

**AGREEMENT BETWEEN RECOLOGY PENINSULA SERVICES
AND SAN MATEO -FOSTER CITY SCHOOL DISTRICT WITH REGARD TO
SOLID WASTE, RECYCLING AND ORGANICS COLLECTION**

THIS AGREEMENT is made and entered into this 1st day of September 1, 2020 between Recology San Bruno d/b/a Recology Peninsula Services (RPS), a subsidiary of Recology Inc., and the San Mateo-Foster City School District (DISTRICT) and shall become effective September 1, 2020.

RECITALS

- A. As public agencies that are political subdivisions of the state, school districts are authorized by law to enter into their own agreements for the collection of solid waste and recyclable materials.
- B. The DISTRICT desires to enter into such an agreement and to do so in the most cost-effective, efficient and environmentally sound manner.
- C. RPS is in the business of the collection of solid waste and recyclable materials and desires to perform such service for the DISTRICT under the following terms and conditions negotiated by the parties.
- D. The DISTRICT is willing to accept such service under the following terms and conditions negotiated by the parties.

TERMS AND CONDITIONS

- 1. **TERM.** This Agreement is for a term commencing on September 1, 2020 and continuing for a period of two years, until August 30, 2022. This term of this Agreement shall automatically extend annually for one year on the 30th of August of each succeeding year, commencing August 30, 2022, unless either party gives written notice to the other before such August 30 date that it does not wish for the term to be extended. In the event that either party issues such written notice, the term of this Agreement shall end on August 30, 2022 (or, if the term has been extended, August 30 of the then-current extension period).
- 2. **SERVICES.** RPS agrees to furnish services for the collection of solid waste, recyclable and organic materials and to deliver equipment as defined in Exhibit A.
- 3. **PAYMENT.** The DISTRICT agrees to make the payments as provided for in Exhibit A to this Agreement. DISTRICT agrees to pay RPS on a monthly basis for the service and/or equipment furnished by RPS in accordance with the charges and rates provided for in Exhibit A. Payment shall be made by DISTRICT to RPS within thirty (30) days of the receipt of an invoice from RPS. RPS may impose, and DISTRICT agrees to pay, a late fee for all past due payments, such late fee not to exceed the maximum rate for same allowed by applicable law.
- 4. **BINDING EFFECT.** This Agreement is a legally binding contract on the part of RPS and DISTRICT, and their respective successors and assigns, in accordance with the terms and conditions set out herein.
- 5. **SOLID WASTE MATERIAL.** The waste material to be collected and disposed of by RPS pursuant to this Agreement is solid waste generated by the DISTRICT. RPS shall provide regular, scheduled collection of solid waste according to the schedule in **Exhibit A**. Placement of containers of Solid Waste shall be at the election of the DISTRICT.

6. **SOLID WASTE CONTAINERS.** RPS agrees to furnish and maintain, at no cost, Solid Waste containers for the DISTRICT facilities. RPS shall be responsible for the regular maintenance and repair of the containers, and shall clean the containers at least once per year. DISTRICT shall be liable for the costs of repair or replacement for any containers that are vandalized or stolen. RPS shall provide additional cleaning services upon the written request of the DISTRICT. RPS shall make containers available in the sizes for which compensation is provided in Exhibit A. RPS agrees further to provide locks for the containers. RPS shall be provided with one key to each school site. Placement of containers of Solid Waste shall be at the election of the DISTRICT. Notwithstanding any other provision, all container locations for Solid Waste, Recyclable Materials and green waste/organic material containers shall be accessible to RPS' vehicles, otherwise additional charges shall apply.

7. **HOURS OF COLLECTION.** Due to the school day, RPS shall perform Solid Waste collections only between the hours of 5:00-11:00 a.m. and 3:00-6:00 p.m. or at mutually agreed time between DISTRICT and RPS.

8. **EXCLUSION OF HAZARDOUS MATERIAL.** RPS shall not collect any radioactive, volatile, highly flammable, explosive, biomedical, toxic or hazardous material. The term hazardous material shall include, but not be limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended or applicable state law.

9. **RECYCLABLE MATERIALS.** RPS shall also collect, at rates in **Exhibit B**, all recyclable materials separated by DISTRICT for collection. Recyclable Materials shall include newspapers, mixed paper, cardboard, glass containers, metal cans, and certain plastics that are separated by the DISTRICT from its solid waste for recycling, which shall be defined for purposes of this Agreement as the processing of Solid Waste materials for the purpose of returning them to economic use as raw material for new, reused or reconstituted products or the diversion of Solid Waste materials for disposition other than disposal at a sanitary landfill. RPS shall charge the DISTRICT for the collection of the above recyclables. In addition, RPS shall provide, at no cost, the appropriate recycling containers as determined by the DISTRICT. The location of the containers shall be determined by the DISTRICT. Each school site shall have its own **single** recycling location. RPS shall provide quarterly reports showing the amount of material recycled by each school. Using this report, RPS will work with the DISTRICT to identify schools that need additional recycling assistance, and determine what kind of assistance is required for improvement (i.e. student presentations, staff education).

10. **EXCLUDED RECYCLABLES.** For materials that RPS does not collect as recyclables under this Agreement, including, but not limited to, metal containers, small scrap metal, used motor oil, and aluminum, the DISTRICT may utilize the services of other solid waste and recycling companies.

11. **GREEN WASTE/ORGANIC MATERIAL:** The green waste / organic material to be collected and processed by RPS pursuant to this Agreement is green waste/organic material generated by the DISTRICT. RPS shall provide regular, scheduled collection of green waste/ organics according to the schedule in **Exhibit A**. Placement of containers of Green Waste/Organics shall be at the election of the DISTRICT

12. **LIABILITY FOR EQUIPMENT.** DISTRICT acknowledges that it has the care, custody and control of equipment owned by RPS and accepts responsibility and liability for the equipment and its contents when under the care, custody and control of the DISTRICT, unless such liability is caused by a defective or negligent product. RPS acknowledges and accepts responsibility and liability for loss

of or damage to property, or injury to or death of person or persons, resulting from or arising in any manner out of RPS's use, operation or possession of any equipment furnished under this Agreement.

13. **DAMAGE TO PAVEMENT.** RPS shall not be liable for any damages to pavement, curbing, or driving surface resulting from the weight of its trucks.

14. **RATE ADJUSTMENTS.** RPS reserves the right to adjust the rates hereunder based upon increases in fuel costs, increases in disposal facility costs and increases in transportation costs. Specifically on September 1 of each year of the term of this Agreement, beginning September 1, 2021 RPS shall submit to the DISTRICT a Request for Adjustment of Rates. The Request shall include a proposed rate schedule in the same format as the Rate schedule set forth in Exhibit A. RPS may adjust the rates hereunder in an amount not in excess of 100% of the increase in the San Francisco Bay Area Consumer Price Index (SFBA-CPI) as published by the U.S. Department of Labor, Bureau of Labor Statistics. The Base Rate shall be multiplied by one (1) plus or minus a percentage equal to 100% of the annual SFBA-CPI. RPS shall provide 30 days written notice (by July 1 of each year) of their intent to raise the rates. RPS shall provide written proof of evidence justifying the increased rate. The DISTRICT shall accept or reject such increased rate in writing, within 30 days of receipt of RPS's letter.

15. **DONATIONS:** Recology Peninsula Services will provide (1) Debris Box at no additional charge annually to the DISTRICT. The DISTRICT will provide the request to RPS at least 1 week in advance. RPS will also provide "extra bin service" for (1) event at each school within the DISTRICT at no additional charge annually to the DISTRICT. The school will coordinate with the DISTRICT and the DISTRICT may then make the request to RPS at least 1 week in advance.

16. **EXTRA PICKUPS:** The DISTRICT may authorize their individual schools the authority to request additional pickups of carts/bins at a rate identified in EXHIBIT A. The pickup day of the extra pickup will be determined by RPS to ensure efficiency.

17. **TERMINATION.** The DISTRICT may, in its sole discretion, terminate this Agreement upon any failure by RPS to perform services to the reasonable satisfaction of the DISTRICT, any material breach by RPS of any term of this agreement, or for other good cause; provided, however, that the DISTRICT shall provide RPS with thirty (30) days written notice and opportunity to cure the defect or breach. The DISTRICT may, in its sole discretion, terminate this agreement at any time and for any reason by giving ninety (90) days prior written notice to RPS of such termination and specifying the effective date thereof. In the event of termination, RPS shall be paid the reasonable value of services rendered up to the date of such termination, as determined by the DISTRICT. RPS may, in its sole discretion, terminate this Agreement upon ninety (90) days written notice to DISTRICT.

18. **EXCUSED PERFORMANCE.** Neither party hereto shall be liable for its failure to perform or delay in performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, fires and acts of God. However, in the case of RPS strike, the DISTRICT has the option to use another waste collection company after giving prior written notice to RPS. In addition, in the event RPS fails to collect and remove Solid Waste as required hereunder for a period of at least 72 consecutive hours, the DISTRICT may authorize an independent hauler to collect Solid Waste at DISTRICT school sites after giving prior written notice and a reasonable opportunity to cure to RPS.

19. **REPORTING.** Consistent with state law, RPS shall provide a quarterly written report to the DISTRICT reflecting the disposal and recycling in yards per ton of all DISTRICT waste.

20. **INSURANCE, INDEMNIFICATION AND HOLD HARMLESS:** RPS shall, at his or her expense, carry adequate insurance to fully protect both RPS and the DISTRICT from any and all claims of any nature for damage to property or for personal injury including death, which may arise while RPS is traveling to or from a work related location. RPS shall indemnify, pay for the defense of, and hold harmless the DISTRICT and its officers, agents and employees of and from any and all liabilities, claims, debts, damages, demands, suits, actions and causes of actions of whatsoever kind, nature or sort which may be incurred by reason of RPS's negligent or willful acts and/or omissions in rendering any services hereunder. RPS shall assume full responsibility for payments of federal, state and local taxes or contributions imposed or required under the social security, workers' compensation or income tax law, or any disability or unemployment law, or retirement contribution of any sort whatever, concerning RPS or any employee and shall further indemnify, pay for the defense of, and hold harmless DISTRICT of and from any such payment or liability arising out of or in any manner connected with RPS's performance under this Agreement. RPS shall take out, prior to the commencement of any program, presentation or work, and maintain through the completion of any such program, presentation or work, General Liability insurance of a \$1,000,000.00 minimum and to produce and provide to the DISTRICT a valid and current Certificate of Insurance naming the DISTRICT as additional insured.

20.1 **WORKER'S COMPENSATION:** RPS agrees to procure and maintain in full force and effect worker's compensation insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of California Worker's Compensation Act is filed against the District by a bona fide employee of RPS participating under this Agreement, RPS agrees to defend and hold harmless the District from such claims.

21. **ASSIGNMENT:** Neither party shall assign this agreement without the prior written consent of the other party. Notwithstanding the foregoing, RPS may, upon providing notice to the DISTRICT, assign this Agreement to any affiliate of RPS as part of an internal reorganization without seeking or obtaining the consent of the DISTRICT.

22. **BINDING EFFECT.** This Agreement is a legally binding contract on the part of RPS and DISTRICT, and their respective successors and assigns, in accordance with the terms and conditions set out herein.

23. **LAWS AND LICENSES.** RPS shall comply with all Federal, State, County, and District laws, ordinances, rules and regulations applicable to the performance of the services hereunder and shall obtain all licenses and permits necessary to perform the service hereunder and maintain the same in full force and effect.

24. **GOVERNING LAW AND VENUE.** This AGREEMENT, including any exhibits, shall for all purposes be deemed subject to the laws of the State of California without regard to its choice of law rules, and in the event of any lawsuit concerning or arising out of this Agreement shall be venued in the County of San Mateo or the United States District Court for the Northern District of California.

25. **MEDIATION.** Prior to the filing of any lawsuit, the parties shall mediate their dispute. The parties shall agree on a mediator and the cost of such mediator shall be borne equally between the parties.

26. **Merger Clause.** This Agreement, including all exhibits/attachments attached hereto, which are incorporated herein by this reference, constitutes the sole agreement of the Parties and correctly states the rights, duties, and obligations of each Party as of this document's date. Any prior agreement, promises, negotiations, or representations between the Parties not expressly stated in this

document are not binding. All subsequent modifications shall be in writing and signed by the Parties. In the event that any term, condition, provision, requirement or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this Agreement, the provisions of the body of this Agreement shall prevail. This Agreement constitutes the entire Agreement between the Parties.

27. CONTAMINATION. If a Recyclable Materials or green waste / organics container appears to contain more than 10% non-recyclable or non-compostable material, then RPS may collect the container as usual, may refuse to collect the container, or may collect the container as Garbage at the Extra-Pickup rate listed on Exhibit A. If RPS chooses one of the latter two options, it will notify DISTRICT of the same by a leaving a tag on the container or otherwise.

For the San Mateo-Foster City School District

For Recology Peninsula Services

Date: _____

Date: _____

Exhibit A

** Key charge of \$15/month per commodity x times per week service **

Garbage	TOTER	1 Yard	2 Yard	3 Yard	4 Yard	6 Yard
1 x per Week		\$ 97.41	\$ 194.80	\$ 292.21	\$ 389.61	\$ 584.42
2 x per Week		\$ 194.80	\$ 389.61	\$ 584.42	\$ 779.22	\$ 1,168.83
3 x per Week		\$ 292.21	\$ 584.42	\$ 876.62	\$ 1,168.83	\$ 1,753.23
4 x per Week		\$ 389.61	\$ 779.22	\$ 1,168.83	\$ 1,558.43	\$ 2,337.65
5 x per Week		\$ 487.03	\$ 974.03	\$ 1,461.04	\$ 1,948.03	\$ 2,922.07
Extra Pickup (off day)		\$65.00	\$ 75.00	\$ 85.00	\$ 95.00	\$ 125.00
Overflowing Bin (per yd)		\$20.18				
Organics	TOTER	1 Yard	2 Yard	3 Yard	4 Yard	6 Yard
1 x per Week		\$ 91.67	\$ 183.34	\$ 275.02	\$ 366.69	\$ 550.03
2 x per Week		\$ 183.34	\$ 366.69	\$ 550.03	\$ 733.39	\$ 1,100.07
3 x per Week		\$ 275.02	\$ 550.03	\$ 825.06	\$ 1,100.07	\$ 1,650.10
4 x per Week		\$ 366.69	\$ 733.39	\$ 1,100.07	\$ 1,466.76	\$ 2,200.15
5 x per Week		\$ 458.37	\$ 916.72	\$ 1,375.09	\$ 1,833.46	\$ 2,750.18
Extra Pickup (off day)		\$65.00	\$ 75.00	\$ 85.00	\$ 95.00	\$ 125.00
Overflowing Bin (per yd)		\$18.75				

Exhibit B

Recycling	TOTER	1 Yard	2 Yard	3 Yard	4 Yard	6 Yard
1 x per Week	\$12.37	NA	\$ 47.55	\$ 50.34	\$ 53.22	\$ 58.70
2 x per Week	\$24.74	NA	\$ 95.10	\$ 100.68	\$ 106.44	\$ 117.40
3 x per Week	\$37.11	NA	\$ 142.65	\$ 151.02	\$ 159.66	\$ 176.10
4 x per Week	\$49.48	NA	\$ 190.20	\$ 201.36	\$ 212.88	\$ 234.80
5 x per Week	\$61.85	NA	\$ 237.75	\$ 251.70	\$ 266.10	\$ 293.50
EXTRA PU	N/C With Bin	NA	\$25.00	\$25.00	\$25.00	\$25.00