Billings.** Grantee shall bill residential Service Recipient accounts bi-monthly. Bills shall not be mailed to Residential Service Recipients before the first day of the period covered by the billing, and payment shall not be due from the Service Recipient until the last day of the period covered by the billing. Grantee shall provide for monthly billing of households eligible for low income service and rates, at no additional cost, at the option of the Service Recipient. Grantee may provide for monthly billing of other residential Service Recipient accounts at Grantee's option.
- c. **Commercial Billings.** Grantee shall bill Commercial Service Recipient accounts monthly. Bills shall not be mailed to Commercial Service Recipients before the first day of the period covered by the billing, and payment from the Service Recipient shall not be due for thirty (30) days after the date the bill is mailed.

Fees and Surcharges. Grantee shall collect Fees and Surcharges on behalf of the County in an amount to be determined by the County. Fees and surcharges shall be remitted as directed by County. At the date of execution of an agreement, the Administrative Surcharge shall be calculated in the amount of four percent (4%) of Gross Receipts. Beginning on July 1, 2017, the Administrative Surcharge shall increase by one percent (1%) to a total of five percent (5%) for the duration of the agreement. An additional Household Hazardous Waste (HHW) Surcharge of \$0.30 per month per residential household served shall be in effect the first year of the Franchise Agreement. Beginning July 1, 2016, the HHW Surcharge shall increase by \$0.10 annually until it reaches \$0.70 per household per month. The County reserves the right to review and modify the surcharges on an annual basis. Grantee shall be given thirty (30) days written notice prior to any change in the surcharges. Any changes in the surcharges must be established by resolution of the County Board of Supervisors and/or by amendment to this Agreement.

5. **Amendments to the Following Agreement Sections.** Sections 8(a), 14 (a), and 14 (b) will be amended to Replace the term County Health Officer with the Term Solid Waste Program Manager.

6. **Amendment to Sections 9(b) of the Agreement.** Sections 9(b) of the Agreement is hereby deleted in its entirety and replaced with the following:

- b. Curbside Clean-ups.** Beginning July 1, 2020, grantee shall provide Residential Service Recipients with the opportunity to request up to two (2) curbside collections per calendar year on an on-call basis, at no additional cost. Curbside collections can either be two (2) “On-call” curbside collections, or two (2) Bulky Item pickups per calendar year, or one of each in a calendar year. “On-call” curbside collections include normal household waste that is containerized not to exceed 70 pounds, must be manageable by one person, and be no larger than 6 feet x 6 feet x 6 feet. Dirt, rock, concrete, Freon-containing appliances, paint, and/or other hazardous materials shall not be collected. Each Bulky Item Pick up can include up to two large items such as washer/dryers, sofas, mattresses, furniture, or other household items placed at curbside, which can be safely handled by one person.

Residential Service Recipients shall be required to call Grantee a minimum of 48 hours in advance of their next regularly scheduled collection day to request and schedule a Curbside Clean-up. Grantee shall notify residents of the program annually through a bill insert which shall be mailed with the first bill of each calendar year to the residents at the Grantees cost and expense. Additional notification of the program shall occur through annual and quarterly residential customer newsletters.

7. **Addition of Section 9(q) of the Agreement.** Section 9(q) is hereby added to the Agreement:

- q. Pilot Development.** Upon request by the County, Grantee shall make available up to 10% of collected tonnage for mutually agreeable pilot programs and new recycling services. Conditions of pilots and enhanced recycling, such as delivery of material, must be determined by mutual agreement between both Parties. Unless otherwise agreed upon, there shall be no changes in service rates as a result of the redirection of material. Pilot tonnage shall be included in the Tonnage report as part of Quarterly Reports.

8. **Amendment to Section 14(j) of the Agreement.** Section 14(j) of the Agreement is hereby deleted in its entirety and replaced with the following:

- j. Vehicle Specification.** All residential and commercial collection vehicles used to provide Garbage, Recyclable Materials, Food Waste, and Yard Waste services shall be fueled with CNG and must be less than 15 years old throughout the term of the contract. Throughout the Agreement, Grantee shall meet collection performance standards as outlined in Section 14a, Performance. Scout Trucks are exempt from the age requirement outlined in this section but shall adhere to performance and appearance standards.

Grantee shall maintain all vehicles consistent with basic appearance standards that maintain a positive public image. Basic appearance standards include weekly truck washing, maintenance of paint, truck signs, and vehicle identification numbers, and correction of extensive body damage or corrosion.

9. **Amendment to Section 14(k) of the Agreement.** Section 14(k) of the Agreement is hereby deleted in its entirety and replaced with the following:

k. Vehicle Inventory. On a quarterly basis, Grantee shall furnish the Recycling and Waste Reduction Division Program Manager with an inventory of collection vehicles used by Grantee for Garbage, Recyclable Materials collection and Yard Waste and transportation under this Agreement and shall keep such inventory current. The quarterly inventory shall indicate the make, model, year, capacity, vehicle identification number, license number, and associated route for each vehicle.

10. **Add Section 17(e) 14 to the Agreement.** Section 17(e) 14 shall be added to the Agreement:

e. Outreach Program. Grantee shall provide an outreach program including, but not be limited, to the following:

14. *Other Outreach Services.* In addition to the above, Grantee shall provide the following services a) an annual review and updates to Grantee website, b) discussion of annual brochure and list of recycling programs with customers at Neighborhood clean up events, and c) include County approved recycling tips in each bi-monthly residential billing message (6 messages/year).

11. **Add Section 22(b)6 and 22(b)7 to the Agreement.** Section 22(b)6 and 22(b)7 shall be added to the Agreement:

b. Collection Quality.

6. Each instance where the collection vehicles do not meet the age requirement as outlined in Section 14(j): \$250.00 per day until vehicle is replaced.
7. Each instance where the collection vehicles are not maintained to basic appearance standards as outlined in Section 14(j), following notice by County: \$50.00 per day until vehicle is maintained to basic appearance standards as approved by the Recycling and Waste Reduction Division Program Manager.

12. **Attachment A.** “County of Santa Clara Recology Emergency Service Rates” is hereby added to existing service rates, attached hereto, and incorporated herein by reference.

2015 Franchise Agreement – Second Amendment Recology South Bay

13. **Counterparts.** This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute the same instrument.
14. **Ratification.** All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term “Agreement” in this Amendment and/or in the Agreement shall include the terms contained in this Amendment.
15. **Conflicting Provisions.** County represents and warrants that its execution, delivery and performance of this Amendment does not and will not conflict with any agreement to which it is a party or any provision of applicable law. In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.

16. Effective Date. The Effective Date of this Amendment is July 1, 2020.

IN WITNESS WHEREOF, the Parties enter into this Amendment. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Amendment by the Party on whose behalf it is indicated that the person is signing.

COUNTY OF SANTA CLARA

RECOLOGY SOUTH BAY



S. Joseph Simitian
President, Board of Supervisors

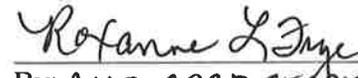


Michael J. Sangiacomo
President and CEO

Date: DEC 17 2019

Date: 12/2/19

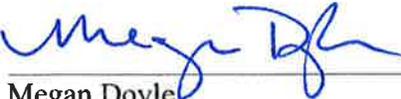
Signed and certified that copy of this Document has been delivered by electronic or other means to the President, Board of Supervisors.



By: ASST. CORP. SECRETARY

Attest:

Date: 12/2/19



Megan Doyle
Clerk of the Board of Supervisors

Date: DEC 17 2019

Approved as to Form and Legality:



Michael Rossi
Lead Deputy County Counsel

Date: 12/2/19

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ATTACHMENT A: COUNTY OF SANTA CLARA EMERGENCY SERVICE RATES
EFFECTIVE JULY 1, 2019

On Call Services - One Time Events-Flat Land East/South District		
Item	Unit	Rate
Driver/Operator*	hourly	\$150
Rear Loader*	hourly	\$150
10 Cubic Yard Containers	per pull + disposal	\$550
20 Cubic Yard Containers	per pull + disposal	\$550
30 Cubic Yard Containers	per pull + disposal	\$550
40 Cubic Yard Containers	per pull + disposal	\$550
E-Waste Collection - Flat Bed Truck	per day + disposal	\$750

* Minimum eight (8) hours

On Call Services - One Time Events-Hill Area East/South District		
Item	Unit	Rate
Driver/Operator*	hourly	\$150
Rear Loader*	hourly	\$150
10 Cubic Yard Containers	per pull + disposal	\$750
20 Cubic Yard Containers	per pull + disposal	\$750
30 Cubic Yard Containers	per pull + disposal	\$750
40 Cubic Yard Containers	per pull + disposal	\$750
E-Waste Collection - Flat Bed Truck	per day + disposal	\$750

* Minimum eight (8) hours

Hill rates will be applied for locations >15 miles from 1675 Rogers Ave.