

SECOND AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT FOR THE COLLECTION, PROCESSING AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLES AND ORGANICS

This **Second Amendment** to the AMENDED AND RESTATED AGREEMENT FOR THE COLLECTION, PROCESSING AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLES AND ORGANICS (hereinafter referred to as the “**Restated Agreement**”) is made and entered into by and between the CITY OF FREMONT, A MUNICIPAL CORPORATION (hereinafter ‘**City**’) and ALLIED WASTE SERVICES OF NORTH AMERICA, LLC, A Delaware limited liability company (hereinafter “**Contractor**” whose parent company is Republic Services, Inc. City and Contractor may collectively be referred to herein as the “Parties”).

Recitals

- A. The City and Contractor have previously entered into the Restated Agreement and a First Amendment to that Agreement.
- B. This Second Amendment addresses three outstanding issues between the Parties regarding the Restated Agreement.
- C. Contractor has requested that the commercial rate schedule be updated to include a rate for 6 days per week front end loader recycling service and City and Contractor have agreed on that compensation rate.
- D. City and Contractor have made rate adjustments based on prevailing wage requirements. Solid waste collection drivers are not included in the general prevailing wage determinations published by the Department of Labor Relations so prevailing wage is therefore determined by collective bargaining agreements. Since Waste Management employs the largest number of drivers in any single driver wage classification in Alameda County; the Collective Bargaining Agreement between Waste Management and Teamsters Local 70 establishes the prevailing wages applicable to all solid waste providers operating in Alameda County and therefore the

Republic Amendment 2 Final

prevailing rate requirements apply to this Agreement between the City and Contractor.

- E. Republic Services is required to pay prevailing wages to its solid waste collection drivers who are represented by International Brotherhood of Teamsters Local 70 (Teamsters Local 70), and that rate went into effect in July 2022 (7.2%), and subsequently increased in July 2023 (5.3%) and was higher than the CPI rate adjustment incorporated in the biennial rate setting calculations.
- F. Republic Services submitted a request for an extraordinary compensation review to address this discrepancy and after analysis of all rates, City and Contractor have agreed to the updated compensation below.
- G. The City proposed and Contractor agreed to additional language to provide clarification on the Health Insurance Index. This language will provide consistency with the City's other franchise agreements.

NOW, THEREFORE, for the reasons stated above and in consideration of the provisions and mutual covenants contained herein, City and Contractor agree as follows:

1. Commercial Recycling Rate for 6 Days Per Week Service

The commercial rate schedule is hereby updated to include a rate for 6 days per week front end loader recycling service. These rates are calculated at 75% of the MSW rates consistent with the other front end loader commercial recycling rates.

The updated matrix is described below and will be incorporated into the Rate Schedule.

Maximum Recycling Collection Rates Per Month						
Size	Collections Per					
	1	2	3	4	5	6
One cubic	\$94.63	\$183.35	\$272.19	\$360.98	\$449.69	\$538.48
Two cubic	\$153.67	\$301.48	\$449.30	\$597.06	\$744.90	\$892.70

Republic Amendment 2 Final

Three cubic	\$212.72	\$419.53	\$626.42	\$833.27	\$1,040.1	\$1,246.9
Four cubic	\$271.72	\$537.61	\$803.51	\$1,069.4	\$1,335.32	\$1,601.18
Six cubic	\$389.81	\$773.83	\$1,157.7	\$1,542.19	\$1,925.72	\$2,309.69
Seven cubic	\$448.87	\$891.87	\$1,334.87	\$1,777.93	\$2,220.91	\$2,663.93
Eight cubic	\$507.88		\$1,512.03	\$2,014.10	\$2,516.17	\$3,018.21

2. Prevailing Wage Extraordinary Review Settlement and Prevailing Wage Definition and Requirements

- a) City and Contractor have agreed to a \$252,647 lump sum payment for prevailing wage extraordinary costs for the period of July 2022 through December 2023. City and Contractor further agree that all anticipated costs for January 2024 and beyond, including a prevailing wage component, have been adequately addressed through the rate setting process, adopted by City Council resolution in December 2023.

City and Contractor have agreed to add the following language to Article 1. **Definitions** of the Restated Agreement.

Prevailing Wage means wages and benefits to be paid as determined by the Department of Industrial Relations (DIR). In the absence of a prevailing wage determination by the DIR, the prevailing wage will be determined as follows for the solid waste collection drivers.

In such circumstances the prevailing wage shall be the single hourly rate and benefit package being paid to the greatest number of workers engaged in that job category within Alameda County. In the future if the employees elect to unionize, consistent with Applicable Law, the Prevailing Wage may also be the wage and benefit rates agreed upon pursuant to a collective bargaining agreement between Contractor and a recognized union representing Contractor's employees.

- b) City and Contractor have agreed to add the following second section to Article 5.19 of the Restated Agreement.

Republic Amendment 2 Final

5.19 Personnel

Wages. The Contractor or its subcontractors shall pay wages and benefits that are consistent with Prevailing Wages.

3. Section 12.2.1 Biennial Adjustment Methodology relating to the Health Insurance Index is hereby revised to read as follows:

The Rates in this Agreement, with the exception of special services as described in section 12.2.4, will be adjusted biennially every other year during even numbered years. Rate adjustments will be calculated by applying the appropriate index to the various components of each unit price reflected in Exhibit B. The biennial increase will reflect:

- a) **Changes in the CPI and its effect on the variable Rate components that are subject to the CPI.** The CPI Change will be calculated using the most recent issued June CPI and CPI index twenty-four (24) months prior.
- b) **Changes in the Health Insurance Index for the most recent 24-month period and its effect on the associated variable components.** The health insurance change will be calculated using the most recently issued June Health Insurance Index and the Health Insurance Index twenty-four (24) months prior; however, that in no event shall any biennial change to the Health Insurance Component be less than the biennial change in CPI for the same period, with a minimum floor of three percent (3%) for the applicable two-year period.
- c) **Biennial changes to the variable component** will be calculated using a weighted index of 12% of the Health Insurance Index and 45% of the CPI index and 43% of the prevailing wage adjustment change with a minimum increase of 5% for the twenty-four (24) month period.

4. Headings

The heading titles for each paragraph of this Second Amendment are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

5. Modifications

Republic Amendment 2 Final

The Restated Agreement, First and Second Amendments may not be modified orally or in any manner other than by an amendment in writing signed by both parties.

6. Terms

All other terms in the Amended and Restated Agreement and the First Amendment, not specifically amended by this Second Amendment shall remain in full force and effect.

7. Signatures

The individuals executing this Second Amendment to the Restated Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Second Amendment on behalf of the respective legal entities of the Contractor and the City. This Second Amendment shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

8. Counterparts

This Agreement may be signed in counterparts, each of which shall be deemed to be an original. The Parties agree that the digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Any digital signature shall have the same legal validity and enforceability as a manually executed signature or use of a paper-based record keeping system to the fullest extent permitted by applicable law.

IN WITNESS WHEREOF, the City and Contractor do hereby agree to the full performance of the terms set forth herein.

CITY

DocuSigned by:
Brian Stott
F6D9A2C4EE0E406...

Brian Stott
Assistant City Manager

Date: 04/18/2024 | 3:08 PM PDT

CONTRACTOR

DocuSigned by:
Kevin DiVincenzo
124BBE0C2EF4407...

Kevin DiVincenzo
Area President

Date: 04/15/2024 | 8:28 AM PDT

Republic Amendment 2 Final

APPROVED AS TO FORM

DocuSigned by:
Brian Lacey
F900D31740534D5...

Sr. Deputy City Attorney