

RESOLUTION NO. 5 3 3 6

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF AUBURN AND RECOLOGY CLEANSCAPES FOR A LITTER CONTROL AND RECYCLING PROGRAM

WHEREAS, the City annually conducts a litter and recycling program to reduce the solid waste that accumulates on public streets, sidewalks and other public areas in the city; and

WHEREAS, Recology CleanScapes Inc. is a private corporation that provides collection, disposal and recycling services to municipalities, and who is able to provide Auburn with a twelve-month litter cleanup and recycling program; and

WHEREAS, it is in the public interest for the parties to enter into an agreement for litter and recycling collection.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. That the Mayor is hereby authorized to execute an Agreement between the City and Recology CleanScapes Inc. for litter collection and recycling which agreement shall be in substantial conformity with the agreement attached hereto as Exhibit A and incorporated herein by this reference.

Section 2. That the Mayor is authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2017.

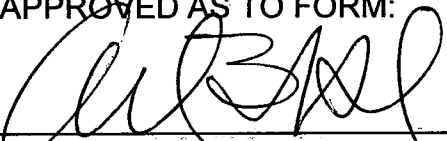
CITY OF AUBURN

NANCY BACKUS, MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

**CITY OF AUBURN
AGREEMENT FOR SERVICES
SW18-L-009**

THIS AGREEMENT made and entered into on this ____ day of December, 2017, 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."

WITNESSETH:

WHEREAS, the City is engaged in or readying itself to be engaged in its litter control and recycling program and is in need of services of individuals, employees or firms for litter control and recycling work; and,

WHEREAS, the City desires to retain the Provider to provide certain services in connection with the City's work related to litter control and recycling; and,

WHEREAS, the Provider is qualified and able to provide services in connection with the City's needs for the above-described work, and is willing and agreeable to provide such services upon the terms and conditions herein contained.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services

The Provider agrees to perform in a good and professional manner the tasks described on Exhibit "A" which is attached hereto and incorporated herein by this reference. (The tasks described on Exhibit "A" shall be individually referred to as a "task," and collectively referred to as the "services.") 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

From time to time hereafter, the parties hereto may agree to the performance by the Provider of additional services with respect to related work or projects. Any such agreement(s) shall be set forth in writing and shall be executed by the respective parties prior to the Provider's performance of the services there under, except as may be provided to the contrary in Section 3 of this Agreement. Upon proper completion and execution of an Amendment (agreement for additional services), such Amendment shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such Amendment were a part of this Agreement as originally executed. The performance of services pursuant to an Amendment shall be subject to the terms and conditions of this Agreement except where the Amendment provides to the contrary, in which case the terms and conditions of any such

Amendment shall control. In all other respects, any Amendment shall supplement and be construed in accordance with the terms and conditions of this Agreement.

3. Performance of Additional Services Prior to Execution of an Amendment

The parties hereby agree that situations may arise in which emergency services other than those described on Exhibit "A" but reasonably related thereto are desired by the City and the time period for the completion of such services makes the execution of Amendment impractical prior to the commencement of the Provider's performance of the requested services. The Provider hereby agrees that it shall perform such services upon the written request of an authorized representative of the City pending execution of an Amendment, at a rate of compensation to be agreed to in connection therewith. The invoice procedure for any such additional services shall be as described in Section 8 of this Agreement.

4. Provider's Representations

The Provider hereby represents and warrants that he has all necessary licenses and certifications to perform the services provided for herein, and is qualified to perform such services.

5. 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.

Specific responsibilities of the City are set forth in Exhibit B, which is attached hereto and by this reference made a part of this agreement.

6. Provider's Responsibilities

Specific responsibilities of the Provider are set forth in Exhibit B, which is attached hereto and by this reference made a part of this agreement.

7. 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 reasonably acceptable to the City.

8. Compensation

As compensation for the Provider's performance of the services provided for herein, the City shall pay the Provider the fees and costs specified on Exhibit "C" attached hereto and made a part hereof (or as specified in an Amendment). The Provider shall

submit to the City an invoice or statement of time spent on tasks included in the scope of work provided herein, and the City 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 thereafter in the normal course, subject to any conditions or provisions in this Agreement or Amendment. The Agreement number must appear on all invoices submitted.

9. Time for Performance and Term of Agreement

The Provider shall not begin any work under this Agreement until **January 2, 2018**. The Provider shall perform the services provided for herein in accordance with the direction and scheduling provided on Exhibit "A" attached hereto and incorporated herein by this reference, unless otherwise agreed to in writing by the parties. The Term of this Agreement shall terminate on **December 31, 2018**.

10. 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.

11. 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.

12. 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.

13. 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 W Main St
Auburn, WA 98001-4998
Phone: 253-876-1900

Recology CleanScapes Inc.
Kevin Kelly
General Manager
117 S. Main Street, Suite 300
Seattle, WA 98104
Fax: 206-859-6701

E-mail: jenelson@auburnwa.gov

E-mail: kkelly@recology.com

14. 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, for mailing by certified mail, return receipt requested, 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, stating his, her or its new address, to the other party, pursuant to the procedure set forth above.

15. Insurance

The Provider shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverages and in the amounts described below. Insurance is to be placed with authorized insurers in Washington State with a current A.M. Best rating of not less than A-: VII. The Provider shall furnish evidence, satisfactory to the City, of all such policies. During the term hereof, the Provider shall take out and maintain in full force and effect the following insurance policies:

- 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. If necessary, the policy shall be endorsed to provide contractual 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 or its equivalent 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 the Aggregate Per Policy Limit. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor'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 or its equivalent 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. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Umbrella/Excess Liability Insurance in a minimum amount of five million dollars (\$5,000,000.00), providing coverage on a following-form basis over the Employer's Liability Insurance limit, the Commercial General Liability Insurance limit, and the Automobile Liability Insurance limit.

16. Indemnification

The Provider shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of the negligent act or omission of the Provider, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement. If a final judgment is rendered against the City, its officers, agents, employees and/or any of them, or jointly against the City and the Provider and their respective officers, agents and employees, or any of them, the Provider shall satisfy the same to the extent that such judgment was due to the Provider's negligent acts or omissions.

17. 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.

18. 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.

19. 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.

20. 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, and does not cure such failure of performance within ten (10) days after written notice of the failure by the non-breaching party.

The City may terminate this Agreement upon not less than seven (7) days written notice to the Provider.

If the Provider is notified by another contractor of the City that one or more of the Provider's services hereunder violate the exclusive rights granted by the City to such contractor or interfere with such contractor's contract with the City, then the Provider may cease providing such services and/or terminate this Agreement, upon not less than seven (7) days written notice to the City.

If this Agreement is terminated early, the Provider shall be compensated for services performed prior to termination in accordance with the rate of compensation provided in Exhibit "C" hereof.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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

RECOLOGY CLEANSCAPES INC.

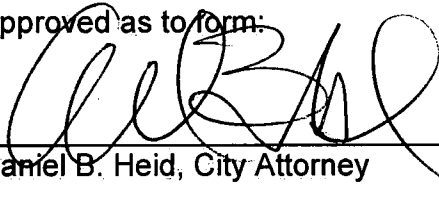
Nancy Backus, Mayor

Kevin Kelly, General Manager

Attest:

Danielle Daskam, City Clerk

Approved as to form:



Daniel B. Heid, 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. The Provider's employees must be trained in traffic control and must possess a "Traffic Control Flagging License" certified by the State of Washington.
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.

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

* 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
2018 FEE SCHEDULE

	<u>Monthly Fee</u>	<u># of Months</u>	<u>Not-To-Exceed Amount</u>
Litter Crew	\$15,346.80	12	\$184,161.60
Total Not To Exceed Amount:			<u>\$184,161.60</u>