

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.**

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the Contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the Contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the Contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by Contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a Contractor to comply with its first source referral contractual obligations.

6) That the failure of Contractor to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts.**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**47. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, the Contractors may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Each Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event any Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractors from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**48. Preservative-treated Wood Containing Arsenic.** The Contractors may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative

that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Contractors may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Contractors from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**49. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Notwithstanding the other provision of this Agreement, the Appendices to this Agreement shall be modified by the Parties, from time to time, and in the manner provided in this Section 49 to conform to the 2006 Rate Order or any other applicable San Francisco Rate Order applicable to the Companies, to include changes in rates that are required by the provisions of this Agreement and as may be agreed to by the Parties. In addition, the Services to be performed and the locations and other operational matters set forth in the Appendices to this Agreement may be amended from time to time in the manner provided in this Section 49 by the Parties to reflect the actual operations at such time. The Parties, as applicable, shall provide each other with revised Appendices from time to time to reflect any changes in rates, Services or locations. Any appropriately revised Appendix shall be incorporated by reference into this Agreement as though fully set forth herein and shall supersede any Appendix that it may replace.

**50. Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement. The determination of Purchasing may be appealed to the City Administrator. The City and the Contractor do not waive any legal remedies under this Section 50.

**51. Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**52. Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**53. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 49, "Modification of Agreement."

**54. Compliance with Laws.** Each Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**55. Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for

services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractors, will be paid unless the provider received advance written approval from the City Attorney.

**56. Omitted.**

**57. Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**58. Protection of Private Information.** Each Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Each Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against such Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar such Contractor.

**59. Omitted.**

**60. Food Service Waste Reduction Requirements.** Each Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, each Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

**61. Omitted.**

**62. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of the Parties, and the Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

63. **Prevailing Rate of Wages Required**

**PREVAILING RATE OF WAGES REQUIRED**

**For Solid Waste Hauling Services:**

Every contract issued by the City and County of San Francisco for the hauling of solid waste (or grit) generated by the City in the course of City operation must require that any employee engaged in the hauling of solid waste (or grit) shall be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalent thereof, paid in private employment for similar work in the area which the contract is being performed. The term "employee" as used in this section shall mean any individual engaged in the hauling of solid waste (or grit) for a Prime Contractor or Subcontractor. Prime Contractors must require Subcontractors to comply with the prevailing wage rate required in this section. The Board of Supervisors shall determine the Prevailing Wage Rate at least once each year. If a contract for solid waste (or grit) hauling conflicts with an existing Collective Bargaining agreement to which the contractor is a party, the collective bargaining agreement shall prevail over this Section.

**Enforcement**

If a Contracting Officer determines that the Contractor or a Subcontractor may have violated the Prevailing Wage requirements of this section, the Contracting Officer shall send written notification to the Contractor or Subcontractor of the possible violation. In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Contract, in which case the Contractor shall not be entitled to any additional payment unless within 30 days of receipt of the violation notice the Contractor has either (1) cured the violation or (2) established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which shall be attested to by affidavit, proof of compliance with the provisions of this section.


Where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to employees, the Contractor shall have "cured" the violation once the Contractor or Subcontractor reimburses employees by paying each individual the balance of what he or she should have earned in accordance with the requirements of this section.

In addition to, or instead of terminating the Contract, where the Contracting Officer finds that the Contractor willfully violated the requirements of this section, the Contracting Officer or the Labor Standards Enforcement Officer may assess a penalty (a "willful violation penalty") of not more than 10 percent of the dollar amount of the Contract. The Contracting Officer or Labor Standards Enforcement Officer may impose such willful violation penalty regardless of whether the Contractor has cured the violation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

Recommended by:

  
\_\_\_\_\_  
Naomi Kelly  
City Administrator

LINDA S. YEUNG


Approved as to Form:

Dennis J. Herrera  
City Attorney

By:

  
\_\_\_\_\_  
Ronald Flynn  
Deputy City Attorney

Approved:

  
\_\_\_\_\_  
Jaci Fong  
Director of the Office of Contract  
Administration, and Purchaser

**CONTRACTOR**


The undersigned read and understood paragraph 36, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

**Recology Sunset Scavenger**

  
\_\_\_\_\_  
Maurice Quillen  
Vice President and General Manager  
Recology Sunset Scavenger  
250 Executive Park Blvd., Suite 2100  
San Francisco, CA 94134

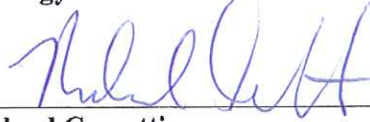
City vendor number: 17929  
Federal Tax ID # 940910600

**Recology Golden Gate**

  
\_\_\_\_\_  
Maurice Quillen  
Vice President and General Manager  
Recology Golden Gate  
900 7<sup>th</sup> Street  
San Francisco, CA 94107

City vendor number: 08401  
Federal Tax ID # 940844930

**Recology San Francisco**



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**Michael Crosetti**

Vice President and General Manager

Recology San Francisco

501 Tunnel Avenue

San Francisco, CA 94134

City vendor number: **16452**

Federal Tax ID # **940840895**

### **Appendices**

- A: Scope of Refuse Collection and Recycling Services for the City Departments
- A1: Rate Book for General Fund and Non-General Fund Accounts (except Parks & Recreation)  
Rate Book for Parks and Recreation
- A2: Schedule and Locations for Collections
- A3: Department Designees