



A Public Agency

COLLECTION AND RECYCLING PROGRAM SUPPORT AND COMPLIANCE

STAFF REPORT

To: SBWMA Board Members
From: Joe La Mariana, Executive Director
Hilary Gans, Senior Operations and Engineering Manager
Date: June 24, 2021 Board of Directors Meeting
Subject: Consideration of Two-Year Extended License Agreement with Recology San Mateo County for Use of a Portion of SBWMA's Shoreway Environmental Center Property

Recommendation

It is recommended that the SBWMA Board of Directors adopt resolution 2021-18 approving a two-year term extended license agreement with Recology San Mateo County ("Recology") allowing it to continue using a portion of SBWMA's Shoreway Environmental Center property to perform its franchise obligations to Member Agencies. The proposed term will be from July 1, 2021 to June 30, 2023.

Background

On January 1, 2011, in conjunction with the award to Recology of the Franchise Agreement for Recyclable Materials, Organic Materials, and Solid Waste Collection Services, SBWMA entered into a License Agreement with Recology, allowing it to use a portion of SBWMA's Shoreway property, the "Shoreway Center License Agreement" (the "License Agreement"). The License Agreement's term mirrored the term of the original franchise agreements – January 1, 2011 through December 31, 2020, "unless previously extended by prior agreement of both parties." Member Agencies approved new franchise agreements with Recology (the "Restated Franchise Agreement"), with a new term of January 1, 2021 through December 31, 2035, but did not renew the License Agreement at that time. Recology needs to continue using the property to perform its franchise obligations. At its November 19, 2020 meeting, the Board approved a six-month extension of the License Agreement, through June 30, 2021, to allow the parties to negotiate updated terms for the renewed license. (Resolution No. 2020-43.) Consideration of a renewed license with a two-year term is now before the Board. (Attachment 1)

Discussion

The original License Agreement addressed two separate portions of the Shoreway property (the "Licensed Area"). First, the "Collection Operations Area" in the northeast portion of the site comprising 276,843 square feet. The Collections Operations Area includes structures for maintaining, repairing, and cleaning vehicles and bins, as well as underground fuel tanks and dispensing pumps, and an oil/water separator. Under the License terms, Recology is responsible for maintenance, permits, and spill response in this area. Second, the "Administration Area" comprising 21,131 square feet, located adjacent to the Collections Operations Area. This area includes office space and adjacent parking. The annual license fee for use of the Licensed Area is \$1.00 per year, which is payable on January 1st each year. This is consistent with industry standard practice as Recology needs to access and use the Licensed Areas in order to perform its franchise obligations for the Member Agencies. Recology is prohibited from using the Licensed Area for any non-franchise related business. Recology assumes all responsibility and risk for its use of the Licensed Area, including compliance with all regulatory and environmental requirements.

Under the revised License Agreement, these basic terms would remain the same. The original License Agreement also contained provisions having to do with getting the Shoreway Center up and running back in 2011; those provisions are now outdated and have been deleted from the revised License Agreement. A copy of the original License Agreement with strike-through and interlineation showing changes to the renewed License Agreement is attached for your convenience as Attachment 2.

Recology will need to continue using the Shoreway property to perform its franchise obligations for the duration of the Restated Franchise Agreements, through December 2035. Staff is nonetheless recommending a two-year License term at this time, July 1, 2021 through June 30, 2023, because of potential changes to the Shoreway site configuration in the future that are not yet fully developed at this point. One such change relates to the upcoming removal of the Underground Storage Tanks ("UST") currently located in the Licensed Area. SBWMA is required by State regulations to remove the USTs no later than December 31, 2025. Actual removal of the USTs will not commence during the term of this License, giving the parties time to work together to develop a plan for the removal and installation work that will allow SBWMA to meet its regulatory obligation while minimizing disruption to Licensee. In addition, SBWMA is conducting long-range site planning to optimize use of the Shoreway Center to meet its other regulatory obligations, which will also occur during the next two years. The parties will be in a better position at the end of the renewed License term to consider whether any terms of the License need to be modified as a result of any site changes, and will negotiate a subsequent License at that time. This approach is consistent with the Board's direction to maintain flexibility for future site needs.

Environmental Review

Approval of the License Agreement is categorically exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guideline 15301, Existing Facilities, which provides that the licensing of existing public facilities that does not expand an existing use is exempt from review.

Conclusion

The current License Agreement is set to expire at the end of June. Entering into a renewed two-year License Agreement will enable Recology to continue its use of the Shoreway Center to perform its franchise obligations, and provide the parties with flexibility to consider any changes to the License Area that might come about as a result of UST removal or the long-term planning process. Staff recommends that the Board adopt Resolution No. 2021-19 approving a renewed License Agreement with a two-year term.

Attachments:

Resolution 2021-18

Attachment A - Shoreway Center License Agreement

Attachment B – Original License with redlines showing changes



RESOLUTION NO. 2021-18

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING A TWO-YEAR LICENSE AGREEMENT WITH RECOLOGY SAN MATEO FOR USE OF A PORTION OF THE SHOREWAY CENTER

WHEREAS, the Member Agencies of the South Bayside Waste Management Authority ("Authority") executed a Franchise Agreement for Collection Services with Recology San Mateo County ("Recology"), with a term of January 1, 2011 through December 31, 2020, under which Recology collected solid waste, recyclable materials, and organics materials from within each such Member Agency's jurisdiction which it delivered to the Shoreway Center for recycling or transfer to a landfill for disposal; and

WHEREAS, the Authority granted a license to Recology to use a portion of the Shoreway Center property (the "Property") in connection with its performance of its Franchise Agreements with Member Agencies, through execution of the Shoreway Center License Agreement, entered January 1, 2011 (the "License Agreement"). The term of the License Agreement was the same as the Franchise Agreements, from January 1, 2011 through December 31, 2020, "unless extended by agreement of both parties"; and

WHEREAS, the Member Agencies have extended their relationship with Recology by executing Amended and Restated Franchise Agreements ("Restated Franchise Agreement"), with a term of January 1, 2021 through December 31, 2035, and Recology needs to continue utilizing the Property to meet its obligations under the Restated Franchise Agreements, and

WHEREAS the Authority extended the License Agreement for six months, until June 30, 2021, to provide time for the Recology and the Authority to negotiate terms of an updated License Agreement to run for the term of the Restated Franchise Agreements; and

WHEREAS, Recology and Authority have agreed to a two-year renewed License to allow Recology to continue using the Property while future site-planning for the Property is being conducted, with the understanding the parties will negotiate a successor License at the end of the two-year term; and

WHEREAS, approval of the renewed License Agreement is categorically exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guideline 15301, Existing Facilities, which provides that the licensing of existing public facilities that does not expand an existing use is exempt from review.

NOW, THEREFORE BE IT RESOLVED that the South Bayside Waste Management Authority hereby approves a renewed License Agreement with a two-year term, from July 1, 2021 through June 30, 2023.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 24th day of June 2021, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist.				
Menlo Park									

I HEREBY CERTIFY that the foregoing Resolution No. 2021-18 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 24, 2021.

ATTEST:

 Cyndi Urman, Board Secretary

 Alicia Aguirre, Chairperson of SBWMA

SHOREWAY CENTER LICENSE AGREEMENT

This License Agreement (“Agreement” or “License”) is entered into as of July 1, 2021, by and between the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a public agency (the “Authority”), and RECOLOGY SAN MATEO COUNTY, a California corporation (“Licensee”).

RECITALS:

A. The Authority is a joint powers authority organized under the California Joint Exercise of Powers Act. Its “Member Agencies” are cities and other local governmental agencies in San Mateo County, each of which oversees the collection of solid waste and recyclable materials within its jurisdiction.

B. The Authority owns and oversees the operation of the Shoreway Recycling and Disposal Center (“Shoreway Center”) in San Carlos. The Shoreway Center and the property on which it is located (the “Property”) is shown on Exhibit A, attached hereto, and incorporated herein by reference.

C. The Shoreway Center is operated by a contractor to the Authority (the “Shoreway Operator”), currently South Bay Recycling, pursuant to that certain Agreement for the Operation of the Shoreway Recycling and Disposal Center dated as of July 30, 2009 (“Operating Agreement”).

D. The Member Agencies executed a Franchise Agreement for Collection Services with Licensee, with a term of January 1, 2011 through December 31, 2020, under which Licensee collected solid waste, recyclable materials, and organics materials from within each such Member Agency’s jurisdiction which it delivered to the Shoreway Center for recycling or transfer to a landfill for disposal.

E. The Authority granted a license (“Original License”) to Licensee to use a portion of the Property in connection with its performance of its Franchise Agreements with Member Agencies. The term of the Original License was the same as the Franchise Agreements, from January 1, 2011 through December 31, 2020, unless previously extended by agreement of both parties.

F. The Member Agencies have extended their relationship with Licensee by executing Amended and Restated Franchise Agreements (collectively “Amended Franchise Agreements”) with Licensee, with a term of January 1, 2021 through December 31, 2035.

G. Licensee desires to continue to license the Property for its operations for a term that runs concurrently with the term of the Amended Franchise Agreements; in order to give the parties time to consider the terms of the continued license, the parties agreed to a 6-month extension of the Original License, which is currently in effect until June 30, 2021.

H. Authority is willing to continue to license the Property to Licensee on the following terms and conditions.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Grant of License. Subject to the conditions, covenants and restrictions of this Agreement, the Authority grants to Licensee a license (“License”) to continue using the License Area for the “Permitted Uses” described in Paragraph 4 below, together with necessary rights of ingress and egress over the Property, commencing July 1, 2021.

2. Term. The term of this Agreement will begin July 1, 2021 and will end on June 30, 2023, unless previously extended by agreement of both parties or terminated by Authority as provided in Section 18.

3. License Area. The “License Area” comprises two separate portions of the Property:

A. Collection Operations Area. This consists of an approximately 276,843 square foot area in the northeast portion of the Property designated “Collection Yard - Collection Operations Area” on Exhibit A and includes structures for maintaining, repairing and cleaning vehicles and bins, as well as underground fuel tanks and dispensing pumps and the oil/water separator. Licensee will be responsible for maintenance, permits and spill response in this area and shall ensure that all operating permits are current.

B. Administration Area. This consists of approximately 21,131 square feet of office space and adjacent parking area designed “Administration - Collection Operations Area” on Exhibit A.

C. Underground Storage Tanks. The parties acknowledge Authority is required by State regulations to remove underground storage tanks (“UST”) currently installed on the Property within the License Area no later than December 31, 2025. Actual removal of the USTs will not commence during the term of this License (July 1, 2021-June 30, 2023). The parties agree to work together during the License term to develop a plan for the removal and installation work that will allow Authority to meet its regulatory obligation while minimizing disruption to Licensee as much as reasonably possible.

4. Permitted Uses. Licensee may use the License Area solely for its provision of solid waste, recyclable materials, and organics materials collection services to Member Agencies which have entered into Amended Franchise Agreements with it as provided herein.

Subject to Section 6, Licensee may use the Collection Yard to:

- park collection trucks and supervisory/support vehicles and may permit employees to park their personal vehicles while on duty;
- allow visitors to park their personal vehicles;
- store collection bins and other equipment; and
- wash, maintain, repair, and fuel its vehicles.

Licensee may use the Administration Area for office activities directly and exclusively associated with its provision of collection service to Member Agencies which have entered into Amended Franchise Agreements with it and for employee and visitor parking.

Licensee may not use the License Area for any other purpose or business without obtaining the Authority's prior written consent.

5. License Fee. Licensee shall pay Authority One Dollar (\$1.00) per year as a fee for use of the License Area. The fee is payable on January 1 of each year of the Term, commencing January 1, 2022.

6. Shoreway Operator's and Authority's Use of Property. The Shoreway Operator will have limited rights to use the following portions of the Collection Yard: the fueling facilities. In addition, both the Shoreway Operator and Licensee will share use of the entry/exit access roads and the parking area behind the Transfer Station building. Licensee shall cooperate with the Shoreway Operator to minimize interference with Shoreway Operator's activities. Provisions addressing cooperation by the Shoreway Operator with Licensee's activities are specified in Section 5.05.D and Sections 1.J and 1.L of Attachment 3 to the Operating Agreement. If there is a dispute between the Licensee and the Shoreway Operator over the use of the Property, the Authority will make a determination, which will be final and binding on both entities. The parties acknowledge that the current Operating Agreement is due to expire on December 31, 2023, and that Authority will be entering into a new Operator Agreement following its expiration. Authority agrees it will maintain the provisions in the current Operating Agreement set forth above, and carry them over into the new Operator Agreement.

The Authority shall have exclusive use of a fenced area within the Collection Yard of approximately 5,000 square feet (approximately 50' x 100'). In addition, the Authority shall have exclusive use of one enclosed office in the administration building (at least fifty (50) square feet) and two parking spaces in front of the building. The Authority will be responsible for furnishing the office; Licensee will be responsible for all utilities including telephone and internet access.

7. Utilities. Licensee shall pay for all utilities including water, electricity, gas, heat, light, communications, and janitorial and building maintenance services provided to the License Area. In cases where there is a single meter, the costs will be allocated as

the Licensee and Shoreway Operator may agree. If they are unable to agree, the Authority will make a determination, which shall be final and binding on both entities.

8. Personal Property. Licensee shall provide, at its expense, telephone and other communications equipment, furniture, computers, office supplies and moveable partitions as well as all other personal property as needed for its use of the License Area.

9. Maintenance. Licensee shall keep the portions of the License Area not within the exclusive control or possession of the Authority or the Shoreway operator, including any improvements located thereon, in safe condition and in good order, condition and repair at all times, and shall provide routine maintenance thereof at Licensee's sole cost and expense. For purposes of clarification, but not limitation, the term "routine maintenance" shall include cleaning, janitorial, landscape maintenance, and monitoring of stormwater drains, and shall not include repairs, replacements or improvements, including, without limitation, any required repair, replacement or improvement of the roof or building systems such as the heating, ventilation and air-conditioning system, except that Licensee shall, at Licensee's sole expense, repair any area damaged by Licensee, its agents, employees, or visitors. Licensee acknowledges that this License imposes no duty on Authority to repair or make improvements to the Property. If Licensee fails to perform Licensee's obligations under this Section, after notice and opportunity to cure, the Authority may enter upon the License Area after twenty-four (24) hours prior notice to Licensee (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on Licensee's behalf and expense. Licensee shall, upon demand, immediately reimburse the Authority for the cost of such cure together with interest at a rate of 10% per year from the date of the expenditure by the Authority until such reimbursement is received by the Authority. At the expiration or earlier termination of this License, Licensee shall surrender the License Area to the Authority in the same condition as when received by Licensee under the terms of this Agreement, ordinary wear and tear, casualty, condemnation and modifications by Authority excepted.

10. Water Quality Protection. Licensee shall use oil-water separators furnished by the Authority to collect oil run-off from its trucks at its wash rack and truck maintenance facilities, in drainage systems in and around the vehicle parking areas, to prevent oil contamination of the San Francisco Bay. Licensee submitted to Authority, for its review and approval, its Spill Prevention Control and Countermeasure Plan (SPCC) and a Storm Water Pollution Prevention Plan (SWPPP), on or around September 1, 2010. Activities delineated in Licensee's SPCC and SWPPP shall be coordinated with the SPCC and SWPPP prepared by the Facility Operator to ensure that spill control and storm water management at the Shoreway Center is managed on an ongoing basis in compliance with applicable laws and regulations.

11. Hazardous Materials. In conducting its operations on the Property, Licensee shall at all times comply with all laws, statutes, ordinances, rules, regulations, or orders applicable to hazardous materials and pay all costs of such compliance. Licensee shall immediately notify the Authority if Licensee learns of, or has reason to believe that, a

release of Hazardous Materials has occurred in, on or about the License Area. The term “release” or “threatened release” when used with respect to Hazardous Materials shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the License Area. Licensee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Licensee or its agents or invitees cause a release of Hazardous Materials, Licensee shall, without cost to the Authority and in accordance with all laws and regulations, return the License Area to the condition immediately prior to the release. In connection therewith, Licensee shall afford the Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Materials. In the event a release of Hazardous Materials is caused by anyone other than Licensee or its agents or invitees, Licensee shall cooperate and participate in any action required to mitigate the release, except that Licensee shall not be liable for any costs associated with the mitigation action

For purposes of this Agreement, “Hazardous Materials” means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Materials includes, without limitation, any material or substance defined as a “hazardous substance, pollutant or contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) or pursuant to Section 25316 of the California Health and Safety Code; a “hazardous waste” listed pursuant to Section 25140 of the California Health and Safety Code; any asbestos and asbestos containing materials and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids.

12. Compliance with Laws. Licensee, at Licensee’s expense, will at all times comply with all applicable laws, regulations, rules, and orders with respect to Licensee’s use of the Property, including, without limitation, those relating to signage, health, disability accommodation (including the Americans with Disabilities Act), safety, noise, environmental protection, waste disposal, and water and air quality. Licensee will furnish satisfactory evidence of such compliance upon request of the Authority.

13. License Non-assignable. This License is personal to the Licensee and shall not be assigned without the prior written consent of Authority. Any attempt to assign the License without such prior consent shall automatically terminate it. No legal title or leasehold interest in the Property is created or vested in Licensee by the grant of this License.

14. Assumption of Risk/Waiver of Claims.

A. Neither the Authority nor any of its directors, officers, employees or Member Agencies shall be liable for any damage to the property of Licensee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by Licensee.

B. Licensee acknowledges and agrees that it will not be a displaced person at the time this License is terminated or expires by its own terms, and Licensee releases, waives and discharges any and all claims, demands, rights, and causes of action against, and covenants not to sue, the Indemnitees under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from the Authority under federal and state relocation assistance laws.

C. Licensee acknowledges and agrees that the fee payable hereunder does not take into account any potential liability of the Authority for any consequential or incidental damages including, but not limited to, lost profits arising out of damage to or destruction of the Shoreway Center and consequential disruption of Licensee's use of the License Area. The Authority would not be willing to grant this License in the absence of a waiver of liability for consequential and incidental damages due to the acts or omissions of the Authority or its agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully releases, waives and discharges the Indemnitees from any and all claims, demands, and causes of action for consequential and incidental damages (including without limitation, lost profits) arising out of damages to or destruction of the Shoreway Center and agrees that Authority has no duty to rebuild or replace the Shoreway Center in the event of such damage or destruction.

D. In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Licensee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive expiration or termination of this License.

15. Indemnity. Licensee shall defend (with counsel reasonably satisfactory to the Authority), indemnify and hold harmless the Authority, its officers, directors, employees, volunteers and agents (collectively "Indemnitees"), from and against all claims, causes of action, proceedings, losses, damages, liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees and consulting, engineering and construction costs) for loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") arising or resulting from the use of the Property by Licensee, its agents, employees, contractors, subcontractors, or invitees or Licensee's breach of a provision of this Agreement. The duty of Licensee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties that Licensee will indemnify and hold harmless Indemnitees from any and all claims, suits or actions regardless of the existence or degree of fault or negligence on the part of Indemnitees, except to the extent the Liability is found by a court to have been caused by the active gross negligence, willful misconduct or criminal act of a particular Indemnitee, it being understood and agreed that any Indemnitee not acting in such a manner shall be entitled to the benefits of this indemnity. This indemnity shall survive expiration or termination of this Agreement.

16. Insurance.

A. Types and Amounts of Coverage. Licensee, at Licensee's sole cost and expense, shall procure and maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers Compensation and Employer's Liability. Licensee shall maintain Workers Compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Licensee shall maintain Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or disease. Licensee shall not be obligated to carry Workers Compensation insurance if it: (i) qualifies under California Law and continuously complies with all statutory requirements to self-insure against such risks; (ii) furnishes a Certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) maintains excess Workers Compensation and Employer's Liability coverage.

2. Commercial General Liability and Automobile Liability. Licensee shall maintain commercial general liability insurance and automobile liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by Licensee's use of the License Area. The insurance required by this subsection shall include:

a. Premises Operations;

- b. Personal Injury Liability with Employment Exclusion deleted;
- c. Owned, Non-Owned, and Hired Motor Vehicles;

3. Property Insurance. Licensee shall arrange for the License Area to be added to the all-risk, first-party property insurance maintained by its parent corporation, Recology Inc. The coverage provided by this policy shall be primary as respects the portion of the License Area designated the Collections Operation Area and the improvements located on that portion.

4. Pollution (Environmental Impairment) Liability. Licensee shall maintain pollution liability insurance coverage of not less than ten million dollars (\$10,000,000) per occurrence covering claims for on-site, under-site, or off-site bodily injury and property damage as a result of pollution conditions arising out of its operations under this License Agreement.

B. Required Endorsements.

1. The Commercial General Liability policy shall contain endorsements in substantially the following form:

a. “Thirty (30) days prior written notice shall be given to the South Bayside Waste Management Authority in the event of cancellation, reduction in coverage, or nonrenewal of this policy. Such notice shall be sent to:

South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070
Attention: Executive Director”

b. “The Authority, its officers, employees, and agents are additional insureds on this policy.”

c. “This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the Authority, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.”

d. “Inclusion of the Authority as an additional insured shall not affect the Authority’s rights as respects any claim, demand, suit or judgment brought or recovered against the Licensee. This policy shall protect Licensee and Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company’s liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured.”

2. The Automobile Liability policy shall contain the endorsements described in subsections B.1 b, c, and d.

3. The Workers Compensation insurance policy (underlying or excess) shall contain an endorsement waiving the carrier's rights of subrogation against the Authority, its agents, officers and employees.

C. Delivery of Proof of Coverage. Licensee shall furnish the Authority, no later than July 1, 2021, certificates of each policy of insurance required hereunder, in form and substance satisfactory to Authority. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the Authority tenders a claim to Licensee covered under one of the policies required hereunder, then, if the Authority requests, a copy of the relevant policy(ies), together with all endorsements, shall also be promptly made available to Authority in a manner that protects the confidentiality of the policy document, except as otherwise required by law. Renewal certificates will be furnished periodically to Authority to demonstrate maintenance of the required coverages throughout the Term.

D. Other Insurance Requirements.

1. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of Size Category XV or larger and a rating classification of A or better.

2. Licensee shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Licensee from any obligation under this License. If any claim is made by any third person against the Licensee on account of any occurrence related to this License, the Licensee shall promptly report the facts in writing to the insurance carrier and to the Authority.

3. Licensee shall provide thirty (30) days prior written notice to the Authority in the event of: (i) loss of permission to self-insure for Workers Compensation risks; or (ii) cancellation, non-renewal or reduction in coverage of the excess Workers Compensation policy, the automobile liability policy or the property damage policy.

E. Absence of Insurance. If Licensee fails to procure and maintain any insurance required by this License, the Authority may take out and maintain, at Licensee's expense, such insurance as it may deem proper and recover the cost thereof from Licensee.

17. Licensee's Commitments Related to Amended Franchise Agreements. The Amended Franchise Agreements for Collection Services between Member Agencies and Licensee require the Licensee to pay to Authority:

- A. "Gate Fees" for delivering material to the Shoreway Center.
- B. Supplemental processing fees, and reimbursement of transfer, transport, and disposal costs, as described in Section 6.02.D and E of the Amended Franchise Agreement(s).

Licensee agrees to remit payment to Authority for each of these fees by automated clearing house (ACH) transaction or wire transfer within three (3) business days upon receipt of a bill or other demand from Authority. Licensee shall pay to Authority a maximum of once monthly the fees described in the preceding subsection 17.B. Licensee shall pay to Authority the Gate Fees described in the preceding subsection 17.A a maximum of once monthly based on payments for the first (1st) through the last day of each month.

In addition, the Amended Franchise Agreements include provisions that involve active participation in their administration by the Authority. Examples include: (i) Authority's conduct of a review of Licensee's annual application for adjustment of its compensation; (ii) Authority's conduct of annual evaluations of Licensee's performance as collection contractor; and (iii) public education and outreach activities. Licensee agrees to fully and actively cooperate with Authority to facilitate its accomplishment of all activities contemplated by the Amended Franchise Agreements.

18. Authority's Right to Terminate. Authority may terminate this Agreement if Licensee commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after notice from Authority, and to the extent such breach cannot be reasonably cured within thirty (30) days, then Licensee shall not be deemed in breach of this Agreement unless Licensee fails to initiate the cure within thirty (30) days after notice from Authority and thereafter diligently pursue the cure to completion.

Authority may also terminate this Agreement if the Shoreway Center is destroyed, or damaged so severely as to be inoperable and Authority elects, in its sole discretion, not to rebuild or restore it.

Upon termination of the License, Licensee shall remove all of Licensee's personal property from the Property and shall surrender possession of the License Area to Authority, in the same condition as at the commencement of Licensee's use, normal wear and tear, casualty, condemnation and modification by Authority excepted. In the event Licensee fails to remove any personal property or repair the License Area, the Authority may, at its sole election, at any time thereafter remove the Licensee's equipment and personal property from the License Area and restore the License Area to the required condition, at Licensee's sole cost and expense. Licensee's obligations in this Section shall survive expiration or termination of this License.

19. Notices. All notices required or permitted to be given under this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested,

by personal delivery, or by overnight courier, to the appropriate address indicated below or at such other place or places as either the Authority or Licensee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be deemed received four (4) days after the date of mailing, one (1) day after transmittal by overnight courier, or immediately upon personal delivery.

To Licensee: Recology San Mateo County
 Attention: General Manager
 225 Shoreway Road
 San Carlos, CA 94070

With a copy to:

Recology San Mateo County
Attention: Legal Department
50 California Street, 24th Floor
San Francisco, CA 94111

To Authority: South Bayside Waste Management Authority
 610 Elm Street, Suite 202
 San Carlos, CA 94070
 Attention: Executive Director

Day-to-day communications shall be directed to the Authority's Facility Operations Contract Manager (Telephone: (650) 802-3507) and to Licensee's General Manager (Tel: (650) 595-3900 (currently)).

20. No Waiver. No waiver of a breach of any obligation of this Agreement by either party shall be implied from any omission by either party to take action on account of such breach. No express waiver shall affect any breach other than the breach specified in the waiver, and the waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term or condition by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. A party's consent to or approval of any act by the other party shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent similar acts.

21. Severability. Each provision of this Agreement is intended to be severable. If any term or provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

22. Attorneys' Fees. If any legal proceeding is instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees.

23. Governing Law. The rights and obligations of the parties under this Agreement shall be interpreted in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

24. Effect of Headings. The headings of the sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

25. Integration; Modification. This Agreement constitutes the complete expression of the agreement between the parties and supersedes any prior agreements, whether written or oral, concerning the subject of this Agreement, which are not fully expressed in this Agreement. The parties intend this Agreement to be an integrated agreement. Any modification of or addition to this Agreement must be in writing signed by both parties.

26. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which shall constitute one and the same agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the day and year first above written by their duly authorized representatives.

**SOUTH BAYSIDE WASTE MANAGEMENT
AUTHORITY**

**RECOLOGY SAN MATEO
COUNTY**

By: _____
Joe La Mariana
Executive Director

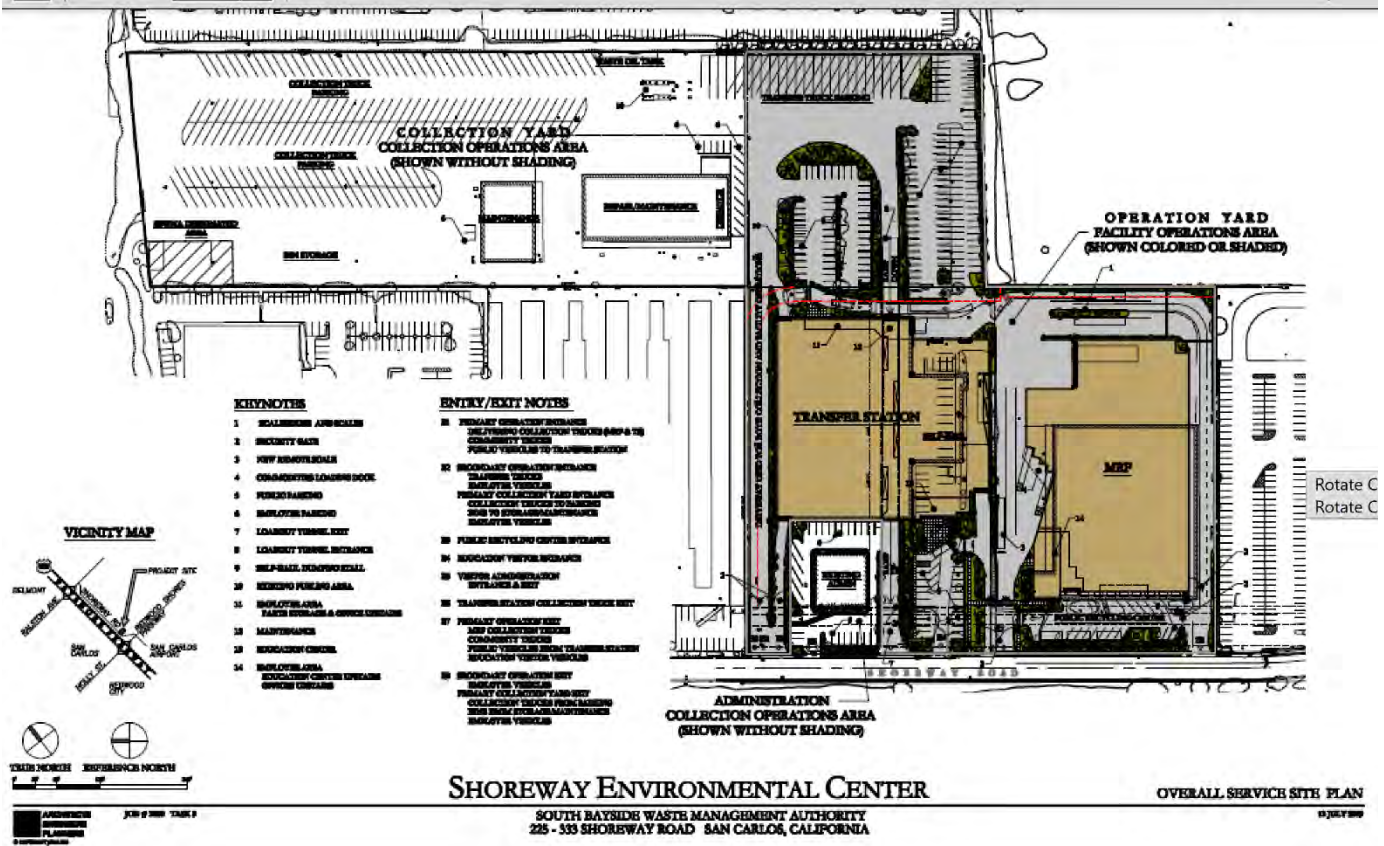
By: _____
Salvatore Coniglio
CEO

By: _____
Cary Chen
Corporate Secretary

APPROVED AS TO FORM:

Jean B. Savaree
Legal Counsel

EXHIBIT A THE PROPERTY



SHOREWAY CENTER LICENSE AGREEMENT

This License Agreement (“Agreement” or “License”) is entered into as of July 1/1/2014, 2021, by and between the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a public agency (the “Authority”), and RECOLOGY SAN MATEO COUNTY, a California corporation (“Licensee”).

RECITALS:

A. The Authority is a joint powers authority organized under the California Joint Exercise of Powers Act. Its ~~12 member agencies~~ “Member Agencies” are cities and other local governmental agencies in San Mateo County, each of which oversees the collection of solid waste and recyclable materials within its jurisdiction.

B. The Authority owns and oversees the operation of the Shoreway Recycling and Disposal Center (~~“Shoreway Center”~~) in San Carlos. ~~The Shoreway Center and the property on which it is located (the “Property”)~~ are ~~is~~ shown on Exhibit A, attached hereto, and incorporated ~~into this Agreement herein~~ by ~~this~~ reference.

C. The Shoreway Center is operated by a contractor to the Authority (the “Shoreway Operator”), currently South Bay Recycling, pursuant to that certain Agreement for the Operation of the Shoreway Recycling and Disposal Center dated as of July 30, 2009 (“Operating Agreement”).

~~D. The Member Agencies have executed or are considering entering into a Franchise Agreement for Collection Services with Licensee, with a term of January 1, 2011 through December 31, 2020, under which the Licensee would, commencing January 1, 2011, collect collected solid waste, recyclable materials, and organics materials (Franchise Agreement) from within each such Member Agency’s jurisdiction and deliver which it delivered to the Shoreway Center for recycling or transfer to a landfill for disposal.~~

~~D. The Authority awarded a contract to South Bay Recycling (Shoreway Operator) to operate the Shoreway Center commencing January 1, 2011.~~

E. ~~Licensee desires to~~ The Authority granted a license (“Original License”) to Licensee to use a portion of the Property commencing January 1, 2011, in connection with its performance of its Franchise Agreements with Member Agencies. The term of the Original License was the same as the Franchise Agreements, from January 1, 2011 through December 31, 2020, unless previously extended by agreement of both parties.

~~FF. The Member Agencies have extended their relationship with Licensee by executing Amended and Restated Franchise Agreements (collectively “Amended Franchise Agreements”) with Licensee, with a term of January 1, 2021 through December 31, 2035.~~

G. Licensee desires to continue to license the Property for its operations for a term that runs concurrently with the term of the Amended Franchise Agreements; in order to give the parties time to consider the terms of the continued license, the parties agreed to a 6-month extension of the Original License, which is currently in effect until June 30, 2021.

H. Authority is willing to ~~allow such use~~ continue to license the Property to Licensee on the following terms and conditions.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Grant of License. Subject to the conditions, covenants and restrictions of this Agreement, the Authority grants to Licensee a license ("License") to ~~use~~ continue using the License Area for the "Permitted Use/Uses" described in Paragraph 4 below, together with necessary rights of ingress and egress over the Property, commencing ~~January~~ July 1, ~~2011~~ 2021.

2. Term. The term of this Agreement will begin ~~January~~ July 1, ~~2011~~ ~~{same as the "as of" date on the first line}~~ 2021 and will end on ~~December 31, 2020~~ June 30, 2023, unless previously extended by agreement of both parties or terminated by Authority as provided in Section ~~19.18~~.

3. License Area. The "License Area" comprises two separate portions of the Property:

A. Collection Operations Area. This consists of an approximately 276,843 square foot area in the northeast portion of the Property designated "Collection Yard - Collection Operations Area" on Exhibit A and includes structures for maintaining, repairing and cleaning vehicles and bins, as well as underground fuel tanks and dispensing pumps and the oil/water separator. Licensee will be responsible for maintenance, permits and spill response in this area and shall ensure that all operating permits are current.

B. Administration Area. This consists of approximately 21,131 square feet of office space and adjacent parking area designed "Administration - Collection Operations Area" on Exhibit A.

C. Underground Storage Tanks. The parties acknowledge Authority is required by State regulations to remove underground storage tanks ("UST") currently installed on the Property within the License Area no later than December 31, 2025. Actual removal of the USTs will not commence during the term of this License (July 1, 2021-June 30, 2023). The parties agree to work together during the License term to develop a plan for the removal and installation work that will allow Authority to meet its regulatory obligation while minimizing disruption to Licensee as much as reasonably possible.

4. Permitted Uses. Licensee may use the License Area solely for its provision of solid waste, recyclable materials, and organics materials collection services to Member Agencies which have entered into Amended Franchise Agreements with it as provided herein.

Subject to Section 76, Licensee may use the Collection Yard to:

- park collection trucks and supervisory/support vehicles and may permit employees to park their personal vehicles while on duty;
- allow visitors to park their personal vehicles;
- store collection bins and other equipment; and
- wash, maintain, repair, and fuel its vehicles.

Licensee may use the Administration Area for office activities directly and exclusively associated with its provision of collection service to Member Agencies which have entered into Amended Franchise Agreements with it and for employee and visitor parking.

Licensee may not use the License Area for any other purpose or business without obtaining the Authority's prior written consent.

~~Authority agrees to pay for parking spaces that are made inaccessible in the parking area east of the transfer station during construction that is anticipated to continue through the first six (6) months of 2011. Authority agrees to compensate Licensee for the twenty four (24) parking spaces that are located in this area and allocated for Licensee's use for an amount not to exceed \$100.00 per month per parking space for each month that the parking spaces are inaccessible to Licensee.~~

~~Authority agrees to share one half (1/2) of the cost for off-site parking with Licensee for the anticipated thirty five (35) additional parking spaces that are needed for Licensee's employee parking based on current estimates. Authority agrees to remit payment to Licensee for an amount not to exceed \$1,800.00 per month for the Term for off site parking. Authority and Licensee agree to meet annually with the goal of determining if Licensee can accommodate all of its parking needs on-site.~~

5. License Fee. Licensee shall pay Authority One Dollar (\$1.00) per year as a fee for use of the License Area. The fee is payable on January 1 of each year of the Term, commencing January 1, 20142022.

~~6. —~~ Shoreway6. Shoreway Operator's and Authority's Use of Property. The Shoreway Operator will have limited rights to use the following portions of the Collection Yard: the fueling facilities ~~and a bay in the smaller maintenance building.~~ In addition, both the Shoreway Operator and Licensee will share use of the entry/exit access roads and the parking area behind the Transfer Station building. Licensee shall cooperate with the

Shoreway Operator to minimize interference with Shoreway Operator's activities. Provisions addressing cooperation by the Shoreway Operator with Licensee's activities are specified in Section 5.05.D and Sections 1.J and 1.L of Attachment 3 to the [Shoreway Operator's 2009 agreement with the Authority-Operating Agreement](#). If there is a dispute between the Licensee and the Shoreway Operator over the use of the Property, the Authority will make a determination, which will be final and binding on both entities. [The parties acknowledge that the current Operating Agreement is due to expire on December 31, 2023, and that Authority will be entering into a new Operator Agreement following its expiration. Authority agrees it will maintain the provisions in the current Operating Agreement set forth above, and carry them over into the new Operator Agreement.](#)

The Authority shall have exclusive use of a fenced area within the Collection Yard of approximately 5,000 square feet (approximately 50' x 100'). In addition, the Authority shall have exclusive use of one enclosed office in the administration building (at least fifty (50) square feet) and two parking spaces in front of the building. The Authority will be responsible for furnishing the office; Licensee will be responsible for all utilities including telephone and internet access.

7. Utilities. Licensee shall pay for all utilities including water, electricity, gas, heat, light, communications, and janitorial and building maintenance services provided to the License Area. In cases where there is a single meter, the costs will be allocated as the Licensee and Shoreway Operator may agree. If they are unable to agree, the Authority will make a determination, which shall be final and binding on both entities.

8. Personal Property. Licensee shall provide, at its expense, telephone and other communications equipment, furniture, computers, office supplies and moveable partitions as well as all other personal property as needed for its use of the License Area.

9. Maintenance. Licensee shall keep the [portions of the License Area not within the exclusive control or possession of the Authority or the Shoreway operator](#), including any improvements located thereon, in safe condition and in good order, condition and repair at all times, ~~at Licensee's sole cost and expense and shall provide routine maintenance thereof at Licensee's sole cost and expense.~~ [For purposes of clarification, but not limitation, the term "routine maintenance" shall include cleaning, janitorial, landscape maintenance, and monitoring of stormwater drains, and shall not include repairs, replacements or improvements, including, without limitation, any required repair, replacement or improvement of the roof or building systems such as the heating, ventilation and air-conditioning system, except that](#) Licensee shall, at Licensee's sole expense, repair any area damaged by Licensee, its agents, employees, or visitors. Licensee acknowledges that this License imposes no duty on Authority to repair or make improvements to the Property. If Licensee fails to perform Licensee's obligations under this Section, [after notice and opportunity to cure](#), the Authority may enter upon the License Area after twenty-four (24) hours prior notice to Licensee (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on Licensee's behalf and expense. Licensee shall, upon demand, immediately reimburse the Authority for the cost of such cure together with interest at a rate of 10% per year from

the date of the expenditure by the Authority until such reimbursement is received by the Authority. At the expiration or earlier termination of this License, Licensee shall surrender the License Area to the Authority in the same condition as when received by Licensee under the terms of this Agreement, ordinary wear and tear, casualty, condemnation and modifications by Authority excepted.

10. Water Quality Protection. Licensee shall use oil-water separators furnished by the Authority to collect oil run-off from its trucks at its wash rack and truck maintenance facilities, in drainage systems in and around the vehicle parking areas, to prevent oil contamination of the San Francisco Bay. Licensee ~~shall submit~~ submitted to Authority, for its review and approval, its Spill Prevention Control and Countermeasure Plan (SPCC) and a Storm Water Pollution Prevention Plan (SWPPP), ~~no later than on or around~~ September 1, 2010. Activities delineated in Licensee's SPCC and SWPPP shall be coordinated with the SPCC and SWPPP prepared by the Facility Operator to ensure that spill control and storm water management at the Shoreway Center is managed ~~in compliance with applicable laws and regulations. Authority shall apply for an interim variance from specific testing and approval requirements for underground storage tank (UST) systems storing certain biodiesel blends (i.e., B5-B20) per section 2631.2 of Chapter 16 of Title 23 of the California Code of Regulations by January 1, 2011. Without regulatory approval obtained by Authority to allow for the continued use of the existing UST systems for a biodiesel blend, the Authority will consider upgrading the UST tanks, allow for an alternative to the UST tanks, or request that the Member Agencies allow Licensee to use an alternative fuel other than that specified for use in the Member Agency Franchise Agreements on an ongoing basis in compliance with applicable laws and regulations.~~

11. Hazardous Materials. In conducting its operations on the Property, Licensee shall at all times comply with all laws, statutes, ordinances, rules, regulations, or orders applicable to hazardous materials and pay all costs of such compliance. Licensee shall immediately notify the Authority if Licensee learns of, or has reason to believe that, a release of Hazardous Materials has occurred in, on or about the License Area. The term "release" or "threatened release" when used with respect to Hazardous Materials shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the License Area. Licensee shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Licensee or its agents or invitees cause a release of Hazardous Materials, Licensee shall, without cost to the Authority and in accordance with all laws and regulations, return the License Area to the condition immediately prior to the release. In connection therewith, Licensee shall afford the Authority a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Materials. In the event a release of Hazardous Materials is caused by anyone other than Licensee or its agents or invitees, Licensee shall cooperate and participate in

any action required to mitigate the release, except that Licensee shall not be liable for any costs associated with the mitigation action

For purposes of this Agreement, “Hazardous Materials” means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Materials includes, without limitation, any material or substance defined as a “hazardous substance, pollutant or contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.) or pursuant to Section 25316 of the California Health and Safety Code; a “hazardous waste” listed pursuant to Section 25140 of the California Health and Safety Code; any asbestos and asbestos containing materials and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids.

12. Compliance with Laws. Licensee, at Licensee’s expense, will at all times comply with all applicable laws, regulations, rules, and orders with respect to Licensee’s use of the Property, including, without limitation, those relating to signage, health, disability accommodation (including the Americans with Disabilities Act), safety, noise, environmental protection, waste disposal, and water and air quality. Licensee will furnish satisfactory evidence of such compliance upon request of the Authority.

13. License Non-assignable. This License is personal to the Licensee and shall not be assigned without the prior written consent of Authority. Any attempt to assign the License without such prior consent shall automatically terminate it. No legal title or leasehold interest in the Property is created or vested in Licensee by the grant of this License.

14. Assumption of Risk/Waiver of Claims.

A. Neither the Authority nor any of its directors, officers, employees or Member Agencies shall be liable for any damage to the property of Licensee, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by Licensee.

B. Licensee acknowledges and agrees that it will not be a displaced person at the time this License is terminated or expires by its own terms, and Licensee releases, waives and discharges any and all claims, demands, rights, and causes of action against, and covenants not to sue, the Indemnitees under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from the Authority under federal and state relocation assistance laws.

C. Licensee acknowledges and agrees that the fee payable hereunder does not take into account any potential liability of the Authority for any consequential or incidental damages including, but not limited to, lost profits arising out of damage to or destruction of the Shoreway Center and consequential disruption of Licensee's use of the License Area. The Authority would not be willing to grant this License in the absence of a waiver of liability for consequential and incidental damages due to the acts or omissions of the Authority or its agents, and Licensee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Licensee or other waivers contained in this License and as a material part of the consideration for this License, Licensee fully releases, waives and discharges the Indemnitees from any and all claims, demands, and causes of action for consequential and incidental damages (including without limitation, lost profits) arising out of damages to or destruction of the Shoreway Center and agrees that Authority has no duty to rebuild or replace the Shoreway Center in the event of such damage or destruction.

D. In connection with the foregoing releases, Licensee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, which and that, if known by him or her ~~must~~, would have materially affected his or her settlement with the debtor or released party.

Licensee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Licensee intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive expiration or termination of this License.

15. Indemnity. Licensee shall defend (with counsel reasonably satisfactory to the Authority), indemnify and hold harmless the Authority, its officers, directors, employees, volunteers and agents (collectively "Indemnitees"), from and against all claims, causes of action, proceedings, losses, damages, liability, cost, and expense (including, without limitation, any fines, penalties, judgments, litigation costs, attorneys' fees and consulting, engineering and construction costs) for loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") arising or resulting from the use of the Property by Licensee, its agents, employees, contractors, subcontractors, or invitees or Licensee's breach of a provision of this Agreement. The duty of Licensee to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties that Licensee will indemnify and hold harmless Indemnitees from any and all claims, suits or actions regardless of the existence or degree of fault or negligence on the part of Indemnitees, except to the extent the Liability is found by a court to have been caused by the active gross negligence, willful misconduct or

criminal act of a particular Indemnitee, it being understood and agreed that any Indemnitee not acting in such a manner shall be entitled to the benefits of this indemnity. This indemnity shall survive expiration or termination of this Agreement.

16. Insurance.

A. Types and Amounts of Coverage. Licensee, at Licensee's sole cost and expense, shall procure and maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers Compensation and Employer's Liability. Licensee shall maintain Workers Compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Licensee shall maintain Employer's Liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or disease. Licensee shall not be obligated to carry Workers Compensation insurance if it: (i) qualifies under California Law and continuously complies with all statutory requirements to self-insure against such risks; (ii) furnishes a Certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) maintains excess Workers Compensation and Employer's Liability coverage.

2. Commercial General Liability and Automobile Liability. Licensee shall maintain commercial general liability insurance and automobile liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by Licensee's use of the License Area. The insurance required by this subsection shall include:

- a. Premises Operations;
- b. Personal Injury Liability with Employment Exclusion deleted;
- c. Owned, Non-Owned, and Hired Motor Vehicles;

3. Property Insurance. Licensee shall arrange for the License Area to be added to the all-risk, first-party property insurance maintained by its parent corporation, Recology Inc. The coverage provided by this policy shall be primary as respects the portion of the License Area designated the Collections Operation Area and the improvements located on that portion.

4. Pollution (Environmental Impairment) Liability. Licensee shall maintain pollution liability insurance coverage of not less than ten million dollars (\$10,000,000) per occurrence covering claims for on-site, under-site, or off-site bodily

injury and property damage as a result of pollution conditions arising out of its operations under this License Agreement.

B. Required Endorsements.

1. The Commercial General Liability policy shall contain endorsements in substantially the following form:

a. “Thirty (30) days prior written notice shall be given to the South Bayside Waste Management Authority in the event of cancellation, reduction in coverage, or nonrenewal of this policy. Such notice shall be sent to:

South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070
Attention: Executive Director”

b. “The Authority, its officers, employees, and agents are additional insureds on this policy.”

c. “This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the Authority, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.”

d. “Inclusion of the Authority as an additional insured shall not affect the Authority’s rights as respects any claim, demand, suit or judgment brought or recovered against the Licensee. This policy shall protect Licensee and Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company’s liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured.”

2. The Automobile Liability policy shall contain the endorsements described in subsections B.1 b, c, and d.

3. The Workers Compensation insurance policy (underlying or excess) shall contain an endorsement waiving the carrier’s rights of subrogation against the Authority, its agents, officers and employees.

C. Delivery of Proof of Coverage. Licensee shall furnish the Authority, no later than ~~September~~July 1, 2010~~2021~~, certificates of each policy of insurance required hereunder, in form and substance satisfactory to Authority. ~~Such certificates shall show~~

the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. ~~If the Authority [tenders a claim to Licensee covered under one of the policies required hereunder, then, if the Authority requests, copies a copy](#) of ~~each~~ [the relevant](#) policy;~~(ies)~~, together with all endorsements, shall also be promptly ~~delivered to Authority~~ [made available to Authority in a manner that protects the confidentiality of the policy document, except as otherwise required by law](#). Renewal certificates will be furnished periodically to Authority to demonstrate maintenance of the required coverages throughout the Term.~~

D. Other Insurance Requirements.

1. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of Size Category XV or larger and a rating classification of A or better.

2. Licensee shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Licensee from any obligation under this License. If any claim is made by any third person against the Licensee on account of any occurrence related to this License, the Licensee shall promptly report the facts in writing to the insurance carrier and to the Authority.

3. Licensee shall provide thirty (30) days prior written notice to the Authority in the event of: (i) loss of permission to self-insure for Workers Compensation risks; or (ii) cancellation, non-renewal or reduction in coverage of the excess Workers Compensation policy, the automobile liability policy or the property damage policy.

E. Absence of Insurance. If Licensee fails to procure and maintain any insurance required by this License, the Authority may take out and maintain, at Licensee's expense, such insurance as it may deem proper and recover the cost thereof from Licensee.

17. Licensee's Commitments Related to Amended Franchise Agreements. The [Amended](#) Franchise Agreements for Collection Services between Member Agencies and Licensee require the Licensee to pay to Authority:

A. "Gate Fees" for delivering material to the Shoreway Center.

B. ~~"Excess Contamination Fees" Supplemental processing fees, and reimbursement of transfer, transport, and disposal costs, as described in Section 6.02.D and E of the Member Agencies Franchise Agreement(s), as well as disincentive payments or other charges for contamination levels of materials delivered to the Shoreway Center exceeding allowable amounts as specified in the franchise agreements.~~

~~C. "Other Fees" that are described in Section 10.05 of the Member Agency Franchise Agreement(s) that are included in customers bills by Licensee on behalf of Member Agencies for various third party provided services such as the Authority's Door to Door HHW Collection Service Program with Curbside, Inc. The fees described in the preceding sentence are included as Pass Through Costs as described in Attachment K section 7 of the Member Agency Franchise Agreements.~~

~~Fees remitted to Authority by Licensee on behalf of Member Agencies shall be treated for the purpose of determining Licensee's compensation under the Franchise Agreement(s) as if these fees are paid directly to the Member Agency pursuant to the Amended Franchise Agreement(s).~~

Licensee agrees to remit payment to Authority for each of these fees by automated clearing house (ACH) transaction or wire transfer within three (3) business days upon receipt of a bill or other demand from Authority. Licensee shall pay to Authority a maximum of once monthly the ~~Excess Contamination Fees and Other Fees~~ fees described in the preceding ~~subsection~~ subsection 17.B and 17.C. Licensee shall pay to Authority the Gate Fees described in the preceding subsection 17.A a maximum of ~~twice~~ once monthly based on payments for: (i) the first (1st) through the ~~fifteenth (15th) day of each month;~~ and (ii) the ~~sixteenth (16th) through the~~ last day of each month. ~~Authority and Licensee agree that the twice monthly payment schedule for Gate Fees described in the preceding sentence shall be implemented commencing April 1, 2011. For the months of January, February and March 2011, Licensee shall remit payment to Authority once per month by ACH or wire transfer within three (3) business days upon receipt of a bill or other demand from Authority.~~

In addition, the Amended Franchise Agreements include ~~or are expected to include~~ provisions that involve active participation in their administration by the Authority. Examples include: (i) Authority's conduct of a review of Licensee's annual application for adjustment of its compensation; (ii) Authority's conduct of annual evaluations of Licensee's performance as collection contractor; and (iii) public education and outreach activities. Licensee agrees to fully and actively cooperate with Authority to facilitate its accomplishment of all activities contemplated by the Amended Franchise Agreements.

~~18. Improvements to the License Area. Authority and Licensee agree that improvements to License Area need to be accomplished. Specifically:~~

~~A. Authority and Licensee agree to share equally the cost of all information technology upgrades to the License Area which are needed for Licensee to provide the services specified in the Franchise Agreements. The scope of the upgrades shall be agreed upon in advance by Authority and Licensee. Authority agrees to pay one half (1/2) of the cost of these upgrades in an amount not to exceed \$33,000 upon receipt of the invoice from Licensee's contractor(s). Licensee's must use qualified licensed contractor(s)~~

~~that carry workers compensation and general liability insurance and provide in advance of any work, an insurance certificate naming the Authority as an additional insured. Authority shall direct the current occupant to cooperate with Licensee to make the necessary improvements based on a plan submitted by Licensee that ensures no disruption to the current tenants operations. The Authority may post a notice of non-responsibility prior to Licensee's contractor commencing with the specified upgrades to the License Area.~~

~~B. As soon as possible weather permitting, between January 1, 2011 and July 1, 2011, Authority shall authorize Licensee to proceed with painting and striping on the pavement of the Collection Operations Area to improve traffic flow and vehicle safety. Authority shall contribute to Licensee an amount not to exceed \$30,000 for the painting and striping of the Collection Operations Area.~~

~~C. By January 1, 2011, Authority will upgrade the transfer station building northeast corner entrance/exit to include a traffic signal paid for by the Authority in an amount not to exceed \$8,000.~~

4918. Authority's Right to Terminate. Authority may terminate this Agreement if Licensee commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after notice from Authority, and to the extent such breach cannot be reasonably cured within thirty (30) days, then Licensee shall not be deemed in breach of this Agreement unless Licensee fails to initiate the cure within thirty (30) days after notice from Authority and thereafter diligently pursue the cure to completion.

Authority may also terminate this Agreement if the Shoreway Center is destroyed, or damaged so severely as to be inoperable and Authority elects, in its sole discretion, not to rebuild or restore it.

Upon termination of the License, Licensee shall remove all of Licensee's personal property from the Property and shall surrender possession of the License Area to Authority, in the same condition as at the commencement of Licensee's use, normal wear and tear, casualty, condemnation and modification by Authority excepted. In the event Licensee fails to remove any personal property or repair the License Area, the Authority may, at its sole election, at any time thereafter remove the Licensee's equipment and personal property from the License Area and restore the License Area to its originalthe required condition, at Licensee's sole cost and expense. Licensee's obligations in this Section shall survive expiration or termination of this License.

2019. Notices. All notices required or permitted to be given under this Agreement shall be in writing and delivered by certified or registered mail, return receipt requested, by personal delivery, or by overnight courier, to the appropriate address indicated below or at such other place or places as either the Authority or Licensee may, from time to time, respectively, designate in a written notice given to the other. Notices shall be

deemed received four (4) days after the date of mailing, one (1) day after transmittal by overnight courier, or immediately upon personal delivery.

To Licensee: Recology San Mateo County
~~1356 Marsten Road~~
~~Burlingame, Ca 94010~~
Attention: General Manager

~~Commencing January 1, 2011:~~

~~Recology San Mateo County~~
225 Shoreway Road
San Carlos, CA 94070

With a copy to:

Recology San Mateo County
Attention: General Manager Legal Department
50 California Street, 24th Floor
San Francisco, CA 94111

To Authority:- South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070
Attention: Executive Director

Day-to-day communications shall be directed to the Authority's Facility Operations Contract Manager (Telephone: (650) 802-3507) and to Licensee's General Manager (Tel: _____) -(650) 595-3900 (currently).

2120. No Waiver. No waiver of a breach of any obligation of this Agreement by either party shall be implied from any omission by either party to take action on account of such breach. No express waiver shall affect any breach other than the breach specified in the waiver, and the waiver shall be operative only for the time and to the extent stated. Waivers of any covenant, term or condition by either party shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. A party's consent to or approval of any act by the other party shall not be deemed to waive or render unnecessary its consent to or approval of any subsequent similar acts.

2221. Severability. Each provision of this Agreement is intended to be severable. If any term of provision shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

2322. Attorneys' Fees. If any legal proceeding is instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this

Agreement, the prevailing party in the proceeding shall receive, in addition to all court costs, reasonable attorneys' fees.

2423. Governing Law. The rights and obligations of the parties under this Agreement shall be interpreted in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.

2524. Effect of Headings. The headings of the sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

2625. Integration; Modification. This Agreement constitutes the complete expression of the agreement between the parties and supersedes any prior agreements, whether written or oral, concerning the subject of this Agreement, which are not fully expressed in this Agreement. The parties intend this Agreement to be an integrated agreement. Any modification of or addition to this Agreement must be in writing signed by both parties.

2726. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which shall constitute one and the same agreement.

~~28. Guaranty. Licensee shall deliver to Authority a Guaranty in the form attached hereto concurrently with the execution of this License Agreement.~~

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the day and year first above written by their duly authorized representatives.

**SOUTH BAYSIDE WASTE MANAGEMENT
AUTHORITY** _____

**RECOLOGY SAN MATEO
COUNTY**

By: _____
Joe La Mariana
~~Sangiaco~~ Mark Lomele
Executive Director

By: _____
Michael J.
President and CEO/CFO

By: _____
~~Roxanne L. Frye~~ Cary Chen
Corporate Secretary

APPROVED AS TO FORM:

Jean B. Savaree
Legal Counsel

EXHIBIT A
THE PROPERTY