CITY OF AUBURN
AGREEMENT FOR SERVICES
SW19-L-012

THIS AGREEMENT made and entered into on this 21st day of December, 2018, by and between the City of Auburn, a municipal corporation of the State of Washington, hereinafter referred to as “City” and Recology CleanScapes Inc., 117 S. Main Street, Suite 300, Seattle, WA 98104, hereinafter referred to as the “Provider.”

RECITALS:

1. The City is in need of the services of individuals, employees or firms for litter control and recycling program work.

2. The City wants to hire the Provider to provide these services in connection with the City’s work.

3. The Provider is qualified and able to provide services in connection with the City’s needs for this work, and is willing and agreeable to provide the services on the terms and conditions in this Agreement.

AGREEMENT:

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. Scope of Services
   The Provider agrees to perform in a good and professional manner the tasks described in Exhibit “A.” The Provider shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with the City.

2. Additional Services
   If additional services with respect to related work are required beyond those specified in the Scope of Work, and not included in the compensation listed in this Agreement, the parties will amend this Agreement before the Provider performs the additional services. However, Provider agrees that it shall perform additional services on the written request of an authorized representative of the City pending execution of an Amendment.

3. Provider’s Representations
   The Provider represents and warrants that it has all necessary licenses and certifications to perform the services provided for in this Agreement, and is qualified to perform those services.
4. **City's Responsibilities**
   The City shall do the following in a timely manner so as not to delay the services of the Provider:
   a. Designate in writing a person to act as the City's representative with respect to the services. The City's designee shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services.
   b. Furnish the Provider with all information, criteria, objectives, schedules and standards for the project and the services provided for herein.
   c. Arrange for access to the property or facilities as required for the Provider to perform the services provided for herein.
   d. Examine and evaluate all studies, reports, memoranda, plans, sketches, and other documents prepared by the Provider and render decisions regarding such documents in a timely manner to prevent delay of the services.

5. **Acceptable Standards**
   The Provider shall be responsible to provide, in connection with the services contemplated in this Agreement, work products and services of a quality and professional standard acceptable to the City.

6. **Compensation**
   As compensation for the Provider's performance of the services provided for in this Agreement, the City shall pay the Provider the fees and costs specified on Exhibit "B." The Provider shall submit to the City an invoice or statement of time spent on tasks included in the scope of work, and the City upon acceptance of the invoice or statement shall process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and shall remit payment to the Provider, subject to any conditions or provisions in this Agreement or Amendment. The Agreement number must appear on all invoices or statements submitted. The not-to-exceed amount for this agreement is $193,369.68.

7. **Time for Performance and Term of Agreement**
   The Provider shall not begin any work under this Agreement until authorized in writing by the City. The Provider shall perform the services in accordance with the direction and scheduling provided on Exhibit “A” unless otherwise agreed to in writing by the parties. All work under this Agreement shall be completed between January 1, 2019, and December 31, 2019.

8. **Ownership and Use of Documents**
   All documents, reports, memoranda, diagrams, sketches, plans, surveys, design calculations, working drawings and any other materials created or otherwise prepared by the Provider as part of his performance of this Agreement (the “Work Products”) shall be owned by and become the property of the City, and may be used by the City for any purpose beneficial to the City.

9. **Records Inspection and Audit**
All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by the City for a period of up to three (3) years from the final payment for work performed under this Agreement.

10. Continuation of Performance
In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Provider agrees that, notwithstanding such dispute or conflict, the Provider shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities.

11. Administration of Agreement
This Agreement shall be administered by Kevin Kelly, on behalf of the Provider, and by the Mayor of the City, or designee, on behalf of the City. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

City of Auburn
  Joan Nelson
  Solid Waste & Recycling Supervisor
  25 West Main Street
  Auburn, WA 98001-4998
  Phone: 253-931-5103
  Fax: 253-876-1900
  E-mail: jenelson@auburnwa.gov

Recology CleanScapes Inc.
  Kevin Kelly
  General Manager
  117 S. Main Street, Suite 300
  Seattle, WA 98104
  Phone: 206-764-8994
  Fax: 206-859-6701
  E-mail: kkelly@recology.com

12. Notices
All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or deposited in the United States mail, postage prepaid, and addressed, if to a party of this Agreement, to the address for the party set forth above.

Either party may change his, her or its address by giving notice in writing to the other party.

13. Insurance
The Provider shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Provider, or the Provider’s agents, representatives, employees, or subcontractors. Provider’s maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Provider to the coverage provided by such
insurance, or otherwise limit the City’s recourse to any remedy available at law or in equity.

The Service Provider shall obtain insurance of the types described below:

a. Automobile Liability insurance, covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. Provider shall maintain automobile insurance with minimum combined single limit for bodily injury and property damage of $1,000,000.00 per accident.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project aggregate limit using ISO form CG 25 03 05 09 or equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Provider’s Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage. Commercial General Liability insurance shall be written with limits no less than $1,000,000.00 each occurrence, $2,000,000.00 general aggregate, and a $2,000,000.00 products-completed operations aggregate limit.

c. Worker’s Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

a. The Provider’s insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Provider’s insurance and shall not contribute with it.

b. The Provider shall provide the Public Entity and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

Insurance is to be placed with an authorized insurer in Washington State. The insurer must have a current A.M. Best rating of not less than A:VII.
Provider shall furnish the City with certificates of insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Provider before commencement of the work. The City reserves the right to require that complete, certified copies of all required insurance policies be submitted to the City at any time. The City will pay no progress payments under Section 7 until the Provider has fully complied with this section.

If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the Public Entity may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Public Entity on demand, or at the sole discretion of the Public Entity, offset against funds due the Contractor from the Public Entity.

14. Indemnification/Hold Harmless
The Provider shall defend, indemnify and hold the City and its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Provider and the City, its officers, officials, employees, and volunteers, the Provider’s liability hereunder shall be only to the extent of the Provider’s negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Provider’s waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

15. Assignment
Neither party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to
cause any such liability or obligation to be reduced to a secondary liability or obligation.

16. **Nondiscrimination**
The Provider may not discriminate regarding any services or activities to which this Agreement may apply directly or through contractual, hiring, or other arrangements on the grounds of race, color, creed, religion, national origin, sex, age, or where there is the presence of any sensory, mental or physical handicap.

17. **Amendment, Modification or Waiver**
No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party’s or parties’ duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not affect or impair any right arising from any subsequent default.

Nothing herein shall limit the remedies or rights of the parties hereto under and pursuant to this Agreement.

18. **Termination and Suspension**
Either party may terminate this Agreement upon written notice to the other party if the other party fails substantially to perform in accordance with the terms of this Agreement through no fault of the party terminating the Agreement.

The City may terminate this Agreement upon not less than seven (7) days written notice to the Provider if the services provided for herein are no longer needed from the Provider.

If this Agreement is terminated through no fault of the Provider, the Provider shall be compensated for services performed prior to termination in accordance with the rate of compensation provided in Exhibit “B” hereof.

19. **Parties in Interest**
This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the parties hereto and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

20. **Costs to Prevailing Party**
In the event of such litigation or other legal action, to enforce any rights, responsibilities or obligations under this Agreement, the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees.

21. **Applicable Law**
   This Agreement and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be in of the county in Washington State in which the property or project is located, and if not site specific, then in King County, Washington; provided, however, that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Provider of the services.

22. **Captions, Headings and Titles**
   All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and masculine, feminine and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

23. **Severable Provisions**
   Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

24. **Entire Agreement**
   This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

25. **Counterparts**
   This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

   IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.
CITY OF AUBURN

Nancy Backus, Mayor

RECOLOGY CLEANSCAPES INC.

Signature
Name: Kevin Kelly
Title: General Manager
Federal Tax ID No: 91-1852894

Approved as to form:

Steven L. Gross, City Attorney
EXHIBIT A

SCOPE OF WORK

The purpose of this Agreement is to contract with the Provider on a clean-up program for the City of Auburn.

Litter Crew

The Provider shall make available a Litter Crew consisting of two (2) employees and two (2) pickup trucks.

The Provider’s Litter Crew shall perform the following services within the City:

1. Specific Tasks
   The Provider’s Litter Crew will collect and remove litter, trash, and debris from the shoulders of City public ways (including but not limited to streets, roads, alleys, paths, and parkways), public parking lots, and other designated public areas. Tasks include the following:
   a. Litter clean-up
      i. Blow and sweep building edge to curb line in core area as needed.
      ii. Bio hazard removal (urine, vomit, feces, sharps)
   b. Designated public place litter can service as determined by the City.
   c. Roadside litter patrols as determined by the City.

City shall ensure that the tasks to be performed by the Litter Crew and the schedule for completion are reasonable. The Provider shall not be required to remove materials of a size, type or quantity that cannot reasonably be removed by such a crew.

2. Examination of Work Sites
   The Provider shall examine all work sites thoroughly before commencing work at the site. It shall be the responsibility of the Provider to verify all the duties, assignments, and job sites. All existing conditions at the job site will be noted and copies with verification noted, given to the City’s Solid Waste and Recycling Supervisor on a monthly basis.

3. Hours
   • The Provider shall perform tasks to completion between the hours of 6:30 AM and 2:30 PM Monday through Friday (seven (7) service hours per employee per day, subject to required meal and break periods).
   • The Provider shall observe New Year’s Day, Thanksgiving Day, and Christmas Day.
EXHIBIT B

RESPONSIBILITIES

PROVIDER

The Provider shall be responsible for the following:

1. The performance of all work as provided in this Agreement with its own employees. Individuals who perform work under this Agreement must be carried on the Provider's payroll. The Provider is responsible for administering and paying employee wages, benefits, and all other employee-related costs. Although the Provider's company headquarters may be located outside of Auburn, Washington, the Provider shall provide a full-time supervisor who will continuously oversee the Provider's employee work and will have authority to represent the Provider in the day-to-day activities. The Provider will present the supervisor's name, address, and telephone number to the City's Solid Waste and Recycling Supervisor at the beginning of the contract period.

2. The Provider is responsible for the safety of its employees at the sites where assigned tasks are performed. If the City provides tools, equipment, safety gear, traffic control devices, and any other items for the Provider's use in the performance of contracted duties, the Provider shall be responsible for the condition and return of the tools while they are in the possession of the Provider and its employees. No equipment or supplies will be removed from City premises except as required for the performance of assigned duties.

3. Monthly reports shall be provided to the City's Solid Waste and Recycling Supervisor on a monthly basis. Monthly reports shall include the following:
   a. Bag count
   b. Bios collected
   c. Litter can overflow
   d. Graffiti removals (if any)
   e. Location and hours of requested pressure washing (if any)
   f. Event service (if any)

4. The Provider shall supply a motor vehicle to transport its employees to and from the designated work sites. The Provider's vehicle shall be well identified with signs and equipped with safety warning lights and emergency flashers.

5. The Provider shall supply litter bags, safety gear, rain gear, foul weather gear, footwear as required, and clothing as needed for its employees.
6. The Provider shall follow accepted safety practices in the performance of all work.

7. The following additional services are not included in the pricing set forth in Exhibit C, but may be provided under this Agreement at the request of the City. The services may be initiated by an email or other written request from the City to the Provider and are not subject to the Additional Services requirement of Section 2, but are subject to all other provisions of this Agreement. The cost of such services shall be as indicated below, or if not so indicated, then as agreed by the parties at the time of the request.

<table>
<thead>
<tr>
<th>Service</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pressure Washing</td>
<td>$100/hr.*</td>
</tr>
<tr>
<td>Spinner and Wand service</td>
<td></td>
</tr>
<tr>
<td>Additional Streetscapes Services (1 employee and 1 pickup truck; tasks as described in Section 1 of Exhibit A)</td>
<td>$52.50/hr.</td>
</tr>
<tr>
<td>Graffiti Removal (graffiti removed or painted over within 5 days of request; grey stain-blocking primer used to paint over)</td>
<td>TBD</td>
</tr>
<tr>
<td>Event Service (delivery and removal of carts; event day litter removal; post-event cleanup)</td>
<td>TBD</td>
</tr>
<tr>
<td>Bulky Item Removal (large furniture, white goods (appliances), large piles of loose debris, other oversize items beyond scope of normal litter service)</td>
<td>TBD</td>
</tr>
</tbody>
</table>

* Assuming waste water can be dumped at City M&O at no cost to Provider.

CITY

The City shall be responsible for the following:

1. The City shall supply the Provider and its Auburn supervisor a copy of the daily work schedule and any change notices to use as a basic guide for the distribution of work each week. The work schedule may be changed as deemed appropriate by the City and a copy of such changes provided to the Provider and the City. The City shall determine the priority of the various assignments. The City shall verify that all services are satisfactorily performed as scheduled.
2. The City shall supply the Provider with a location map of the public place litter cans and the frequency that they shall be serviced.

3. The City shall at no cost to the Provider provide disposal for all materials collected by the Provider during services performed under this Agreement. The Provider shall deliver all such materials to the City's Maintenance and Operations Division facility located at 1305 C Street SW, Auburn, WA ("City M&O").
EXHIBIT C

2019 FEE SCHEDULE

<table>
<thead>
<tr>
<th>Monthly Fee</th>
<th># of Months</th>
<th>Not-To-Exceed Amount</th>
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</thead>
<tbody>
<tr>
<td>Litter Crew</td>
<td>$16,114.14</td>
<td>12</td>
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<tr>
<td></td>
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<td>$193,369.68</td>
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**Total Not To Exceed Amount:** $193,369.68