

EXHIBIT A

AMENDMENT NO. 1 TO FRANCHISE AGREEMENT

The Franchise Agreement for Collection, Disposal, and Processing of Mixed Materials, Recyclable Materials and Organic Materials and Related Activities in the City of Petaluma Pursuant to Chapter 8.16 of the Petaluma Code (“Franchise Agreement”) is hereby amended in accordance with Section 14.8.2 of the Franchise Agreement as follows:

1. Section 1 of the Franchise Agreement is amended to add a new Section 1.15.A, which shall read in its entirety as follows:

1.15.A “Change of Control” means that beneficial ownership of securities of Contractor representing at least fifty percent (50%) of the combined voting power entitled to vote in the election of directors is no longer held (whether directly or through one or more wholly-owned subsidiaries) by the Person or Persons that (whether directly or through one or more wholly-owned subsidiaries) owned one hundred percent (100%) of the outstanding voting securities of Contractor as of the date Contractor first began providing services under this Agreement.

2. Section 1.29 of the Franchise Agreement is amended to read in its entirety as follows:

1.29 “Contractor” means Recology Sonoma Marin, a corporation organized and operating under the laws of the State of California.

3. Section 1.37 of the Franchise Agreement is amended to read in its entirety as follows:

1.37 “Diversion” means the handling of materials in a manner that counts as diversion under applicable CalRecycle regulations.

4. Section 1.38 of the Franchise Agreement is amended to read in its entirety as follows:

1.38 “Diversion Level” means the percentage equal to 100 multiplied by the quotient obtained by dividing (i) the number of tons of material collected by Contractor pursuant to this Agreement, or pursuant to a non-exclusive franchise agreement with City for the collection of Construction and Demolition Debris, that are delivered to an Approved Recyclable Materials Processing Site, an Approved Organic Materials Processing Site, or a permitted Construction and Demolition Debris processing facility (in each of the foregoing cases, net of all residue), or that are otherwise Diverted, by (ii) the total number of tons of material collected by Contractor pursuant to this Agreement, or pursuant to a non-exclusive franchise agreement with City for the collection of Construction and Demolition Debris.

5. Section 1.39 of the Franchise Agreement, which defines the term “Diversion Rate,” is deleted in its entirety, and the words “Diversion Rate” in Sections 12.1.4.10 are replaced by the words “Diversion Level.”

6. Sections 1.57 and 14.8.3.3 of the Franchise Agreement, relating to interfamilial assignments, are deleted in their entirety.
7. Section 1 of the Franchise Agreement is amended to add a new Section 1.58A which shall read in its entirety as follows:

1.58A “MS4 Permit” means the waste discharge requirements that apply to the City pursuant to the State Water Resources Control Board Water Quality Order no. 2013-0001-DWQ National Pollutant Discharge Elimination System General Permit No. CAS000004 for small municipal separate storm sewer systems.
8. Section 1.75 of the Franchise Agreement is amended to read in its entirety as follows:

1.75 “Rate” means the dollar unit the Contractor bills a Customer for Mixed Materials Collection and disposal, Recyclable Materials Collection and Processing Services, Organic Materials Collection and Processing Services, and Trash Capture services, where such dollar unit does not exceed the maximum Rate determined by the City pursuant to Section 8.16.220 and 8.16.230 of the Petaluma Municipal Code and contained in Exhibit 1.
9. Section 1.85 of the Franchise Agreement is amended to read in its entirety as follows:

1.85 “Service Type” refers separately to the following types of Mixed Materials, Recyclable Materials, and Organic Materials Collection services, and Trash Capture services for each of the following types of services: Single-Family Premises Cart service, Multi-Plex Premises Cart service, Multi-family Premises Cart service, Multi-Family Premises Bin service, Commercial Cart service, Commercial Bin service, Drop Box service, annual clean-ups, City facilities service, and Street Sweeping.
10. Section 1 of the Franchise Agreement is amended to add a new Section 1.98A which shall read in its entirety as follows:

1.98A “Trash Capture Materials” means Mixed Materials resulting from the City’s retrieval activities under the Trash Capture Program.”
11. Section 1 of the Franchise Agreement is amended to add a new Section 1.98B which shall read in its entirety as follows:

1.98B “Trash Capture Program” refers to the City program to prevent discharge of refuse to City storm sewers in accordance with MS4 permit requirements. The Trash Capture Program may consist of a combination of installation and maintenance of full capture devices, large capture devices, and small capture devices, as well as utilization of control measures such as public education and outreach, street sweeping, cleanup days, and public refuse receptacles in order to satisfy MS4 requirements.

12. Section 2.8 is amended to read in its entirety as follows:

2.8 Council Action

The City Council shall adopt an ordinance approving of and adopting this Franchise Agreement and authorizing execution of this Franchise Agreement on behalf of the City prior to or on the effective date of this Franchise Agreement.

13. Section 4.2 of the Franchise Agreement is amended to add a new Section 4.2.11A which shall read in its entirety as follows:

4.2.11A MS4 Trash Capture Services

Retrieval of refuse from City capture facilities under the Trash Capture Program will be carried out by City staff and/or contractors and not by Contractor. Contractor will collect Trash Capture Materials following retrieval by the City or contractors in accordance with Section 5.7 of this Agreement.

14. The first and fourth paragraphs of Section 5.7 of the Franchise Agreement are amended to read in their entirety as follows

Contractor shall Collect Mixed Materials, Recyclable Materials, Organic Materials and Trash Capture Materials from the City locations identified in Exhibit 4. Collection for City Facilities shall occur at least once per week or more frequently as requested by the City.

Contractor may integrate Collection of Mixed Materials, Recyclable Materials, Organic Materials and Trash Capture Materials from City facilities with other Collection services, provided that Contractor attributes Tonnage Collected from City facilities separately from other Customers.

15. Section 6.2.2 of the Franchise Agreement is amended to read in its entirety as follows:

6.2.2 No Commingling of City Materials

6.2.2.1 Mixed Materials. Contractor shall not commingle in Collection vehicles any Mixed Materials Collected pursuant to this Agreement, with any other material Collected by Contractor inside or outside the City, without the prior written approval of an authorized representative of the City.

6.2.2.2 Recyclable Materials. Contractor shall not commingle in Collection vehicles any Recyclable Materials Collected pursuant to this Agreement, with any other material Collected by Contractor inside or outside the City, without the prior written approval of an authorized representative of the City.

6.2.2.3 Organic Materials. Contractor shall not commingle in Collection vehicles any Organic Materials Collected pursuant to this Agreement, with any other

material Collected by Contractor inside or outside the City, without the prior written approval of an authorized representative of the City.

16. The second paragraph of Section 6.3.1 of the Franchise Agreement is amended to read in its entirety as follows:

Contractor shall confer with the City before purchasing any new Collection and Street-Sweeping vehicles during the Term. Contractor shall submit the specifications for all vehicles to the City for review and approval before acquisition. Contractor acknowledges that City is constructing a CNG facility and agrees that after the facility becomes operational the City may require subsequent vehicle purchases to be CNG vehicles.

17. The first paragraph of Section 10.3.1 is amended, and a new final paragraph is added to that section, to read in their entirety as follows:

The RRI Adjustment shall be the sum of the weighted percentage changes for all RRI indices. With the exception of the "Disposal Fee," "Organic Waste Processing Fee," and "Trash Capture Fee," the percentage change in each RRI index shall be calculated using the change in the 12-month annual average of RRI index values between the base year, which shall be the prior preceding calendar year ending December 31, and the preceding calendar year ending December 31, as contained in the most recent release of the source document listed in Exhibit 2, which is attached to and included this Agreement. Therefore, the first RRI adjustment (effective July 1, 2014) will be based on the percentage changes between the 12-month annual average of the RRI indices for the calendar year ending December 31, 2012 and the 12-month annual average of the RRI indices for the calendar year ending December 31, 2013.

So long as the City has approved a Trash Capture Program budget and rate setting in accordance with all procedural and substantive requirements for such a budgeting and rate setting action and the terms of this Agreement, the percentage change shall be calculated using the change in the Trash Capture Fee between the preceding calendar year and the current calendar year's fee as established and provided to the Contractor by the City prior to March 1 of the current year. Except that; for the first year the Trash Capture Fee is collected (e.g., the RRI that is applicable to any rate change taking effect on July 1, 2018), the RRI shall be calculated based on the Trash Capture Fee established by the City prior to March 1, 2018 by adding to that RRI calculation the quotient, multiplied by 100, of the City-established Trash Capture Fee and the total revenue generated by this Agreement as reported in the 2017 Annual Report. As an example, using the total revenue of \$11,534,192 generated by this Agreement as reported in the 2017 annual report, if the City established the Trash Capture Fee to be \$100,000 before March 1, 2018, the RRI percentage calculated based on the prior year methodology would be increased by \$100,000 divided by \$11,534,192 multiplied by 100.

18. Section 10.4 of the Franchise Agreement is amended to read in its entirety as follows:

10.4 The City or Contractor may request a Detailed Rate Review to be conducted following the procedures as specified in Exhibit 3. However, a Detailed Rate Review shall not be conducted more than once every three (3) Agreement years. Contractor shall not request a Detailed Rate Review before November 1, 2019. On or after that date (but no later than December 31, 2019), Contractor may request a Detailed Rate Review to adjust Maximum Service Rates effective July 1, 2020. A request for a Detailed Rate Review shall be made in writing at least six (6) months prior to the July 1st rate adjustment date for the year in which the results for the Detailed Rate Review are to be applied. If City engages a consultant to assist it in a Detailed Rate Review, Contractor shall pay, or reimburse City for, such consultant's fees and expenses, and such fees and expenses shall be an allowable pass-through cost for purposes of such Detailed Rate Review.

19. A new Section 11.3A is added to the Franchise Agreement to read in its entirety as follows:

The Contractor shall remit the proceeds of Trash Capture Fees paid by Customers to the City in one annual payment by 5:00 p.m. on October 31 of each year.

20. The second paragraph of Section 12.2.1 is amended to read in its entirety as follows:

Contractor shall submit monthly reports by 5:00 PM on the 30th calendar days after the end of the reporting month. Contractor shall submit quarterly reports by 5:00 PM on the 45th calendar days after the end of the reporting quarter. Contractor shall submit annual reports by 5:00 PM on the 45th calendar days after the end of the calendar year.

21. Section 12.2.3 of the Franchise Agreement is amended to add a new Section 12.2.3.17, which shall read in its entirety as follows:

12.2.3.17 Diversion

Provide calculated Diversion Levels for the quarter for (i) all material collected by Contractor, (ii) all material collected by Contractor from Single-Family Premises, and (iii) all material collected by Contractor other than from Single-Family Premises.

22. Section 12.2.4 of the Franchise Agreement is amended to add a new Section 12.2.4.5, which shall read in its entirety as follows:

12.2.4.5 AB 341 and 1826 Compliance Data. Contractor shall report the total number of Commercial and/or Multi-Family Premises serviced and the number of containers, container sizes and frequency of collection for Mixed Materials, Recyclable Materials, and Organic Materials for each Commercial and/or Multi-Family Premises. Contractor shall also provide the following information, separately as required by both AB 341 and AB 1826:

12.2.4.5.1 The total number of Commercial Premises that appear (based on subscribed-for container volume) to fall under the AB 341/1826 thresholds, and the total number of those Commercial Premises that are not subscribed to

Recycling/Organics Material Collection Service, and a summary of the type of follow-up outreach provided to such Commercial Premises.

12.2.4.5.2 The total number of Multi-Family Premises that appear (based on subscribed-for container volume) to fall under the AB 341/1826 thresholds, the total number of those Multi-Family Premises that are not subscribed to Recycling/Organics Material Collection Service, and a summary of the type of follow-up outreach provided to such Multi-Family Premises.

23. The first two sentences of Section 12.2.4.2 are amended to read in their entirety as follows:

At the request of the City or in conjunction with a Detailed Rate Review as described in Section 10.4, within 120 calendar days after the close of Contractor’s fiscal year, Contractor shall deliver to the City four copies or a PDF of audited financial statements and profit and loss statements reflecting Contractor’s operations under this Agreement for such fiscal year. The financial statements shall show Contractor’s results of operations (including the specific revenues and expenses) in connection with the operations provided for in this Agreement.

24. Section 14.4.5 of the Franchise Agreement is amended to add the following to the table of liquidated damages:

47.	Failure to submit the Diversion Plan and Public Education Plan required by Section II(3) of the Assignment, Assumption and Amendment Agreement among City, Contractor and Petaluma Refuse and Recycling, Inc., by the deadline specified in that section.	\$1,000/day that either plan is overdue.
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25. Section 14.8.1 of the Franchise Agreement is amended to add the following as the second paragraph thereof:

For purposes of this Section 14.8, the term ‘assignment’ shall also include (i) a sale of all or substantially all the assets of Contractor; (ii) a sale, exchange or other transfer of outstanding voting securities of Contractor which results in a Change of Control; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a Change of Control; (iv) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, or appointment of a receiver taking possession of Contractor’s property; and (v) any combination of the foregoing which results in a Change of Control.

26. Section 15.13 of the Franchise Agreement is amended to change Contractor’s notice address to the following.

Recology Sonoma Marin
c/o Recology Inc.

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

27. Exhibit 2 of the Franchise Agreement is amended to add the following additional Operating Cost Category and Index as follows:

Trash Capture Fee: Fee to be calculated in accordance with section 10.3.1 of this Agreement and paid to the City in accordance with Section 11.3A of this Agreement.

28. Section 1(b) of Exhibit 3 of the Franchise Agreement is amended to read in its entirety as follows:

b. Forecasts of Costs. Allowed costs of operations for the Contractor's prior fiscal year will be used to evaluate the forecasted cost for upcoming year. The review will evaluate forecasted labor-related costs, vehicle-related costs, depreciation expense, and other costs, including pass-through costs. Pass-through costs are those portions of Contractor's annual cost of operations that are recoverable through the detailed rate review, but without a profit margin (i.e. without application of the operating ratio). Pass-through costs consist of (i) Franchise Fees, HHW fees, AB 939 fees, and any other fees established by or pursuant to Sections 11.1, 11.2 or 11.4; (ii) detailed rate review costs payable by Contractor under Section 10.4; (iii) fees payable by Contractor for landfill disposal; and (iv) fees payable by Contractor for processing of Organic Materials.

29. Exhibit 5 of the Franchise Agreement is amended to read in its entirety as set forth in Exhibit 5 to this Amendment.

30. Exhibit 9 of the Franchise Agreement is amended to read in its entirety as set forth in Exhibit 9 to this Amendment.

31. All references in the Franchise Agreement to "Petaluma Refuse and Recycling," "The Ratto Group of Companies, Inc.," and "www.unicycler.com" are amended to refer to "Contractor," "Recology Inc.," and "www.recology.com," respectively. All references in the Franchise Agreement to "North Bay Corporation" or "Redwood Empire Realty, LLC" are amended to refer to "Recology Inc. or an Affiliate of Recology Inc." All references in the Franchise Agreement to James Ratto, or to Contractor's fiscal year being January to December, are deleted.

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EXHIBIT 5

APPROVED FACILITIES

Approved Disposal Site(s)

Name: Redwood Landfill
Address: 8950 Redwood Highway, Novato CA 94945
SWIS #:21-AA-0001

Approved Organic Materials Processing Site(s)

Green Materials
Name: Redwood Landfill Composting Facility
Address: 8950 Redwood Highway, Novato, CA 94945
SWIS #: 21-AA-0001

Commercial Organics
Name: West Contra Costa Sanitary Landfill Organics Material Processing Facility
Address: Parr Blvd. & Garden Tract Rd., Richmond, CA 94806
SWIS #: 07-AA-0044

Approved Recyclable Materials Processing Site(s)

Name: Novato Disposal Service
Address: 2543 Petaluma Blvd. South, Petaluma, CA 94952
SWIS #: 49-AA-0406

EXHIBIT 9

VEHICLE SPECIFICATIONS

<u>Truck #</u>	<u>License #</u>	<u>Type</u>	<u>Year</u>	<u>Manufacturer</u>
101P	7210001	Ford	2006	FORD - CONTAINER
102P	7205642	Ford	2006	FORD - SERVICE
106P	7Y24701	Ford	2006	FORD - PICKUP
1007	94927A2	Sweeper	2016	FREIGHTLINER
103P	7Y62221	Sweeper	2006	TYMCO
901P	8A07228	Side Loader	2005	PETERBILT
903P	8A07223	Side Loader	2005	PETERBILT
904P	8A07224	Side Loader	2005	PETERBILT
905P	8A07225	Side Loader	2005	PETERBILT
906P	8A07112	Side Loader	2006	PETERBILT
907P	8A07113	Side Loader	2006	PETERBILT
911P	8A07230	Side Loader	2005	PETERBILT
912P	8A07231	Side Loader	2005	PETERBILT
937R	68306X1	Side Loader	2006	PETERBILT
300P	7W98433	Rear Loader	2006	FREIGHTLINER
201P	7V68242	Front Loader	2006	AUTOCAR
202P	7V68243	Front Loader	2006	AUTOCAR
203P	7V68245	Front Loader	2006	AUTOCAR
2024	03710Z1	Front Loader	2006	AUTOCAR

Note: The information in this exhibit was provided by the previous contractor. Contractor may correct this exhibit if it discovers that the information herein is inaccurate, provided such corrections are submitted to City within sixty (60) days after Recology Sonoma Marin begins providing services under the Franchise Agreement.

ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT BETWEEN THE CITY OF PETALUMA, PETALUMA REFUSE & RECYCLING, INC., AND RECOLOGY SONOMA MARIN, REGARDING THE FRANCHISE AGREEMENT FOR COLLECTION, DISPOSAL, AND PROCESSING OF MIXED MATERIALS, RECYCLABLE MATERIALS, AND ORGANIC MATERIALS AND RELATED ACTIVITIES IN THE CITY OF PETALUMA PURSUANT TO CHAPTER 8.16 OF THE PETALUMA MUNICIPAL CODE

This Assignment, Assumption and Amendment Agreement ("Assignment Agreement") is entered into as of _____, ____, 20__ by and among the City of Petaluma, a California charter city ("City"), Petaluma Refuse & Recycling, Inc. ("PR&R"), California Corporation no. C3264523, a subsidiary of the Ratto Group of Companies, and Recology Sonoma Marin, California Corporation no. C4051107, ("Recology"), a wholly-owned subsidiary of Recology Inc., for the assignment and amendment of the Franchise Agreement ("Franchise Agreement") for Collection, Disposal and Processing of Mixed Materials, Recyclable Materials and Organic Material and Related Activities, dated March 6, 2013 between the City and PR&R. City, PR&R and Recology are collectively referred to as the "Parties."

RECITALS

This Assignment Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

WHEREAS, on September 13, 2005, the City entered into the Franchise Agreement with GreenWaste Recovery, Inc., ("GreenWaste") commencing on January 1, 2006, for collection of solid waste, recyclable materials and yard trimmings, pursuant to authority granted in Resolution No. 2005-141 N.C.S.; and,

WHEREAS, on January 4, 2010, the City Council adopted Ordinance No. 2010-2361 N.C.S. authorizing the assignment of the Franchise Agreement from GreenWaste to PR&R; and,

WHEREAS, on January 7, 2013 the City Council adopted Ordinance No. 2013-2448 N.C.S authorizing the City and PR&R to enter into a restated Franchise Agreement for the provision of the exclusive right to collect, transport, and process mixed materials, recyclable materials, and organic material generated within the City; and,

WHEREAS, by letter dated August 18, 2017, PR&R requested assignment of the Franchise Agreement to Recology, in accordance with Section 14.8 of the Franchise Agreement; and,

WHEREAS, TRG and its owners and affiliated entities, including PR&R (collectively, "TRG"), reportedly entered into an Asset Purchase Agreement dated August 11, 2017 (the "APA") which TRG and Recology represent provides for the purchase by Recology Inc. or its designated subsidiaries of substantially all of the assets of TRG, including all of PR&R's assets; and,

WHEREAS, in connection with the closing of the transactions contemplated by the APA (the "Closing"), PR&R wishes to assign the Franchise Agreement to Recology, and Recology wishes to accept such assignment; and

WHEREAS, Section 14.8 of the Franchise Agreement requires the City's consent to any assignment of the Franchise Agreement as defined therein, including the sale to a third party of PR&R's assets dedicated to service under the Franchise Agreement; and,

WHEREAS, the City has considered the potential risks associated with such an assignment, including, but not limited to, those discussed in its consultant's report entitled, "Final Report: Review of Assignment of TRG Agreements to Recology Sonoma Marin," and seeks certain assurances regarding the performance of Recology, as provided for herein, in consideration of the City's consent to the assignment; and,

WHEREAS, Recology seeks to assure the City that, following the sale, Recology will continue operations under the Franchise Agreement in accordance with high professional standards, and provide services to the City in full compliance with the terms of the Franchise Agreement and the City's operational expectations (not limited to, but specifically including, the maintenance of separate operations and financial records, and separate records of all other transactions - except for the allocation of health, liability and workers compensation insurance), and keeping reporting of activities under the Franchise Agreement separate from any other franchise agreement or other activity of Recology, as well as keeping separate identification and use of all assets, including vehicles and containers under the Franchise Agreement, unless specifically approved in writing in advance by the City; and,

WHEREAS, Recology seeks to assure the City that the sale of the Franchise Agreement assets to Recology will not result in increased costs or a reduction in services or the quality of those services provided to the City, its residents, or businesses or a reduction of any obligations of Recology under the Franchise Agreement; and

WHEREAS, the City has determined that the implementation costs for the Trash Capture Program as required by the State Phase II MS4 permit for a municipal separate storm sewer system is a property-related cost of providing refuse services for the community and that therefore such costs are eligible for recovery through the fee structure and the annual refuse rate adjustment process of the Franchise Agreement; and

WHEREAS, although the materials attached to and made a part of this Assignment Agreement for approving assignment and amendment of the Franchise Agreement provide a mechanism for providing Trash Capture services and recovering Trash Capture service costs pursuant to the Franchise Agreement, approval of assignment and amendment of the Franchise Agreement does not commence the provision of Trash Capture services in the City or recovery of Trash Capture service costs; and

WHEREAS, commencement of such Trash Capture services and cost recovery are anticipated to occur after assignment of the Franchise Agreement has taken effect and following a subsequent budget approval and rate setting action of the City in accordance with all procedural and substantive requirements for such a rate setting action and the terms of the Franchise Agreement; and

WHEREAS, assignment of the Franchise Agreement and the rights and obligations thereunder continues the same solid waste disposal, recycling and related services currently provided under the Franchise Agreement, requires the same diversion percentage of waste from landfills, directs garbage and rubbish hauled from City sources to the same landfill, continues the composting of green waste and directs the hauling of green waste to the same composting site, and uses the same trucks, equipment and facilities as used by the existing

solid waste, recycling and disposal services provided under the Franchise Agreement, thereby making no changes to the Franchise Agreement services which would have physical environment impacts as defined by the California Environmental Quality Act ("CEQA"); and

WHEREAS, because assignment of the Franchise Agreement would result in no changes that would have physical environmental impacts under CEQA, such assignment pursuant to execution of this Assignment Agreement is not a "project" subject to CEQA and/or is categorically exempt pursuant to Section 15301 of the CEQA guidelines as the operation, maintenance, repair, permitting, leasing or licensing of existing public or private structures, facilities or mechanical equipment with negligible or no expansion of use; and

WHEREAS, at its December 18 regularly scheduled City Council meeting, the City Council is scheduled to introduce an ordinance conditionally approving assignment of the Franchise Agreement to Recology and amendment of the Franchise Agreement in accordance with Sections 46, 51 and 75 of the Petaluma City Charter, Chapter 8.16 of the Petaluma Municipal Code and other applicable law, and authorizing execution on behalf of the City of this Assignment Agreement, subject to the ordinance being adopted and taking effect and satisfaction of the conditions specified in Section 2 of the Franchise Agreement and in this Assignment Agreement;

NOW, THEREFORE, the Parties hereto agree as follows:

I. Conditions Precedent to Assignment Taking Effect

The following conditions precedent must be satisfied in accordance with the terms of this Assignment Agreement and the Franchise Agreement in order for this Assignment Agreement, and the City's consent to the assignment contemplated by this Assignment Agreement and the amendments to the Franchise Agreement specified in Exhibit A attached hereto to take effect, and for the rights and obligations pursuant to the Franchise Agreement, as amended pursuant to this Assignment Agreement, to accrue:

1. Recology, on behalf of PR&R, shall pay the City an assignment fee in the amount of \$500,000, in accordance with Section 14.8.3.1 of the Franchise Agreement, to cover the costs the City incurs due to the assignment of the Franchise Agreement, including the cost of staff time and consultant fees. In accordance with Section 14.8.3.1 of the Franchise Agreement, any amount remaining from the assignment fee upon completion of the City's assignment analysis, after deduction of all costs incurred by the City related to the assignment, will be returned. The Parties agree that any unexpended balance remaining from the assignment fee will be returned to Recology.
2. Recology shall make all of the representations contained in Sections 2.1 through 2.7 of the Franchise Agreement, and shall satisfy all of the conditions set forth in Sections 2.9 and 2.10 of the Franchise Agreement, in each case as applicable to this Assignment Agreement and assignment of the Franchise Agreement to Recology.
3. Recology shall ensure that PR&R and/or Recology have paid to the reasonable satisfaction of the City all amounts due the City in accordance with the Franchise Agreement from PR&R for the period prior to the Closing, including, but not limited to, the Franchise Fee and HHW/AB939 Fees described in Section 11 of the Franchise Agreement, the cost of the recently-conducted performance review under Section 12.3

of the Franchise Agreement, and any other amounts due to the City under the Franchise Agreement.

4. Recology shall satisfy all of the conditions in Sections 14.8.2.1 through 14.8.2.3 of the Franchise Agreement.

II. Other Agreements of the Parties

As a further condition to the City's consent to the assignment of the Franchise Agreement to Recology pursuant to this Assignment Agreement, the parties hereby agree as follows:

1. By execution of this Assignment Agreement, PR&R, and its predecessors, successors, subsidiaries, related entities, past and present directors, employees, independent contractors, managers, attorneys, agents and assigns (collectively, the "Releasing Parties"), dismisses and fully and forever resolves any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits against the City (collectively, "Claims"), and fully and forever releases, discharges and covenants not to sue or otherwise institute in any way, actively participate in or voluntarily assist in the participation of any legal or administrative proceedings against the City, including, without limitation, the City Council, the City Manager, other City officials, City directors, departments, commissions, predecessors, subsidiaries, related entities, past and present employees, managers, attorneys, agents and assigns with respect to any Claims arising out of, connected with or related in any way to the Franchise Agreement, assignment of the Franchise Agreement, and/or any act or omission by the City prior to the Closing. PR&R understands and expressly agrees that the releases pursuant to this provision extend to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, arising from or attributable to the Franchise Agreement, the assignment of the Franchise Agreement, and/or any act or omission by the City that occurred prior to the Closing. PR&R acknowledges that any and all rights granted to it under Section 1542 of the California Civil Code or any analogous state or federal law or regulation are hereby expressly waived. PR&R recognizes and acknowledges that factors which have induced it to enter into this Assignment Agreement might turn out to be incorrect or different from what PR&R had previously anticipated, and expressly assumes all of the risks of this waiver of California Civil Code Section 1542, which reads as follows:

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

PR&R acknowledges and agrees that this Section II(1) is a material term of this Assignment Agreement and that without it neither City nor Recology would have entered into this Assignment Agreement.

2. Recology acknowledges and agrees that the indemnity, defense and hold harmless obligations that Recology assumes pursuant to this Assignment Agreement and Section 13 of the Franchise Agreement for liability resulting from or connected with the Franchise Agreement expressly include, without limitation, the obligation to indemnify, hold harmless and defend the City regarding any and all Claims of the Releasing Parties against the City that arise out of, are connected with or related in any way to the

Franchise Agreement, assignment of the Franchise Agreement, and/or any act or omission by the City that took place prior to the Closing. As a material inducement to the foregoing agreement by Recology, City represents and warrants to Recology that it is not aware of any Claims as of the date Recology executes this Assignment Agreement, and PR&R represents and warrants to Recology that the Releasing Parties are not aware of any Claims as of the date PR&R executes this Assignment Agreement.

3. Within ninety (90) days after the Closing, Recology agrees to submit for City approval detailed Diversion and Public Education plans to remedy diversion shortfalls that have occurred under the Franchise Agreement prior to assignment of the Franchise Agreement to Recology, and the specific details necessary to promptly implement the commercial food waste program required pursuant to the Franchise Agreement. The City will not unreasonably withhold its approval of the Diversion and Public Education Plans and commercial food waste program details.
4. Within ninety (90) days after the Closing, Recology agrees to correct and/or to submit a plan of correction for all the deficiencies identified in Section 1.4 in the Performance Review dated November 17, 2017 concerning the Franchise Agreement. The corrections and/or plan of correction must be completed to the satisfaction of the City, not to be unreasonably withheld.
5. Within twelve (12) months after the Closing, Recology agrees to replace or repair all broken or damaged collection containers, containers with graffiti, and all other containers as necessary to provide for visually consistent color scheme, consistent container manufacture, and consistent labeling pursuant to the Franchise Agreement.

III. Assignment and Assumption

As a further condition to the City's consent to the assignment of the Franchise Agreement to Recology pursuant to this Assignment Agreement, the parties hereby agree as follows with respect to the Closing:

1. Subject to and effective as of the Closing, PR&R shall assign to Recology all of its right, title and interest in and to the Franchise Agreement.
2. Subject to and effective as of the Closing, Recology shall accept assignment of the Franchise Agreement and assume all rights, duties and obligations thereunder and meet all terms and conditions of the Franchise Agreement, in each case as amended by this Assignment Agreement.
3. Recology agrees to notify City of the Closing by 5:00 pm of the business day thereafter. Recology shall satisfy the requirements of this section by providing notice via email to City Manager John Brown at jbrown@ci.petaluma.ca.us, with a copy to Director Dan St. John at dstjohn@ci.petaluma.ca.us.

IV. City Consent

Conditioned on satisfaction of the conditions precedent to this Assignment Agreement taking effect specified in Section I., above, and the ordinance conditionally approving this Assignment Agreement taking effect, the City hereby consents to assignment and assumption of the Franchise Agreement on the terms and conditions set forth therein and in this Assignment

Agreement, in accordance with the requirements of Sections 46, 51 and 75 of the Petaluma City Charter, Chapter 8.16 of the Petaluma Municipal Code and other applicable law.

V. Amendment of the Franchise Agreement

In accordance with Section 14.8.2.4 of the Franchise Agreement, the Parties agree that, subject to and effective as of the Closing, the Franchise Agreement shall be amended, automatically and without any further action by the Parties, in accordance with Section 15.1 of the Franchise Agreement and Exhibit A to this Assignment Agreement, which is attached and made a part of this Assignment Agreement for all purposes. Except as amended in accordance with Exhibit A, all terms and conditions of the Franchise Agreement shall remain unmodified and continue in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the respective dates set forth below.

City of Petaluma

By: 

Name: John C. Brown

Title: City Manager

Date Executed: 2/22/18

Petaluma Refuse & Recycling, Inc.

By: 

Name: Richard Powell

Title: President

Date Executed: 1-3-2018

Recology Sonoma Marin

By: _____

Name: Michael J. Sangiacomo

Title: President & CEO

Date Executed: _____

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the respective dates set forth below.

City of Petaluma

By: 

Name: John C. Brown

Title: City Manager

Date Executed: 2/22/18

Petaluma Refuse & Recycling, Inc.

By: _____

Name: _____

Title: _____

Date Executed: _____

Recology Sonoma Marin

By: 

Name: Michael J. Sangiacomo

Title: President & CEO

Date Executed: 12-26-2017

Recology

Reviewed by:



Legal

**EFFECTIVE DATE
OF ORDINANCE**

February 22, 2018

ORDINANCE NO. 2636 N.C.S.

1 Introduced by

Seconded by

2
3
4 Teresa Barrett

Gabe Kearney

5
6
7
8 **AN ORDINANCE CONDITIONALLY APPROVING ASSIGNMENT OF THE FRANCHISE**
9 **AGREEMENT BETWEEN THE CITY OF PETALUMA AND PETALUMA REFUSE & RECYCLING, INC.,**
10 **AN AFFILIATE OF THE RATTO GROUP OF COMPANIES, INC., FOR SOLID WASTE, RECYCLABLE**
11 **MATERIALS AND YARD TRIMMINGS SERVICES TO RECOLOGY SONOMA MARIN, A WHOLLY**
12 **OWNED SUBSIDIARY OF RECOLOGY INC., AND AUTHORIZING THE CITY MANAGER TO**
13 **EXECUTE AN ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT UPON**
14 **SATISFACTION OF THE CONDITIONS PRECEDENT SPECIFIED IN THE FRANCHISE AGREEMENT**
15 **AND THE ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT**
16
17

18 **WHEREAS**, on September 13, 2005, the City entered into an exclusive Franchise
19 Agreement ("Franchise Agreement") with GreenWaste Recovery, Inc., ("GreenWaste")
20 commencing on January 1, 2006, for collection of solid waste, recyclable materials and yard
21 trimmings, pursuant to authority granted in Resolution No. 2005-141 N.C.S.; and

22 **WHEREAS**, on January 4, 2010, the City Council of the City of Petaluma adopted
23 Ordinance No. 2010-2361 N.C.S. authorizing the assignment of the Franchise Agreement from
24 GreenWaste to Petaluma Refuse & Recycling, Inc. a California corporation ("PR&R"); and

25 **WHEREAS**, on January 7, 2013 the City Council of the City of Petaluma adopted
26 Ordinance No. 2013-2448 N.C.S. authorizing the City and PR&R to enter into a restated
27 Agreement for the provision of the exclusive right to collect, transport, and process mixed
28 materials, recyclable materials, and organic material generated within the City; and

29 **WHEREAS**, by letter dated August 18, 2017, PR&R requested assignment of the Franchise
30 Agreement, in accordance with Section 14.8 of the Agreement, to Recology Sonoma Marin
31 ("Recology" or "Assignee") as included as Exhibit B to this Ordinance; and

32 **WHEREAS**, The Ratto Group of Companies Inc. and its owners and affiliated entities,
33 including PR&R (collectively, "TRG"), entered into an Asset Purchase Agreement dated August
34 11, 2017 (the "APA") which Recology and TRG represent provides for the purchase by Recology
35 or its designated subsidiaries of substantially all of TRG's assets, including all of PR&R's assets; and

36 **WHEREAS**, in connection with the closing of the transactions contemplated by the APA
37 (the "Closing"), PR&R wishes to assign the Franchise Agreement to Recology, and Recology
38 wishes to accept such assignment; and,

1 **WHEREAS**, Section 14.8 of the Franchise Agreement requires the City's consent to any
2 assignment of the Franchise Agreement as defined therein, including the sale of PR&R's assets
3 dedicated to service under the Franchise Agreement, to a third party; and

4 **WHEREAS**, the City has considered the potential risks associated with such an assignment,
5 including, but not limited to, those discussed in the related report entitled, "Final Report: Review
6 of Assignment of TRG Agreements to Recology Sonoma Marin," and seeks certain assurances
7 regarding the performance of Recology, as provided for herein, in consideration of the City's
8 consent to the assignment; and

9 **WHEREAS**, Recology seeks to assure the City that, following the sale, Recology will
10 continue operations under the Franchise Agreement in accordance with high professional
11 standards, and provide services to the City in full compliance with the terms of the Franchise
12 Agreement and the City's operational expectations (not limited to, but specifically including, the
13 maintenance of separate operations and financial records, and separate records of all other
14 transactions - except for the allocation of health, liability and workers compensation insurance),
15 and keeping separate from any other franchise agreement or other activity of Recology
16 reporting of activities under the Franchise Agreement, as well as keeping separate identification
17 and use of all assets, including vehicles and containers under the Franchise Agreement, unless
18 otherwise specifically approved in writing in advance by the City; and

19 **WHEREAS**, Recology seeks to assure the City that the sale of the Franchise Agreement
20 assets to Recology will not result in increased costs or a reduction in services or the quality of
21 those services provided to the City, its residents, or businesses or a reduction of any obligations of
22 Contractor under the Agreement; and

23 **WHEREAS**, the City has determined that the implementation costs for the Trash Capture
24 Program as required by the State Phase II MS4 permit for municipal separate storm sewer systems
25 is a property-related cost of providing refuse services for the community and that therefore such
26 costs are eligible for recovery through the fee structure and the annual refuse rate adjustment
27 process of the Franchise Agreement; and

28 **WHEREAS**, although the materials attached to and made a part of this ordinance for
29 approving assignment and amendment of the Franchise Agreement provide a mechanism for
30 providing Trash Capture services and recovering Trash Capture service costs pursuant to the
31 Franchise Agreement, approval of assignment and amendment of the Franchise Agreement
32 pursuant to this ordinance does not commence the provision of Trash Capture services in the
33 City or recovery of Trash Capture service costs; and

34 **WHEREAS**, commencement of such Trash Capture services and cost recovery are
35 anticipated to occur after assignment of the Franchise Agreement has taken effect and
36 following a subsequent budget approval and rate setting action of the City in accordance with
37 all procedural and substantive requirements for such a rate setting action and the terms of the
38 Franchise Agreement; and

39 **WHEREAS**, assignment of the Franchise Agreement and the rights and obligations
40 thereunder continues the same solid waste disposal, recycling and related services currently
41 provided under the Franchise Agreement, requires the same diversion percentage of waste
42 from landfills, directs garbage and rubbish hauled from City sources to the same landfill,
43 continues the composting of green waste and directs the hauling of green waste to the same
44 composting site, and uses the same trucks, equipment and facilities as used by the existing solid
45 waste, recycling and disposal services provided under the Franchise Agreement, thereby
46 making no changes to the Franchise Agreement services which would have physical
47 environment impacts as defined by the California Environmental Quality Act ("CEQA"); and

1 **WHEREAS**, because assignment of the Franchise Agreement would result in no changes
2 that would have physical environmental impacts under CEQA, such assignment pursuant to
3 adoption of this ordinance is not a "project" subject to CEQA and/or is categorically exempt
4 pursuant to Section 15301 of the CEQA guidelines as the operation, maintenance, repair,
5 permitting, leasing or licensing of existing public or private structures, facilities or mechanical
6 equipment with negligible or no expansion of use;

7 **NOW THEREFORE BE IT ORDAINED** by the Council of the City of Petaluma as follows:

8 **Section 1. Recitals Incorporated as Findings.** The above recitals are hereby declared to
9 be true and correct and are incorporated into this ordinance as findings of the City Council.

10 **Section 2. Conditions Precedent.** Before assignment of the Franchise Agreement to
11 Assignee contemplated pursuant to this ordinance may take effect, each and every condition
12 precedent in Sections 2 and 14 of the Franchise Agreement, as modified by the Assignment,
13 Assumption and Amendment Agreement ("Assignment Agreement"), which is attached to and
14 made a part of this Ordinance as Exhibit A, and each and every condition precedent in Section
15 1 of the Assignment Agreement, must first be satisfied. The Franchise Agreement is hereby made
16 a part of this ordinance by this reference.

17 **Section 3. Approval of Assignment.** Subject to satisfaction of the conditions precedent
18 specified in Section 2, above, the City Council approves the Assignment Agreement. Each and
19 every provision in the Assignment Agreement shall be binding upon the City, Recology, PR&R
20 and their successors and assigns conditioned upon this ordinance taking effect, satisfaction of
21 the conditions specified in Section 2 of this ordinance and execution of the Assignment
22 Agreement by the City Manager in accordance with this ordinance. Provided the foregoing
23 have occurred, the amendments to the Franchise Agreement contained in the Assignment
24 Agreement shall become effective and part of the Franchise Agreement and binding on
25 Recology and the City and their successors and assigns, subject to and effective as of the
26 Closing.

27 **Section 4. Execution.** The City Council authorizes and directs the City Manager to
28 execute the Assignment Agreement on behalf of the City, including any related and necessary
29 implementing documents, at the time that this ordinance has become effective in accordance
30 with the City Charter and all of the conditions specified in Section 2, above, are satisfied.

31 **Section 5. Severability.** If any section, subsection, sentence, clause, phrase or word of
32 this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a
33 court of competent jurisdiction or preempted by state legislation, such decision or legislation
34 shall not affect the validity of the remaining portions of this ordinance. The City Council of the
35 City of Petaluma hereby declares that it would have passed and adopted this ordinance and
36 each and all provisions thereof irrespective of the fact that any one or more of said provisions be
37 declared unconstitutional, unlawful or otherwise invalid.

38 **Section 6. Publication.** This ordinance or a synopsis of it shall be posted and/or published
39 for the period and in the manner required by City charter.

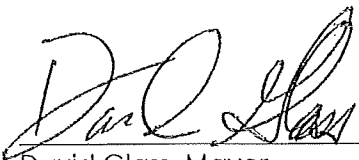
40 **Section 7. Effective Date.** This ordinance shall become effective thirty (30) days after the
41 date of its adoption by the Petaluma City Council.

42 **INTRODUCED**, and ordered posted/published, this 18th day of December 2017.

43
44 **ADOPTED** this 22nd day of January 2018, by the following vote:
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Ayes: Vice Mayor Barrett, Mayor Glass, Healy, Kearney, King, Miller
Noes: None
Abstain: None
Absent: Albertson



David Glass, Mayor

ATTEST:

APPROVED AS TO FORM:



Claire Cooper, City Clerk



Eric W. Danly, City Attorney

AMENDMENT NO. 1 TO FRANCHISE AGREEMENT

The Franchise Agreement for Collection, Disposal, and Processing of Mixed Materials, Recyclable Materials and Organic Materials and Related Activities in the City of Petaluma Pursuant to Chapter 8.16 of the Petaluma Code ("Franchise Agreement") is hereby amended in accordance with Section 14.8.2 of the Franchise Agreement as follows:

1. Section 1 of the Franchise Agreement is amended to add a new Section 1.15.A, which shall read in its entirety as follows:

1.15.A "Change of Control" means that beneficial ownership of securities of Contractor representing at least fifty percent (50%) of the combined voting power entitled to vote in the election of directors is no longer held (whether directly or through one or more wholly-owned subsidiaries) by the Person or Persons that (whether directly or through one or more wholly-owned subsidiaries) owned one hundred percent (100%) of the outstanding voting securities of Contractor as of the date Contractor first began providing services under this Agreement.

2. Section 1.29 of the Franchise Agreement is amended to read in its entirety as follows:

1.29 "Contractor" means Recology Sonoma Marin, a corporation organized and operating under the laws of the State of California.

3. Section 1.37 of the Franchise Agreement is amended to read in its entirety as follows:

1.37 "Diversion" means the handling of materials in a manner that counts as diversion under applicable CalRecycle regulations.

4. Section 1.38 of the Franchise Agreement is amended to read in its entirety as follows:

1.38 "Diversion Level" means the percentage equal to 100 multiplied by the quotient obtained by dividing (i) the number of tons of material collected by Contractor pursuant to this Agreement, or pursuant to a non-exclusive franchise agreement with City for the collection of Construction and Demolition Debris, that are delivered to an Approved Recyclable Materials Processing Site, an Approved Organic Materials Processing Site, or a permitted Construction and Demolition Debris processing facility (in each of the foregoing cases, net of all residue), or that are otherwise Diverted, by (ii) the total number of tons of material collected by Contractor pursuant to this Agreement, or pursuant to a non-exclusive franchise agreement with City for the collection of Construction and Demolition Debris.

- 1 5. Section 1.39 of the Franchise Agreement, which defines the term “Diversion Rate,” is deleted
2 in its entirety, and the words “Diversion Rate” in Sections 12.1.4.10 are replaced by the
3 words “Diversion Level.”
- 4 6. Sections 1.57 and 14.8.3.3 of the Franchise Agreement, relating to interfamilial assignments,
5 are deleted in their entirety.
- 6 7. Section 1 of the Franchise Agreement is amended to add a new Section 1.58A which shall
7 read in its entirety as follows:
- 8 1.58A “MS4 Permit” means the waste discharge requirements that apply to the City pursuant
9 to the State Water Resources Control Board Water Quality Order no. 2013-0001-DWQ
10 National Pollutant Discharge Elimination System General Permit No. CAS000004 for small
11 municipal separate storm sewer systems.
- 12 8. Section 1.75 of the Franchise Agreement is amended to read in its entirety as follows:
- 13 1.75 “Rate” means the dollar unit the Contractor bills a Customer for Mixed Materials
14 Collection and disposal, Recyclable Materials Collection and Processing Services, Organic
15 Materials Collection and Processing Services, and Trash Capture services, where such dollar
16 unit does not exceed the maximum Rate determined by the City pursuant to Section 8.16.220
17 and 8.16.230 of the Petaluma Municipal Code and contained in Exhibit 1.
- 18 9. Section 1.85 of the Franchise Agreement is amended to read in its entirety as follows:
- 19 1.85 “Service Type” refers separately to the following types of Mixed Materials, Recyclable
20 Materials, and Organic Materials Collection services, and Trash Capture services for each of
21 the following types of services: Single-Family Premises Cart service, Multi-Plex Premises
22 Cart service, Multi-family Premises Cart service, Multi-Family Premises Bin service,
23 Commercial Cart service, Commercial Bin service, Drop Box service, annual clean-ups, City
24 facilities service, and Street Sweeping.
- 25 10. Section 1 of the Franchise Agreement is amended to add a new Section 1.98A which shall
26 read in its entirety as follows:
- 27 1.98A “Trash Capture Materials” means Mixed Materials resulting from the City’s retrieval
28 activities under the Trash Capture Program.”
- 29 11. Section 1 of the Franchise Agreement is amended to add a new Section 1.98B which shall
30 read in its entirety as follows:
- 31 1.98B “Trash Capture Program” refers to the City program to prevent discharge of refuse to
32 City storm sewers in accordance with MS4 permit requirements. The Trash Capture Program
33 may consist of a combination of installation and maintenance of full capture devices, large
34 capture devices, and small capture devices, as well as utilization of control measures such as
35 public education and outreach, street sweeping, cleanup days, and public refuse receptacles
36 in order to satisfy MS4 requirements.

37

1 12. Section 2.8 is amended to read in its entirety as follows:

2 2.8 Council Action

3 The City Council shall adopt an ordinance approving of and adopting this Franchise
4 Agreement and authorizing execution of this Franchise Agreement on behalf of the City prior
5 to or on the effective date of this Franchise Agreement.

6 13. Section 4.2 of the Franchise Agreement is amended to add a new Section 4.2.11A which
7 shall read in its entirety as follows:

8 4.2.11A MS4 Trash Capture Services

9 Retrieval of refuse from City capture facilities under the Trash Capture Program will be
10 carried out by City staff and/or contractors and not by Contractor. Contractor will collect
11 Trash Capture Materials following retrieval by the City or contractors in accordance with
12 Section 5.7 of this Agreement.

13 14. The first and fourth paragraphs of Section 5.7 of the Franchise Agreement are amended to
14 read in their entirety as follows

15 Contractor shall Collect Mixed Materials, Recyclable Materials, Organic Materials and Trash
16 Capture Materials from the City locations identified in Exhibit 4. Collection for City
17 Facilities shall occur at least once per week or more frequently as requested by the City.

18 Contractor may integrate Collection of Mixed Materials, Recyclable Materials, Organic
19 Materials and Trash Capture Materials from City facilities with other Collection services,
20 provided that Contractor attributes Tonnage Collected from City facilities separately from
21 other Customers.

22 15. Section 6.2.2 of the Franchise Agreement is amended to read in its entirety as follows:

23 6.2.2 No Commingling of City Materials

24 6.2.2.1 Mixed Materials. Contractor shall not commingle in Collection
25 vehicles any Mixed Materials Collected pursuant to this Agreement, with any other
26 material Collected by Contractor inside or outside the City, without the prior written
27 approval of an authorized representative of the City.

28 6.2.2.2 Recyclable Materials. Contractor shall not commingle in Collection
29 vehicles any Recyclable Materials Collected pursuant to this Agreement, with any
30 other material Collected by Contractor inside or outside the City, without the prior
31 written approval of an authorized representative of the City.

32 6.2.2.3 Organic Materials. Contractor shall not commingle in Collection
33 vehicles any Organic Materials Collected pursuant to this Agreement, with any other
34 material Collected by Contractor inside or outside the City, without the prior written
35 approval of an authorized representative of the City.

1 16. The second paragraph of Section 6.3.1 of the Franchise Agreement is amended to read in its
2 entirety as follows:

3 Contractor shall confer with the City before purchasing any new Collection and
4 Street-Sweeping vehicles during the Term. Contractor shall submit the specifications
5 for all vehicles to the City for review and approval before acquisition. Contractor
6 acknowledges that City is constructing a CNG facility and agrees that after the
7 facility becomes operational the City may require subsequent vehicle purchases to be
8 CNG vehicles.

9 17. The first paragraph of Section 10.3.1 is amended, and a new final paragraph is added to that
10 section, to read in their entirety as follows:

11 The RRI Adjustment shall be the sum of the weighted percentage changes for all RRI
12 indices. With the exception of the "Disposal Fee," "Organic Waste Processing Fee," and
13 "Trash Capture Fee," the percentage change in each RRI index shall be calculated using the
14 change in the 12-month annual average of RRI index values between the base year, which
15 shall be the prior preceding calendar year ending December 31, and the preceding calendar
16 year ending December 31, as contained in the most recent release of the source document
17 listed in Exhibit 2, which is attached to and included this Agreement. Therefore, the first
18 RRI adjustment (effective July 1, 2014) will be based on the percentage changes between the
19 12-month annual average of the RRI indices for the calendar year ending December 31, 2012
20 and the 12-month annual average of the RRI indices for the calendar year ending December
21 31, 2013.

22 So long as the City has approved a Trash Capture Program budget and rate setting in
23 accordance with all procedural and substantive requirements for such a budgeting and rate
24 setting action and the terms of this Agreement, the percentage change shall be calculated
25 using the change in the Trash Capture Fee between the preceding calendar year and the
26 current calendar year's fee as established and provided to the Contractor by the City prior to
27 March 1 of the current year. Except that; for the first year the Trash Capture Fee is collected
28 (e.g., the RRI that is applicable to any rate change taking effect on July 1, 2018), the RRI
29 shall be calculated based on the Trash Capture Fee established by the City prior to March 1,
30 2018 by adding to that RRI calculation the quotient, multiplied by 100, of the City-
31 established Trash Capture Fee and the total revenue generated by this Agreement as reported
32 in the 2017 Annual Report. As an example, using the total revenue of \$11,534,192 generated
33 by this Agreement as reported in the 2017 annual report, if the City established the Trash
34 Capture Fee to be \$100,000 before March 1, 2018, the RRI percentage calculated based on
35 the prior year methodology would be increased by \$100,000 divided by \$11,534,192
36 multiplied by 100.

37 18. Section 10.4 of the Franchise Agreement is amended to read in its entirety as follows:

38 10.4 The City or Contractor may request a Detailed Rate Review to be conducted
39 following the procedures as specified in Exhibit 3. However, a Detailed Rate Review
40 shall not be conducted more than once every three (3) Agreement years. Contractor
41 shall not request a Detailed Rate Review before November 1, 2019. On or after that
42 date (but no later than December 31, 2019), Contractor may request a Detailed Rate
43 Review to adjust Maximum Service Rates effective July 1, 2020. A request for a

1 Detailed Rate Review shall be made in writing at least six (6) months prior to the July
2 1st rate adjustment date for the year in which the results for the Detailed Rate Review
3 are to be applied. If City engages a consultant to assist it in a Detailed Rate Review,
4 Contractor shall pay, or reimburse City for, such consultant's fees and expenses, and
5 such fees and expenses shall be an allowable pass-through cost for purposes of such
6 Detailed Rate Review.

7 19. A new Section 11.3A is added to the Franchise Agreement to read in its entirety as follows:

8 The Contractor shall remit the proceeds of Trash Capture Fees paid by Customers to the City
9 in one annual payment by 5:00 p.m. on October 31 of each year.

10 20. The second paragraph of Section 12.2.1 is amended to read in its entirety as follows:

11 Contractor shall submit monthly reports by 5:00 PM on the 30th calendar days after
12 the end of the reporting month. Contractor shall submit quarterly reports by 5:00 PM
13 on the 45th calendar days after the end of the reporting quarter. Contractor shall
14 submit annual reports by 5:00 PM on the 45th calendar days after the end of the
15 calendar year.

16 21. Section 12.2.3 of the Franchise Agreement is amended to add a new Section 12.2.3.17, which
17 shall read in its entirety as follows:

18 12.2.3.17 Diversion

19 Provide calculated Diversion Levels for the quarter for (i) all material collected by
20 Contractor, (ii) all material collected by Contractor from Single-Family Premises, and
21 (iii) all material collected by Contractor other than from Single-Family Premises.

22 22. Section 12.2.4 of the Franchise Agreement is amended to add a new Section 12.2.4.5, which
23 shall read in its entirety as follows:

24 12.2.4.5 AB 341 and 1826 Compliance Data. Contractor shall report the total
25 number of Commercial and/or Multi-Family Premises serviced and the number of
26 containers, container sizes and frequency of collection for Mixed Materials,
27 Recyclable Materials, and Organic Materials for each Commercial and/or Multi-
28 Family Premises. Contractor shall also provide the following information, separately
29 as required by both AB 341 and AB 1826:

30 12.2.4.5.1 The total number of Commercial Premises that appear (based on
31 subscribed-for container volume) to fall under the AB 341/1826 thresholds, and
32 the total number of those Commercial Premises that are not subscribed to
33 Recycling/Organics Material Collection Service, and a summary of the type of
34 follow-up outreach provided to such Commercial Premises.

35 12.2.4.5.2 The total number of Multi-Family Premises that appear (based on
36 subscribed-for container volume) to fall under the AB 341/1826 thresholds, the
37 total number of those Multi-Family Premises that are not subscribed to

1 Recycling/Organics Material Collection Service, and a summary of the type of
2 follow-up outreach provided to such Multi-Family Premises.

3 23. The first two sentences of Section 12.2.4.2 are amended to read in their entirety as follows:

4 At the request of the City or in conjunction with a Detailed Rate Review as described
5 in Section 10.4, within 120 calendar days after the close of Contractor's fiscal year,
6 Contractor shall deliver to the City four copies or a PDF of audited financial
7 statements and profit and loss statements reflecting Contractor's operations under this
8 Agreement for such fiscal year. The financial statements shall show Contractor's
9 results of operations (including the specific revenues and expenses) in connection
10 with the operations provided for in this Agreement.

11 24. Section 14.4.5 of the Franchise Agreement is amended to add the following to the table of
12 liquidated damages:

47.	Failure to submit the Diversion Plan and Public Education Plan required by Section II(3) of the Assignment, Assumption and Amendment Agreement among City, Contractor and Petaluma Refuse and Recycling, Inc., by the deadline specified in that section.	\$1,000/day that either plan is overdue.
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13
14 25. Section 14.8.1 of the Franchise Agreement is amended to add the following as the second
15 paragraph thereof:

16 For purposes of this Section 14.8, the term 'assignment' shall also include (i) a sale of
17 all or substantially all the assets of Contractor; (ii) a sale, exchange or other transfer
18 of outstanding voting securities of Contractor which results in a Change of Control;
19 (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock
20 issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,
21 liquidation or other transaction which results in a Change of Control; (iv) any
22 assignment by operation of law, including insolvency or bankruptcy, an assignment
23 for the benefit of creditors, or appointment of a receiver taking possession of
24 Contractor's property; and (v) any combination of the foregoing which results in a
25 Change of Control.

26 26. Section 15.13 of the Franchise Agreement is amended to change Contractor's notice address
27 to the following.

28 Recology Sonoma Marin
29 c/o Recology Inc.
30 50 California Street, 24th Floor
31 San Francisco, CA 94111
32 Attention: Legal Department

1 27. Exhibit 2 of the Franchise Agreement is amended to add the following additional Operating
2 Cost Category and Index as follows:

3 Trash Capture Fee: Fee to be calculated in accordance with section 10.3.1 of this Agreement
4 and paid to the City in accordance with Section 11.3A of this Agreement.

5 28. Section 1(b) of Exhibit 3 of the Franchise Agreement is amended to read in its entirety as
6 follows:

7 b. Forecasts of Costs. Allowed costs of operations for the Contractor's prior fiscal
8 year will be used to evaluate the forecasted cost for upcoming year. The review will
9 evaluate forecasted labor-related costs, vehicle-related costs, depreciation expense,
10 and other costs, including pass-through costs. Pass-through costs are those portions of
11 Contractor's annual cost of operations that are recoverable through the detailed rate
12 review, but without a profit margin (i.e. without application of the operating ratio).
13 Pass-through costs consist of (i) Franchise Fees, HHW fees, AB 939 fees, and any
14 other fees established by or pursuant to Sections 11.1, 11.2 or 11.4; (ii) detailed rate
15 review costs payable by Contractor under Section 10.4; (iii) fees payable by
16 Contractor for landfill disposal; and (iv) fees payable by Contractor for processing of
17 Organic Materials.

18 29. Exhibit 5 of the Franchise Agreement is amended to read in its entirety as set forth in Exhibit
19 5 to this Amendment.

20 30. Exhibit 9 of the Franchise Agreement is amended to read in its entirety as set forth in Exhibit
21 9 to this Amendment.

22 31. All references in the Franchise Agreement to "Petaluma Refuse and Recycling," "The Ratto
23 Group of Companies, Inc.," and "www.unicycler.com" are amended to refer to "Contractor,"
24 "Recology Inc.," and "www.recology.com," respectively. All references in the Franchise
25 Agreement to "North Bay Corporation" or "Redwood Empire Realty, LLC" are amended to
26 refer to "Recology Inc. or an Affiliate of Recology Inc." All references in the Franchise
27 Agreement to James Ratto, or to Contractor's fiscal year being January to December, are
28 deleted.

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EXHIBIT 5

APPROVED FACILITIES

Approved Disposal Site(s)

Name: Redwood Landfill
Address: 8950 Redwood Highway, Novato CA 94945
SWIS #:21-AA-0001

Approved Organic Materials Processing Site(s)

Green Materials
Name: Redwood Landfill Composting Facility
Address: 8950 Redwood Highway, Novato, CA 94945
SWIS #: 21-AA-0001

Commercial Organics
Name: West Contra Costa Sanitary Landfill Organics Material Processing Facility
Address: Parr Blvd. & Garden Tract Rd., Richmond, CA 94806
SWIS #: 07-AA-0044

Approved Recyclable Materials Processing Site(s)

Name: Novato Disposal Service
Address: 2543 Petaluma Blvd. South, Petaluma, CA 94952
SWIS #: 49-AA-0406

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EXHIBIT 9

VEHICLE SPECIFICATIONS

<u>Truck #</u>	<u>License #</u>	<u>Type</u>	<u>Year</u>	<u>Manufacturer</u>
101P	7210001	Ford	2006	FORD - CONTAINER
102P	7205642	Ford	2006	FORD - SERVICE
106P	7Y24701	Ford	2006	FORD - PICKUP
1007	94927A2	Sweeper	2016	FREIGHTLINER
103P	7Y62221	Sweeper	2006	TYMCO
901P	8A07228	Side Loader	2005	PETERBILT
903P	8A07223	Side Loader	2005	PETERBILT
904P	8A07224	Side Loader	2005	PETERBILT
905P	8A07225	Side Loader	2005	PETERBILT
906P	8A07112	Side Loader	2006	PETERBILT
907P	8A07113	Side Loader	2006	PETERBILT
911P	8A07230	Side Loader	2005	PETERBILT
912P	8A07231	Side Loader	2005	PETERBILT
937R	68306X1	Side Loader	2006	PETERBILT
300P	7W98433	Rear Loader	2006	FREIGHTLINER
201P	7V68242	Front Loader	2006	AUTOCAR
202P	7V68243	Front Loader	2006	AUTOCAR
203P	7V68245	Front Loader	2006	AUTOCAR
2024	03710Z1	Front Loader	2006	AUTOCAR

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6 Note: The information in this exhibit was provided by the previous contractor.
7 Contractor may correct this exhibit if it discovers that the information herein is

1 inaccurate, provided such corrections are submitted to City within sixty (60) days after
2 Recology Sonoma Marin begins providing services under the Franchise Agreement.
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