

FOURTH AMENDMENT TO THE AMENDMENT AND RESTATEMENT OF COLLECTION
AGREEMENT OF THE CITY OF SAN RAFAEL WITH MARIN SANITARY SERVICE

This FOURTH AMENDMENT to the Amendment and Restatement of Collection Agreement between the CITY OF SAN RAFAEL (CITY) and MARIN SANITARY SERVICE (COMPANY) is made and entered into this ____ day of December, 2021.

WHEREAS, the CITY and COMPANY entered into a written agreement on September 4, 2001, as amended on March 1, 2005, November 14, 2012, and December 17, 2018 (together the "Agreement") pursuant to which the COMPANY renders Solid Waste, Recyclable Material and Green Waste collection, processing and disposal services to businesses, residents and government institutions in the CITY; and

WHEREAS, certain state laws require cities, counties, and special districts providing solid waste collection services to adopt ordinances and take other measures to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators, more specifically the Short-Lived Climate Pollutants Organic Waste Reduction regulations adopted pursuant to Senate Bill 1383 (Statutes of 2016) set forth in the California Code of Regulations (the "SB 1383 Regulations").

WHEREAS, the SB 1383 Regulations require cities, counties, and special districts providing solid waste collection services to, by January 1, 2022, provide certain new programs; and

WHEREAS, pursuant to the terms and conditions of the Agreement, CITY and COMPANY met and conferred and have agreed that COMPANY will be responsible for the programs provided for herein; and

WHEREAS, CITY and COMPANY mutually desire to amend the Agreement to describe these programs in more detail.

NOW, THEREFORE, it is mutually agreed as follows:

1. Effective Date. This Amendment shall take effect January 1, 2022.
2. Definitions. For purposes of this Amendment, the terms set forth in Exhibit A, attached hereto and incorporated herein, shall have the meanings given to them in such exhibit.
3. Three-Container Organic Waste Collection Services.
 - 3.1. Phased Implementation. CITY and COMPANY acknowledge that COMPANY's Organic Waste Collection routes must be expanded to satisfy the requirements of the SB 1383 Regulations, and that new collection trucks must be procured by COMPANY in order to provide such services. Beginning January 1, 2022 all new customers will be provided base level of collection service including Recycling Container, Organics Container and Garbage Container collection service. Between January 1, 2022 and December 31, 2023, COMPANY shall continue and expand its Organic Waste collection service to existing customers within CITY. By January 1, 2024, COMPANY shall provide Organic Waste collection service to all of its customers within CITY who are subscribed to and pay for Solid Waste collection service, unless (i) the customer is categorically exempted under CITY's municipal code from the requirement to subscribe for Organic Waste collection service, or (ii) the customer qualifies for and is granted a State- or CITY-issued waiver. COMPANY will work with customers to appropriately size collection containers such that source-separation of all materials is possible without any overflow of material, and if any disputes arise or overages occur, the CITY will make the final determination on proper container size.

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4. Container Colors.

4.1. General Requirement. COMPANY shall ensure that each Container that it newly purchases after January 1, 2022 and provides to a customer serviced under the Agreement conforms to the following designations in distinct colors as required or permitted by CalRecycle: Garbage Containers for collection of Solid Waste, Recycling Containers for collection of Recyclable Materials, and Organics Containers for collection of Organic Waste. In addition, COMPANY shall ensure that all Containers it uses to provide such services to customers serviced under the Agreement conform to such color scheme by January 1, 2036.

4.2. Specific Material Types. Paper products and printing and writing paper, each as defined in the SB 1383 Regulations, may be placed in either the Recycling Container or the Organics Container. Carpet and textiles may not be placed in either the Recycling Container or the Organics Container.

5. Container Labels.

5.1. General Requirement. COMPANY shall ensure that each Container that it newly purchases after January 1, 2022 and provides to a customer serviced under the Agreement shall be labeled or imprinted with language and/or graphics that clearly indicates the primary items accepted and the primary items that are Prohibited Container Contaminants for that Container type. COMPANY may comply with this section by using model labeling provided by CalRecycle.

6. Route Reviews.

6.1. General Requirement. At least once annually, beginning in 2022, COMPANY shall conduct a Route Review for each Hauler Route. The number of Containers to review per Hauler Route shall be calculated on the basis of the number of garbage accounts provided service by a specific Hauler Route for one week. For example, "Route A" collects garbage from 250 accounts, 4 days per week for a total of 1,000 accounts per week; include a minimum of 25 accounts for Route Review of "Route A". For each Route Review of a Hauler Route, COMPANY shall inspect at least the following minimum number of Containers but may inspect more if COMPANY deems necessary; and shall inspect all Containers placed for collection (including Recycling Containers, Organics Containers, and Garbage Containers). Each inspection shall involve lifting the Container lid and observing the contents but shall not require COMPANY to disturb the contents or open any bags. COMPANY may select the Containers to be inspected at random, or (if mutually agreed with CITY) by any other method not prohibited under the SB 1383 Regulations. For the avoidance of doubt, COMPANY shall not be required to annually inspect every Container on a Hauler Route. COMPANY shall include the results of each Route Review in its next regularly scheduled report to CITY, as required by Section 9.

<u>Route Size (# garbage accounts/ week)</u>	<u>Minimum Number of Containers</u>
Less than 1,500	25
1,500-3,999	30
4,000-6,999	35
7,000 or more	40

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- 6.2. Notice of Contamination. If COMPANY observes Prohibited Container Contaminants in a Container during a Route Review comprising ten percent or more of observable container volume, COMPANY shall notify the customer of the violation in writing. The written notice shall include information regarding the requirement to properly separate materials into the appropriate Containers. The notice may be left on the customer's Container, gate, or door at the time the violation is discovered, and/or be mailed, e-mailed, electronically messaged or delivered personally to the customer within 30 days. COMPANY may dispose of the contents of any Container found to contain Prohibited Container Contaminants and may charge a contamination fee not to exceed the fee in Exhibit C. The notice shall be provided in English and Spanish.
7. Compliance Reviews.
- 7.1. General Requirement. At least once annually, beginning in 2022, COMPANY shall review the records of its Commercial and Multi-Family customers in CITY that are subscribed for at least two (2) cubic yards per week of combined Solid Waste, Organic Waste and Recyclable Materials service, to determine whether such customers are subscribed for Organic Waste collection service or have an applicable waiver. COMPANY shall include the results of each compliance review in its next regularly scheduled report to CITY, as required by Section 9.
- 7.2. Site Visit Requirement. Based on COMPANY's review of the list of customers requiring site visit compiled in accordance with section 7.1 above, COMPANY shall conduct an annual site visit to each Commercial and Multi-Family customer in CITY that is determined to not be enrolled in 3-container organic waste collection service and not be eligible for a waiver based on the CITY determination, to encourage those businesses to sign up for SB 1383 compliant Organics Waste service and provide educational material about the law's requirements.
8. Education & Outreach.
- 8.1. Prior to February 1, 2022, and annually thereafter, COMPANY shall provide the following to all its customers under the Agreement:
- 8.1.1. Information on the customer's requirements to properly separate materials in appropriate containers.
- 8.1.2. Information on methods for: the prevention of Organic Waste generation, recycling Organic Waste on-site, sending Organic Waste to community composting, and any other local requirements regarding Organic Waste.
- 8.1.3. Information regarding the methane reduction benefits of reducing the landfill disposal of Organic Waste, and the methods of Organic Waste recovery contemplated by the Agreement.
- 8.1.4. Information regarding how to recover Organic Waste.
- 8.1.5. Information related to the public health and safety and environmental impacts associated with the landfill disposal of Organic Waste.

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- 8.2. The above information will be provided, at a minimum, through print and/or electronic media, and may also be provided through workshops, meetings and/or on-site visits.
- 8.3. COMPANY shall provide an educational webpage which includes downloadable copies of all the materials described in Section 8.1, as well as an educational brochure to be provided by CITY for edible food recovery outreach.
- 8.4. Educational materials provided pursuant to the above shall be translated into Spanish.
- 8.5. COMPANY shall provide educational materials to customers discovered to be out of compliance with the SB 1383 Regulations requirements and report a list of such customers as well as actions taken to the CITY on a periodic basis as required by CITY.
9. Waivers. COMPANY shall be responsible for the distribution, collection and evaluation of waiver applications as appropriate and provide the CITY a recommendation to accept or deny waiver requests. COMPANY shall develop waiver application forms and shall provide them to CITY for CITY approval prior to use. COMPANY shall evaluate requests for exemption or waiver from the Act's requirements and provide the CITY periodic recommendations and supporting documentation to deny or approve waivers, including a site visit and re-evaluation at least every five years as required by the SB 1383 Regulations.
10. Edible Food Recovery. COMPANY shall provide CITY with a list of Tier One commercial edible food generators located in their jurisdiction by January 1, 2022 and annually thereafter. COMPANY shall provide CITY with a list of Tier Two commercial edible food generators located within their jurisdiction by January 1, 2024 and annual thereafter.
11. Reporting.
- 11.1. Beginning January 1, 2022, COMPANY shall provide the following information to CITY annually, by February 15 of the year following the reporting year:
- 11.1.1. For information provided by COMPANY pursuant to Section 8 above:
- (a) Copies of all such information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, emails, and other electronic messages).
 - (b) The date the information was disseminated or the direct contact made. For website and social media postings, this shall be the date posted.
 - (c) To whom the information was disseminated or the direct contact made. For mass distributions such as mailings or bill inserts, COMPANY may provide the type and number of accounts receiving the information, rather than listing each recipient individually.
- 11.1.2. For Route Reviews and Compliance Reviews:
- (a) The date the review was conducted.

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- (b) The name and title of each person conducting the review.
- (c) A list of the account names and addresses covered by the review.
- (d) For Route Reviews, a description of each Hauler Route reviewed, including COMPANY's route number and a description of the Hauler Route area.
- (e) For Route Reviews, the results of such review (i.e., the addresses where any Prohibited Container Contaminants were found), and any photographs taken.
- (f) For Compliance Reviews, the results of such review (i.e., COMPANY's findings as to whether the customers reviewed are subscribed for Organic Waste collection service, have an applicable waiver, or neither) and any relevant evidence supporting such findings (e.g. account records).
- (g) Copies of any educational materials issued pursuant to such reviews.

11.1.3. Documentation relating to observed Prohibited Container Contaminants, whether observed during Route Reviews or otherwise:

- (a) Copies of the form of each notice issued to customers for Prohibited Container Contaminants, as well as, for each such form, a list of the customers to which such notice was issued, the date of issuance, the customer's name and service address, and the reason for issuance (if the form is used for multiple reasons). This information will also be provided monthly to any other government entity approved by the CITY, including but not limited to Zero Waste Marin requests.
- (b) The number of times notices were issued to customers for Prohibited Container Contaminants.
- (c) The number of Containers where the contents were disposed due to observation of Prohibited Container Contaminants.

11.1.4. A description of COMPANY's process for determining the level of Container contamination under the Agreement.

11.1.5. Reports to CITY on customers discovered to be out of compliance with the SB 1383 Regulations, including a list of the customers, the type of violation, actions taken to educate those customers, and contact information for those customers. Such reports shall be provided periodically as required by CITY. .

12. Section 18988.1 and 18988.2 Compliance. COMPANY is responsible for delivery of all Solid Waste to properly permitted disposal facilities, transfer stations, recyclable materials processing facilities, organics processing facilities, and C&D processing facilities as listed in Exhibit B. The list may be amended from time to time by COMPANY, subject to CITY approval of the amended list. Failure to comply with this provision will result in the levy of any Administrative Charge or Penalty that may be provided in the San Rafael Municipal Code and may result in COMPANY being in default under this Agreement. CITY hereby approves delivery of Organic Waste to such facility(ies). COMPANY shall

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comply with its obligations under this Amendment and the obligations that by operation of law are imposed upon it directly pursuant to Chapter 12 of the SB 1383 Regulations.

13. Future Changes. The parties acknowledge that future changes to this Amendment or the Agreement may be desirable to assist the parties with their respective compliance obligations under the SB 1383 Regulations or subsequent amendments thereto or interpretations thereof. The parties agree to negotiate any such proposed changes in good faith. The foregoing shall not be deemed to limit either party's rights or remedies under the Agreement.
14. Miscellaneous. In the event of any conflict between this Amendment and the Agreement, this Amendment shall govern. Section headings in this Amendment are for convenience only and shall not be used in the interpretation of this Amendment. 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."

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

CITY OF SAN RAFAEL

MARIN SANITARY SERVICE, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

ROBERT F. EPSTEIN, City Attorney

ATTEST:

LINDSAY LARA, City Clerk

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Exhibit A

DEFINITIONS

“Act” means the California Integrated Waste Management Act of 1989 (sometimes referred to as CIWMA or “AB 939”), Public Resources Code § 40000 and following as it may be amended, including but not limited to, the Jobs and Recycling Act of 2011 (AB 341), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), and as implemented by the regulations of CalRecycle.

“Recycling Container” means a Container for the collection of recyclable materials as defined in the Agreement. The Recycling Container shall be colored as defined in the SB 1383 Regulations.

“Container” means any Cart, Bin or Debris Box.

“Garbage Container” means a Container for the collection of Garbage, which does not include Organic Waste or recyclable materials as defined in the Agreement. The Garbage Container shall be colored as defined in the SB 1383 Regulations.

“Organics Container” means a Container for the collection of Organic Waste and colored as defined in the SB 1383 Regulations. Hardware such as hinges and wheels may be any color.

“Food Waste Container” means a Container for the collection of Commercial Food Waste only and colored as defined in the SB 1383 Regulations.

“Hauler Route” means the designated weekly itinerary or sequence of stops scheduled to be performed by one collection vehicle providing regularly scheduled Solid Waste, Recyclable Material or Organic Waste collection services (not on-call or Bulky Item/Abandoned Waste) within the COMPANY’s collection service area under the Agreement.

“Organic Waste” means wastes comprising material originated from living organisms and their metabolic waste products, including food, green material, landscape and pruning waste, clean unpainted/untreated wood (with no nails, wire, etc.), paper products, and printing and writing paper, but excluding textiles and carpets, manure, biosolids, digestate, sludges, non-compostable paper, Construction & Demolition Debris, and Hazardous Waste. No material shall be considered Organic Waste unless it has been segregated by the customer for separate collection.

“Prohibited Container Contaminants” means any of the following:

- (a) Non-Organic Waste placed in the Organics Container, including but not limited to textiles and carpets, manure, biosolids, digestate, sludges, non-compostable paper, Construction & Demolition Debris, and Hazardous Waste;
- (b) Organic Waste placed in the Garbage Container that is specifically identified under the Agreement for collection in the Organics Container or Recycling Container;
- (c) Organic Waste placed in the Recycling Container that is specifically identified under the Agreement for collection in the Organics Container. Paper products and printing and writing paper

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may be considered acceptable and not considered Prohibited Container Contaminants if they are placed in the Recycling Container.

“Route Review” means a visual inspection of Containers along a Hauler Route for the purpose of identifying Prohibited Container Contaminants, which may include mechanical inspection methods such as use of cameras.

“SB 1383 Regulations” means the Short-lived Climate Pollutants (SLCP): Organic Waste Reductions regulations adopted by the California Department of Resources Recycling and Recovery (“CalRecycle”) in 2020 and found in California Code of Regulations Title 14, Division 7, Chapter 12.

For purposes of this Amendment, the following terms (whether or not capitalized) shall have the meanings given to them in the SB 1383 Regulations, unless the context indicates a different meaning was intended: biosolids, digestate, food, non-compostable paper, paper products, printing and writing paper, sludges.

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Exhibit B

FACILITIES

Marin Sanitary Service Transfer Station

1050 Andersen Drive San Rafael CA 94912

Marin Recycling Center

535 Jacoby Street San Rafael CA 94912

Marin Resource Recovery Center

535 Jacoby Street San Rafael CA 94901