

## STAFF REPORT

**DATE:** April 10, 2018

**TO:** City Council

**FROM:** Robert A. Clarke, Public Works Director  
Stan Gryczko, Assistant Public Works Director  
Richard Tsai, Environmental Resources Manager

**SUBJECT:** Davis Waste Removal Franchise Assignment to Recology Davis

---

### **Recommendation**

1. Approve the Resolution (Attachment 4) Authorizing the City Manager to execute the Franchise Assignment Agreement assigning the Solid Waste Franchise to Recology Davis and the Second Amendment to the Franchise Agreement (Attachment 1) on behalf of the city.
2. Direct staff to work with the Utility Rate Advisory Commission, Natural Resources Commission, and Finance and Budget Commission over the next 2 years to study the feasibility of relocation of the Material Recovery Facility (MRF) from 2727 2<sup>nd</sup> Street, Davis to another site and provide recommendations on the long-term strategy for Solid Waste handling.

### **Council Goals**

The action of the solid waste franchise transfer does not directly address a specific City Council goal but is consistent with the Council Goals to Pursue Environmental Sustainability and to Ensure Fiscal Resilience.

### **Fiscal Impact**

There is no fiscal impact at this time for the Franchise assignment and agreement. The transfer binds Recology to the existing solid waste agreement negotiated and approved in 2015. Assessment of long-term strategies for solid waste handling is estimated at \$100,000 for the feasibility study to determine whether or not to site and construct a City owned materials recovery facility (MRF) or to require Recology to relocate the current MRF at 2727 2nd Street.

### **Background and Analysis**

In February 2015, City of Davis and Davis Waste Removal (DWR) entered into an agreement granting DWR exclusive rights to haul waste (solid waste franchise) in Davis until the year 2027. The agreement allows DWR to sell and reassign the franchise with City approval, but allows the City the right of first refusal to purchase all, or any portion of DWR's business operations, facilities and/or equipment.

On September 8, 2017, City received a formal request from DWR that the City waive its right of first refusal to allow DWR to sell its solid waste franchise and property to Recology, Inc. During the review of DWR's initial request, the City hired a consultant and a property appraiser, through the City Attorney's office, to review the value of the franchise and associated property. Section

19.C. of the 2015 Agreement specifies the confidential nature of the offer, therefore discussions related to the transfer and assignment of the franchise, an interest in property, and whether the City would waive its right of first refusal were held in City Council closed sessions. In addition to closed session consideration, the City Council received Commission feedback and public comment in open session requesting that Council direct staff to consider purchase of the Second Street property associated with the sale of DWR. Between September and November, staff discussed Recology, Inc.'s offer to purchase DWR with the executive management of that company to assess their ability to take over DWR's franchise and ability to provide uninterrupted service to the customers of Davis. During these discussions, Recology indicated its intent to require that the right of first refusal clause be removed from the existing contract as part of the assignment agreement. Based on this information, the City Council determined that DWR's September 2017 request for the City to waive the right of first refusal was not a bona fide offer.

Beginning in September 2017, based on feedback from City Council on potential goals related to solid waste handling including; relocation of the MRF (either publicly or privately owned), the Council's desire not to own solid waste utility, the City's interest in partnering with other agencies on long-term strategies, and in public participation in long-term solid waste planning; staff, in conjunction with a consultant, prepared information addressing Council concerns and questions associated with the proposed assignment of the solid waste franchise.

On January 22, 2018, DWR submitted a revised letter to the City, again requesting that the City consider waiving its right of first refusal and work with DWR & Recology towards a transfer plan. The revised letter included a number of items Recology agreed to include in the amended franchise agreement. These items, in large part, address current practices that the City wanted to see continued but were not included in the express language of the franchise. On February 20, 2018, after receiving additional public comment on the item, City Council waived its right of first refusal and directed staff to work with the City Attorney's office to draft a solid waste franchise assignment agreement conditioned upon negotiated terms to be incorporated into a franchise agreement amendment.

#### **Assignment of the Solid Waste Contract to Recology Davis**

Per Section 16. H of the 2015 Agreement, in determining whether to approve the assignment, the City Council reviewed the following:

*“CITY shall operate in good faith to evaluate the proposed Assignee and/or Transferee to determine if the Assignee and/or Transferee has prior experience in cities of similar complexity and size and has similar services and demonstrated the financial capability and capacity to perform, the reputation, responsibility, reliability, and integrity equal to or better than the current Franchisee., and that the assignment and or transfer is in the public interest.”*

Staff relied on interviews with Recology management, other agencies, and public reports on the ability for Recology to perform the duties associated with the solid waste franchise.

- **Prior experience in cities of similar complexity, size and with similar services**  
Recology operates in cities and counties of various size in California, Oregon, and Washington. They service dual-stream recycling, single-stream recycling and one-bin systems. Attachment 2 provides a table of jurisdictions, including details of residential service, that Recology provides in California.
- **Capacity to perform**  
Recology will extend employment offers to the current DWR employees (who pass their pre-employment screening process) upon the transfer. The same experienced DWR employees that provide recycling, garbage and organics pick-up services, answer customer calls, assist with special pick-ups, perform street sweeping and yard pile pick-ups, and coordinate truck routes will continue to do so after the transfer to Recology. Recology will also acquire all of DWR's facilities and equipment.

Operating DWR's recycling MRF on 2nd Street will not be a new endeavor for Recology. Recology owns and operates a number of solid waste facilities in California, including landfills, recycling centers, MRFs, composting operations, and transfer centers. See Attachment 3 for details.

- **Financial Capability**  
Recology, Inc. is an employee owned corporation. With its current franchises, it has the financial capability of operating the Davis franchise. Recology, Inc. has the financial capability to operate the Davis franchise. Recology Davis is a wholly owned subsidiary of Recology, Inc. It is unclear what assets Recology Davis will own at acquisition and what it will own in the future and which assets will be owned by Recology, Inc.. Therefore, the City has required that Recology, Inc, the parent corporation, guarantee Recology Davis' performance of the franchise through a separate guaranty. This obligation is in addition to the performance bond required under the franchise agreement. Recology, Inc. will execute a guaranty of Recology Davis and its obligations under the franchise as a condition of the assignment. Therefore, staff believe that Recology Davis, together with the guaranty from Recology, Inc., provides the financial capability to operate and maintain the Davis franchise.

Further, the assignment provides that Recology Davis, and through the guarantee, Recology, Inc. will be responsibility for any unknown liabilities that may arise in the future related to the time frame in which DWR owned and operated the system and/or whether the liability arose during the time that DWR owned the franchise. This provides for coverage for claims and liabilities, such as hazardous materials issues, that may have arisen in the past, but are discovered after the transfer.

- **Reputation, responsibility, reliability and integrity**  
City staff interviewed staff from other jurisdictions (Dixon, Chico, San Benito, and Santa Clara) regarding their experience working with Recology. Overall, staff reported positive experiences, although they stressed the importance of staying in contact with the regional Recology representatives. Some staff noted in interviews the positive experiences with Recology in contrast to the more challenging experiences with other haulers they have

worked with. Recology is a leader among waste haulers in regards to zero waste and organic waste diversion programs.

- **The assignment is in the public's interest**

In the short term, staff believes it is in the public's interest to continue with the recently adopted (2015) solid waste agreement, retain program stability, and consistency by assigning the transfer to Recology Davis while beginning an in-depth public process to assess long-term strategies for solid waste. In addition, City Council has determined that managing additional facilities or utility operations at this time is not in the best interest of the city. Staff would also note that the transfer and assignment of the franchise continues the existing operational relationship between the city and the solid waste franchisee. Approving the transfer from one operator to another is not a "gift of public funds" as the City has already provided for a transfer under the terms of the franchise and Recology has the capacity to perform. Further, as discussed below, the price paid by Recology to acquire the assets of DWR may not be included in the rate calculations and therefore, will not be paid by Davis ratepayers.

*Utility Rate Advisory Commission*

At a special meeting of the Utility Rate Advisory Commission on April 2, discussion focused on the topic of the transfer, and a motion was made to recommend City Council, "defer action on the Davis Waste Removal transfer, and undertake a thorough comparative analysis by an independent third party and public discussion of the benefits and costs of a city acquisition of the DWR property versus the current plan to transfer the property and business to Recology, including the three sources of ratepayer value identified by the URAC task group."

While staff concur an in-depth review of the City's solid waste management is necessary, this review can be conducted after the assignment of the agreement is completed. City Council has directed staff to begin the public process of assessing the City's long-term solid waste management, including potential partnerships, ownership, and control of city solid waste commodities. In the next few years, staff will focus efforts to study MRF relocation, ownership of solid waste assets or waste commodities, gather ratepayer input, and assess potential partnerships with neighboring jurisdictions. If further analysis indicates that local control of either solid waste assets or solid waste commodities, or partnerships with other agencies can provide benefits to the community, and Council provides policy direction consistent with one or all of those options, staff would begin the process of establishing all permitting and development prior to the end of the existing franchise agreement in 10 years. Further, staff would note that the City retains its right to acquire the franchise and/or any or all of the assets of the franchise through the City's power of condemnation should the City Council determine at a later date that it is in the public interest to acquire the franchise or and/ or property of the franchisee.

**Potential Rate Impacts Due to Assignment**

The assignment of the solid waste franchise to Recology will not have an immediate impact on customer rates. The purchase of DWR assets by Recology is specifically prohibited from being an allowable cost in determining rates and cannot be included as an expense in the contractor rate

calculation moving forward. There are three methods specified in the 2015 agreement for adjusting contractor rates; Refuse Rate Index, Detailed Rate Review, and Request for Extraordinary Rate Increases.

#### *Contractor Maximum Rate Methodologies*

The 2015 agreement established Contractor Maximum Rates (Exhibit C) and specified two standard methodologies for use in adjusting Contractor Maximum Rates (section 9.g) Contractor Maximum Rate adjustments can only be calculated using either a Refuse Rate Index (RRI) or a Detailed Rate Review. Both methods require the contractor to account for costs in a number of categories – labor, fuel, vehicle replacement, vehicle maintenance, disposal fees, recyclables processing fee, organic waste processing fee, and all other costs. Definitions for each of these categories are listed in Exhibit G of the agreement. Both methods require the use of actual expenses incurred the previous contract year adjusted by indexes associated with each category. The Detailed Rate Review also incorporates profit and revenues to account for overall cost of operations and arrives at a calculated adjustment. The existing contractor rate adjustments have been 2.15% (2016) and 3.23% (January 2018). An additional 0.42% contractor rate adjustment was made in July 2017 due to Yolo County landfill tipping fee increases.

The third means of adjusting contractor rates is via a request for extraordinary rate increases (section 9.v). The contractor may request a rate increase for unexpected events outside of their control, which increase the cost of providing services beyond the typical rate adjustments allowed by the agreement.

Regardless of which method is selected for contractor rate adjustments, the City has the ability to review any and all documents associated with the operating costs or revenues to determine if the requested increases are accurate and justified prior to any adjustments being recommended to Council for consideration during a Proposition 218 hearing.

Utility Rate Advisory Commission members have expressed concern regarding future rate impacts related to the assignment of the franchise to Recology Davis. Staff understands the concern expressed by members and is cognizant of other agencies experiences with Recology and other solid waste haulers. When conducting reviews of other agencies assignments to Recology, it was noted by staff that in many cases, Recology requested large contractor rate increases. In most cases, these requests were due to either higher labor costs associated with collective bargaining agreements, or substantial investments in new trucks, containers, and other equipment. Staff does not anticipate large one-time investments in new vehicles or containers for Davis. DWR recently purchased new containers and a new fleet of vehicles able to run on compressed natural gas, as well as a new natural gas refueling station. All parties however, have acknowledged that the MRF equipment will need some capital investment. This cost would be incurred regardless of who owned the franchise. It is unknown at this time what, if any, impact that will have on rates in the future however; DWR does currently include a cost for vehicle and infrastructure replacement costs as an expense in the current contractor maximum rates.

**Additional Items**

With the transfer, the City is also receiving additional services and benefits from Recology. Additional services are set forth in the Second Amendment to the Franchise Agreement (Attachment 1). The current Agreement will transfer in its entirety with the addition of the following negotiated terms:

- Recology will encourage all current DWR employees to apply for employment with Recology, and Recology will offer employment to the current DWR employees who pass Recology’s customary hiring process.
- Recology will establish an “Artist in Residence Program”
- City of Davis may determine where organic materials are to be delivered for processing, provided that any additional costs associated with such determination will be recovered in the rates.
- Recology will provide two free paper-shredding events per year.
- Recology and the City of Davis will work together for two years following the closing of the Transaction to determine whether to have Recology relocate the Facility from 2727 2nd Street. Recology would retain ownership of the MRF. If the City Council ultimately determined a City or multi-agency owned MRF was in the best long-term interest of Davis it would require Recology or another solid waste hauler to use the City owned MRF once the current contract term expires.
- If Recology relocates the Facility at City’s request, Recology will be made “Whole” regarding the cost to relocate.
- If Recology relocates, Recology will provide a “Sharps” program at a mutually agreed upon location within the city limits.
- The City has under Section 9.g.ii. and Exhibit H the right to request a detailed rate review. Recology will have the same right, at Recology’s cost.
- Recology will pay an additional \$160,000 in franchise fee to the City annually.

Additional items in the Agreement Amendment include requiring 60 days written pre-notice of any notice to transfer or request to waive or exercise the right of first refusal. In addition, the agreement is clarified to expressly state that the City retains its right to acquire all or any portion of the franchise or the second street property (or other property) through the City’s power of eminent domain. The rest of the Agreement will remain the same.

**Attachment:**

1. Davis Waste Removal Franchise Agreement Amendment and Transfer to Recology
2. California Jurisdictions Serviced by Recology
3. Recology Facilities in California
4. Resolution

**ASSIGNMENT AGREEMENT AND  
AMENDMENT NO. 2 TO FRANCHISE AGREEMENT**

This Assignment Agreement and Amendment No. 2 to Franchise Agreement (this "Agreement") is entered into as of April \_\_\_\_, 2018 by and among the City of Davis, a California municipal corporation ("City"), Davis Waste Removal Co., Inc., a California corporation ("DWR"), and Recology Davis, a California corporation ("Recology").

WHEREAS, City and DWR are parties to an Agreement for Collection and Handling of Solid Waste effective March 1, 2015, as amended by Amendment No. 1 dated November 12, 2015 (collectively, the "Franchise Agreement");

WHEREAS, DWR owns a property at 2727 2<sup>nd</sup> Street, Davis, CA on which are located facilities used by DWR in performing the Franchise Agreement (such property and all improvements thereon, the "Property");

WHEREAS, DWR and Recology Inc., the parent company of Recology, contemplate entering into an asset purchase agreement (the "APA") pursuant to which DWR would sell all or substantially all of its assets to Recology;

WHEREAS, it is contemplated that, upon the closing of the transactions contemplated by the APA (the "Closing"), DWR would assign all of its right, title and interest in and to the Franchise Agreement and the Property to Recology, and Recology would accept such assignment subject to the requirements set forth herein;

WHEREAS, the Franchise Agreement prohibits DWR from assigning the Franchise Agreement without the City's consent, and grants the City a right of first refusal with respect to the sale of DWR's business;

WHEREAS, City is willing to consent to the assignment of the Franchise Agreement to Recology, and to waive its right of first refusal for this transaction only, on the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. Effective as of the Closing and contingent on Recology fully complying with Section 3, below, DWR will assign to Recology all of its right, title and interest in and to the Franchise Agreement, and Recology will accept such assignment, and will assume all duties and obligations of Contractor under the Franchise Agreement.
2. Effective as of the Closing, the Franchise Agreement shall be amended by Amendment No. 2 (automatically and without any further action by any party) as provided in Exhibit A, attached hereto and incorporated herein by this reference.
3. At least five business days prior to the Closing, Recology shall deliver to City certificates of insurance as required by Section 13.a.vii, and a \$750,000 performance bond as required by Section 12.d. City shall review the certificates of insurance and performance bond to determine compliance with the Franchise Agreement within two business day of receipt. City also acknowledges that DWR has made the \$75,000 deposit required under Section 16.h.

4. Recology shall notify City that the Closing is intended to occur on a date certain at least 24 hours prior to the date of Closing and Recology shall notify the City that the Closing has occurred within 24 hours thereafter, by providing email notification to the City Manager (MWebb@cityofdavis.org), the City Attorney (Harriet.Steiner@bbklaw.com), and the Environmental Resources Manager (RTsai@cityofdavis.org).
5. Recology will encourage all current DWR employees to apply for employment with Recology. At a minimum, Recology will provide written notice to all current DWR employees and information on the application process. It is Recology's intent to offer post-Closing employment to all current DWR employees who pass Recology's customary hiring process.
6. From and after the date of Closing, Recology shall be the City's point of contact for the Franchise Agreement and Recology shall be responsible for any and all obligations and liabilities of the Contractor to City under the Franchise Agreement, whether occurring prior to or after the date of Closing. As a material inducement to the foregoing agreement by Recology, each of City and DWR represents and warrants that, as of the date of this Agreement, it is not aware of any obligations or liabilities of DWR to the City under the Franchise Agreement that have not been satisfied or performed, other than Franchise Fee payments that have not yet become due under the terms of the Franchise Agreement. Nothing in this section shall preclude Recology from seeking remedies, if any from DWR.
7. In addition to the performance bond referenced in Section 3, above, Recology shall cause Recology Inc. to provide a guarantee of the financial capability of Recology to perform its obligations under the Franchise Agreement, in the form attached hereto as Exhibit B.
8. City hereby consents to the assignment of the Franchise Agreement by DWR to Recology effective as of the Closing, on the terms and conditions set forth herein. City hereby waives its right of first refusal under Section 19 for this transaction only.
9. All section references in this Agreement refer to sections of the Franchise Agreement. This Agreement shall constitute a written amendment of the Franchise Agreement for purposes of Section 16.h. In the event of any conflict between this Agreement and the Franchise Agreement, this Agreement shall govern. This Agreement may be executed in counterparts, and facsimile signatures hereto shall be valid.

*[Remainder of this page intentionally left blank]*



IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement and Amendment No. 2 to Franchise Agreement as of the date first written above.

**City of Davis**

**Davis Waste Removal Co., Inc.**

By: \_\_\_\_\_  
Michael Webb, City Manager

By: \_\_\_\_\_  
Paul E. Hart, President

Approved As To Form:

**Recology Davis**

\_\_\_\_\_  
Harriet Steiner, City Attorney

By: \_\_\_\_\_  
Michael J. Sangiacomo, President & CEO

## EXHIBIT A

### AMENDMENT NO. 2 TO FRANCHISE AGREEMENT

1. Section 1 is hereby amended to delete the definition of "Gross Revenue," and the first paragraph of Section 3.a is hereby amended to read in its entirety as follows\*:

"In consideration of this Agreement, beginning March 1, 2015, CONTRACTOR shall pay to CITY as an administration and franchise fee ("Franchise Fee") an annual amount equal to (i) five percent (5%) of Gross Revenues plus (ii) One Hundred Sixty Thousand Dollars (\$160,000). "Gross Revenues" means CONTRACTOR's or Affiliated Companies' gross revenues from all operations within the CITY pursuant to this Agreement, exclusive of payments received by CONTRACTOR or Affiliated Companies from the sale of Recyclable Materials and revenue received from the disposal of Recyclable Materials, but including any moneys received from governmental agencies, including CITY, not related to recycling activities ("Franchise Fee"). The variable portion of the Franchise Fee shall be paid to CITY on a monthly basis on the 15<sup>th</sup> day of the month based on Ggross Rrevenue received for the prior month. The fixed portion shall be paid to CITY as a \$160,000 lump-sum payment due on [September 30] of each year. The fixed portion of the Franchise Fee shall be adjusted once per year in the same percentage as the RRI adjustment to the CONTRACTOR's Maximum Rates under Section 9.g."

2. Section 6 is hereby amended to add a new Section 6.i.iv(1), which shall read in its entirety as follows:

"Effective as of the assignment of this Agreement to Recology Davis, the initial Organic Materials Processing Facility for Green Waste, Food Waste, and Organic Materials shall be Yolo County Central Landfill. CITY may at any time and from time to time designate a new Organic Materials Processing Facility for Green Waste, Food Waste and/or mixed Organic Material. To the extent the cost to CONTRACTOR of using the new CITY-designated Organic Materials Processing Facility exceeds the cost of using the previous Organic Materials Processing Facility (taking into account processing fees, transport costs, and any other costs reasonably and necessarily incurred by CONTRACTOR). Maximum Rates shall be adjusted so as to generate sufficient additional revenue to CONTRACTOR to cover such increased costs. CONTRACTOR shall not be required to begin using the new CITY-designated Organic Materials Processing Facility until such Maximum Rate adjustment has taken effect. The parties shall negotiate in good faith to determine the amount of such rate adjustment and shall work to effect it as promptly as practicable."

3. Section 7 is hereby amended to add a new Section 7.r, which shall read in its entirety as follows:

"Artist-In-Residence Program.

CONTRACTOR will establish an Artist-in-Residence program within CITY within twelve (12) months after the effective date of the assignment of this Agreement to Recology Davis. The program is an art and education program that will provide local artists with access to discarded materials and support for creating art from such materials. The program will be incorporated into CONTRACTOR's public education efforts as a means

to encourage reuse and recycling and promote new ways of thinking about art and the environment. CONTRACTOR shall be deemed to have established the program if it has established program parameters, publicly announced the program, and issued a "Call for Artists" to encourage artists to apply for the program. CONTRACTOR shall give appropriate CITY staff designated by the City Manager a reasonable opportunity to review and provide comments on the scope, parameters and budget of the program, and shall consider in good faith the reasonable comments of those staff on such matters. If CONTRACTOR fails to comply with the foregoing, then the parties shall negotiate in good faith for sixty (60) days to resolve the disagreement and, if no resolution is forthcoming, to wind down the program within a reasonable period thereafter."

4. Section 7 is hereby amended to add a new Section 7.s, which shall read in its entirety as follows:

"Paper Shredding Events.

CONTRACTOR shall provide up to two (2) paper shredding events per year for CITY SFD and MFD residents, on dates to be mutually agreed with CITY. Each event shall be held at CONTRACTOR's facility at 2727 Second Street, or at another mutually agreed location within CITY. CONTRACTOR shall provide adequate staffing and publicity for each event. CONTRACTOR may engage a third party approved by CITY to shred the accepted materials."

5. The first paragraph of Section 9.g.ii is hereby amended to read in its entirety as follows\*:

"Detailed Rate Review. A Detailed Rate Review may, upon the request of CITY or CONTRACTOR, be conducted ~~starting~~ in Rate Period 5 for purposes of adjusting CONTRACTOR Maximum Rates for Rate Period 6 beginning October 1, 2019 ~~January 1, 2019~~. In addition, CITY or CONTRACTOR may request subsequent Detailed Rate Reviews as provided in this paragraph to adjust Maximum Rates for subsequent Rate Periods. All Detailed Rate Reviews shall ~~to~~ be conducted following the procedures as specified in Exhibit H. However, a Detailed Rate Review shall not be conducted more than once every three Contract Years except as provided for below. If the CITY or CONTRACTOR elects to exercise its right to request a Detailed Rate Review it shall provide a written notice to the other party ~~CONTRACTOR~~ indicating its intention to do so on or before December ~~March~~ 1, prior to the Rate Period for which the associated Maximum Rates would take effect. The CONTRACTOR shall pay the cost for the Detailed Rate Reviews that are not in excess of once every three Contract Years, and the cost of such a Detailed Rate Review shall be ~~is~~ an allowable Pass-Through Cost. However, CITY may request a Detailed Rate Review once per Contract Year provided that CITY bears the cost of the Detailed Rate Review, and CONTRACTOR may request a Detailed Rate Review once per Contract Year provided that CONTRACTOR bears the cost of the Detailed Rate Review and such cost shall not be an allowable Pass-Through Cost."

6. The first paragraph of Section 16.h is hereby amended to add the following after the 2<sup>nd</sup> paragraph:

"At least sixty (60) days prior to any formal notice or request for approval required by this Agreement with respect to any proposed assignment, transfer or sale, CONTRACTOR shall provide CITY with a written "pre-notice" of the proposed transaction, containing at a minimum the voting shares, stock or assets that will be the subject of the proposed

transaction. CONTRACTOR shall use good faith efforts to provide CITY, during such sixty (60) day period, with advance information and documentation about the proposed transaction and any proposed assignee or transferee. The contents of the "pre-notice" and any such advance information or documentation, as well as the fact of the proposed transaction, shall be kept confidential by CITY to the maximum extent permitted by law. Upon the City's receipt of formal notice or request for approval under Section 19 or Section 16.h. the provisions of those sections, as applicable, related to confidentiality shall apply. The parties may by mutual agreement waive or modify the above or any other deadlines set forth in this Agreement relating to any such proposed transaction."

7. A new Section 20 is hereby added, which shall read in its entirety as follows:

"20. RELOCATION OF CONTRACTOR'S FACILITY

For a period of two (2) years from the assignment of this Agreement to Recology Davis, CONTRACTOR and CITY shall cooperate in good faith to explore the feasibility of relocating the facilities currently located on the Property to one or more other suitable sites to be owned by CONTRACTOR. The parties intend that, if such a relocation occurs, it shall not place CONTRACTOR in a worse financial position than CONTRACTOR would have been in had the relocation not occurred, taking into account the purchase price of the new site(s), the sale price of the Property, the costs of designing, permitting, building, equipping, and relocating to the new facilities, differences in operating and transport costs, and other relevant factors. To that end, the parties acknowledge that it may be necessary for CONTRACTOR to receive additional compensation from CITY in the form of increased Maximum Rates or other mutually agreed methods. If the parties agree that it is appropriate to engage one or more third parties to perform feasibility studies, environmental reviews, or other work to assist in evaluating a possible relocation, CONTRACTOR shall not be required to bear the cost of such third-party services. If a relocation occurs, CONTRACTOR shall arrange for a Sharps drop-off location to continue to be provided within CITY, at a mutually agreed location. Nothing in this Section 20 or elsewhere in this Agreement shall limit CITY's rights under Applicable Law to exercise its power of eminent domain with respect to the Property or otherwise."

8. The first paragraph of Exhibit H is hereby amended to read in its entirety as follows\*:

"No later than December 1<sup>st</sup> ~~March 1<sup>st</sup>~~ the CITY or CONTRACTOR may request that a Detailed Rate Review be conducted in accordance with Section 9 of this Agreement. In the event that the CITY or CONTRACTOR requests a Detailed Rate Review, the Detailed Rate Review shall be based on the reviewed financial statements for the preceding complete ~~fiscal Contract~~ Year of CONTRACTOR."

9. Section 1.a.ii of Exhibit H is hereby amended to add the following to the list of non-allowable costs:

"15. The purchase price paid and transaction expenses incurred by CONTRACTOR or its Affiliated Companies to acquire the assets of Davis Waste Removal Co., Inc."

10. Because CONTRACTOR's fiscal year ends September 30 rather than December 31, the following changes shall be made, to the extent not already indicated above, effective as of January 1, 2019:

- (a) In Section 1, the definition of “Rate Period” shall be revised to read in its entirety as follows\*:

“Rate Period means a twelve (12) month period, commencing October 1  
~~January 4~~ and concluding September 30 ~~December 31~~.”

- (b) The term “Contract Year” shall be deleted from Section 1 (together with its definition), replaced with “calendar year” in Sections 3.b, 15.b and 15.c, and replaced with “Rate Period” in Section 18.b and Exhibit H.
- (c) In Sections 9.g and Exhibit H, the dates January 1, March 1 and July 1 shall be replaced with October 1, December 1 and April 1, respectively.
- (d) In Exhibit G, the words “January to December” shall be replaced with “October to September,” and the date March 31<sup>st</sup> shall be replaced with December 31<sup>st</sup>.
11. Wherever in Exhibit H the methodology calls for forecasting a cost by multiplying the cost for the most recently completed Rate Period by one (1) plus the Annual Percentage Change in an index, the methodology shall be modified so that the forecasted cost is obtained by multiplying the cost for the most recently completed Rate Period by one (1) plus the Annual Percentage Change in the index, and multiplying that result by one (1) plus the Annual Percentage Change in the same index (i.e., instead of multiplying the previous year’s cost by  $(1 + X)$ , the previous year’s costs shall be multiplied by  $(1 + X)$  \*  $(1 + X)$ ).

\* For convenience, additions to current language are underlined, and deletions struck through.

## EXHIBIT B

### GUARANTY

This Guaranty is entered into as of April \_\_\_\_, 2018 by Recology Inc., a California corporation ("Guarantor"), in favor of the City of Davis, a California municipal corporation ("City").

WHEREAS, City and Davis Waste Removal Co., Inc., a California corporation ("DWR"), are parties to an Agreement for Collection and Handling of Solid Waste effective March 1, 2015, as amended by Amendment No. 1 dated November 12, 2015 (collectively, the "Franchise Agreement");

WHEREAS, DWR and Recology Inc., the parent company of Recology Davis, a California corporation ("Recology Davis"), contemplate entering into an asset purchase agreement (the "APA") pursuant to which DWR would sell all or substantially all of its assets to Recology Davis;

WHEREAS, it is contemplated that, upon the closing of the transactions contemplated by the APA (the "Closing"), DWR would assign all of its right, title and interest in and to the Franchise Agreement to Recology Davis, and Recology Davis would accept such assignment;

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, it is hereby agreed as follows:

1. Guaranty. Guarantor hereby guarantees unconditionally, irrevocably and absolutely to the City, the full performance and observance by Recology Davis of all the terms, obligations and conditions contained in the Franchise Agreement to be performed and observed by Recology Davis to the maximum extent required by applicable law: (1) subject to any and all defenses available to Recology Davis under the Franchise at law, in equity, or otherwise but not subject to personal disabilities of Recology Davis that are unavailable to a guarantor under Civil Code section 2810 nor to defenses arising in favor of Recology Davis by operation of law under Civil Code section 2825 such as the statute of limitations; and (2) only to the extent such obligations accrue and relate to the period from and after the Closing.

2. Termination. This Guaranty shall be effective as of the Closing and remain in effect for the term of the Franchise Agreement unless and until (a) earlier terminated, substituted or cancelled by the parties; or (b) the Franchise Agreement is transferred to a third party as a consequence of a sale thereof by, or a change in control of, Recology Davis, approved by the City if required under Section 16.h of the Franchise Agreement. No claim, suit or action under this Guaranty shall be brought against Guarantor unless asserted or commenced no later than one year after the effective date of the termination or cancellation of this Guaranty.

3. Modification of Franchise. This Guaranty shall not be affected by any deviation from or alteration of the terms, covenants or conditions of the Franchise Agreement, including but not limited to any extension of the Franchise Agreement's term. If the Franchise Agreement is modified in any respect by agreement between City and Recology Davis, the obligations hereunder of Guarantor shall extend and apply with respect to the full performance and observance of all of the lawful covenants, terms, and conditions of the Franchise and of any such modification thereof.

4. Liability of Guarantor. The liability of Guarantor under this Guaranty is joint and several with Recology Davis and independent of any security for or other guarantee of the indebtedness of Recology Davis, whether executed by Guarantor or any other party, and the liability of Guarantor under this Guaranty is not affected or impaired by: (a) any other continuing or other guaranty, undertaking, or maximum liability of Guarantor or of any other party as to the indebtedness of Recology Davis; (b) any payment on or in reduction of any other guaranty or undertaking; (c) any dissolution, termination, or increase, decrease, or changes of personnel of the Guarantor; or (d) any payment made to the City on any indebtedness under the Franchise Agreement that City repays to Recology Davis pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceedings. Guarantor waives any right to the deferral or modification of Guarantor's obligations by virtue of any such proceeding.

5. Actions. The obligations of Guarantor are independent of the obligations of Recology Davis, and a separate action or actions may be brought and prosecuted against Guarantor, whether an action is brought against Recology Davis or whether Recology Davis be joined in any such action or actions. This Guaranty may be enforced against Guarantor only upon a default by Recology Davis; provided that Guarantor is given notice of such breach or default and an opportunity to cure such breach or default in accordance with the Franchise Agreement as if Guarantor were the Contractor thereunder.

6. Condition of Franchisee. Guarantor assumes all responsibility for keeping itself informed of Recology Davis's financial condition and assets, and of all other circumstances bearing on the risks incurred by Guarantor hereunder, including the nature, scope, and extent thereof, and Guarantor agrees that City shall have no duty to advise Guarantor of information known to it regarding those circumstances or risks.

7. No Waiver. No right or power of City under this Guaranty shall be deemed to have been waived by any act or conduct on the part of the City, or by any neglect to exercise that right or power, or by a delay in so doing; and every right or power shall continue in full force and effect until specifically waived or released by an instrument in writing executed by City; provided, however, that Guarantor shall not be deemed to have waived any claim or defense that would be available to Recology Davis except for personal disabilities of Recology Davis that are unavailable to a guarantor under Civil Code section 2810 and defenses arising in favor of Recology Davis by operation of law under Civil Code section 2825 such as the statute of limitations.

8. No Third Party Beneficiary. This Guaranty is solely for the benefit of the City and shall not inure to the benefit of any third party.

9. Severability. If any provision of this Guaranty shall be invalid, unenforceable or ineffective for any reason whatsoever, all other provisions hereof shall be and remain in full force and effect.

10. Binding Effect; Assignment. This Guaranty and the liability and obligations of Guarantor hereunder are binding on Guarantor and its respective successors and assigns, and inure to the benefit of and are enforceable by the City and its successors, transferees and assigns.

11. Governing Law, Personal Jurisdiction and Venue. This Guaranty shall be governed by and construed in accordance with the law of the State of California, excluding its

conflict of law provisions. The Guarantor consents that personal jurisdiction and venue shall be either in the California Superior Court, Yolo County or the United States District Court, Eastern District of California, exclusively.

12. Amendment. The terms and provisions of this Guaranty may not be waived, altered, modified, amended or supplemented except in writing duly signed by an authorized agent of the City and by Guarantor.

13. Representations and Warranties. Guarantor represents and warrants that this Guaranty has been duly authorized by all necessary corporate action on Guarantor's part, has been duly executed and delivered by a duly authorized officer, and constitutes Guarantor's valid and legally binding agreement enforceable in accordance with its term.

14. Waiver of Jury Trial. To the extent allowed by applicable law, Guarantor and the City each waive trial by jury with respect to any action, claim, suit or proceeding on or arising out of this Guaranty. This Guaranty represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements between the parties. There are no unwritten oral agreements between the parties.

15. Notice Section. Written notices concerning this Guaranty shall be given as follows:

To the City:

City of Davis  
c/o City Manager  
23 Russell Boulevard  
Davis, CA 95616

With a copy to:

Harriet A. Steiner, Esq.  
Best & Krieger LLP  
500 Capitol Mall, Suite 1700  
Sacramento, CA 95814

To Guarantor:

Recology Inc.  
Attention: Legal Department  
50 California Street, 24<sup>th</sup> Floor  
San Francisco, CA 94111

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date and year first written above.

RECOLOGY INC. (GUARANTOR)

By: \_\_\_\_\_  
Michael J. Sangiacomo, President & CEO



## California Jurisdictions Service by Recology

Recology Company	Jurisdiction	CalRecycle-Calculated Diversion %	Residential Cart Collection System	Recycling* Collection System	Population (2016 Census Data)
Recology American Canyon	American Canyon	74%	Three bins (trash, yard materials, recycling)	Single-stream	20,338.00
Recology Arcata	Arcata	59%	Three bins (trash, yard materials, recycling)	Single-stream	18,137.00
Recology Auburn Placer	Auburn	65%	Two bins (trash/recycling and yard materials)	One Big Bin	14,066
Recology Butte Colusa Counties	Chico	64%	Three bins (trash, yard materials, recycling)	Single-stream	92,117.00
Recology Humboldt	Eureka	52%	Three bins (trash, yard materials, recycling)	Single-stream	26,881.00
Recology South Valley	Gilroy	53%	Three bins (trash, organics**, recycling)	Single-stream	54,777.00
Recology South Valley	Morgan Hill	52%	Three bins (trash, organics, recycling)	Single-stream	43,484.00
Recology Mountain View	Mountain View	78%	Three bins (trash, organics, recycling)	Dual-stream recycling	78,396.00
Recology Butte Colusa Counties	Oroville	45%	Three bins (trash, yard materials, recycling)	Single-stream	17,999.00
Recology of the Coast	Pacifica	54%	Three bins (trash, organics, recycling)	Single-stream	38,192.00
Recology San Bruno	San Bruno	59%	Three bins (trash, organics, recycling)	Single-stream	45,230.00
Recology San Francisco	San Francisco	49%	Three bins (trash, organics, recycling)	Single-stream	864,889.00
Recology Sonoma Marin	Sonoma County	68%	Varies in each City	Single-stream	502,604.00
Recology Vacaville	Vacaville	59%	Three bins (trash, organics, recycling)	Single-stream	96,946.00
Recology Vallejo	Vallejo	62%	Three bins (trash, yard materials, recycling)	Single-stream	117,629.00

\* Dual-stream systems collect paper separately from plastic, glass and metals. Single-stream systems collect paper together with plastics, glass and metals. In One Big Bin systems, recycling is collected mixed with trash and is recycling is separated out at a materials recovery facility. In Auburn, recyclables are placed in blue recycling bags inside the trash cart.

\*\* Organics includes yard materials, food scraps and food-soiled paper.



**Recology Mountain View uses a split-cart recycling cart, organics cart and trash cart, similar to Davis.**



**Recology San Francisco uses a three-cart system for trash, recycling and organics.**



**Recology Vacaville uses a three-bin system for organics, recycling and trash.**

### Recology Facilities in California\*

<b>Facility Site Name</b>	<b>Address</b>	<b>City</b>	<b>County</b>	<b>Activity Types</b>
<b>Recology - Golden Gate</b>	900 7th St	San Francisco	San Francisco	Solid Waste Hauler - Commercial, Solid Waste Hauler - Residential
<b>Recology - Sunset Scavenger</b>	501 Tunnel Ave	San Francisco	San Francisco	Curbside Recycling - Commercial, Curbside Recycling - Residential
<b>Recology Blossom Valley Organics North</b>	3909 W Gaffery Rd	Vernalis	Stanislaus	Composting
<b>Recology Blossom Valley Organics North (Hammett)</b>	6133 Hammett Ct	Modesto	Stanislaus	Chipping and Grinding, Composting
<b>Recology Blossom Valley Organics South</b>	1261 Wheeler Ridge Rd	Arvin	Kern	Composting
<b>Recology Dixon - Recycling Center</b>	302 N 1st St	Dixon	Solano	Used Oil Collection
<b>Recology Hay Road Landfill, Inc. (B + J Landfill)</b>	6426 Hay Rd, 1/4 Mi W Hwy 113	Vacaville	Solano	Alternative Daily Cover/Alternative Intermediate Cover, Beneficial Reuse, Inerts/C&D Disposal, Solid Waste Disposal (Landfill), Used Oil Collection
<b>Recology Los Angeles</b>	9147 De Garmo Ave	Sun Valley	Los Angeles	C&D Processing, Chipping and Grinding, Material Recovery Facility, Transfer Station
<b>Recology Norcal Ostrom Road LF Inc</b>	5900 Ostrom Rd	Wheatland	Yuba	Alternative Daily Cover/Alternative Intermediate Cover, Beneficial Reuse, Inerts/C&D Disposal, Solid Waste Disposal (Landfill)
<b>Recology of Butte Colusa Counties</b>	2720 S 5th Ave	Oroville	Butte	Carpet Collection, HHW/E-waste Collection, Sharps Collection, Transfer Station
<b>Recology of the Coast</b>	1046 Palmetto Ave	Pacifica	San Mateo	C&D Processing, HHW/E-waste Collection, Sharps Collection
<b>Recology Pacheco Pass</b>	3675 Pacheco Pass Hwy	Gilroy	Santa Clara	Alternative Daily Cover/Alternative Intermediate Cover, C&D Processing, Inerts/C&D Disposal
<b>Recology San Martin Transfer and Recycling</b>	14070 Llagas Ave	San Martin	Santa Clara	C&D Processing, Sharps Collection, Transfer Station
<b>Recology San Mateo</b>	333 Shoreway Rd	San Carlos	San Mateo	C&D Processing, Material Recovery Facility, Transfer Station
<b>Recology Vacaville Solano Recycling Center</b>	855.5 Davis St	Vacaville	Solano	C&D Processing, HHW/E-waste Collection, Sharps Collection, Used Oil Collection

<b>Recology Vallejo-American Canyon</b>	2021 Broadway St	Vallejo	Solano	HHW/E-waste Collection, Material Recovery Facility, Sharps Collection, Transfer Station, Used Oil Collection
<b>Recology Yuba Sutter MRF/Transfer Station</b>	3001 N Levee Rd	Marysville	Yuba	Carpet Collection, HHW/E-waste Collection, Material Recovery Facility, Sharps Collection, Transfer Station
<b>Recology-Auburn Placer Disposal Transfer Station</b>	12305 Shale Ridge Rd	Auburn	Placer	HHW/E-waste Collection, Paint Recycler/Collector, Sharps Collection, Transfer Station, Used Oil Collection

*\*Source: CalRecycle online Facility Information Toolbox*

**RESOLUTION NO. 18-XXX, SERIES 2018**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS APPROVING THE ASSIGNMENT AGREEMENT APPROVING THE ASSIGNMENT AND TRANSFER OF THE SOLID WASTE FRANCHISE FROM DAVIS WASTE REMOVAL, INC, TO RECOLOGY DAVIS AND AMENDMENT NUMBER 2 TO THE 2015 SOLID WASTE FRANCHISE AGREEMENT AND AUTHORIZING CITY MANAGER TO EXECUTE THE ASSIGNMENT AGREEMENT AND AMENDMENT NUMBER 2 ON BEHALF OF THE CITY**

WHEREAS, in 2015, the City of Davis and Davis Waste Removal, Inc. (DWR) entered into a franchise agreement granting DWR exclusive rights to haul solid waste within the City until 2027; and

WHEREAS, in January 2018, DWR submitted a letter to the City requesting the City waive its right of first refusal set forth in section 19 of the 2015 agreement which would allow DWR to proceed to sell the business and franchise to Recology Davis subject to the City's further approval of the transfer and assignment; and

WHEREAS, at the Council meeting on February 20, 2018, the Council approved waiving the City's right of first refusal and directed staff to prepare a solid waste franchise assignment agreement, and a franchise agreement amendment to allow the sale to Recology; and

WHEREAS, Recology Davis has demonstrated the expertise, financial capacity and operational experience to operate the City's solid waste franchise for the reasons set forth in the Staff Report; and

WHEREAS, the City Council finds that it is in the public interest to approve the transfer of the franchise to Recology Davis, for the reasons set forth in the Staff Report; and

WHEREAS, the City desires to retain program stability and consistency in the short term, and to initiate and pursues a larger community effort to address the future of the solid waste franchise in Davis.

NOW, THEREFORE, the City Council of the City of Davis does resolve as follows::

1. The City Council hereby approves the Assignment Agreement and Amendment No. 2 to the 2015 Solid Waste Franchise Agreement, copies of which are attached hereto Exhibit 1, and incorporated herein. The City Manager, in consultation with the City Attorney is hereby authorized to make minor changes to the agreements, as may be necessary or appropriate.
2. The City Manager is authorized to execute agreements on behalf of the City and to take any additional actions necessary to complete the assignment of the solid waste franchise to Recology Davis. ; and

3. All terms, conditions and covenants of said contracts be, and the same are hereby approved, ratified, and confirmed.

PASSED AND ADOPTED by the City Council for the City of Davis on this 10<sup>th</sup> day of April 2018, by the following vote:

AYES:

NOES:

ABSENT:

Robb Davis  
Mayor

ATTEST:

Zoe S. Mirabile, CMC  
City Clerk