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## MEMORANDUM

TO: ALL CITY ELECTED OFFICIALS  
ALL CITY BOARD AND COMMISSION MEMBERS  
ALL CITY DEPARTMENT HEADS

FROM: Ronald P. Flynn  
Chief Deputy City Attorney

Yvonne R. Meré  
Chief of Complex and Affirmative Litigation

Keslie Stewart  
Head Attorney for Public Integrity

Andrew Shen  
Head Attorney, Ethics and Elections

DATE: August 10, 2021

RE: Recology - Gifts and Behested Payments

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On March 3, 2021, the City and Recology San Francisco, Sunset Scavenger Company, and Golden Gate Disposal & Recycling Company (collectively “SF Recology Companies”) entered into a Settlement Agreement resolving claims related to SF Recology Companies’ overcollection of refuse collection funds assessed against San Francisco residents and businesses between July 1, 2017 and March 31, 2021. As you are likely aware, under the Settlement Agreement, the SF Recology Companies will reimburse ratepayers approximately \$94 million, including interest, for these overpayments.

On June 30, 2021, Judge Schulman of the San Francisco Superior Court approved and entered a Stipulated Injunction and Consent Judgment regarding the SF Recology Companies overcollection.

Under the Stipulated Injunction, the SF Recology Companies are ordered to comply with disclosure requirements as well as the following ethics-related restrictions. For four years, or until June 30, 2025, the SF Recology Companies cannot:

- make any gift of any value to any City employee or officer; or
- make any payment of any value made at the behest of any City employee or officer.

For the purposes of the Stipulated Injunction, a “gift” is defined according to State law. In general, a gift is any item or payment received by a public official for which the public official does not provide equal or greater consideration. Cal. Gov. Code § 82028; 2 C.C.R. § 18942. Likewise, consistent with State and local law, a “behested payment” is defined as any payment made “at the behest of” a City employee or officer, or an agent thereof, for any governmental or charitable purpose. *See* Cal. Gov. Code § 82004.5; S.F. Campaign & Governmental Conduct Code § 3.600. The Stipulated Injunction defines “at the behest of” as “under the control or at the

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direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.” “City officer” includes any City elective officer, City commissioner, and City department head. *See* S.F. Campaign & Governmental Conduct Code § 3.203.

Note that these restrictions on gifts and behested payments do not apply solely to City departments, officers, and employees who have a direct contractual or regulatory relationship with the SF Recology Companies. These restrictions apply to all City officers and employees, regardless of the nature of their relationship with the SF Recology Companies. Under the Stipulated Injunction, the SF Recology Companies may continue to make charitable contributions to any 501(c)(3) nonprofit organization, if such charitable contributions are not made at the behest of a City employee or officer.

But under this Stipulated Injunction, for example, the SF Recology Companies cannot:

- take a group of City employees or officers out for dinner;
- pay for a group of City employees or officers to attend a sporting event or luncheon;
- make a charitable contribution to a local 501(c)(3) nonprofit organization, at the request of a City elected official; or
- make a donation to a City program, or a 501(c)(3) nonprofit organization operating as a “friends group” for a City department, at the request of a City employee or officer.

The Stipulated Injunction applies to the SF Recology Companies, not to any City departments, officers or employees. Nonetheless, the Stipulated Injunction’s terms will bear on the SF Recology Companies’ interactions with City officials, and may alter your and your department’s requests of the SF Recology Companies. The SF Recology Companies bear the responsibility of abiding by the terms of the Stipulated Injunction, but the cooperation of City officers and employees with the Stipulated Injunction’s restrictions would further compliance with these Court-enforced rules. Also, if you learn of potential violations of the Stipulated Injunction by the SF Recology Companies, please contact the City Attorney’s Office. For your reference, a copy of the Stipulated Injunction approved and entered by the court is attached.

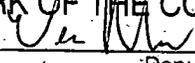
Lastly, the Stipulated Injunction does not replace or supersede any otherwise applicable ethics and gift laws that may apply to the SF Recology Companies. Guidance about these laws is available in the City Attorney’s Office’s Good Government Guide, available under the “Good Government” tab at [sfcityattorney.org](http://sfcityattorney.org).

If you have any questions, please contact Deputy City Attorney Andrew Shen at [andrew.shen@sfcityatty.org](mailto:andrew.shen@sfcityatty.org).

**FILED**  
San Francisco County Superior Court

JUN 30 2021

CLERK OF THE COURT

BY:  Deputy Clerk

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9 Attorneys for Plaintiffs  
PEOPLE OF THE STATE OF CALIFORNIA,  
10 acting by and through DENNIS J. HERRERA  
AS CITY ATTORNEY OF SAN FRANCISCO  
11 and the CITY AND COUNTY OF SAN FRANCISCO

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14 UNLIMITED JURISDICTION

15 PEOPLE OF THE STATE OF CALIFORNIA,  
16 acting by and through DENNIS J. HERRERA  
AS CITY ATTORNEY OF SAN  
17 FRANCISCO; and CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation;

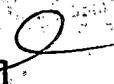
18 Plaintiffs,

19 vs.

20 RECOLOGY SAN FRANCISCO; SUNSET  
21 SCAVENGER COMPANY; GOLDEN GATE  
DISPOSAL & RECYCLING COMPANY; and  
22 DOES 1 THROUGH 20,

23 Defendants.

Case No. CGC-21-590091

[PROPOSED] 

STIPULATED INJUNCTION

Date Action Filed: March 4, 2021

Trial Date: Not set



1 the injunctive provisions, and to punish any violations. The Parties agree that the obligations arising  
2 out of this Injunction shall rest with all Defendants, jointly and severally, except as otherwise  
3 specifically provided.

4 The Parties agree that this Injunction shall be entered and become final for all purposes upon  
5 entry thereof, and each party to this Injunction waives any right to appeal therefrom.

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7 **II. AUTHORITY**

8 Plaintiffs have the authority under California law to maintain this action to protect the People  
9 of the State of California and the City and County of San Francisco.

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11 **III. PARTIES AND ENTITIES BOUND BY THIS INJUNCTION**

12 The Parties agree to submit to this Court's jurisdiction, and agree, in writing, to be bound by  
13 the terms of this Injunction's terms, without limitation or restriction. The provisions of this Injunction  
14 will apply to all of the following: SF Recology Companies, including their agents, assignees, board  
15 members, officers, employees, successors in interest, and all persons who are acting in concert, on  
16 behalf of, or in participation with any of them in connection with refuse collection and refuse rate-  
17 making.

18 Although the Parties stipulate to the entry of this Injunction, SF Recology Companies'  
19 stipulation does not constitute, nor shall it be construed as, an admission of liability by the SF  
20 Recology Companies that they have engaged in any unlawful act or overcharged for refuse collection;  
21 or constitute an admission that the filed-rate doctrine and general prohibition on retroactive rate-  
22 making are not lawful defenses to the City's alleged claims. The SF Recology Companies expressly  
23 deny that they have engaged in any unlawful act and deny liability for all claims any other Party had,  
24 has, or may have against them.

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1 **IV. DEFINITIONS**

2 1. "Behested Payment" shall mean any payment made at the behest of a City employee or  
3 Officer, or an agent thereof, for any governmental or charitable purpose. "At the behest of" shall  
4 mean under the control or at the direction of, in cooperation, consultation, coordination, or concert  
5 with, at the request or suggestion of, or with the express, prior consent of.

6 2. "City" or "Plaintiff" shall mean the City and County of San Francisco.

7 3. "City Government Official" shall mean (a) any Officer of the City and County of San  
8 Francisco, or (b) any employee of the City and County of San Francisco who has decision-making  
9 authority concerning the refuse rate-making process or who participates in the City's decision-making  
10 concerning the refuse rate-making process.

11 4. "Compliance Period" shall mean the time period beginning as of the effective date of  
12 this Injunction and ending four years later.

13 5. "Confirmed" shall mean a belief or fact established by objectively reasonable facts or  
14 information.

15 6. "Contact" shall be defined as set forth in San Francisco Campaign and Governmental  
16 Conduct Section 2.106; however, the Parties acknowledge and agree that the definition of Contact  
17 does not include any communication, oral or written, made for the purpose of discussing SF Recology  
18 Companies' day-to-day operations, such as customer collection and processing services, customer  
19 payments, and customer invoicing.

20 7. "Contact Lobbyist" shall be defined as set forth in San Francisco Campaign and  
21 Governmental Conduct Code Section 2.105.

22 8. "Gift" shall be defined as set forth in the Political Reform Act (California Government  
23 Code Section 82028), including the exceptions set forth in Fair Political Practices Commission  
24 Regulation 18942.

25 9. "Material Difference" is a difference of more than five percentage points between the  
26 actual operating ratio and the allowed operating ratio as memorialized in the applicable Rate Order.

27 10. "Material Mistake or Error" is a mistake or error in Rate Reporting for which the  
28 correction of said mistake or error would change the estimated total revenue or total expenses.

1 Assumptions and projections in a Rate Application that are forecasts of future events are not Material  
2 Mistakes or Errors to the extent such events do not occur as forecast. An omission of data in a Rate  
3 Application that should have been reported would be a Material Mistake or Error.

4 11. "Non-profit Entity" shall mean an organization with tax exempt status under 26 United  
5 States Code Section 501(c)(3).

6 12. "Officer" shall be defined as set forth in San Francisco Campaign and Governmental  
7 Conduct Code Section 3.203.

8 13. "Parties" shall mean the City and County of San Francisco, the People of the State of  
9 California and SF Recology Companies, collectively.

10 14. "Rate Application" means any application submitted by the SF Recology Companies to  
11 adjust the maximum rates it may charge San Francisco residents for the collection and disposal of  
12 refuse pursuant to the Refuse Ordinance, including any supporting documentation and amendments  
13 submitted by the SF Recology Companies before the Rate Board issues its Rate Order.

14 15. "Rate Board" means the board established by the Refuse Ordinance for the  
15 determination of rates that may be charged to San Francisco residents for the collection and disposal of  
16 refuse.

17 16. "Rate Order" means an order issued or deemed effective by the Rate Board in response  
18 to a Rate Application.

19 17. "Rate Reporting" shall mean any rate-making calculations, information, figures, or data  
20 communicated to the City by the SF Recology Companies in connection with a Rate Application  
21 process per the Refuse Ordinance, quarterly reports to the City, as required by the rate-making  
22 process, or annual reports to the City, as required by the rate-making process.

23 18. "Refuse Ordinance" shall mean the 1932 Refuse Collection and Disposal Ordinance.

24 19. "Suspected" shall mean a belief or opinion based on objectively reasonable facts or  
25 information that may be true, but is subject to confirmation.

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1 **V. INJUNCTION**

2 **A. IT IS HEREBY ORDERED** that the SF Recology Companies, for the duration of the  
3 Compliance Period, are hereby enjoined and restrained from:

- 4 1. Making any Gift of any value to any City employee or Officer.
- 5 2. Making any Behested Payment; provided that the SF Recology Companies may  
6 continue to make charitable contributions to any Non-profit Entity, if such charitable contributions are  
7 not made at the behest of any City employee or Officer.

8 **B. IT IS HEREBY ORDERED** that the SF Recology Companies, for the duration of the  
9 Compliance Period, shall comply with all of the following:

10 1. Disclose all contributions of money or goods valued at \$1,000 or more to Non-  
11 profit Entities based in the City and County of San Francisco ("Non-profit Disclosures"). These Non-  
12 profit Disclosures shall be made quarterly and are due on April 15, July 15, October 15, and January  
13 15, reporting contributions from the preceding quarter. The Non-profit Disclosures shall be signed  
14 under penalty of perjury, visibly posted on SF Recology Companies' websites, and uploaded to the  
15 San Francisco Public Works' website at <https://www.sfpublishworks.org/refuserates>. Complete copies  
16 of each Non-profit Disclosure shall be sent electronically to all members of the Rate Board. If SF  
17 Recology Companies discover any good faith errors in previously disclosed Non-profit Disclosures,  
18 SF Recology Companies shall have 30 days from the date of submission to cure the errors by the  
19 submission of amended Non-profit Disclosures.

20 2. Disclose all Contacts with City Government Officials ("Contact Disclosures").  
21 The Contact Disclosures shall be made monthly and due on the 15th of each month, reporting  
22 communications and contacts for the preceding month. The Contact Disclosures shall be signed under  
23 penalty of perjury, visibly posted on SF Recology Companies' websites, and uploaded to the San  
24 Francisco Public Works' website at <https://www.sfpublishworks.org/refuserates>. Complete copies of  
25 the Contact Disclosures shall be sent electronically to all members of the Rate Board. If SF Recology  
26 Companies discover any good faith errors in previously disclosed Contact Disclosures, SF Recology

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1 Companies shall have 30 days from the date of submission to cure the errors by the submission of  
2 amended Contact Disclosures.

3 3. Ensure that all SF Recology Companies' employees that qualify as Contact  
4 Lobbyists register with the San Francisco Ethics Commission as required by San Francisco Campaign  
5 and Governmental Conduct Code Section 2.110 within 30 days of the effective date of this Injunction.

6 4. Ensure that all SF Recology Companies' employees that qualify as Contact  
7 Lobbyists comply with the gift, disclosure, reporting, training and record-keeping requirements set  
8 forth in San Francisco Campaign and Governmental Conduct Code Section 2.110 *et seq.* Specifically,  
9 SF Recology Companies shall ensure that any SF Recology Companies' employees who qualify as  
10 Contact Lobbyists comply with the Gift restrictions set forth in San Francisco Campaign and  
11 Governmental Conduct Code Section 2.115. A violation of San Francisco Campaign and  
12 Governmental Conduct Code Section 2.100 *et seq.* by any of the SF Recology Companies' employees  
13 shall constitute a violation of this Injunction and subject SF Recology Companies to the penalties and  
14 enforcement described in Section VI below, in addition to any other penalties or fines outlined in San  
15 Francisco Campaign and Governmental Conduct Code Section 2.145.

16 5. Disclose any Material Mistake or Error, Suspected or Confirmed, as set forth  
17 below:

18 a. Within thirty days of any discovery by SF Recology Companies of a  
19 Suspected Material Mistake or Error, SF Recology Companies shall  
20 disclose a description of the Suspected Material Mistake or Error  
21 ("Suspected Mistake Disclosure"). Within 30 days of the Suspected  
22 Mistake Disclosure, SF Recology Companies shall disclose whether the  
23 Suspected Material Mistake or Error has been Confirmed or not  
24 Confirmed. If Confirmed, SF Recology Companies shall follow the  
25 procedures set forth in this Section V.B.5.

26 b. Within thirty days of any discovery of a Confirmed Material Mistake or  
27 Error, SF Recology Companies shall report and explain the following:  
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(1) the scope of the Material Mistake or Error, and (2) the cause of the Material Mistake or Error.

c. Within sixty days of the discovery of a Confirmed Material Mistake or Error, SF Recology Companies shall report and explain the following:

(1) the plan to address the Material Mistake or Error; and (2) the proposed timeline to cure the Material Mistake or Error.

d. All disclosures required by this Section V.B.5 shall be signed under penalty of perjury and visibly posted on SF Recology Companies' websites, and uploaded to the San Francisco Public Works' website at <https://www.sfpublishworks.org/refuserates>. Complete copies of these disclosures shall be sent electronically to all members of the Rate Board. The deadlines set forth in this section may be extended by mutual agreement of the Parties.

6. As an addendum to quarterly and annual reporting requirements to the City, disclose any Material Difference between actual operating ratio and the projected operating ratio, projected as of the most recent Rate Application process. Disclosures shall include descriptions of (a) the scope of the Material Difference; and the (b) cause of the Material Difference. Disclosures governed by this paragraph shall be signed under penalty of perjury and visibly posted on SF Recology Companies' websites, and uploaded to the San Francisco Public Works' website at <https://www.sfpublishworks.org/refuserates>. Complete copies of these disclosures shall be sent electronically to all members of the Rate Board.

7. Utilize the revised refuse rates as published on the San Francisco Public Works' website and attached to <sup>*The Settlement*</sup> ~~this~~ Agreement as Exhibit A beginning no later than July 1, 2021 and going forward until such time as a new refuse rate-making process is completed and new rates are established, including any applicable cost of living adjustments provided by the operative Rate Order and/or any revised refuse rates.

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1           8.     Cooperate with and provide full, accurate, and audited financial statements in  
2 response to any reasonable requests for information from San Francisco Public Works, or successor  
3 agencies, as part of any future rate-making process.  
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5 **VI.    ENFORCEMENT**

6           This Injunction is subject to enforcement pursuant to Business and Professions Code Section  
7 17207 and Code of Civil Procedure §1218, *et seq.*

8           If the Court finds after noticed motion and hearing that the SF Recology Companies have  
9 violated the terms of this Injunction, the SF Recology Companies shall be liable for civil penalties of  
10 no less than \$2,500 and no more than \$6,000 for each violation of this Injunction pursuant to Business  
11 and Professions Code Sections 17206 and 17207. Plaintiffs shall also be entitled to reasonable  
12 attorney's fees and costs incurred in enforcing this Injunction and/or monitoring disclosures and  
13 reports made by the SF Recology Companies', as required by this Injunction.

14           Any fines, penalties, or other monetary relief for future violations of this Injunction shall be in  
15 addition to any other relief or sanctions that the Court may order as a matter of law or equity. Any  
16 fines, penalties, or other monetary relief for future violations of this Injunction shall not preclude  
17 Plaintiffs from obtaining other penalties or relief prescribed by law.  
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19 **VII.   NO WAIVER OF RIGHTS TO ENFORCE**

20           The failure of Plaintiffs to enforce any provision of this Injunction shall in no way be deemed a  
21 waiver of such provision or in any way affect the validity of the Injunction. The failure of Plaintiffs to  
22 enforce any such provision shall not preclude Plaintiffs from later enforcing the same or any other  
23 provision of this Injunction. No oral advice, guidance, suggestion, or comments by Plaintiffs'  
24 employees or officials regarding matters covered by this Injunction shall be construed to relieve  
25 Defendants of their obligations.

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**VIII. EFFECTIVE DATE AND TERM OF INJUNCTION**

The terms of this Injunction shall take effect on the date of entry of this Injunction by this Court and continue for a period of forty-eight (48) months, provided that its terms have been complied with during this period. If the Court finds after noticed motion and hearing that SF Recology Companies violated the terms of this Injunction, then the City may move the Court to extend and modify this injunction to extend its terms.

**IX. JOINT AND SEVERAL LIABILITY**

The Parties agree that the obligations arising out of this Injunction shall rest with all Defendants, as defined herein, jointly and severally, except as otherwise specifically provided. The provisions of this Injunction are applicable to all Defendants as well as their agents, servants, employees, representatives, and others acting in concert or participation with any Defendant.

**X. RETENTION OF JURISDICTION**

Pursuant to the request of Plaintiffs and Defendants, this Court shall retain continuing jurisdiction to enforce this Injunction. The Court expressly reserves jurisdiction to take such further action as may be necessary or appropriate to carry into effect the provisions of this Injunction.

**SO STIPULATED:**

Dated: 6/7/2021 | 11:01 AM PDT

DocuSigned by:

*Salvatore M. Coniglio*

Salvatore M. Coniglio  
Chief Executive Officer  
RECOLOGY SAN FRANCISCO

Dated: 6/7/2021 | 11:01 AM PDT

DocuSigned by:

*Salvatore M. Coniglio*

Salvatore M. Coniglio  
Chief Executive Officer  
SUNSET SCAVENGER COMPANY

Dated: 6/7/2021 | 11:01 AM PDT

DocuSigned by:

*Salvatore M. Coniglio*

Salvatore M. Coniglio  
Chief Executive Officer

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**GOLDEN GATE DISPOSAL &  
RECYCLING COMPANY**

Dated: 6/7/2021

  
Dennis J. Herrera  
City Attorney  
CITY AND COUNTY OF SAN  
FRANCISCO

Dated: 6/7/2021

  
Dennis J. Herrera  
City Attorney  
PEOPLE OF THE STATE OF CALIFORNIA  
ex rel: Dennis J. Herrera

APPROVED AS TO FORM:

**MORRISON & FOERSTER LLP**

Dated: 6/7/21

  
JOSHUA HILL, JR.  
CHRISTINE Y. WONG  
Attorneys for Recology San Francisco, Sunset  
Scavenger Company, Golden Gate Disposal &  
Recycling Company

**DENNIS J. HERRERA  
CITY ATTORNEY**

Dated: June 7th, 2021

  
KYONNIE R. MERE  
Deputy City Attorney  
Attorney for City and County of San  
Francisco and the People of the State of  
California

IT IS SO ORDERED:

DATED: June 30, 2021

  
Judge of the Superior Court  
ETHAN P. SCHULMAN