

FIRST AMENDMENT FRANCHISE AGREEMENT FOR COLLECTION, DISPOSAL, AND  
PROCESSING OF SOLID WASTE, RECYCLABLES, AND COMPOSTABLE  
MATERIALS AND RELATED ACTIVITIES PURSUANT TO CHAPTER 8.08 OF THE  
COTATI MUNICIPAL CODE

This First Amendment to *Franchise Agreement for Collection, Disposal, and Processing of Solid Waste, Recyclables, and Compostable Materials and Related Activities Pursuant to Chapter 8.08 of the Cotati Municipal Code* (this "Amendment") is entered into as of June 28, 2022 between the City of Cotati ("City") and Recology Sonoma Marin ("Recology").

WHEREAS, City and Recology are parties to a *Franchise Agreement for Collection, Disposal, and Processing of Solid Waste, Recyclables, and Compostable Materials and Related Activities Pursuant to Chapter 8.08 of the Cotati Municipal Code*, dated April 10, 2013 (such agreement as amended, the "Agreement" or "Franchise Agreement");

WHEREAS, the parties wish to amend the Agreement to assist City in complying with the SB 1383 Regulations (as defined in Exhibit A);

WHEREAS, over the next year, the parties intend to continue discussions regarding additional mutually agreed changes to the Franchise Agreement;

WHEREAS, City intends to implement a 3-container Organic Waste collection service as contemplated by Section 18984.1 of the SB 1383 Regulations.

NOW, THEREFORE, the parties agree as follows:

1. Effective Date. This Amendment shall take effect April 1, 2022.
2. Purpose; Term Extension. This Amendment is intended to amend the Franchise Agreement to provide services relating to the SB 1383 Regulations and to extend the Franchise term. The parties hereby agree to a five (5) year term extension to the Franchise Agreement, continuing through June 30, 2028. To that end, Section 1.32 ("Franchise term") of the Franchise Agreement, and the first paragraph of Section 3.2 ("Term") of the Franchise Agreement, are each hereby amended to replace "2023" with "2028." In addition, Contractor shall pay a negotiation reimbursement fee in a one-time lump sum payment of fifteen thousand dollars (\$15,000) to reimburse the City for out-of-pocket costs it incurred in connection with negotiating this Amendment, payable within 30 days of execution of this amendment.
3. Definitions. The Franchise Agreement is hereby amended to add the terms set forth in Exhibit A of this Amendment. For purposes of this Amendment only, the terms set forth in Exhibit A, attached hereto and incorporated herein, shall have the meanings given to them in such exhibit.
4. Three-Container Organic Waste Collection Services.

The Franchise Agreement is hereby amended to add the following to Exhibit A (6):

- 4.1. Phased Implementation. City and Contractor acknowledge that Contractor's Organic Waste Collection routes must be expanded to satisfy the requirements of the SB 1383 Regulations, and that new collection trucks must be procured by Contractor in order to provide such services. Between January 1, 2022 and December 31, 2023, Contractor

shall continue and expand its existing Organic Waste collection service within City. By January 1, 2024, Contractor shall provide Organic Waste collection service to all of its customers within City who are subscribed to and pay for Solid Waste collection service, unless (i) the customer is not required under City’s municipal code to subscribe for Organic Waste collection service, or (ii) the customer qualifies for a State- or locally-issued waiver, or (iii) the customer refuses to accept such service.

5. Containers.

The Franchise Agreement is hereby amended to add the following to Exhibit B (2):

5.1. Container Color. Contractor shall ensure that each Container that it newly purchases after January 1, 2022 and provides to a customer serviced under the 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 Waste. 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.

5.2. Container Labels. Contractor shall ensure beginning January 1, 2022 that each new Container (or new Container lid) that it provides to a customer serviced under the 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.

6. Route Reviews.

The Franchise Agreement is hereby amended to add the following to Exhibit B:

6.1. 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 at least the following minimum number of Containers, but may inspect more if Contractor wishes. Each inspection shall involve lifting the Container lid and observing the contents, including illuminating them if necessary, 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 next regularly scheduled report to City, as required by Section 9 of this Amendment. The parties agree that if there are a significant number of violations that Contractor may increase the minimum number of containers inspected, if mutually agreed to by City and Contractor.

| <u>Route Size (# accounts)</u> | <u>Minimum Number of Containers</u> |
|--------------------------------|-------------------------------------|
| Less than 1,500                | 25                                  |
| 1,500-3,999                    | 30                                  |
| 4,000-6,999                    | 35                                  |
| 7,000 or more                  | 40                                  |

6.2. 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.

7. Compliance Reviews.

The Franchise Agreement is hereby amended to add the following to Exhibit B:

7.1. 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 Waste and Recyclable Materials service, to determine whether such customers are subscribed for Organic Waste collection service or have an applicable waiver. Contractor shall include the results of each compliance review in its next regularly scheduled report to City, as required by Section 9 of this Amendment.

8. Education & Outreach.

The Franchise Agreement is hereby amended to add the following to Exhibit A (21):

8.1. Prior to February 1, 2022, and annually thereafter, Contractor shall provide the following information to all its customers under the Agreement.

8.1.1. Information on the Organic Waste customer's requirements to properly separate materials in appropriate containers.

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

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

8.1.4. Information regarding how to recover Organic Waste.

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

8.2. 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.

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

9. Reporting.

The Franchise Agreement is hereby amended to add the following to Section 8.2.3:

9.1. Beginning January 1, 2022, Contractor shall provide the following information to City as part of Contractor's regularly scheduled quarterly reports under the Agreement:

9.1.1. For information provided by Contractor pursuant to Section 8 of this Amendment:

- (a) Copies of all such information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, emails, and other 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.

9.1.2. 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) A list of the account names and addresses covered by the review.
- (d) For Route Reviews, a description of each Hauler Route reviewed, including Contractor's route number and a description of the Hauler Route area.
- (e) For Route Reviews, the results of such review (i.e. the addresses where any Prohibited Container Contaminants were found), and any photographs taken.
- (f) For Compliance Reviews, the results of such review (i.e. Contractor's findings as to whether the customers reviewed are subscribed for Organic Waste collection service, have an applicable waiver, or neither), and any relevant evidence supporting such findings (e.g. account records).
- (g) Copies of any educational materials issued pursuant to such reviews.

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

- (a) Copies of the form of each notice issued to generators 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). This information will also be provided monthly to Zero Waste Sonoma if City requests.
- (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.

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

10. Rate Adjustments. Effective January 1, 2023, each rate set forth in Exhibit D (Maximum Rates) of the Agreement shall be adjusted as follows:

10.1. The Collection Element of each rate that has such an element shall be increased by 6.4%, over and above the adjustment required by Section 6.2.1(1) of the Agreement or otherwise under the Agreement; and

10.2. The Disposal Element of each rate that has such an element shall be increased by 9.26% (= 6.4% + 2.86%), over and above the adjustment required by Section 6.2.1(2) of the Agreement or otherwise under the Agreement.

10.3. The Organics Element of each rate that has such an element shall be increased by 6.4%, over and above the adjustment required by Section 6.2.1(2) of the Agreement or otherwise under the Agreement.

10.4. Rates that do not have any Collection/Disposal/Organics Elements shall be increased by 6.4%, over and above any adjustment required by the Agreement.

For example, assuming that: (i) as of December 31, 2022 a given rate is \$30.00 per month, (ii) the rate consists of a \$15.00 Collection Element, a \$12.00 Disposal Element, and a \$3.00 Organics Element, (iii) the change in the CPI index for the year ending June 30, 2022 is 3.0%, (iv) the change in the per-ton tip Disposal fee at the County facilities for the year ending December 31, 2022 is 5.0%, (v) the change in the per-ton Organics tip fee at the County facilities for the year ending December 31, 2022 is 4.0%, and (vi) no other rate adjustments are applicable (e.g. due to a change in City fees), then effective January 1, 2023, the rate in question would be \$33.30, calculated as follows:

$$\$33.30 = \$15.00 * \{ 1 + [ ( 0.70 * 0.03 ) + 0.064 ] \} + \$12.00 * \{ 1 + [ 0.05 + 0.0286 + 0.064 ] \} + \$3.00 * \{ 1 + [ 0.04 + 0.064 ] \}$$

11. Section 18988.1 and 18988.2 Compliance.

The Franchise Agreement is hereby amended to add the following to Exhibit I:

Contractor has identified Organic Waste collected pursuant to the Agreement is currently being delivered to the following facility(ies) either directly or after transfer at County facilities: Waste Management EarthCare Compost in Novato; Cold Creek Compost in Ukiah; West Contra Costa Landfill Composting Facility in Richmond. City hereby approves delivery of Organic Waste to such facility(ies). Contractor shall comply with its obligations under this Amendment and the obligations that by operation of law are imposed upon it directly pursuant to Chapter 12 of the SB 1383 Regulations.

12. Future Changes. The parties acknowledge that future changes to this Amendment or the Agreement may be desirable to assist the parties with their respective compliance obligations under the SB 1383 Regulations or subsequent amendments thereto or interpretations thereof.

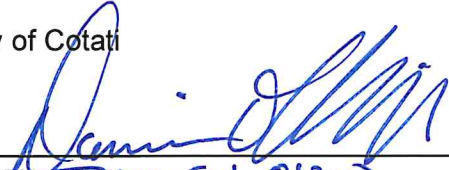
The parties agree to negotiate any such proposed changes in good faith. The foregoing shall not be deemed to limit either party's rights or remedies under the Agreement.

13. Miscellaneous. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern. Section headings in this Amendment are for convenience only and shall not be used in the interpretation of this Amendment. This Amendment may be executed in counterparts and/or by electronic signature (e.g. DocuSign). As used in this Amendment, "including" and its variants mean "including without limitation."

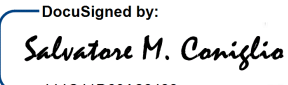
*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, this Amendment is entered into as of the date first written above.

City of Cotati

By:   
Name: DAMIEN O'BIID  
Title: CITY MANAGER  
Date: 7/1/2022

Recology Sonoma Marin

DocuSigned by:  
Salvatore M. Coniglio  
By:   
Name: Salvatore M. Coniglio  
Title: Chief Executive Officer  
Date: 7/9/2022 | 11:53 AM PDT

APPROVED AS TO FORM:

  
City Attorney

ATTEST:


  
City Clerk

Exhibit A

DEFINITIONS

“Blue Container” means a Container colored as follows: (a) the lid shall be blue, or (b) the body shall be blue and the lid shall be either blue, gray, or black. Hardware such as hinges and wheels may be any color.

“Container” means any Cart, Bin or Debris Box.

“Gray Container” means a Container colored as follows: (a) the lid shall be gray or black, or (b) the body shall be gray or black and the lid shall be gray or black. Hardware such as hinges and wheels may be any color.

“Green Container” means a Container colored as follows: (a) the lid shall be green, or (b) the body shall be green and the lid shall be green, gray, or black. Hardware such as hinges and wheels may be any color.

“Hauler Route” means the designated weekly itinerary or sequence of stops scheduled to be performed by one collection vehicle providing regularly scheduled Solid Waste, Recyclable Material or Organic Waste collection services (not on-call or Bulky Item/Abandoned Waste) within the Contractor’s collection service area under the Agreement.

“Organic Waste” means wastes containing material originated from living organisms and their metabolic waste products, including, but not limited to, food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges.

“Prohibited Container Contaminants” means any of the following:

- (a) Non-Organic Waste placed in the Green Container, including but not limited to Construction & Demolition Debris, Hazardous Substances and Infectious Waste;
- (b) The following types of Organic Waste placed in the Green Container: textiles and carpets, hazardous wood waste, manure, biosolids, digestate, sludges, non-compostable paper, and any individual item of Organic Waste exceeding 6” in diameter or 4’ in length;
- (c) Organic Waste placed in the Gray Container that is specifically identified under the Agreement for collection in the Green Container or Blue Container;
- (d) Organic Waste placed in the Blue Container that is specifically identified under the Agreement for collection in the Green Container. Paper products and printing and writing paper may be considered acceptable and not considered Prohibited Container Contaminants if they are placed in the Blue Container.

“Route Review” means a visual inspection of Containers along a Hauler Route for the purpose of identifying Prohibited Container Contaminants, which may include mechanical inspection methods such as use of cameras.



“SB 1383 Regulations” means the Short-lived Climate Pollutants (SLCP): Organic Waste Reductions regulations adopted by the California Department of Resources Recycling and Recovery (“CalRecycle”) in 2020.

For purposes of this Amendment, the following terms (whether or not capitalized) shall have the meanings given to them in the SB 1383 Regulations, unless the context indicates a different meaning was intended: biosolids, digestate, food, non-compostable paper, paper products, printing and writing paper, sludges.

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