

**FIRST AMENDMENT
TO
Comprehensive Garbage, Recyclables, and Compostables Collection Services Contract
with Recology King County Inc.**

This First Amendment ("Amendment") dated October __, 2023 is effective on the date this Amendment is fully executed by the Parties. The Parties to this Amendment are the City of Mercer Island, a Washington municipal corporation ("City"), and Recology King County Inc. ("Contractor").

WHEREAS, the City and Contractor entered into an agreement entitled "Comprehensive Garbage, Recyclables, and Compostables Collection Services Contract," ("Contract"), dated effective January 16, 2019.

WHEREAS, King County has revised their disposal charge rate structure, which will require a modification of how disposal charges are included in Customer charges and the methodology for rate adjustments resulting from changes to the disposal charges over the term of the Contract.

WHEREAS, Section 5.3.2 of the Contract provides for periodic Customer charge adjustments due to changes in King County disposal charges, with the intention that increases or decreases in those disposal charges shall be "passed through" to Customers without additional or reduced profit to the Contractor.

WHEREAS, the City and Contractor wish to revise the Contract to address the King County disposal charge modifications.

NOW, THEREFORE, the parties agree to the following terms and conditions:

1. Amendment to Existing Contract. The Contract shall be amended by adding and revising sections of the Contract as described in Exhibit "A-1" attached hereto and incorporated by this reference.
2. Full Force and Effect. All other terms and conditions of the Agreement not modified by this Amendment shall remain in full force and effect.
3. Effective Date. This Amendment shall be effective on the date this Amendment is fully executed by the Parties.

CONTRACTOR:

RECOLOGY KING COUNTY INC.

By: _____

Date: _____

801 S Fidalgo Street Suite 100
Seattle, WA 98108

CITY:

CITY OF MERCER ISLAND

By: _____

Jessi Bon
City Manager

Date: _____

9611 S.E. 36th St.
Mercer Island, WA 98040
Staff: Jason Kintner, Chief of Operations

APPROVED AS TO FORM:

Bio Park, City Attorney

DRAFT

EXHIBIT "A-1"
Contract Amendment #1

"Definitions" shall be amended to add the following definitions:

Fixed Annual Charge: The term "Fixed Annual Charge" means the amount of the annual County-wide Fixed Annual Charge that the County has calculated is allocable to the City Service Area and owed by Contractor to fund certain elements of the County's disposal system, in accordance with King County Code 10.12.021(B), as amended.

Tipping Fee: the term "Tipping Fee" means the per-ton disposal fee assessed on the Contractor by the County for Garbage delivered to County disposal facilities.

Section 4.3.4.2, "Annual Reports," shall be amended to add the following:

11. Total billed revenue, aggregate Fixed Annual Charge component collected, with Sustainability Fee and excise tax on Sustainability Fee removed, and the payments made to the County that are allocable to the Fixed Annual Charge;

Section 5.1.2, "Itemization on Invoices," shall have the first paragraph amended to read as follows:

All applicable City, County, and Washington State solid waste or household hazardous waste taxes or fees, utility taxes, the Fixed Annual Charge component, and certain sales taxes shall be itemized separately on Customer invoices and added to the charges listed in Exhibit B, except that the City Sustainability Fees (if any) shall be included in Exhibit B rates and shall not be itemized separately on Customer invoices.

Section 5.3.2, "Changes in Disposal Fees," shall be replaced in its entirety as follows:

Effective January 1, 2024, disposal fees shall include a Tipping Fee component and a Fixed Annual Charge component, as shown within Exhibit B, "Fixed Annual Charge" column, with the values calculated using the methodology set forth below.

Adjustments shall be made to the Tipping Fee component of Customer charges contained in Exhibit B as needed to reflect increases or decreases in the Tipping Fee charged by the County to the Contractor. In the event of a change in the Tipping Fee, the Tipping Fee component of each Customer charge shall be adjusted by the percentage increase or decrease in the Tipping Fee. Any adjustment pursuant to the preceding sentence shall become effective on the date of the County's implementation of such change to the Tipping Fee, provided that the Contractor has provided Customers forty-five (45) days' advance notification.

The Fixed Annual Charge component that shall be calculated in accordance with this Contract and Contractor's receipts of the Fixed Annual Charge component, less the Sustainability Fee and excise

tax on the Sustainability Fee that are included in the Fixed Annual Charge component, shall be used by Contractor to satisfy its obligations to County for payment of the Fixed Annual Charge. As of the date of this First Amendment, it is the parties' understanding that the Fixed Annual Charge will be published by the County no later than September 1 of each calendar year and it is the parties' intent that Contractor shall be entitled to (a) collect from Customers under this Contract all disposal fees and related charges payable by Contractor to County with respect to the services provided by Contractor hereunder, including but not limited to all per-ton disposal fees (Tipping Fees) and all annual Fixed Annual Charge payments, and (b) collect all such amounts from Customers under this Contract during the term of this Contract. In the event that the County modifies its procedures for calculating or publishing the Fixed Annual Charge, the parties agree to amend this Contract as needed to accomplish the foregoing intent.

The Fixed Annual Charge component shall be calculated on an annual basis. The aggregate value of the Fixed Annual Charge component to be included in Customer charges each year shall be calculated to be an amount equal to the Fixed Annual Charge for such year adjusted upwards or downwards as applicable by the amount of any overpayment or underpayment of the Fixed Annual Charge from the most recently completed calendar year plus the applicable Sustainability Fee and excise tax on Sustainability Fee. The amount of any overpayment or underpayment shall be calculated as the difference between the aggregate Fixed Annual Charge component collected by Contractor during the most recent completed calendar year for which this data is available, less the amounts that are attributable to the Sustainability Fee and excise tax on the Sustainability Fee, and the Fixed Annual Charge applicable to that year. For example, calendar year 2024 data shall be used to calculate the amount of any underpayment or overpayment that shall be applied to the Fixed Annual Charge to become effective 2026 since 2024 will be the most recently completed calendar year for which data is available when Contractor is preparing its rate application that is due to City by October 1, 2025.

The Fixed Annual Charge component of the Customer charges shall be applied to all regular Garbage services and Garbage Drop-Box services, but shall not apply to Bulky Waste, Extra Units, temporary Detachable Container, Recyclables, Compostables services, or those services identified as Miscellaneous Services or Ancillary Fees on Exhibit B. For regular Garbage services, this component shall be calculated annually as a proportion of each Customer's subscribed for monthly Garbage Container volume for the current Container counts. For Garbage Drop-Box services, this component shall be calculated based on the Container volume and charged to Customers on a per-haul basis.

In the final year of the Contract, the Fixed Annual Charge component included in Customer charges shall be increased by a percentage to be reasonably determined by the Contractor over and above what is required to be collected by Contractor to satisfy payment of the County's Fixed Annual Charge in order to avoid underpayment by Customers of an amount equal to at least the Fixed Annual Charge assessed on Contractor plus the applicable Sustainability Fee and excise tax on the Sustainability Fee. Any overpayment by Customers to Contractor of the Fixed Annual Charge component that exceeds amounts required to be paid by Contractor to satisfy its payment obligations of the Fixed Annual Charge, Sustainability Fee, and excise tax on Sustainability Fee at the end of the Contract shall be paid to the City.

Specific examples of rate modifications due to Consumer Price Index and disposal fee changes are provided in Exhibit D.

“Exhibit B” shall be deleted and replaced in its entirety with attached replacement Exhibit B.

Replacement Exhibit B differs from the original Exhibit B by changing the name of the “Disposal Fee” column to “Tipping Fee” and “Service Rate” to “Customer Rate.”

“Exhibit D: Fee Modification Examples,” shall be deleted and replaced in its entirety as follows:

The Customer charges in Exhibit B shall be adjusted annually and are comprised of three separate components: Tipping Fee component, collection fee component, and the Fixed Annual Charge component. The Tipping Fee component and collection fee component shall be referred to as the Customer rate, and the Fixed Annual Charge shall be listed separately. The Customer charges shall be adjusted proportionally if there is a change to the City’s Sustainability Fee, Washington State excise tax, or other adjustment to compensation made pursuant to Article 5 of the Contract.

Tipping Fee component. The Tipping Fee component of the Customer charges shall be adjusted by the percentage increase or decrease in the County Tipping Fee. Any increase or decrease shall not become effective until the new Tipping Fee becomes effective and are actually charged to the Contractor. The City’s Sustainability Fee plus excise tax on the Sustainability Fee are embedded in the Tipping Fee component of the rate.

Collection fee component. The collection fee component of the Customer charges shall be adjusted annually to reflect the CPI change as described below. The City’s Sustainability Fee is embedded in the collection fee component of the rate.

Fixed Annual Charge component. The Fixed Annual Charge component of the Customer charges shall be applied to all regular Garbage services and Garbage Drop-Box services. City and Contractor anticipate that the amount of each year’s Fixed Annual Charge is to be provided by the County to the City and Contractor no later than September 1st of the year preceding in which such Fixed Annual Charge is to take effect. The Fixed Annual Charge component shall reflect any underpayment or overpayment collected from Customers from the prior year as set forth in Section 4.3.2. This component shall be calculated annually as a proportion of monthly Container volume for the current Container counts. The City’s Sustainability Fee plus excise tax on the Sustainability Fee is embedded in the Fixed Annual Charge component of the rate annually.

Formulas for adjustments of the Tipping fee component, collection fee component, and Fixed Annual Charge component are provided below. Numbers and percentages shall be truncated to two decimal places (\$1.23 or 1.23%) in all calculations. Adjustments to the Contractor’s disposal fees and charges on rates shall be made in units of one cent (\$0.01).

For example, as of January 1, 2024, a 32/35-gallon Cart has a Customer rate of \$35.00 per month where \$7.00 is the Tipping Fee component and \$28.00 is the collection fee component. \$1.25 is the Fixed Annual Charge component including the Sustainability Fee and excise tax on the Sustainability

Fee. The current Tipping Fee is \$150.83 and increases to \$165.31 per ton starting on January 1, 2025. The previous CPI is 100.0 and the new CPI is 105.0. The new County Fixed Annual Charge is \$227,000 with \$1,000 previously overpaid by Customers to the Contractor. Currently there are 125,000 cubic yards of garbage calculated from current container counts. The City's current Sustainability Fee is 3.5% and the Washington State excise tax is 1.75%.

Symbol	Current Customer Rate Description	Example	Calculation
TFC _{OLD}	Current Tipping Fee Component of Customer Rate	\$7.00	-
CFC _{OLD}	Current Collection Fee Component of Customer Rate	\$28.00	-
CR _{OLD}	Current Customer Rate	\$35.00	= TFC _{OLD} + CFC _{OLD}

Symbol	Tipping Fee Component Description	Example	Calculation
TF _{OLD}	Current King County Garbage Tipping Fee	\$150.83	-
TF _{NEW}	New King County Garbage Tipping Fee	\$165.31	-
TF%	Garbage Tipping Fee Adjustment	9.60%	= (TF _{NEW} - TF _{OLD}) / TF _{OLD}

Symbol	Collection Fee Component Description	Value	Calculation
CPI _{OLD}	Previous CPI	100.0	-
CPI _{NEW}	Current CPI	105.0	-
CPI%	CPI Adjustment	5.0%	= (CPI _{NEW} - CPI _{OLD}) / CPI _{OLD}

Symbol	New Customer Rate Description	Example	Calculation
TFC _{NEW}	New Tipping Fee Component of Customer Rate	\$7.67	= TFC _{OLD} * (1 + TF%)
CFC _{NEW}	New Collection Fee Component of Customer Rate	\$29.40	= CFC _{OLD} * (1 + CPI%)
CR _{NEW}	New Customer Rate	\$37.07	= TFC _{NEW} + CFC _{NEW}

Symbol	Fixed Annual Charge Component Description	Example	Calculation
FAC _{OLD}	Previous Aggregate Fixed Annual Charge (FAC) to be Included in Customer Charges	\$224,000	Target FAC for Current Year, Adjusted by Any Previous Overpayment or Underpayment
FAC _{AGG}	Previous Aggregate FAC Components Actually Received by Contractor During Most Recently Completed Calendar Year	\$225,000	= ∑ Previous Years' FAC Components (Without Sustainability Fee or Excise Tax on Sustainability Fee)
FAC _{O/U}	FAC Overpayment/Underpayment from Prior Year	\$1,000	= FAC _{AGG} - FAC _{OLD}
FAC _{NEW}	New County FAC	\$227,000	-
FAC _{TRG}	New Aggregate FAC to be Included in Customer Charges	\$226,000	= FAC _{NEW} - FAC _{O/U}

GV	Annual Garbage Container Volume (Cubic Yards)	125,000	$= \sum (\text{Monthly Garbage Container Volume}) * 12$
FAC _{GV}	Monthly Target FAC per Cubic Yard of Garbage (with Sustainability Fee and Excise Tax on Sustainability Fee)	\$1.87	$= (\text{FAC}_{\text{TRG}} / \text{GV}) * (1 + \text{SF} + (\text{SF} * \text{ET}))$
FACC _{NEW}	New Fixed Annual Charge Component of Customer Rate	\$1.28	$= (\text{Monthly Garbage Container Volume}) * \text{FAC}_{\text{GV}}$

Symbol	Tax & Fee Elements	Value	Calculation
SF	Current City Sustainability Fee	3.5%	-
ET	Current Excise Tax (B&O Tax)	1.75%	-

Based upon the calculations above, the new Customer rate as of January 1, 2025 for one 32/35-gallon Cart is \$37.07 per month where \$7.67 is the Tipping Fee component and \$29.40 is the collection fee component, and \$1.24 is the new Fixed Annual Charge component.