

FIRST AMENDMENT TO
2015 FRANCHISE AGREEMENT

This FIRST AMENDMENT TO 2015 FRANCHISE AGREEMENT (Amendment) is made and entered into by and among COUNTY OF SANTA CLARA, a political subdivision of the State of California (County), and GREENWASTE RECOVERY, a California corporation (Grantee). County and Grantee may be collectively referred to herein as the Parties and individually as a Party, unless specifically identified otherwise. This Amendment shall take effect on the Effective Date specified below. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement (as defined below).

RECITALS

WHEREAS, the Parties entered into the *2015 Franchise Agreement Between GreenWaste Recovery and the County of Santa Clara for Garbage Collection District South*, effective dated July 1, 2015, as subsequently modified, amended, and/or extended (Agreement), for the collection and removal of Garbage, Recyclable Materials, Yard Waste, Food Waste, and Rubbish within Collection District South; and

WHEREAS, the Agreement allowed County, at its sole discretion, to extend the Agreement on the same terms for one (1), two (2), or five (5) additional years by providing Grantee with notice not less than thirty (30) days before the expiration of the Agreement; and

WHEREAS, the Parties desire to extend the Agreement for a term of five (5) years;

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties mutually agree, represent and warrant as follows:

1. **Amendment to Section 3 of the Agreement.** Section 3 of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION 3. TERM OF AGREEMENT. The term of this Agreement for Collection District South shall be from July 1, 2015 through June 30, 2025.

Extension of the franchise will not include a change in rates, except as provided for in this Agreement, but will not result in any increase in Service Rates. Rates will continue to be reviewed and adjusted annually as described in Section 7 of this Agreement.

2. **Addition of Section 1(qq) to the Agreement.** Section 1qq will be added to the Definitions section, and subsequent sub-sections will be re-ordered after this addition:

qq. Recycling and Waste Reduction Division Program Manager means the Program Manager overseeing Unincorporated Solid Waste Contract Management

functions in the Consumer and Environmental Protection Agency, or duly authorized designee.

In every instance where the Agreement references the term “Recycling and Waste Reduction Division Manager”, the term “Recycling and Waste Reduction Division Program Manager” shall be used instead.

3. **Amendment of Section 6 of the Agreement.** Section 6 of the Agreement is hereby deleted in its entirety and replaced with the following:

SECTION 6. SCHEDULE OF RATES AND COUNTY SURCHARGES.

Grantee has the privilege of collecting and receiving from Service Recipients within Collection District South the rates as set forth in Exhibit A, entitled "Schedule of Monthly Residential Service Rates", and Exhibit B, entitled "Schedule of Monthly Commercial Service Rates", attached hereto and incorporated herein by reference. The schedules of monthly rates in Exhibits A & B include HHW surcharge collected on behalf of the County as outlined below. Neither the County nor any of its officers or employees shall be liable for the non-payment of any Service Rates or charges due Grantee for performing services within Collection District South.

Attachment A: One Time Emergency Service Rates – County of Santa Clara – District South, is also included to outline the rates that the County will pay to Grantee for emergency services.

- a. **One Time Emergency Service Rates – County of Santa Clara – District South.**

In emergency situations, where the Grantee and County mutually agree to the use of Grantee services, the County will pay the Grantee based on the rates outlined in Attachment A: One Time Emergency Service Rates – County of Santa Clara – District South,

- b. **Residential Billings.** Grantee will bill residential Service Recipient accounts bi-monthly. Bills will not be mailed to Residential Service Recipients before the first day of the period covered by the billing, and payment will not be due from the Service Recipient until the last day of the period covered by the billing. Grantee will provide for monthly billing of households eligible for low income service and rates, at no additional cost, at the option of the Service Recipient. Grantee may provide for monthly billing of other residential Service Recipient accounts at Grantee's option.

- c. **Commercial Billings.** Grantee will bill Commercial Service Recipient accounts monthly. Bills will not be mailed to Commercial Service Recipients before the first day of the period covered by the billing, and payment from the Service Recipient will not be due for thirty (30) days after the date the bill is mailed.

Fees and Surcharges. Grantee will collect Fees and Surcharges on behalf of the County in an amount to be determined by the County. Fees and surcharges will be remitted as directed by County. At the date of execution of this Agreement, the Franchise Fee is fifteen percent (15%) of Gross Receipts collected for exclusively franchised services. At the date of execution of an agreement, the Administrative Fee will be calculated in the amount of four percent (4%) of Gross Receipts. Beginning on July 1, 2017, the Administrative Fee will increase by one percent (1%) to a total of five percent (5%) for the duration of the agreement. An additional Household Hazardous Waste (HHW) Surcharge of \$0.30 per month per residential household served shall be in effect the first year of the Franchise Agreement. Beginning July 1, 2016, the HHW Surcharge will increase by \$0.10 annually until it reaches \$0.70 per household per month. The County reserves the right to review and modify the fees and surcharges on an annual basis. Grantee will be given thirty (30) days written notice prior to any change in fees or surcharges. Any changes in fees or surcharges must be established by resolution of the County Board of Supervisors and/or by amendment to this Agreement.

4. **Amendments to the Following Agreement Sections.** Sections 8a, 14a, and 14b will be amended to replace the term “County Health Officer” with the Term “Recycling and Waste Reduction Division Program Manager”.

5. **Amendment to Sections 9(m) of the Agreement.** Sections 9(m) of the Agreement is hereby deleted in its entirety and replaced with the following:

m. Annual Cleanup Program. Grantee will furnish all supervision, labor, materials, equipment, tools, expertise, and other items necessary to perform such services, including the supply of a claw-loader and claw-loader operator to maximize customer through-put. Grantee will provide adequate number of events and debris box capacity to allow for each residential service recipient to participate in at least two (2) annual clean-up events per fiscal year.

6. **Amendment to Sections 9(o) of the Agreement.** Sections 9(o) of the Agreement is hereby deleted in its entirety and replaced with the following:

o. Donation of four (4) 40-yard debris boxes. Grantee will provide up to four (4) non-hazardous material debris boxes annually for use at events in unincorporated Santa Clara County. Grantee will provide drop-off, pick-up and disposal costs. Events will be mutually agreed upon by Recycling and Waste Reduction Division staff and Grantee and may include, but are not limited to illegal dumping clean up, litter removal events, etc.

7. **Addition of Section 9(r) of the Agreement.** Section 9(r) is hereby added to the Agreement:

r. Pilot Development – Upon request by the County, Grantee will make available up to 10% of collected tonnage for mutually agreeable pilot programs and new recycling services including the processing of garbage or other enhanced organic waste

recycling upon County request during the agreement term. Conditions of pilots and enhanced recycling, such as delivery of material, must be determined by mutual agreement between both Parties. Unless otherwise agreed upon, there will be no changes in service rates as a result of the redirection of material. Pilot tonnage will be included in the Tonnage report as part of Quarterly Reports.

8. **Amendment to Section 14(g) of the Agreement.** Section 14(g) of the Agreement is hereby deleted in its entirety and replaced with the following:

g. Customer Service. Grantee will maintain regular office hours. Normal office hours will be from 8:00 a.m. to 5:00 p.m. daily, except Saturdays, Sundays and holidays. Grantee will maintain a local (non-toll) telephone number for use by Service Recipients during normal office hours. Grantee will have customer service representatives, or an answering service to respond to Service Recipient inquiries during normal office hours.

Grantee will maintain an emergency telephone number at all times and have a representative available to respond to emergency calls. The emergency telephone number shall be made available to the County Health Officer, Recycling and Waste Reduction Program Manager, and emergency service providers, such as Sheriff and Fire Department.

Grantee will keep a log of Service Recipient work orders and will provide a monthly summary report on typical customer service complaints, questions, and problems to County, or more frequently upon request by County. Customer service log will be available for County inspection upon request.

9. **Amendment to Section 14(j) of the Agreement.** Section 14(j) of the Agreement is hereby deleted in its entirety and replaced with the following:

j. Vehicle Specification. All residential and commercial collection vehicles used to provide Garbage, Recyclable Materials, Food Waste and Yard Waste services will utilize renewable diesel fuel, or alternative fuel of comparable fuel efficiency and GHG emission thresholds, throughout the term of the contract. As a result of unforeseen circumstances that limit the availability of aforementioned fuels, Green Waste Recovery shall be permitted to utilize other obtainable fuels on a temporary basis. This requirement is excluded during emergency operations. Throughout the Agreement, trucks will meet performance requirements as outlined in Section 14a Performance. Smaller, lighter-weight trucks (e.g. lighter weight “scout” trucks) may be used on private roads, where truck traffic is allowed on an as-needed basis.

Grantee shall maintain all vehicles consistent with basic appearance standards that maintain a positive public image. Basic appearance standards include weekly truck washing, maintenance of paint, truck signs, and vehicle identification numbers, and correction of extensive body damage or corrosion.

10. **Amendment to Section 14(k) of the Agreement.** Section 14(k) of the Agreement is hereby deleted in its entirety and replaced with the following:

k. Vehicle Inventory. On a quarterly basis, Grantee will furnish the Recycling

and Waste Reduction Division Program Manager with an inventory of collection vehicles used by Grantee for Garbage, Recyclable Materials collection and Yard Waste and transportation under this Agreement and shall keep such inventory current. The quarterly inventory shall indicate the make, model, year, capacity, Vehicle Identification Number, license number, and associated route for each vehicle.

11. **Amendment to Section 14(o) of the Agreement.** Section 14(o) of the Agreement is hereby deleted in its entirety and replaced with the following:

o. Holiday Trees. Grantee will provide for annual curbside/streetside collection and recycling or composting of holiday trees, up to two holiday trees per Service Recipient, which have been cut in lengths not to exceed four (4) feet, for a five-week period from December 25 to January 31st. Such collection may be part of regular Yard Waste collection. Any holiday trees with tinsel, ornaments, or plastic stands will not be collected.

12. **Add Section 17(e) 14 to the Agreement.** Section 17(e)14 will be added to the Agreement:

e. Outreach Program. Grantee will provide an outreach program including, but not be limited, to the following:

(14) *Other Outreach Services.* In addition to the above, Grantee will provide the following services a) informational materials translated into Spanish, Vietnamese, and Chinese as appropriate, b) enhanced online platforms including website and social media to provide service updates, educational messages, targeted campaigns, and how to videos, c) technical assistance for multi-family and commercial customers to support AB 341 and AB 1836, and d) community participation in community organizations and events to engage directly with service recipients and bring greater visibility to services.

13. **Attachment A – “One-Time Emergency Service Rates Santa Clara County- District South”** is hereby added to hereby added to existing service rates, attached hereto, and incorporated herein by reference.
14. **Exhibit E. “List of Recyclables”** is hereby amended in full and replaced by Exhibit E-1 “List of Recyclables”.
15. **Exhibit F. “Contingency Plan Following Force Majeure Event”** is hereby amended in full and replaced by Exhibit F-1 “Contingency Plan Following Force Majeure Event”.
16. **Counterparts.** This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute the same instrument.
17. **Ratification.** All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after

2015 Franchise Agreement – First Amendment GreenWaste Recovery

the date of this Amendment, all references to the term “Agreement” in this Amendment and/or in the Agreement shall include the terms contained in this Amendment.

- 18. **Conflicting Provisions.** County represents and warrants that its execution, delivery and performance of this Amendment does not and will not conflict with any agreement to which it is a party or any provision of applicable law. In the event of any conflict between the terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.
- 19. **Effective Date.** The Effective Date of this Amendment is July 1, 2020.

IN WITNESS WHEREOF, the Parties enter into this Amendment. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Amendment by the Party on whose behalf it is indicated that the person is signing.

COUNTY OF SANTA CLARA

S. Joseph Simitian
President Board of Supervisors

Date: DEC 17 2019

GREENWASTE RECOVERY

Frank Weigel
Co-CEO

Date: 12/2/19

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:

Megan Doyle
Clerk of the Board of Supervisors

Date: DEC 17 2019

By: _____

Date: _____

Approved as to form and legality:

Michael L. Rossi
Lead Deputy County Counsel

Date: 12/2/19

GRANTEE

**ATTACHMENT A:
ONE TIME EMERGENCY SERVICE RATES
COUNTY OF SANTA CLARA – DISTRICT SOUTH
Effective July 1, 2019**

On Call Services - One Time Events		
Item	Unit	Rate
Driver/Operator	hourly	\$87.00
Rear Loader	hourly	\$129.41
Claw Tractor	hourly	\$129.41
Collection Containers – 10 to 40 Yard sizes	per pull	\$601.49
E-Waste Collection - Flat Bed Truck	per day	\$569.39

EXHIBIT E-1

Acceptable Commodities for Santa Clara County District South	
Material	Definition
Tin/Steel	Includes steel food, beverage, aerosol and paint cans. “Tin” cans fall into this category. Tin or other coatings are often applied to a steel food can.
Aluminum	Aluminum used beverage containers, post-consumer aluminum beverage cans.
Metal – Misc.	Electrical motors, hangers (<i>bundled</i>), keys, nuts and bolts, metal pipe, propane tanks (<i>empty</i>), scrap metal, tools (<i>drained of all fluids</i>), toys, doors and screens.
PET	#1 Polyethylene Terephthalate (PET, PETE). PET is clear and tough. Commonly used in soft drink bottles and many injection molded consumer product containers.
NHDPE CHDPE	#2 (Natural High Density Polyethylene). Includes milk, water and other bottles that are HDPE and are of a natural or translucent color. #2 (Colored High Density Polyethylene). Includes juice,
Mixed Plastic #3-7	#3 V: Polyvinyl Chloride. Commonly used in film for meat packaging and some rigid plastic containers. #4 LDPE: Low Density Polyethylene. Commonly used in newspaper and grocery bags and butter cups lids. Only acceptable when all film plastics are bagged together. #5 PP: Polypropylene. Commonly used in yogurt containers and deli trays. #6 PS: Polystyrene. Commonly used in plastic cups and plates and to-go containers. (<i>Not typically recycled including Styrofoam</i>) #7 OTHER: Other mixed resins. Commonly used in mixed
Glass – Clear	Clear Glass Bottles and Containers means clear glass beverage and food containers with or without a CRV label. Examples: Whole or broken clear soda and beer bottles, fruit juice bottles, peanut butter jars, and mayonnaise jars. <i>Does not include glass bakeware, Pyrex or ceramics.</i>

Acceptable Commodities for Santa Clara County District South	
Material	Definition
Glass – Colored	<p>Colored Glass Bottles and Containers includes food and beverage containers – three subtypes described below:</p> <p>Green Glass Bottles and Containers means green-colored glass containers with or without a CRV label. Examples: Whole or broken green soda, beer and wine bottles.</p> <p>Brown Glass Bottles and Containers means brown-colored glass containers with or without a CRV label. Examples: Whole or broken brown soda, beer and wine bottles.</p> <p>Other Colored Glass Bottles and Containers means colored glass containers and bottles other than green or brown with or without a CRV label. Examples: Whole or broken blue or other colored bottles and containers.</p>
Glass – 3 Mix	A collection of flint, amber, and green beverage or food container glass. It may contain normal container labels and metal tops.
Mixed Paper	<p>A mixture of various grades of recyclable waste paper not limited by fiber content and includes most types of clean and dry paper including glossy, white ledger and computer papers, newspapers, magazines, catalogs, phone books, cards, laser-printed white ledger, windowed envelopes, sticky notes, and often contains corrugated and brown paper.</p> <p><i>Does not include food soiled materials and materials with visible water marks; photographs, carbon paper, tissue, napkins or waxed/coated fiber or mixed fiber products that may include coffee cups, ice cream containers, gable top cartons, aseptic</i></p>
News	<p>Known as ONP (old news print), ONP has two major sub-grades:</p> <p>No. 8 is sorted newspapers only.</p> <p>No. 6 may have some magazines mixed in and may be tied in bundles or gathered in brown bags.</p> <p><i>Does not include food soiled materials and/or materials with</i></p>
OCC	Used boxes and sheets of corrugated board of various qualities. Corrugated is known as OCC (old corrugated container). OCC is clean cardboard made from unbleached, unwaxed paper with a fluted (corrugated) inner liner.

Acceptable Commodities for Santa Clara County District South	
Material	Definition
eWaste	Includes calculators, cameras, cell phones, computer peripherals (e.g. mice, keyboards, cords), DVD/DVR players, fax machines, small printers, radios, scanners, smart phones, stereos, telephones, VCRs. <i>Does not include inkjet/toner cartridges</i>

EXHIBIT F-1

CONTINGENCY PLAN FOLLOWING FORCE MAJEURE EVENT

The Contingency Plan described herein demonstrates Grantee's ability to provide vehicles and personnel, to maintain uninterrupted service (to the extent possible), and/or resume service during and/or after a Force Majeure Event. If services are disrupted as a result of a Force Majeure Event, Grantee shall make every commercially reasonable effort to continue, adapt and/or restart performance hereunder as soon as practicable, and will take all reasonable steps to overcome the cause of cessation of services.

Immediately following notification of a Force Majeure Event, Grantee will determine the extent to which collection, transportation, processing or disposal may be impacted and assess the expected duration of the disruption. Grantee, shall respond within two (2) hours of County's notification, and arrange for personnel, vehicles and/or equipment to ensure continuity of services or resume service in County Garbage Collection District South. Services include but are not limited to: material collection and handling, processing, composting, or recycling materials.

Grantee and Grantee's sister company, Zanker Road Resource Management (Zanker), own and operate vehicles, equipment and multiple facilities in the vicinity of Collection District South, that are permitted to accept, process, compost and transfer materials as needed. All facilities have in place contingency plans to accept an unusual peak in incoming material during emergencies and all vehicle and equipment operators are fully trained in handling emergency situations. Grantee and Zanker have the ability to pool, prioritize and appropriately dispatch personnel, vehicles and equipment as needed. If more resources are warranted and available, management will coordinate dispatching of appropriate resources to provide needed services including personnel, collection vehicles, heavy equipment, disposal services, recycling processing services, debris boxes, roll-off vehicles, material handling equipment, at the rates listed in Exhibit A One-Time Emergency Service Rates

Grantee has made the following arrangements to provide and/or resume services following a Force Majeure Event:

- Grantee has back-up and spare collection vehicles and trucks specifically used for servicing residents and commercial customers that can be used as needed.
 - If more trucks, or material handling equipment are needed to aid in an emergency, Zanker can provide the necessary equipment at a moment's notice from their facilities in San Jose or Gilroy.
- Depending on the type and quantity of material, materials will be delivered to:
 - Proper Processing Facilities, as specified in per Section 9 of the Agreement and/or
 - Proper Disposal facilities, as specified in Section 18 of the Agreement