

## FIRST AMENDMENT TO PRIME SUBCONTRACT

This First Amendment (“Amendment”) to the Agreement for Operations of Sonoma County Transfer Stations and Materials Recovery Facility (the “Prime Subcontract”) is entered into as of March 15, 2022 by and between Republic Services of Sonoma County, Inc. (“Republic”) and Recology Sonoma Marin (“Recology”) as follows:

### **Recitals**

WHEREAS, the County of Sonoma (“County”) and Republic are parties to the Amended and Restated Agreement for Operation of the Central Landfill and County Transfer Stations (the “MOA”);

WHEREAS, pursuant to the Prime Subcontract, Republic has subcontracted to Recology certain of Republic’s obligations under the MOA;

WHEREAS, each of the cities of Cloverdale, Cotati, Healdsburg, Rohnert Park, Santa Rosa and Sebastopol (the “Committed Cities” or “Cities”) is party to a Waste Delivery Agreement with Republic (each, a “WDA”), and a Franchised Hauler Agreement with Republic and Recology (each, an “FHA”);

WHEREAS, the MOA, Prime Subcontract, WDAs and FHAs (collectively, the “County Agreements”) contemplate that Recology will provide a limited program for collection of Commercial Food Waste and Dry Commercial Waste within urban areas of the County and Cities (the “Programs”), to be compensated solely through a portion of the Facility Operations Service Fee that Recology receives under the Prime Subcontract;

WHEREAS, the Programs and related compensation contemplated by the County Agreements do not meet the requirements of SB 1383, including provision of organics service to all residential and commercial generators (not just urban customers), periodic route reviews to monitor contamination, periodic compliance reviews to monitor participation, and detailed reporting related to the foregoing;

WHEREAS, the parties believe that the needs of the County and each City to comply with SB 1383 can be best served by having the County’s and each City’s organic waste and Dry Commercial Mixed Waste programs fully funded under their respective franchise agreements with Recology, rather than attempting to implement an SB-1383 compliant program by supplementing the existing (noncompliant with SB1383) Programs with additional services under the County’s and each City’s franchise agreement;

WHEREAS, eliminating the funding for the Programs under the Prime Subcontract will allow the Gate Rates charged to Recology (as the County and City’s franchised hauler) on Committed County and City Waste delivered to the County facilities to be reduced (compared to what the Gate Rates would otherwise be) by the amount per ton that previously funded the Programs;

WHEREAS, to maximize route efficiency for the collection of Commercial Food Waste in each City and in the County, Recology proposes to use collection routes that are dedicated solely to the collection of Commercial Food Waste, and also to have some routes that will commingle Commercial Food Waste with Residential Food Waste and Organics;

WHEREAS, Republic and Recology have agreed to certain arrangements regarding such commingling, as more fully detailed herein;

WHEREAS, the continued collection of Dry Commercial Mixed Waste and Commercial Food Waste will be as mutually agreed by Contractor and each of County and the Committed Cities.

### **Terms and Conditions**

NOW, THEREFORE, the parties agree as follows:

1. Section 5.4 of the Prime Subcontract is hereby deleted in its entirety and replaced with the following language:

**“5.4 Recology Diversion Goal.**

Republic has agreed to assist the County and Committed Cities in achieving their collective Waste Recycling and diversion goals, and has committed in the First Amendment to the MOA to divert from Disposal 44,735 Tons per year of Recyclable Material, on a go forward basis from the Effective Date of the First Amendment to the Amended and Restated MOA and continuing for the remainder of the Term. To enable Republic to attain this annual Tonnage diversion goal, Recology has identified that approximately 23,908 Tons per year can be diverted from Disposal by Recology at the Transfer Stations and the Materials Recovery Facility and through its Dry Commercial Waste re-routing programs (if continued). Therefore, Recology’s Tonnage diversion goal for the remainder of the Term of this Agreement, which is conditioned on the performance by the County and Committed Cities of their Waste delivery commitments to Republic and the County Facilities and construction of the Materials Recovery Facility by Republic, shall be 23,908 Tons per calendar year, commencing with calendar year 2022.”

2. Section 5.5 of the Prime Subcontract is hereby deleted in its entirety and replaced with the following language:

**“5.5 Waste Stream Subject to Contractor’s Diversion Performance Standards.**

Recology’s Tonnage diversion goal will be based on and limited to Recology’s diversion of Waste from Disposal and will be measured annually as the total Tonnage diverted from Disposal from the following combined waste streams received at the Transfer Stations or the Materials Recovery Facility:

- Recyclable Materials recovered at the Materials Recovery Facility (that have not been recovered at the Transfer Stations);
- Recyclable Materials recovered at the Transfer Stations; and
- One half of the Fines from the Materials Recovery Facility.

3. Section 5.19 is added to the Prime Subcontract as follows:

**“5.19 Commingled Commercial Food Waste Collection.**

(a) On a quarterly basis Recology will provide a summary to Republic of the Commercial Food Waste cubic yard capacity used to service Commercial Food Waste

customers that are being serviced by Recology's residential collection vehicles. This information shall be provided on an aggregate (combined) basis for all jurisdictions including the County that are party to a Waste Delivery Agreement (or in the case of the County, the MOA) with Republic, where Recology is the franchised hauler. This summary will include capacity (gallons), frequency of service and number of collection days during the quarterly reporting period. From this data the total cubic yards of Commercial Food Waste capacity serviced by Recology's residential route vehicles will be calculated for the prior quarter.

(b) On a quarterly basis Recology will also determine the tons per cubic yard of Commercial Food Waste collected by Recology on dedicated Commercial Food Waste routes, also on an aggregate (combined) basis. The tons per cubic yard shall be calculated by dividing the quarterly total of Commercial Food Waste tons collected on such routes ("Dedicated Commercial Food Waste Tonnage") by the total cubic yards of Commercial Food Waste capacity serviced on such routes. The tons per cubic yard so calculated shall be multiplied by the cubic yard capacity calculated in subsection (a), to determine the "Commingled Commercial Food Waste Tonnage."

(c) Recology may commingle Commercial Food Waste with residential Organic Material for its customers in the jurisdictions described in subsection (a), but under no circumstances will Recology commingle Commercial Food Waste with residential Organic Materials such that Commingled Commercial Food Waste Tonnage exceeds fifteen percent (15%) of the total Commercial Food Waste collected by Recology in such jurisdictions (calculated on an aggregate (combined) basis by adding Commingled Commercial Food Waste Tonnage and Dedicated Commercial Food Waste Tonnage).

(d) Once the tonnage of Commercial Food Waste commingled by Recology with residential Organic Material is determined for a given quarter as provided in subsection (b), the calculation of compensation due to Republic will be the product of the Commingled Commercial Food Waste Tonnage for the quarter times \$50.65, as such dollar amount is increased annually by the CPI formula referenced in Section 8.4 of this Prime Subcontract. Recology will begin paying such compensation on commingled Commercial Food Waste collected in the second calendar quarter of 2022. Attached hereto as Exhibit E is an example of the calculations described in subsections (a)-(d).

(e) Recology has the option to conduct an audit every 3 years to evaluate food waste cart capacity utilization and present this data to Republic for review and consideration. Any change to the aforementioned methodology will require an amendment to this Prime Subcontract, and be subject to Republic's, Recology's and the County's mutual consent prior to any change in the aforementioned methodology."

4. Section 8.1 of the Prime Subcontract is amended by adding the following new paragraph (e) to read as follows:

"(e) As of April 1, 2022, the Facility Operations Service Fee to be paid by Republic to Recology on all Committed Waste and Self-Haul Waste that is delivered to the County Facilities for disposal) will be \$17.51 per ton. This adjusted Facility Operations Service Fee of \$17.51 does not reflect any CPI adjustment to the Facility Operations Service Fee to which Recology will be entitled as of April 1, 2022 (which adjustment shall be added to the \$17.51). The \$17.51

per ton represents a \$4.21 per ton reduction in the Facility Operations Service Fee paid by Republic to Recology on all Committed Waste and Self Haul Waste that is delivered to the County Facilities for disposal. Nothing in this subsection (e) is intended to modify the categories of Waste with respect to which the Facility Operations Service Fee has been or will be paid prior or subsequent to this Amendment. This Amendment does not modify the categories of Waste exempt from payment of the Facility Operations Service Fee in Section 8.3 of the Prime Subcontract.”

5. Section 5.16 of the Prime Subcontract (Other Obligations of TRG) is hereby deleted in its entirety.

6. This Amendment shall be effective on April 1, 2022. The effectiveness of this Amendment is subject to satisfaction of all of the following conditions:

(a) The MOA is amended to, among other things: (i) reduce the Gate Rate on all Committed Waste and Self Haul Waste delivered to the County Facilities for disposal by Recology after collection by Recology in the unincorporated County or the Committed Cities by \$4.21 per ton (which amount represents the portion that funds the Programs), (ii) revise Republic’s diversion tonnage goal in Section 9.2 of the MOA from 67,000 to 44,735 tons per year; and (iii) delete the second sentence of the first paragraph of Section 9.7 of the MOA, all such amendments to be effective as of April 1, 2022;

(b) On or before April 1, 2022, (i) each of County and the Committed Cities enters into a written amendment to its respective franchise agreement with Recology that includes a rate adjustment that, in Recology’s sole but reasonable opinion, is sufficient to fully fund the organic waste and, if continued, the Dry Commercial Waste programs provided by Recology in such jurisdiction pursuant to the franchise agreement, and (ii) each of the Committed Cities (with Republic and Recology) enters into an omnibus amendment to its WDA and FHA that deletes Section 2.3 of each Committed City’s WDA, and Sections 3 and 4 of each Committed City’s FHA (and Exhibit C, which sets forth the form of the FHA). Any of the conditions set forth in this subsection (b) may be waived by Recology in writing.

7. In the event of any conflict between this Amendment and the Prime Subcontract, this Amendment shall govern. This Amendment may be executed in counterparts and/or by electronic signature (e.g. DocuSign). As used in this Amendment, “including” and its variants mean “including without limitation.”

8. Nothing contained herein shall change the definition of Committed Waste within any of the County Agreements. More specifically, Commercial Food Waste and Dry Commercial Waste are and shall continue to be Committed Wastes. “Dry Commercial Waste” as used in this Amendment shall have the meaning given to in the First Amendment to the MOA. Further, upon execution of this Amendment, Republic shall have no responsibility for implementation of Commercial Food Waste and Dry Commercial Mixed Waste collection programs within the County or Committed Cities.

9. Except as expressly amended herein, the Prime Subcontract shall remain in full force and effect.

IN WITNESS WHEREOF, this First Amendment is entered into as of the date first written above.

Recology Sonoma Marin

Republic Services of Sonoma County, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT E

Example of Commingled Commercial Food Waste Calculation (see Section 5.19(a)-(d))

		2020	2021		
<b><i>Pound per cu. yd. on Commercial Food Waste Routes</i></b>		<b><u>Q4</u></b>	<b><u>Q1</u></b>	<b><u>Q2</u></b>	<b><u>Q3</u></b>
Tons of Food Waste Collected on Commercial Food Waste routes		1,765.15	1,608.58	2,043.22	2,187.9
Recology Weekly Cu. Yds. on Commercial Food Waste routes		2,799	2,928	2,967	3,488
Weekly Collections per Quarterly		13	13	13	13
Quarterly Cu. Yds. on Commercial Food Waste routes		36,387	38,066	38,567	45,338
Pounds Food Waste Collected / Cu. Yd		97.02	84.52	105.96	96.52
<b>MOA Food Waste Tons Commingled on Residential routes</b>					
Recology Weekly Cu. Yds on Residential routes (MOA Areas only)		110.6	110.0	107.97	111.90
Weekly Collections per Quarterly		13	13	13	13
Quarterly Cu. Yds. on Residential routes (MOA Areas only)		1,437.6	1,429.4	1,403.6	1,454.7
Pounds Food Waste Collected / Cu. Yd		97.02	84.52	105.96	96.52
MOA Food Waste Tons Commingled on Residential routes		69.7	60.4	74.4	70.2
Per Ton Fee Owed to Republic		\$ 50.65	\$ 50.65	\$ 50.65	\$ 50.65
<b>Payment to Republic (Payments begin Q2 2022)</b>		<b>\$ 3,532</b>	<b>\$ 3,059</b>	<b>\$ 3,766</b>	<b>\$ 3,556</b>