Cooperative Agreement
By and Between The County of Yuba and the City and County of San Francisco
Concerning Cooperative Efforts to Complete Environmental Review of the
Amendments to Recology’s Conditional Use Permit and Solid Waste Facility Permit for the
Ostrom Road Landfill and Related Agreements between Recology and San Francisco
Associated with the Recology Green Rail Project

This Cooperative Agreement ("Agreement") is made and entered into as of March 28, 2013 by and between the Yuba County Community Development and Services Agency ("Yuba") and the City and County of San Francisco, acting through its Environmental Review Officer ("San Francisco"), also individually referred to as "a Party" and collectively referred to as "the Parties."

RECITALS

A. Recology, Inc. ("Recology") seeks approvals from Yuba for the Green Rail Project and Amendments to Recology’s Conditional Use Permit ("CUP") and Solid Waste Facility Permit ("SWFP") for the Recology Ostrom Road Landfill ("Landfill"), which will facilitate transport of municipal solid waste and Beneficial Reuse Material ("BRM") via rail to Recology’s Landfill in Yuba County, California, starting in approximately 2015. In addition to the discretionary approvals sought from Yuba, discretionary approvals from San Francisco and other jurisdictions will be required. Each of the approvals sought collectively make up the "Project."

B. In 2009, Recology submitted a permit application to Yuba for authorization to construct a railroad spur to facilitate transport of municipal solid waste and BRM by rail to the Landfill and now seeks amendments to the CUP and SWFP. On March 23, 2010 Yuba County Board of Supervisors adopted a Reimbursement Agreement with Recology to reimburse the County for its actual costs in processing the application to modify the Conditional Use Permit and preparation of an environmental document pursuant to CEQA. Section 4 of the Reimbursement Agreement includes provisions that indemnify and holds harmless the County from any litigation related to the project and stipulates that all costs, attorney fees, expenses, and liabilities incurred will be covered by Recology.

C. As part of its review of Recology’s permit applications, Yuba began an environmental review process, including preparation of an environmental impact report and environmental assessment ("EIR/EA") to satisfy the requirements of the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). Yuba issued a Notice of Preparation ("NOP") of the EIR/EA for the Project on April 20, 2012.

D. In July 2011, San Francisco approved agreements with Recology for the disposal and transportation of San Francisco’s waste to the Landfill. Yuba determined that its EIR/EA should evaluate all impacts associated with the transport of municipal waste from San Francisco to the Landfill, in addition to the impacts that adding a rail spur and amending the CUP and SWFP would have, because the rail spur would enable the transport of the waste from San Francisco by rail.

E. On November 26, 2012, San Francisco and Recology terminated the agreements that had been approved in July 2011. San Francisco asked Recology to terminate those agreements, and Recology agreed to do so, to enable San Francisco to participate in the environmental review process that Yuba had initiated for the Recology Green Rail Project and to conduct environmental review of the entirety of the Project. Following completion of environmental review, San Francisco could then consider whether to enter into agreements for the disposal and transportation of San Francisco’s solid waste.
F. In light of the comprehensive environmental review process already underway for the Project in Yuba County, San Francisco determined that it should participate in that environmental review process as part of its future consideration of one or more agreements with Recology relating to the disposal and transportation of San Francisco’s municipal solid waste. Furthermore, Yuba and San Francisco agreed that it would be in their mutual interests, and in the public interest, to cooperate in their efforts to complete environmental review of the Project. Yuba County and San Francisco then consulted as to which agency should take the lead in the environmental review process of the Project for purposes of CEQA.

G. Under the CEQA Guidelines, where two or more public agencies will be involved with a project carried out by a nongovernmental entity, “the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.” (Cal. Code Regs., tit. 14, § 15051(b).) Where more than one public agency equally meet this criteria, the “agency which will act first on the project in question shall be the lead agency.” (Cal. Code Regs., tit. 14, § 15051(c).) Where, after consideration of these provisions, two or more public agencies have “a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract....” (Cal. Code Regs., tit. 14, § 15051(d).)

H. Yuba and San Francisco considered acting as co-lead agencies to prepare the EIR. However, CEQA contemplates that only one agency will act as the lead agency. Yuba consulted with the Governor’s Office of Planning and Research (“OPR”) about designation of lead agency. OPR advised that only one agency could serve as lead agency and further advised that Yuba would be the appropriate lead agency here. Yuba and San Francisco agree that Yuba has the greatest regulatory responsibility for supervising and approving the Project as a whole, because (1) Yuba has discretion whether to approve permit amendments that will allow the Landfill to receive waste by rail, (2) the majority of construction activity contemplated by the Project will occur in Yuba County, and (3) it is anticipated that the majority of the environmental impacts of the Project will occur outside of San Francisco and in Yuba County. OPR suggested that the two jurisdictions enter into a cooperative agreement, pursuant to CEQA Guidelines section 15051(d), regarding their agreement as to which agency should be lead agency under CEQA, as well as how the Parties will cooperate and coordinate in preparation of the environmental review document for the proposed Project.

NOW, THEREFORE, and pursuant to CEQA Guidelines section 15051(d), Yuba and San Francisco agree as follows:

1. CEQA Lead Agency Responsibility. The Parties agree that, in accordance with the CEQA Guidelines sections 15051(d) and 15367, Yuba shall act as lead agency for the Project for the purpose of environmental review under CEQA because Yuba has the greatest regulatory responsibility for supervising and approving the Project as a whole.

2. CEQA Responsible Agency. The Parties agree that, in accordance with the CEQA Guidelines, sections 15096 and 15381, San Francisco will act as responsible agency, will actively participate in Yuba’s CEQA process as described herein, and, subject to its responsibilities under CEQA Guidelines Sections 15052 and 15096, will rely on the Final EIR/EA when making a decision on any discretionary approvals relating to the Project, including consideration of one or more agreements with Recology relating to the disposal and transportation of San Francisco’s municipal solid waste.
3. Cooperative Effort. Yuba and San Francisco agree in good faith to undertake cooperative actions in connection with the preparation of the EIR/EA for the Project, which include, but are not limited to, the following efforts:

a. **Processing Duties.** Yuba and San Francisco shall use reasonable good faith efforts to consult, review, provide comments, and perform the other tasks set forth herein as expeditiously as possible, to facilitate the timely processing of the EIR/EA for the Project.

b. **Coordinated Staffing.** Yuba and San Francisco each shall provide coordinated staffing from their respective agencies. The Parties' respective department staffs shall coordinate with each other to review and assist in processing the EIR/EA.

c. **EIR/EA Scoping.** Yuba intends to circulate a revised NOP to provide notice that San Francisco's consideration of one or more agreements for the disposal and transportation of San Francisco's waste will be addressed in the EIR/EA and to provide an additional opportunity for San Francisco and other interested parties to comment as to the appropriate scope and content of the Draft EIR/EA; however, the scope of the Project in Yuba remains substantially unchanged since the previous NOP was issued on April 20, 2012. San Francisco intends to conduct a public hearing in San Francisco to receive public comments on the NOP and the scope of the EIR. The Parties shall coordinate to conduct scoping, as each deems appropriate, in connection with recirculation of the NOP, in order to receive comments on the scope and content of the EIR/EA. Yuba will make the final decisions regarding the scope of the EIR/EA, with substantial input from, and consultation with, San Francisco.

d. **EIR/EA Process.** Yuba has contracted with and shall direct the work of the EIR/EA consultant, WRA Environmental Consultants, or its successors, if any (the "EIR/EA Consultant"). San Francisco shall be entitled to participate in all work sessions with the EIR/EA Consultant and any EIR/EA subconsultants. The Parties agree that Yuba will ultimately direct the work of the EIR/EA Consultant, but that Yuba will closely consult and coordinate with San Francisco prior to directing the EIR/EA Consultant.

e. **Preparation of the Draft EIR/EA.** Yuba and San Francisco shall confer about the content of the Draft EIR/EA, including, but not limited to, description of environmental setting, appropriate baseline(s), significance thresholds, impact determinations, mitigation measures and a reasonable range of alternatives to the proposed Project. The EIR/EA Consultant shall provide to Yuba and San Francisco copies of all administrative drafts of the Draft EIR/EA and any specialized studies, memoranda or reports used to prepare the EIR/EA for review and comment. Yuba and San Francisco agree to review and provide comments on the administrative Draft EIR/EA generated by the EIR/EA Consultant within a reasonable period of time following their receipt and no later than 30 days thereafter or such other time frame agreed to by the Parties. After consideration of the comments prepared by both Yuba and San Francisco, Yuba shall direct the EIR/EA Consultant as to which revisions to make to the administrative Draft EIR/EA, and circulate the draft for public review.

f. **Public Proceedings.** Yuba will hold at least one public hearing in Yuba County to receive comments on the Draft EIR/EA and will hold at least one public hearing in Yuba County to consider whether to certify the Final EIR/EA. San Francisco will hold at least one public scoping meeting, one public hearing in
order to receive comments on the Draft EIR/EA, and intends to conduct at least one informational presentation to the San Francisco Planning Commission. The Parties may provide additional public review throughout the CEQA process as they determine necessary in their discretion. The Parties shall inform each other of any additional public review that may be provided so as to coordinate scheduling on the environmental review process.

g. **Final EIR/EA.** Yuba and San Francisco shall consult regarding preparation of the Final EIR/EA, including preparation of Responses to Comments, any Corrections and Additions, and the Mitigation Monitoring and Reporting Program. Yuba shall direct preparation of the Final EIR/EA. The EIR/EA Consultant shall provide to Yuba and San Francisco copies of all administrative drafts of the Final EIR/EA and any specialized studies, memoranda or reports for review and comment. Yuba and San Francisco agree to independently review and provide comments on the Final EIR/EA generated by the EIR/EA Consultant within a reasonable period of time following their receipt and no later than 30 days thereafter or such other time frame agreed to by the Parties. After consideration of the comments prepared by both Yuba and San Francisco, Yuba shall direct the EIR/EA Consultant to make revisions to the Final EIR/EA, and direct that it be issued to all responsible and trustee agencies, and made available to the general public.

h. **Documents.** Yuba and San Francisco shall consult and cooperate as the EIR/EA process develops to maintain a complete and organized administrative record, as defined by Public Resources Code 21167.6. As the lead agency, Yuba shall maintain and organize all documents to be included in any administrative record of proceedings prepared by it as required by Public Resources Code section 21167.6. As a responsible agency, San Francisco shall maintain and organize all documents to be included in any administrative record of proceedings prepared by it as required by Public Resources Code section 21167.6.

4. **Dispute Resolution.** In the event a dispute arises regarding the preparation and/or review of the Project EIR/EA, mutual negotiations by and between the Parties shall occur at the staff level. If staff cannot resolve any disagreement within 14 days, the signatories to this Agreement will meet to attempt to resolve it. If the Parties cannot resolve the dispute, the determination of the lead agency shall be binding, subject to San Francisco’s obligations as a responsible agency under CEQA Guidelines Sections 15052 and 15096.

5. **Independent Judgment and Discretion under CEQA.** Nothing in this Agreement shall be interpreted to replace or eliminate either Parties’ independent judgment or discretion under CEQA. Nothing in this Agreement shall be interpreted as an approval of the Project or a commitment to approve the Project on the part of Yuba, or as a commitment on the part of San Francisco to enter into any agreement with Recology regarding the disposal and transportation of San Francisco’s solid waste. The Parties retain full discretion under CEQA to consider and approve the Project, impose mitigation measures, and adopt alternatives to the Project, including the No Project Alternative.

6. **Agreement.** This Agreement (1) may be signed in counterparts; (2) becomes effective upon signature by both Parties; (3) may be modified only in a writing signed by both Parties; (4) contains the entire understanding related to their interests, obligations, and rights in connections with the subject matter set forth herein; and (5) will remain in effect until its terms have been carried out to the satisfaction of the Parties unless, prior to that time, either Party provides 30 days’ written termination notice to the other Party.