FIRST AMENDMENT TO AGREEMENT FOR OPERATION OF THE
CENTRAL LANDFILL AND COUNTY TRANSFER STATIONS

BETWEEN

COUNTY OF SONOMA

AND

REPUBLIC SERVICES OF SONOMA COUNTY, INC.

March 3, 2015
THIS FIRST AMENDMENT TO AGREEMENT FOR OPERATION OF THE CENTRAL LANDFILL AND COUNTY TRANSFER STATIONS (“First Amendment”) is made and entered into between the County of Sonoma, a political subdivision of the State of California (hereinafter “County”) and REPUBLIC SERVICES OF SONOMA COUNTY, INC., a Delaware corporation (hereinafter “Contractor”) as of the 3rd day of March, 2015.

RECITALS

WHEREAS, the County and Contractor entered into the “Agreement for Operation of the Central Landfill and County Transfer Stations” on April 23, 2013 (the “Master Operations Agreement” or “MOA”); and

WHEREAS, as a result of negotiations by the County and Contractor with the potential Committed Cities, and developments subsequent to the execution of the MOA, the County and Contractor have agreed to amend the Master Operations Agreement as provided in this First Amendment; and

WHEREAS, all of the conditions precedent to effectuating the MOA have been met with the exception of transferring the permits and the final execution by all parties of the Committed Cities’ Waste Delivery Agreements. The Parties are striving to meet these last conditions precedent by the end of this month so that the MOA can be effectuated by April 1, 2015, or soon thereafter.

NOW, THEREFORE, intending to be legally bound, the parties agree as follows:

1. The following definitions in Article I, “Definitions,” of the MOA are revised in their entirety to read as follows:

   **Affiliate** “Affiliate” means any Entity that (a) directly or indirectly controls the specified Entity; (b) is controlled by or is under direct or indirect common control with the specified Entity; (c) is an officer, director, employee, representative or agent of the Entity; (d) is a whollyowned subsidiary of the Entity; or (e) a person or firm that has acquired the equity, stock, a portion of or substantially all of the assets of such Entity. For the purposes of this definition, “control”, when used with respect to any specified Entity, means the power to direct the management or policies of the specified Entity, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

   **Committed City Waste** “Committed City Waste” means, as to each Committed City, Waste from the jurisdictional area of such Committed City that is described in this Agreement (excluding all exclusions therefrom as set forth in Exhibit B to each Committed City’s respective Waste Delivery Agreement) and collected and hauled by the Committed City or the City’s Franchised Haulers or by any other person or Entity over which the City has Flow Control. Committed City Waste shall also include any residual waste or other materials requiring Disposal remaining after the processing of Source Separated Recyclable Material, Generic Recyclable Materials or Waste collected in a Committed City at any Prime Subcontractor’s and its Affiliates’ or other entity’s recycling and material recovery facility in or outside of Sonoma...
County that is processing Source Separated Recyclables, Generic Recyclable Materials or Waste collected under a Franchise Agreement.

**Committed County Waste** “Committed County Waste” means all Waste generated in any unincorporated area of the County and any Waste which by any lawful means means the County has Flow Control over and which is collected or hauled by the County, or by any County Franchised Hauler or by any other Entity over which the County has Flow Control, but excluding the exclusions therefrom in Section 12.2. Committed County Waste shall also include any residual waste or other materials requiring Disposal remaining after the processing of Source Separated Recyclable Material, Generic Recyclable Materials or Waste collected in unincorporated Sonoma County at any Prime Subcontractor’s and its Affiliates’ or other entity’s recycling, transfer station and/or material recovery facility in or outside of Sonoma County that is processing Source Separated Recyclables, Generic Recyclable Materials or Waste collected under a Franchise Agreement. Committed County Waste also includes those materials described in Paragraph 4 of Exhibit B to that certain Intergovernmental Mitigation Agreement dated October 23, 2012 by and between the County and the Federated Indians of Graton Rancheria which has a term through December 31, 2033.

**Committed Waste Period** “Committed Waste Period” means the first twenty-five (25) years of Contractor’s operations under this Agreement during which the County and the Committed Cities agree to deliver their respective Waste to Contractor for Disposal under this Agreement.

**County Concession Payments** “County Concession Payments” means those payments to be paid by Contractor to County in consideration of the exclusive rights granted by County to Contractor to operate the County Facilities for the Term of this Agreement, which are more particularly described in Article 10 and Amended Exhibit R, and include Base Concession Payments (which are set forth in Column A of Amended Exhibit R) and Special Concession Payments (which are set forth in Column B of Amended Exhibit R).

**Leachate Pipeline** “Leachate Pipeline” means the approximately 5 mile leachate pipeline from the Landfill to the interconnect with the Cotati sewer line located on the east side of Stony Point Road just south of the Laguna de Santa Rosa, for ultimate transmission of untreated Leachate from the Landfill to the Water Treatment Plant.

**Recyclable Materials** “Recyclable Materials” means glass, fibrous material (including paper, cardboard, newspaper), wood, green waste and organic material, food waste, concrete, plastic, ferrous and non-ferrous metal, aluminum, used motor oil and filters, and any other materials that are Recycled. Recyclable Materials does not include Waste that is not actually Recycled.

**Source Separated** “Source Separated” means materials separated from an Occupant’s Waste and placed in designated colored containers at the Occupant’s Premises with the intention of diversion for a beneficial use, and which are collected by the County or City’s Franchised Hauler but are not part of the County or City’s waste delivery commitment. Source Separated materials include Generic Recyclable Materials, Wood Waste, Green Waste, and Residential
Food Waste, that has no more than ten percent (10%) maximum residue that is not Recyclable Material.

**Waste** “Waste” means all putrescible and non-putrescible solid, semi-solid and associated liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes; discarded non-hazardous home and industrial appliances; dewatered, treated or chemically fixed non-hazardous biosolids; Special Waste; manure; vegetable or animal solid and semi-solid wastes; other discarded solid and semi-solid wastes; Mixed Waste; Construction and Demolition Wastes; Recyclable Materials, Organic Material, Food Waste, Beneficial Reuse Material, agricultural wastes; landscaping wastes and non-hazardous industrial wastes; residual waste from processing and any other types of Waste allowed by the Permits. Waste does not include (i) Hazardous Substances; (ii) Medical and Infectious Waste; and (iii) other Unpermitted Material that is not allowed by Permit to be received at a facility to which it is delivered.

2. The following additional definitions are added to Article I, “Definitions,” of the MOA:

**Base Concession Payment** “Base Concession Payment” means a component of the County Concession Payment(s) paid by Contractor to the County, as set forth in Column A of Amended Exhibit R.

**Committed City Contingent Liability Fee** “Committed City Contingent Liability Fee” means the fee to be charged on each ton of Committed Cities Waste as set forth in the Committed Cities Contingent Liability Fund Agreement and transferred to the County to hold in trust for the Cities in accordance with the terms of the Settlement Agreement between the County and the Committed Cities.

**County Facilities Operations Period** “County Facilities Operations Period” means the period after the expiration of the initial twenty-five year Committed Waste Period during which Contractor may operate either the Central Facilities or all County Facilities as provided in this Agreement, which may include periods during which some or all of the County and Committed Cities may renew their commitment to deliver Waste to the County Facilities.

**Franchise Agreement** “Franchise Agreement” means any written agreement, contract, permit or other governmental authorization consistent with a party’s Flow Control obligations.

**Generic Recyclable Material** “Generic Recyclable Material” means glass, bottles, plastic, metal, cardboard, newspaper, fibrous material that is typically generated from residential Premises and many commercial Premises, collected under the terms and conditions of a Franchise Agreement and which is Source Separated with the intention of being delivered to a processing facility for subsequent processing, recycling, and diversion. “Generic Recyclable Material” does not include Source Separated Commercial Food Waste, which shall be a part of Committed City Waste, Committed County Waste and Waste. Generic Recyclable Material is excluded from Committed City Waste.

**Leachate Pipeline State Sewer Permit** “Leachate Pipeline State Sewer Permit” means that certain State Sewer Permit for Leachate Pipeline #WDID #1SS011652, Order No. 2006-
Market Rates “Market Rates” as it relates to transfer station and Transportation services shall mean the prevailing average rates (net of franchise fees, use permit fees, and other governmental fees, surcharges, taxes and assessments) in the nine San Francisco Bay Area counties for transfer station and Transportation services with a scope substantially similar to those to be provided to a City or the County by Contractor.

Occupant “Occupant” means a Person who may or may not hold the legal title to real property constituting the Premises, including businesses or other entities, and who permanently or temporarily lives, works, or operates a business or other venture at the Premises.

Transport “Transport,” “Transported” and “Transportation” means the conveyance of Franchised Materials Collected from the point of Collection to a processing facility, Recyclables trans-load facility, or Transfer Station or from a Transfer Station to a processing or Disposal facility.

3. At the time the County disconnects from the Rohnert Park sewer line and connects to the Cotati sewer line, all references in the MOA to the Rohnert Park sewer line shall be deemed to refer to the Cotati sewer line. These references are in the definitions of “Force Majeure Event” and “Leachate Pipeline,” and in Sections 5.09, 7.4 F. 9, and 12.3.1 B. of the MOA.

4. Section 2.2 of the MOA entitled “County and City Option To Obtain Third Party Proposal,” is hereby deleted in its entirety, and replaced with a new Section 2.2 entitled “Right to Use County Transfer Stations at Market Rates,” which new section 2.2 will read as follows:

Provided that Contractor exercises its option to remain under contract with the County to operate any or all of the County Transfer Stations following the expiration of the Cities Waste Delivery Agreements, Contractor agrees to and shall provide transfer station and Transportation services for the County and Cities Committed Waste at Market Rates for as long as the Contractor has the right to operate any such Transfer Station. Any disputes regarding whether Contractor is offering to provide such services at Market Rates may be submitted by either party to Dispute Resolution, but the dispute must be submitted to Dispute Resolution no later than 45 days following the expiration of the Initial Term.

5. Section 4.16 entitled “Community Cleanup Events” is amended to read in its entirety as follows:

Contractor understands that County supports and approves a certain number of community waste clean-up events throughout Sonoma County. Contractor agrees to waive up to $20,000 (escalated by 3% per year) of Gate Fees annually for these County sponsored events, provided that the County Concession
Fee and all other fees described in Amended Exhibit R, or any subsequent increase or addition thereto, are all waived as to such clean-up event tonnage. County shall provide Contractor with 5 days prior written notice of any County sponsored community waste clean-up event and shall continue to be the coordinator with various community groups for these events.

6. **A new paragraph is added to the end of Section 4.2 B to read as follows:**

   Notwithstanding the foregoing, County shall not develop, or allow the Waste Management Agency or its successor to develop, the Future Compost Facility, unless such facility is designed to meet all Applicable Laws and the facility has independent environmental control systems so that there is no commingling of discharge of wastewater from the compost facility with Contractor’s operations.

7. **A new paragraph is added to the end of Section 5.9 entitled “Leachate Control Systems” as follows:**

   The County shall at all times maintain the permit and remain the permit holder on the Leachate Pipeline State Sewer Permit. The rights and obligations under the Leachate Pipeline Sewer Permit shall be assigned from the County to Republic prior to the Effective Date.

8. **A new Section 10.4 is added to the MOA to read as follows:**

   Contractor shall also pay the County, for disbursement, the Committed Cities Contingent Liability Fee on Committed City Waste (column C of Amended Exhibit R), at the same time that, pursuant to Section 10.2, Contractor pays the County the County Concession Payment defined in Section 10.1.

9. **Section 12.1 B of the MOA is amended to read as follows:**

   The term of the County’s Waste delivery commitment to Contractor shall be 25 years commencing on the Effective Date of this Agreement, which may be extended by a mutual written agreement signed by both of the parties or as provided in this Article.

10. **Section 12.5 of the MOA entitled “Option to Extend County Facilities Operations Period and Waste Commitments,” is hereby amended to read in its entirety as follows:**

    In addition to the Contractor’s option to extend the County Facilities Operations Period set forth in Section 2.1, the County and the Committed Cities shall also each independently have 6 successive options to extend the County Facilities Operations Period if they also elect to continue to commit their respective Waste flow to Contractor for 5 additional years per option. The County and/or each City seeking an extension must provide written notice of its decision to exercise each option no later than twelve (12) months prior to the expiration of the then-prior period under which the City’s Waste has been committed (e.g., the initial option must be exercised by the twenty fourth (24th) year anniversary of the Effective Date). The exercise of the options shall be within the sole respective discretion of the County and each Committed City and
the exercise of one option does not guaranty or mean that the succeeding option or options will be exercised; provided, however, that the subsequent options may not be exercised unless the immediately preceding option has been exercised. The terms of the County’s and each Committed City’s six (6) successive options, assuming a Commencement Date in 2014, follow below:

Option #1: Years 2039-2044
Option #2: Years 2044-2048
Option #3: Years 2048-2054
Option #4: Years 2054-2059
Option #5: Years 2059-2064
Option #6: Years 2064-2069

(a) Notwithstanding the foregoing, Contractor shall not be obligated to (but may at its sole discretion) accept deliveries of any Waste from the County or any Committed City at any point in time after the initial Term of this Agreement unless both of the following conditions are met:

(1) The Central Landfill shall have sufficient Permitted Disposal Capacity to Dispose of all Waste to be delivered by the County and Committed Cities extending their Waste delivery commitments to Contractor; and

(2) Jurisdictions timely exercising their options to extend their Waste delivery commitments shall have contributed through their Franchised Haulers at least sixty percent (60%) of the total Committed Waste deliveries of all jurisdictions delivering material to the County Facilities for the two year period immediately preceding the date by which these jurisdictions must have exercised their options to extend their commitment.

11. Attachment A to Exhibit O is hereby amended by adding the following personal property to the list:

E122 Ford F150 (License No. 1167554; VIN:2FTRX18W14CA83339; 67,000 miles +/-)

12. Exhibit R is hereby deleted and replaced in its entirety with the Amended Exhibit R, which is attached hereto and incorporated herein.

13. Exhibit S is hereby deleted and replaced in its entirety with the Amended Exhibit S, which is attached hereto and incorporated herein.

14. Exhibit T is hereby deleted and replaced in its entirety with the Amended Exhibit T, which is attached hereto and incorporated herein.
Except as provided herein all other terms and conditions of the Agreement shall remain in full force and effect. In the event of any inconsistencies between this Amendment and the Agreement, the terms and conditions of this Amendment shall control.
IN WITNESS WHEREOF, the County and Contractor have executed this Amendment as of the day and year first above written.

COUNTY:

THE COUNTY OF SONOMA, nia

By: ________________________________
Name: ________________________________
Title: ________________________________

ATTEST:
By: ________________________________
Name: ________________________________
Title: ________________________________

APPROVED AS TO FORM:
By: ________________________________
Assistant County Counsel

CONTRACTOR:

REPUBLIC SERVICES OF SONOMA COUNTY, INC., a Delaware corporation

By: ________________________________
Name: ________________________________
Title: ________________________________
## Amended Exhibit R

### CONCESSION PAYMENT SCHEDULE

<table>
<thead>
<tr>
<th>Total Annual Tons</th>
<th>Base Concession Payment on Committed Waste and Self Haul Waste ($/ton)</th>
<th>Special Concession Payment on Committed County Waste and Self Haul Waste</th>
<th>Special Concession Payment on Committed City Waste</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 200,000 tons</td>
<td>$15.75</td>
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<tr>
<td>200,000 – 225,000 tons</td>
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<td>225,001 – 250,000</td>
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<tr>
<td>325,001 – 350,000</td>
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<td>$1.00</td>
<td>$5.00</td>
</tr>
<tr>
<td>More than 350,000 tons</td>
<td>$8.00</td>
<td>$1.00</td>
<td>$5.00</td>
</tr>
</tbody>
</table>

### NOTES:

1. The above rates would be the initial rates starting in 2015. The rates in the above table would all be adjusted annually by the same inflation adjustment factor applicable to the Contractor Service Fee, as described in Section 11.4 A of the MOA.

2. The Base Concession Payment would start at $9.25 for the initial operating year and then be adjusted annually based on changes in total tonnage delivered during the previous 12 months. For purposes of determining the current Base Concession Payment, Total Annual Tons shall include Committed County Waste, Committed City Waste, Self Haul Waste, Green Waste, Wood Waste, Organic Material and Food Waste. Organic Material, Green Waste, Wood Waste, Food Waste and any other Waste delivered to non County facilities that had the Base Concession Payment included in the rates charged at a non County Facility and where the County is in receipt of the Base Concession Payment from the non County Facility for those materials, those materials shall be counted in the Total Annual Tons for purposes of determining the then current Base Concession Payment.

3. The Special Concession Payment on Committed City Waste would start at $5.00 for the initial operating year and be adjusted annually by the same inflation adjustment factor applicable to the Contractor Service Fee, as described in Section 11.4 A of the MOA. In addition, the Committed Cities may make other adjustments to the Special Concession Payment on Committed City Waste in the Committed Cities’ discretion as further set forth in Exhibit C. County shall implement said adjustments to the Special Concession Payment on Committed City Waste, (to take effect on an Adjustment Date), by providing Contractor with written notice at least 60 days prior to the Adjustment Date.
4. The Special Concession Payment on Committed County Waste and Self Haul Waste (Column B) would start at $1.00 for the initial operating year and then be adjusted annually by the same inflation adjustment factor applicable to the Contractor Service Fee, as described in Section 11.4 A of the MOA. In addition, County may make other adjustments to the Special Concession Payment on Committed County Waste, to take effect on an Adjustment Date, by providing Republic with written notice at least 60 days prior to the Adjustment Date.

5. Both the Base Concession Payment (Column A) and the Special Concession Payment (Column B) will be charged on all Committed City Waste during the term of the Waste Delivery Agreements, provided, however, that County agrees to waive the then current Base Concession Payment for Republic and all Committed Cities on Committed City Waste during the last 5 years of the 25 year term of the Waste Delivery Agreements. For example, during the first year of the Term, Republic would pay County $14.25 per ton of Committed City Waste.

6. Both the Base Concession Payment on County Committed Waste and Self-Haul Waste and the Special Concession Payment on Committed County Waste and Self Haul Waste will be charged throughout the Committed Waste Period and the County Facilities Operation Period. For example, during the first year, Republic would pay County $10.25 per ton of Committed County Waste and Self-Haul Waste.

7. If total tons of Committed and Self Haul Waste drop below 175,000 tons per year, County has the right to increase the Base Concession Payment (Column A).

8. The above Base Concession Payments shall be imposed on every ton coming through the County Facilities (except as provided in Note 10 below) throughout the Committed Waste Period and the County Facilities Operation Period, except as provided in Note 5 above.

9. All Concession Fee Payments described in this Exhibit shall be a “pass-through” expense of Republic and shall be included in the Gate Rates to be collected by Republic. Republic shall not be obligated to make payment on materials where the Concession Fees have not been placed in the tipping fees that Republic can collect or if materials are not being delivered to the County Facilities.

10. The above Base Concession Payments (Column A), Special Concession Payment on Committed County Waste/Self Haul Waste (Column B) and Special Concession Payment on Committed City Waste (Column C) shall be charged on every ton coming through the County Facilities, including all green waste and wood waste received at the County Facilities with the following limited exceptions:

   - Beneficial Reuse Material [“Beneficial Reuse Materials” means materials that are incorporated into the operations of the County Facilities in accordance with Applicable Law, including but not limited to material used as or for Alternative Daily Cover, daily or intermediate soil cover, construction of drainage and erosion controls, retaining walls, French drains, sedimentation basins, roads, all weather surfaces, or other non-disposal, beneficial reuse. The term shall not include materials converted for purposes of producing energy or other products.]
   - Special Waste from within the County [“Special Waste” means any solid, liquid, semi-solid, gaseous material and associated containers which would not normally be disposed of by a municipal garbage removal and disposal system, which by way of example would include materials generated as a direct or indirect result of an industrial process or from the removal of contaminant(s) from the air, water or land. “Special Waste” includes but is not limited to any Waste from a non-residential source that includes, but is not limited to any of the following: industrial process waste, pollution control waste, incinerator residues, ash, spent catalyst, coke, sludges; tires, bottom settlements and water from storage]
tanks, oily silt, gasoline additive residues, tars, oils, grease, contaminated soil, contaminated wood, dead animals, residue, debris, articles from the cleanup of a spill or release of materials listed in this section, and regulated asbestos-containing material as defined in 40 CFR 61.141.]

- Residuals from any other non-County owned waste processing or transfer station facility within the County.
INITIAL GATE RATE AND CONTRACTOR SERVICE FEE

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): $ 7.85
(Consists of the following fees detailed below)
  Waste Management Agency Fee: $ 4.85*
  AB 1220 Fee (State Board of Equalization): $ 1.40
  Sonoma Local Enforcement Agency (LEA) Fee: $ 0.91**
  Regional Water Board Fees: $ 0.57**
  Bay Air Quality Air Districts: $ 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. Contractor shall be responsible for the payment of all Government Fees.

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.

Commencing upon the expiration of the 20th 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 20th 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

WASTE MANAGEMENT AGENCY FEE PAYMENT SCHEDULE

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Initial Price Per Ton on all Waste ($/ton)</th>
<th>Maximum Price Per Ton on Self Haul Waste ($/ton)</th>
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<tr>
<td>Waste Management Agency Fee</td>
<td>$4.85*</td>
<td>$5.95</td>
</tr>
</tbody>
</table>

NOTES:

- The above rate would be charged on every ton coming through the County Facilities, including green waste and wood waste, with the following limited exceptions:
  
  - Beneficial Reuse Material [“Beneficial Reuse Materials” means materials that are incorporated into the operations of the County Facilities in accordance with Applicable Law, including but not limited to material used as or for Alternative Daily Cover, daily or intermediate soil cover, construction of drainage and erosion controls, retaining walls, French drains, sedimentation basins, roads, all weather surfaces, or other non-disposal, beneficial reuse. The term shall not include materials converted for purposes of producing energy or other products.]

  - Special Waste from within the County [“Special Waste” means any solid, liquid, semi-solid, gaseous material and associated containers which would not normally be disposed of by a municipal garbage removal and disposal system, which by way of example would include materials generated as a direct or indirect result of an industrial process or from the removal of contaminants(s) from the air, water or land. “Special Waste” includes any Waste from a non-residential source that includes, but is not limited to any of the following: industrial process waste, pollution control waste, incinerator residues, ash, spent catalyst, coke, sludges; tires, bottom settlements and water from storage tanks, oily silt, gasoline additive residues, tars, oils, grease, contaminated soil, contaminated wood, dead animals, residue, debris, articles from the cleanup of a spill or release of materials listed in this section, and regulated asbestos-containing material as defined in 40 CFR 61.141.]

  - Residuals from any other non-County owned waste processing or transfer station facility within the County.
EXECUTIVE SUMMARY OF LANDFILL SETTLEMENT AGREEMENT

Central Disposal Site and Former Landfills Settlement Agreement (Settlement Agreement)

The Settlement Agreement is intended to settle any potential liability that the Committed Cities may have for disposal of their solid waste to the Central Landfill and/or the Former Urban Landfills owned by the County (Airport, Healdsburg, Roblar, and Sonoma closed landfills). Under the Settlement Agreement, the County and the Committed Cities have agreed to apply the Concession Payments from Republic under the MOA to cover the ongoing costs of the Former Urban Landfills for the next 30 years. The County also agrees that it will allocate 70% of the County Concession Fee collected under the MOA and hold in trust the Healdsburg Leak Fund of $2,567,504 and the Sonoma Leak Fund of $2,170,837 creating a fund to cover the costs of closure and post-closure maintenance for the Former Urban Landfills. Thirty percent (30%) of the County Concession Fee shall be allocated for the County’s actual Administrative Costs which are defined in the agreement for oversight of the MOA and the collection and reporting of the various funds. There are provisions for any unused portion of the funds allocated for Administrative Costs to transfer to the Former Urban Landfills funds at the end of each fiscal year and provisions to engage in dispute resolution if there is a disagreement over any increase in Administrative Costs.

Under the Settlement Agreement, the County agrees not to sue the Committed Cities for any liability or closure or post-closure costs with the exception of any third party claims that arise in the future or any unexpected events. The County shall exhaust all applicable funds and any remedies against Republic under the MOA before pursing any Committed City. In addition, the County shall not sue the Committed Cities for any liability for the Central Disposal Site (1) except for liabilities not assumed by Republic; (2) if Republic breaches the MOA; or (3) if a City materially breaches its obligations under the Waste Delivery Agreement. Before the County can bring any action against a Committed City, it must pursue any available remedies against Republic through its corporate guaranty and exhaust the $10,611,435 County Contingent Liability Fund collected from former tipping fees and the $2,306,347 Central Disposal Site Leak Fund. In addition, the parties have agreed to mediate prior to any litigation.

Under the Settlement Agreement, the County agrees to release and indemnify the Committed Cities for any potential liability in connection with the former Rural Landfills owned by the County (Annapolis, Occidental and Guerneville closed landfills) and will assume all costs of post-closure maintenance for those three sites.

In the event the County or Republic sue any non-committed City, under the terms of the MOA Republic shall defend and indemnify the Committed Cities and the County will defend. The County further agrees that the Settlement Agreement represents a fair and reasonable apportionment of any potential liability, and that any funds collected from a non-committed City shall be contributed to the funds specified above.

At the end of year 19, the parties, or their consultant, shall meet and confer to assess the funds being held and the current known liabilities and determine whether it is necessary to continue
to retain all of the funds. The parties shall submit any dispute to the dispute resolution procedure (binding arbitration through JAMS) for resolution. Any funds that may be distributed shall be distributed to the Cities based on the respective percentages of their contributions to the funds.

As part of the Settlement Agreement, the Committed Cities have requested, and the County and Republic have agreed, to collect an initial $5.00/ton “Committed Cities Contingent Liability Fee” on committed city waste as part of the Gate Fees. Fees collected are allocated to each Committed City based on solid waste tonnage delivered from its jurisdiction. The County will hold, administer and report on the funds at no cost to the Cities. Funds are to be used solely to cover the contingent liabilities or associated costs for the benefit of the ratepayers.