

**FIRST AMENDMENT TO  
AMENDED AND RESTATED AGREEMENT FOR OPERATION OF THE CENTRAL  
LANDFILL AND COUNTY TRANSFER STATIONS BETWEEN COUNTY OF  
SONOMA AND REPUBLIC SERVICES OF SONOMA COUNTY, INC.**

This First Amendment (“First Amendment”) to the Amended and Restated Agreement for Operation of the Central Landfill and County Transfer Stations Between County of Sonoma (“County”) and Republic Services of Sonoma County, Inc. (“Republic”), is dated as of \_\_\_3/15/2022\_\_\_, but this amendment will only be effective upon the Effective Date, as defined herein.

**RECITALS**

WHEREAS, on August 4, 2020, Republic and County entered into that certain Amended and Restated Agreement for Operation of the Central Landfill and County Transfer Stations Between County of Sonoma and Republic Services of Sonoma County, Inc. (the “Original Amended and Restated Agreement”);

WHEREAS, the “Original Amended and Restated Agreement” as amended by this First Amendment is hereafter referred to as the “Agreement;”

WHEREAS, Republic (“Contractor”) and County desire to amend the Original Amended and Restated Agreement to terminate Contractor’s responsibility to collect certain Commercial Food Waste and Dry Commercial Waste in the incorporated and unincorporated areas of the County so that those collection services can be performed directly by and through the County and Cities’ Franchise Haulers pursuant to SB 1383, provided however that Contractor shall continue to have obligations to transport, at Contractor’s expense, Commercial Food Waste received at County facilities to the West County Resource and Recovery Facility Food Waste and Green Waste composting facility, located in Richmond, California or such other County-designated Organic Materials Processing Facility located in the County of Sonoma;

WHEREAS, in recognition of the fact that this First Amendment relieves Contractor of its responsibility to collect Commercial Food Waste and Dry Commercial Waste from area customers, the parties desire to reduce Contractor’s diversion requirements to maintain parity with the assumptions embedded in the parties’ original diversion goal agreement;

WHEREAS, the reduction to Contractor’s diversion goal effectuated by this First Amendment is consistent with the existing regional goal to divert from landfilling no less than eighty percent (80%) of all Waste generated in Sonoma County by 2015. Senate Bill 1383, effective January 1, 2022, requires diversion of all Organic Waste from landfilling and effectively supplants the need for the supplemental organic waste diversion programs that were required by the Original Amended and Restated Agreement. That is, those once-discretionary Organic Waste diversion programs are now required by State law, and thus the maintenance of those original programs, including associated contract goals and damages owing to County for failure to achieve them, is no longer feasible or needed to achieve the County’s larger diversion

goals, which are otherwise unchanged at the regional scale;

WHEREAS, this First Amendment is not intended to modify the County and City Committed Waste delivery commitments to Contractor;

WHEREAS, except as the Gate Rates are specifically adjusted hereby pursuant to Section 9.7 (C) below, this First Amendment is not intended to and does not change Gate Rates applicable to materials received at County Facilities, including Commercial Food Waste delivered to County Facilities, or the County-designated Organic Materials Processing Facility if other than a County Facility.

WHEREAS, Republic and County also desire to amend the Original Amended and Restated Agreement to make adjustments to the Waste Management Agency Fee;

NOW, THEREFORE, in consideration of the recitals set forth above, the parties hereto agree to this First Amendment as set forth below.

### PROVISIONS

1. *Recitals.* The above recitals are true and correct.
2. *Updated and New Definitions.*

The definitions of “Commercial Food Waste” and “Dry Commercial Waste” included in Paragraph 1.1 of the Original Amended and Restated Agreement (Definitions) are hereby amended and replaced as follows:

**“Commercial Food Waste** “Commercial Food Waste” means all Food Waste collected by Franchised Haulers except for Residential Food Waste. Commercial Food Waste is a Committed City Waste and a Committed County Waste as defined in this Agreement. Residential Food Waste is not a Committed City Waste nor is it a Committed County Waste.”

**“Dry Commercial Waste”** “Dry Commercial Waste” means material discarded by nonresidential sources in the black (landfill) container that happens to contain a high proportion of Recyclable Materials and no Food Waste. Dry Commercial Waste is a Committed City Waste and a Committed County Waste as defined in this Agreement.”

The following definition is hereby added:

**“Organic Materials Processing Facility** “Organic Materials Processing Facility” means a composting operation or “composting facility” as defined in 14 CCR Section 18815.2(a)(13), and, if applicable, which complies with the digestate handling requirements specified in 14 CCR Section 17896.5.”

3. Paragraph 4.2(C) of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

“C. “Waste Management Agency Use of County Facilities for Transloading and Transport of Organic Materials.

The following paragraphs describe the Waste Management Agency’s rights to use the County Facilities for purposes of transloading and transporting Organic Materials.

Contractor shall allow the Waste Management Agency or its contractor access to the County Facilities for purposes of transferring and transporting loads of Organic Material that are delivered to the County Facilities, to the Compost Facility, the Future Compost Facility or an Organic Materials Processing Facility designated by the Waste Management Agency pursuant to Section 9.7. Such access shall be granted at no cost, except as space may be needed by the Waste Management Agency at the Central Transfer Station, in which event Contractor shall be entitled to a reasonable rental rate to be negotiated with the County, which rate may be collected through an adjustment in the Contractor Service Fee for the period of the Waste Management Agency’s use, provided that Contractor offers a non-revocable license to the Waste Management Agency for this access. Provided further, Contractor shall not be required to license space to the Waste Management Agency at the Central Transfer Station if it can be shown to the County’s satisfaction that the Waste Management Agency’s proposed Organic Material operation cannot be designed and implemented in such a way as to avoid substantial interference with Contractor’s operations. Once the license with the Waste Management Agency is in place, it may be terminated or revised only if it interferes with Contractor’s expansion plans for the Central Transfer Station/MRF.

Should the Waste Management Agency or its contractor reject any loads of Organic Material delivered to the County Facilities due to excessive contamination of the materials, they may have the material transported to another processing facility at the Waste Management Agency’s expense or they may dispose of the rejected materials at the County Facilities by paying Contractor the Gate Fees normally charged for Residuals from Prime Subcontractor’s in-County Processing operations. In the event an alternative Franchise Hauler other than the Prime Subcontractor is performing service for the County or Committed City, the rejected materials will be charged the then current Gate Rate for that entity. With the exception of Commercial Food Waste delivered to the County Facilities, Contractor shall not have any obligation to transfer and transport loads of Organic Material that are delivered to the County Facilities, to the Organic Materials Processing Facility or Future Compost Facility.”

4. Paragraph 4.5 of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

“4.5 **Waste Acceptance.**

Contractor shall develop and maintain adequately sized unloading areas at the County Facilities for Waste, including Specially Handled Waste, soil, asphalt and concrete materials, Construction & Demolition Waste, and Organic Material so as to provide a safe and efficient environment for vehicles to unload their vehicles. Unloading areas shall be of sufficient design to provide for safe distances between unloading vehicles, accommodate the turning radius of a tractor-trailer vehicle, enable the queuing of vehicles during peak usage periods and ensure that vehicles do not have to come into contact with Wastes in order to unload their vehicles. Contractor shall control dumping at all locations that Wastes are unloaded, including, but not limited to, the Active Face and the inert material unloading and stockpiling areas, inspect Waste loads for prohibited materials in accordance with the County's Hazardous Waste Exclusion Plan, and perform other duties as may be required to operate the County Facilities in compliance with this Agreement, Applicable Laws, and Prudent Solid Waste Practices."

5. Paragraph 7.4, subsections A through D, of the Original Amended and Restated Agreement are hereby deleted and replaced with the following language:

"7.4 Composting Provisions if Agreement Not Reached.

Until and unless County and Contractor execute a written agreement whereby Contractor will assume responsibility for the Compost Facility, the County-designated Organic Materials Processing Facility or Future Compost Facility operations, then the following provisions shall apply:

A. The County and Committed Cities may still direct Organic Materials, excluding Commercial Food Waste, to the County Facilities or such other facilities as they may elect and Contractor shall allow such materials to be processed on the Landfill Land and/or provide for such materials to be delivered to the appropriate collection or processing sites designated by the County. The parties further agree that County may direct Commercial Food Waste to such facilities as described in Section 9.7.

B. County reserves the right to establish a Processing Gate Fee at the County Facilities for processing Organic Material, but excluding Commercial Food Waste. Contractor shall collect those Gate Fees through the existing gate and weigh station process and disperse such Gate Fees to the County on a monthly basis as directed by County.

C. County reserves the right to develop the Future Compost Facility at the location identified on Exhibit E and Contractor shall not have access to that portion of the Landfill Land.

D. The County and Committed Cities reserve the right to direct Organic Materials to the County Facilities for transport by Contractor, its Prime Subcontractor or other entity to a third party facility. Contractor shall have no obligation to provide for the transfer or

transport of Organic Materials, excluding Commercial Food Waste, delivered to any of the County Facilities unless mutually agreed to by the Contractor and the County. County and Committed Cities shall also be responsible for paying the transportation and processing costs to the third party processing facility, except as to Commercial Food Waste for which the cost for transportation and processing shall remain Contractor's responsibility, subject to Contractor's right to receive reimbursement for excess third party processing costs pursuant to Section 9.7 (C).

6. *Intent of Diversion Performance Standard.* Paragraph 9.2 of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

“9.2 Intent of Diversion Performance Standard.

The County, the City County Solid Waste Advisory Group (SWAG) and many of the communities within the region, have established as a goal the diversion from landfilling of eighty percent (80%) of all Waste generated in Sonoma County, including Source Separated Recyclable Materials and Organic Materials. In order to assist the County, the SWAG and the community in meeting their diversion goals, Contractor originally identified that approximately 67,000 tons per year can be diverted from Disposal based on the material volumes and composition then being delivered to the County Facilities for Disposal. Contractor's tonnage diversion goal for the Committed Waste Period, which was conditioned on the performance by the County and Committed Cities of their Waste delivery commitments to Contractor and the County Facilities, was set at 67,000 tons per year when this Agreement was originally executed. This First Amendment reduces Contractor's tonnage diversion goal for the Committed Waste Period by 22,265 tons per year, which represents the assumed amount of Commercial Food Waste and Dry Commercial Waste that was to be diverted under the original Agreement, which material will no longer be Contractor's responsibility to collect and divert because such programs will be operated by the County and cities Franchised Haulers. Therefore, Contractor's tonnage diversion goal for the remainder of the Committed Waste Period is 44,735 tons per year, conditioned on the performance by the County and Committed Cities of their Waste delivery commitments to Contractor and the County Facilities.

Contractor's achievement of its annual diversion goal shall be excused to the extent that its achievement of that goal is prevented or materially hindered by reason of a Change in Law or Force Majeure Event, including, without limiting the generality of the foregoing, any Change in Law that no longer allows Contractor or the County to treat as diversion from Disposal the beneficial reuse at the Landfill or other facilities of Beneficial Reuse Materials, including Alternative Daily Cover materials, which are currently treated as diversion by CalRecycle.

As of the Effective Date of this Amendment, Contractor shall have no obligation to the County or Cities to operate Commercial Food Waste or Dry Commercial Waste

collection routes, nor shall Contractor have any obligation to contract with the Prime Subcontractor to do so.

Contractor's diversion obligations in this Article 9 will not be in force or effect for any period following the expiration of the Committed Waste Period.”

7. *Commercial Food Waste.* Paragraph 9.7 of the Original Amendend and Restated Agreement is hereby deleted and replaced with the following language:

**“9.7 Commercial Food Waste Charges and Diversion.**

A. Unless and until the Future Compost Facility is developed and accepting Commercial Food Waste or the Waste Management Agency designates another Organic Material Processing Facility that accepts Commercial Food Waste:

- i. Contractor agrees to process Commercial Food Waste at the following facility: West County Resource and Recovery Facility Food Waste and Green Waste composting facility, located in Richmond, California.
- ii. All Commercial Food Waste loads shall be directed to and weighed at either the scales at the Central Transfer Station or at the West County Resource Recovery Facility Food Waste and Green Waste composting facility. The tonnage of Commercial Food Waste sent to each such facility shall be tracked and reported to the County. All Commercial Food Waste loads will be charged the then current Gate Fees applicable to Committed Waste for the County or City (including Concession Payments and Waste Management Agency Fees).

B. If an Organic Materials Processing Facility is designated by the Waste Management Agency and the County elects to direct Commercial Food Waste to this facility:

- i. Contractor agrees to deliver Commercial Food Waste received at County facilities to the designated Organic Materials Processing Facility and to pay the associated tipping or processing fees for deposit of such waste at the facility; provided that such facility establishes and continuously maintains a “virtual gate” acceptable to Contractor in its reasonable discretion, to ensure that all Commercial Food Waste will be charged the Gate Rate for Committed Waste then in effect at the County Facilities and that all such Gate revenues, without deduction, shall be remitted to Contractor. Contractor may condition its acceptance of a County-designated facility on a right to audit all inbound volumes of Commercial Food Waste to the Organic Materials Processing Facility upon reasonable notice. Nothing in this section shall be construed to relieve Contractor of the obligation to remit to the County the applicable

Government Fees and the County Concession Payments due on such Commercial Food Waste.

- iii. If the per ton charge for the receipt and processing of such Commercial Food Waste at the Organic Materials Processing Facility designated by the Waste Management Agency is in excess of \$41.09 per ton (increased annually by the amount of the CPI percentage increase in the Contractor Service Fee) (for the outer Transfer Stations) or \$38.71 per ton (increased annually by the amount of the CPI percentage increase in the Contractor Service Fee)(for the Central Transfer Station), the County will pay the Contractor each month an additional fee equal to the difference between these threshold amounts and the per ton charge at the Organic Materials Processing Facility designated by the Waste Management Agency, or such lesser amount as may be negotiated between County and Contractor. The parties agree that, as of the Execution Date of the Amended and Restated MOA, the thresholds established by this paragraph were updated to reflect applicable CPI increases dating back to the Effective date of the Original MOA.

C. Regardless of the Organic Material Processing Facility that is designated by County for processing of Commercial Food Waste, the parties acknowledge and agree that some portion of the Commercial Food Waste collected in the incorporated and unincorporated areas of the County may be comingled with Residential Organic Material in order to promote and maintain efficient collection routes. The County and Contractor agree that commingling of Commercial Food Waste (a Committed County Waste and a Committed City Waste) with other Organic Waste (which is not committed to Contractor) makes it difficult for Contractor to collect compensation for all Commercial Food Waste, as comingled Organic Waste Materials are generally characterized as residential organic material, which is exempt from Contractor's Service Fee as uncommitted Waste. Contractor will arrange with the Franchised Haulers an appropriate method to calculate compensation due to Contractor for Commercial Food Waste that is comingled with residential Organic Waste, which method shall be presented to and reasonably acceptable to County. Contractor will collect such compensation directly from the Franchise Haulers.

Franchised Hauler shall not be allowed to commingle with Residential Organic Material more than fifteen (15%) of the total amount of Commercial Food Waste collected by Franchised Hauler, within the unincorporated County and the Cities that are party to a Waste Delivery Agreement with Republic where Recology is the franchised hauler (calculated on an aggregate (combined) basis, not jurisdiction by jurisdiction). For example, if the total annual amount of Commercial Food Waste, including the amount comingled with Residential Organic Material, is 1000 tons from the unincorporated County and such Cities combined, no more than 150 tons per year of the total Commercial Food Waste collected by the Franchised Hauler can be comingled with Residential Organic Material in the unincorporated County and such Cities combined.

D. Contractor shall have no obligation to design, permit, develop or construct the Future Compost Facility or the Organic Materials Processing Facility that may be designated by the Waste Management Agency.”

8. Paragraph 11.4(B) of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

**“B. Changes in Law and/or Force Majeure.**

The Contractor Service Fees for Committed County Waste and Committed City Waste in Amended Exhibit S already include all costs associated with complying with all existing Applicable Law (including, but not limited to, Environmental Laws) applicable to the County Facilities as of the Execution Date. The purpose of this Subsection B is to: (a) define those Applicable Laws for which the cost of compliance has already been included, (b) define those Applicable Law which may be enacted in the future, or changes in the interpretation of current laws and regulations, the costs of which may be the basis for an increase in the Contractor Service Fees for Committed County Waste and Committed City Waste; (c) identify costs that might otherwise be regarded as resulting from a Change in Law but which, due to the reasons they were incurred by Contractor, shall not result in an increase in the Contractor Service Fees for Committed County Waste and Committed City Waste; and (d) provide for rate adjustments based on Force Majeure Events.

The costs to comply with all Applicable Law in existence as of the Execution Date are already included in the Contractor Service Fees for Committed County Waste and Committed City Waste, which fees are set forth in Amended Exhibit S.

Contractor shall be entitled to an adjustment as provided herein for any Change in Law or Force Majeure Event that occurs during the Committed Waste Period. Furthermore, and without limiting the generality of the foregoing sentence, the Contractor Service Fees for Committed County Waste and Committed City Waste will be increased as a result of any Change in Law or Force Majeure Event that directly adopts, promulgates or increases any federal, state or local fee, tax or surcharge applied to Contractor’s property rights or operations at any of the County Facilities, but such increase shall only be in an amount that reimburses Contractor for the actual bona fide out-of-pocket incremental increase in costs to Contractor (without profit, overhead or mark-up). Contractor shall allocate increased per ton operating costs equally across all tons of Waste, excluding Organic Material (but including Commercial Food Waste), then being delivered to the County Facilities by any Entity. Contractor shall allocate capital costs (i.e., costs for cell construction and other permanent improvements to any of the County Facilities that would normally be treated as capital costs under Generally Accepted Accounting Principles) over the remaining: (a) capacity of the Landfill to the extent the Change in Law or Force Majeure Event causes an increase in capital costs of operating, closing or maintaining the Landfill; or (b) Committed Waste Period or the estimated County Facilities Operations Period, whichever is longer, to the extent the Change in Law or

Force Majeure Event causes an increase to the cost of operating the Transfer Stations or Materials Recovery Facility. Notwithstanding the generality of the foregoing, should a possessory interest tax or similar tax be imposed on Contractor's property rights, licenses or operations under this Agreement, this tax shall be treated as a Change in Law and Contractor shall be entitled to a rate adjustment in accordance with this paragraph to compensate Contractor for the additional costs arising out of such tax.

The following categories of costs are not considered to arise from a Change in Law or Force Majeure Event and are hereby excluded from eligibility for an adjustment in the Contractor Service Fees due to a Change in Law or Force Majeure Event:

1. any costs which result from, arise out of or are caused by (A) any unexcused failure to perform or a breach of this Agreement by Contractor or any member of the Contractor Parties, (B) any unexcused violation of or non-compliance with Applicable Law by Contractor or any member of the Contractor Parties, or (C) any negligence, recklessness, willful misconduct, fault, culpable act or culpable omission by Contractor or any member of the Contractor Parties; and
  2. any cost resulting from a Change in Law or Force Majeure Event that has a cost impact of less than \$50,000 per year (as such amount is adjusted annually by 3% per year during the Committed Waste Period or the County Facilities Operations Period) (provided that Contractor shall be entitled to compensation through a rate adjustment for all costs, starting with the first dollar, associated with a Change in Law having a cost impact of \$50,000 or more per year); and
  3. any change in a Permit solely initiated by Contractor, except to the extent such Permit change is required to comply with Applicable Law; and
  4. any fines or penalties imposed on Contractor or any member of the Contractor Parties.”
9. *Governmental Fee Component.* Paragraph 11.6 of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

**“11.6 Governmental Fee Component.**

The Government Fee Component of the Gate Rate, which shall be applicable to Committed County Waste and Committed City Waste and Self-Haul Waste Disposed of in the Landfill, shall be \$7.50 per ton as of the Effective Date of the MOA. Except as provided in Section 11.8 with respect to Waste Management Agency Fees, the initial Government Fee Component for tonnage Disposed of in the Landfill consists of the following state and local fees, taxes and surcharges applied to operations at the County Facilities:

- State of California AB1220 Fee

- Waste Management Agency Fee (as set forth in Section 11.8)
- Local Enforcement Agency Fee

The following Government Fees, though not originally contemplated by this Agreement, have been approved by the County during the term of this Agreement as a Change in Law:

- The Bay Area Air Quality Management District Fee
- State of California North Coast Regional Water Quality Control Board Fee
- Certified Unified Program Agency Fee
- County of Sonoma Possessory Interest Tax

For Beneficial Reuse Materials, the Government Fee Component shall be zero.

All Special Waste, including Exempt Special Waste, and any Residuals or Waste delivered to the County Facilities from any Third Party processing or transfer facility in Sonoma County that is Disposed of in the Landfill shall be charged only the State of California AB 1220 Fee.

For Organic Material (except for Commercial Food Waste) delivered to any County-designated site or County Facility for diversion, the Government Fee Component shall be only the Waste Management Agency Fee.

No new, additional or increased fees, taxes or surcharges shall be imposed by County on any of Contractor's activities, operations or performance under this Agreement, or otherwise imposed on Contractor by County, except as mutually agreed by County and Contractor. Should County breach this covenant, County shall promptly reimburse Contractor for all such new, additional or increased fees, taxes or surcharges. Any new, additional or increased mutually agreed fees, taxes or surcharges shall be added to the Governmental Fee Component and will thereby reflected in an increased Gate Rate at the County Facilities to be collected by Contractor on incoming Waste at the scale houses.

Any new, additional or increased fees, taxes or surcharges imposed on Contractor's activities or operations under this Agreement by any Governmental Authority other than the County shall be treated as a Change in Law.

The following categories of costs are not considered Government Fees and are hereby excluded from eligibility for an adjustment in the Government Fee portion of the Gate Rate:

**A.** Any costs which result from, arise out of or are caused by (A) any unexcused failure to perform or a breach of this Agreement by Contractor or any member of the Contractor Parties, (B) any unexcused violation of or non-compliance with Applicable Law by Contractor or any member of the Contractor Parties, or (C) any negligence, recklessness, willful misconduct, fault, culpable act or culpable omission by Contractor or any member of the Contractor Parties; and

**B.** Any cost resulting from a Change in Law or Force Majeure Event that has a cost impact of less than \$50,000 per year (as such amount is adjusted annually by 3% per year during the Committed Waste Period or the County Facilities Operations Period) (provided that Contractor shall be entitled to compensation through a rate adjustment for all costs, starting with the first dollar, associated with a Change in Law having a cost impact of \$50,000 or more per year); and

**C.** Any change in a Permit solely initiated by Contractor, except to the extent such Permit change is required to comply with Applicable Law; and

**D.** Any fines or penalties imposed on Contractor or any member of the Contractor Parties.

As described in Amended Exhibit S, County-approved adjustments to the Gate Rate for Government Fees will be recovered by dividing estimated Government Fees for the following Operating Year across the expected tonnage for which Government Fees apply. If fees collected through the Gate Rate to compensate Contractor for any Government Fee exceed actual costs to Contractor for that fee in any given Operating Year, the excess shall be credited towards the anticipated cost of that Government Fee for the following Operating Year in calculating the adjusted rates. If the Government Fees collected through the Gate Rate are less than the actual Government Fee costs to Contractor in any given Operating Year, Contractor shall be entitled to an increase in the Gate Rate for the unfunded Government Fees at issue in accordance with the procedures described in Section 11.4 C of the MOA (Process for Requesting an Increase in Gate Rates Resulting from Change in Law or Force Majeure Event). Contractor shall be responsible for the payment of all Government Fees Adjustments to the Gate Rate for Government Fees are not subject to CPI increases.”

10. *Waste Management Agency Fee.* Paragraph 11.8 of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

**“11.8 Waste Management Agency Fee.**

For the life of the Waste Management Agency, Contractor shall charge a Waste Management Agency Fee, in the amount set forth in Amended Exhibit T, as part of the Government Fee Component on all Waste that is received for the first time at any of the County Facilities (except for Beneficial Reuse Material, Exempt Special Waste and any Residuals delivered to the County Facilities from any other non-County owned

processing or transfer facility in Sonoma County) and any Committed County Waste or Committed City Waste that is delivered to or enters into any facility that is owned or operated by Contractor or any Affiliate. The Waste Management Agency Fee on collected Gate Rate revenues shall be provided to County monthly for the County to deposit with the Waste Management Agency. Should the Waste Management Agency Fee increase or decrease, Contractor shall adjust Gate Rates to pass through such increase or decrease; provided, however, that the Waste Management Agency Fee for Self-Haul Waste shall at no time be greater than \$10.17 per ton, which cap shall be subject to increase annually consistent with the percentage increase in the Contractor Service Fee.”

11. *Exclusions from County Committed Waste.* Paragraph 12.2 of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

**“12.2 Exclusions from County Commitment.**

A. As used in this Agreement, “Committed County Waste” excludes:

1. Construction & Demolition Wastes, except to the extent the County has exercised Flow Control over such Waste or the County’s Franchised Hauler has agreed to deliver such Waste to the County Facilities;

2. Source Separated Recyclable Materials (but Committed County Waste includes Commercial Food Waste and the Residuals requiring Disposal resulting from the processing of Source Separated Recyclable Materials and Waste delivered to any of Prime Subcontractor’s recycling and materials recovery facilities in Sonoma County);

3. Self-Haul Waste; and

4. Committed City Waste.

B. Whenever a Franchised Hauler’s contract, authorization, permit, license or franchise agreement is issued, granted, renewed (excluding a renewal on the basis of a unilateral option of the Franchised Hauler), extended or materially modified after the Execution Date, the County shall incorporate language in such contract, authorization, permit, license or franchise agreement, requiring the Franchise Hauler to deliver all Committed County Waste to the County Facilities.”

12. *Amended Exhibit S.* Amended Exhibit S is hereby replaced with the attached Amended Exhibit S-1, attached hereto and incorporated herein. For clarity, Amended Exhibit S-1 is modified by this First Amendment to delete the following language:

“The Initial Contractor Service Fee paid by the County or a Committed City, shall be

reduced by \$3.60 per ton (as such amount is annually increased by Section 11.4) in the event the Prime Subcontractor (or its Affiliate) is not the County's or a Committed City's designated Franchise Hauler during any portion of the Committed Waste Period, but only with respect to that franchised Solid Waste from a given Committed City or the County which is delivered to the County Facilities by such successor hauler."

13. *Amended Exhibit T.* Amended Exhibit T is hereby replaced with the attached Amended Exhibit T-1, attached hereto and incorporated herein.

14. *Contractor Service Fee Adjustment.* The parties agree that the Contractor Service Fee shall be adjusted as of the Effective Date of this First Amendment to eliminate compensation to Contractor for the Commercial Food Waste Program that will be modified as described herein as of the Effective Date of this First Amendment. As of the Effective Date of this First Amendment, the compensation paid to Contractor for this program is \$4.21 per ton. By operation of this First Amendment, the Contractor Service Fee will be adjusted from \$122.32 per ton to \$118.11 per ton as of the Effective Date. This adjusted Contractor Service Fee does not reflect any CPI adjustment to the Contractor Service Fee to which Contractor will be entitled as of April 1, 2022.

15. *Living Wage.* Paragraph 19.2 of the Original Amended and Restated Agreement is hereby deleted and replaced with the following language:

**"19.2 Living Wage.**

Without limiting the generality of the foregoing, Contractor agrees to comply with the County of Sonoma Living Wage Ordinance as it applies to the services provided under this Agreement, and as the ordinance may be amended from time to time. Contractor expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Any changes to the County's Living Wage Ordinance that may be made after the Execution Date of this First Amendment shall constitute a Change in Law. In such event, Contractor may make an application to the County for an adjustment to Contractor's compensation under Section 11.4 B and C of this Agreement to compensate Contractor for Contractor's actual costs resulting from such Change in Law and regardless of the minimum annual dollar threshold in Section 11.4 B.2. The County shall not unreasonably withhold or delay its consent to such adjustment. Noncompliance during the term of this Agreement with the County's Living Wage Ordinance will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies. Before County elects to terminate this Agreement pursuant to this clause, it shall first provide Contractor with a notice and opportunity to cure the breach as further specified in Article 16. Contractor shall not be considered in breach of the Living Wage Ordinance so long as Contractor is pursuing a bona fide challenge to a specific application of the Ordinance pursuant to Article 18, and shall not be in breach if Contractor is successful in such challenge."

16. *Conditions to Effectiveness of this First Amendment.* This First Amendment shall be effective upon the effective date of an amendment to the Prime Subcontract Agreement as approved by the County as to form and by Contractor as a party. County agrees the effective date of the amendment to the Prime Subcontract may itself be conditioned on (1) amendments to the Waste Delivery Agreements between the Prime Subcontractor (Recology), Contractor and certain cities. Should the Prime Subcontract Amendment fail to become effective on or before April 1, 2022 such that this First Amendment is likewise not effective on or before that date, all terms and conditions of this First Amendment will be null and void and shall have no force or effect.

17. Except to the extent the Original Amended and Restated Agreement is specifically amended or supplemented hereby, the Original Amended and Restated Agreement together with exhibits is, and shall continue to be, in full force and effect as originally executed, and nothing contained herein shall be construed to modify, invalidate or otherwise affect any provision of the Original Amended and Restated Agreement or any right of County arising thereunder.

18. This First Amendment shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law, and any action to enforce the terms of this First Amendment or for the breach thereof shall be brought and tried in the County of Sonoma.

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment to the Original Amended and Restated Agreement as of \_\_\_\_\_, 2022.

<p>CONTRACTOR: REPUBLIC SERVICES OF SONOMA COUNTY, INC., a Delaware corporation</p> <p>By: _____ Name: _____ Title: _____</p> <p>By: _____ Name: _____ Title: _____</p>	<p>COUNTY: THE COUNTY OF SONOMA, a political subdivision of the State of California</p> <p>By: _____ Name: _____ Title: _____</p> <p>ATTEST: By: _____ Name: _____ Title: _____</p>
	<p>APPROVED AS TO FORM:</p> <p>By: _____ Deputy County Counsel</p>

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## Amended Exhibit S-1

### INITIAL GATE RATE AND CONTRACTOR SERVICE FEE

*The "Initial Rates" provided below became effective as of April 1, 2015.*

**Total Initial Gate Rate on Committed City Waste: \$126.45**

**Total Initial Gate Rate on Committed County Waste & Self Haul \$122.45**

Rate Components:

Initial Contractor Service Fee (on all Waste):	\$104.35
Initial Governmental Fee Component (on all Waste): (Consists of the following fees detailed below)	\$7.85
Waste Management Agency Fee:	\$ 4.85*
AB 1220 Fee (State Board of Equalization):	\$ 1.40
Sonoma Local Enforcement Agency (LEA) Fee:	\$ 0.91**
North Coast Regional Water Quality Control Board Fee:	\$ 0.57**
The Bay Area Air Quality Management District Fee:	\$ 0.12**

County Concession Payment (on all Waste):

\$9.25\*\*\*

Committed Cities Contingent Liability Fee  
(on Committed City Waste only):

\$5.00\*\*\*

Special Concession Payment (on Committed  
County Waste & Self-Haul Waste only):

\$1.00\*\*\*

Notes:

\*See Section 11.8 of the Agreement for further details.

\*\* These Government Fees are not assessed on a per ton basis but rather are lump sum annual estimated costs of each of these governmental agency fees. The initial lump sum estimates are \$200,000 for the LEA Fee, \$126,000 for the Water Board Fees and \$26,000 for the Air District Fees. All fees are divided by an estimated 220,000 annual tons for the first Operating Year of the Agreement, and shall be revised annually on each Adjustment Date to reflect changes in annual tons delivered to the County Facilities and actual Government Fees assessed for the prior year.

If fees collected through the Gate Rate to compensate Contractor for any Government Fee exceed

actual costs to Contractor for that fee in any given Operating Year, the excess shall be credited towards the anticipated cost of that Government Fee for the following Operating Year in calculating the adjusted rates. If the Government Fees collected through the Gate Rate are less than the actual Government Fee costs to Contractor in any given Operating Year, Contractor shall be entitled to an increase in the Gate Rate for the unfunded Government Fees at issue in accordance with the procedures described in Section 11.4(C) of the MOA (Process for Requesting an Increase in Gate Rates Resulting from Change in Law or Force Majeure Event). Contractor shall be responsible for the payment of all Government Fees.

\*\*\* See Note 10 in Exhibit R for categories of Waste not subject to these Concession fees.

Commencing upon the expiration of the 20<sup>th</sup> year of the Term, the Contractor Service Fees charged on Committed Waste shall be reduced by 5% of the Contractor Service Fee (which are net of any County Concession Payments, Waste Management Agency Fees or any other governmental taxes, fees, surcharges or assessments) in effect immediately prior to the end of the 20<sup>th</sup> year of the Term. Contractor Service Fees thereafter will remain subject to annual and other adjustments as provided for in the Master Operations Agreement.

**Amended Exhibit T-1**

**WASTE MANAGEMENT AGENCY FEE PAYMENT SCHEDULE**

<b>Fee Type</b>	<b>Initial Price Per Ton on all Waste(\$/ton)</b>	<b>Maximum Price Per Ton on Self Haul Waste (\$/ton)</b>
Waste Management Agency Fee	\$4.85	\$10.17*

\* *Maximum Price Per Ton on Self Haul Waste to be adjusted annually by CPI as described in Section 11.4 of the MOA.*

NOTES:

- The Initial Rate listed above was the initial rate effective on April 1, 2015.
- The Waste Management Agency Fee shall be charged on every ton of Waste coming through the County Facilities, including Green Waste, Wood Waste, Construction & Demolition Debris, including Exempt Construction & Demolition Debris, and Special Waste, with the following limited exceptions:
  - Beneficial Reuse Material, as defined in the MOA;
  - Exempt Special Waste, as defined in the MOA;
  - Residuals, as defined in the MOA, from any other non-County owned waste processing or transfer station facility within the County, provided such Residuals may be Disposed of at the Central Landfill under the MOA. For example, Residuals from the Global Facility (as defined in the MOA) and any other facility under Contractor’s control may not be Disposed of at the Central Landfill without the County’s consent, as further specified in Section 4.14(C) of the MOA. To the extent that the County consents to allow Residuals from facilities under Contractor’s control to be Disposed of at the Central Landfill, and such consent is conditioned upon Contractor’s agreement to pay Concession Fees on such material, this exemption shall not to apply to such material.