

## ASSIGNMENT AND ASSUMPTION AGREEMENT AND CONSENT TO ASSIGNMENT

This Assignment and Assumption Agreement and Consent to Assignment (this "Consent") is made and entered into this \_\_\_\_\_ day of November 2017 ("Effective Date"), by and among North Bay Corporation, a California corporation, ("Assignor"), Recology Sonoma Marin d/b/a Recology Santa Rosa, a California corporation ("Assignee"), and the City of Santa Rosa, a municipal corporation ("City").

### RECITALS

- A. City has awarded Assignee a Solid Waste Collection Services Agreement (the "New Agreement") pursuant to which Assignee will begin providing solid waste collection services in City on January 1, 2018.
- B. City and Assignor previously entered into an Amended and Restated Collection Services Contract dated February 2, 2010 (the "Old Agreement"). Under the Old Agreement, Assignor was contracted to provide solid waste collection services in City for a 15-year period ending December 31, 2017.
- C. On August 11, 2017, Recology, Inc., the parent company of Assignee, and The Ratto Group of Companies Inc. and its owners and affiliated entities, including Assignor (collectively, "Ratto"), entered into an Asset Purchase Agreement (the "APA"), which provides for the purchase by Recology, Inc. or its subsidiaries of substantially all of the assets of Ratto.
- D. The parties to the APA are working to close the transactions contemplated by the APA (the "Closing") by the end of November 2017.
- E. To facilitate the smooth transition of services between Assignor and Assignee, Assignor and Assignee have requested that the City consent to the Assignment of the Old Agreement to Assignee effective as of the Closing, even though less than two months will remain under the Old Agreement.
- F. Given the short period of time remaining under the Old Agreement and the fact that assignment of the Old Agreement is being sought solely to smooth the transition of services to the New Agreement, Assignee has requested that the assignment fee contemplated by the Old Agreement be waived.
- G. In light of the foregoing factors and City's shared interest in facilitating a smooth transition of services, City is willing to consent to the above requests, on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which of hereby acknowledged, the parties hereto agree as follows:

1. Effective as of the Closing, Assignor will assign all of its rights and interest in and to the Old Agreement to Assignee, and will delegate to Assignee all of the duties and obligations imposed upon Assignor under the Old Agreement from and after the Closing.
2. Effective as of the Closing, Assignee will accept such assignment and delegation, will assume all duties and obligations of "Contractor" under the Old Agreement from and after the Closing, and will perform the Old Agreement on the terms and conditions set forth in the Old Agreement from and after the Closing.
3. City hereby agrees to waive the transfer fee set forth in Section 34.01 of the Old Agreement.
4. The City consents to the assignment, assumption and delegation of the Old Agreement by Assignor to Assignee on the terms set forth herein, effective as of the Closing.
5. Assignee shall notify City in writing of the Closing date within five calendar days thereof.
6. Assignee agrees to indemnify City from any and all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorneys' fees (collectively, "Claims"), resulting from and related to Assignor's failure to perform its obligations under the Old Agreement prior to the Closing, to the extent of Assignor's obligations to City under the Old Agreement, and subject to the terms of the Old Agreement and to any defenses that Assignor could have asserted with respect to such Claims or performance, including but not limited to the Settlement and Release of Claims dated February 13, 2017 between City and Assignor. The indemnity set forth in this paragraph shall constitute Assignee's sole responsibility for the actions or omissions of Assignor under the Old Agreement. City represents and warrants that, as of the date this Consent is approved by the City Council, it is not aware of any unresolved Claims resulting from or related to Assignor's performance under the Old Agreement prior to the date hereof, with the exception of the matter of *Hernandez v. Novato Disposal Service, Inc., et al.*, Sonoma County Superior Court Case number SCV 260326.
7. This agreement constitutes the entire agreement concerning the assignment and consent among the parties (other than the APA and related documentation) and it may not be modified, altered or amended other than in writing executed by the party sought to be charged thereby.
8. This agreement may be executed in faxed or emailed PDF counterparts, and in such event, the counterpart signatures shall be assembled and shall together constitute a complete agreement.

IN WITNESS WHEREOF, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS ASSIGNMENT AND ASSUMPTION AGREEMENT AND CONSENT TO ASSIGNMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS. EACH

PARTY HAS FULL POWER AND AUTHORITY TO ENTER INTO AND PERFORM THIS ASSIGNMENT AND ASSUMPTION, AND THE PERSON SIGNING THIS ASSIGNMENT AND ASSUMPTION AGREEMENT AND CONSENT TO ASSIGNMENT ON BEHALF OF EACH HAS BEEN PROPERLY AUTHORIZED AND EMPOWERED TO ENTER INTO THIS AGREEMENT.

Executed as of the day and year first above stated.

North Bay Corporation,  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Recology Sonoma Marin,  
a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Santa Rosa,  
a Municipal corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Office of City Attorney

Attest:

\_\_\_\_\_  
City Clerk