

## **EIGHTH AMENDMENT TO CONTRACT**

This Eighth amendment is executed at Sonoma, California on June\_\_2020, by and between the City of Sonoma, a municipal corporation, ("City") and Sonoma Garbage Collectors, a California corporation, ("Contractor").

### **RECITALS**

WHEREAS, City entered into a contract on October 19, 1994 with John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. (Sonoma Garbage Collectors) for the exclusive right to collect and remove garbage and rubbish within the City. Said contract has been amended seven times (collectively, the October 19, 1994, agreement and its seven amendments shall be referred to as the "Contract"); and

WHEREAS, on January 16, 2002, the City executed the First Amendment to Contract extending the original term expiration (May 31, 2007), for a term of five (5) additional years through May 31, 2012; and

WHEREAS, on November 18, 2002, the City consented to an assignment of the Contract from John D. Curotto, Margaret Curotto, and John D. Curotto, Jr. (Sonoma Garbage Collectors) to Sonoma Garbage Collectors, a California corporation; and

WHEREAS, on January 16, 2007, the City executed the Second Amendment to Contract adding Section 26 to provide for additional services; and

WHEREAS, on August 22, 2007, the City executed the Third Amendment to Contract extending the term expiration (May 31, 2012), for a term of five (5) additional years through May 31, 2017; and

WHEREAS, on January 18, 2012, the City executed the Fourth Amendment to Contract amending Sections 13 and 26.E. and adding Sections 27, 28, 29, and 30, under which the Contractor reserved the right to dispose of garbage and rubbish at locations outside the County of Sonoma, among other things; and

WHEREAS, on November 7, 2016, the City executed the Fifth Amendment to Contract, extending the term expiration (May 31, 2017) for a term of ten (10) additional years through May 31, 2027; and

WHEREAS, on June 18, 2018, the City Council approved the Sixth Amendment to Contract modifying the rate adjustment procedures applicable to garbage rates charged by the Contractor; and

WHEREAS, on July 29, 2019, the City Council approved the Seventh Amendment to Contract making additional modifications to the rate adjustment procedures applicable to garbage rates charged by the Contractor; and

WHEREAS, the parties have reviewed the Contract along with the legal responsibilities and various tasks to be performed by each party to the Contract under S.B. 1383 (Short-Lived Climate Pollutants Bill) in order to satisfy the public outreach, education, reporting, recordkeeping, monitoring and all other mandates of the bill focused on organic waste methane emissions that are applicable to the parties; and

WHEREAS, noncompliance with the mandates of S.B. 1383 can carry fines and other penalties under state law for each party to the Contract; and

WHEREAS, the parties agree that in order for the Contractor to comply with provisions for which it is responsible as well as for the City to comply with provisions for which it is responsible the parties will need to join efforts to fulfill regulatory requirements by the Legislature's target date of 2022 and maintain such compliance for all times that the mandates remain in effect; and

WHEREAS, the parties wish to create a special fund comprised of 1% of the annual rate revenues of the Contractor for its operations within the City that will be transferred on an annual basis to the City for the City to organize, coordinate, and lead the S.B. 1383 compliance support efforts within the City on a continuing basis; and

WHEREAS, the legal mandates of S.B. 1383 necessitate that additional services be performed within a brief period of time to achieve compliance, which cost of such work would create a substantial increase of costs for the Contractor if required to perform such services on its own; and

WHEREAS, the additional onset of substantial costs for S.B. 1383 compliance qualifies under the category of "extraordinary circumstances" added through the Seventh Amendment to the Contract which entitles the Contractor to a rate increase proportionate to such costs for any given year that the "extraordinary circumstance" remains in effect; and

WHEREAS, the City intends to lead the compliance support efforts for S.B. 1383 compliance to provide greater assurance that the legislative mandates will be met from year to year, and therefore will be incurring substantial costs each and every year that the mandates remain in effect; and

WHEREAS, the parties wish to create a framework for the transfer of funding from the rate revenues of the Contractor to the City for the City to financially support its efforts to lead and maintain S.B. 1383 compliance activities; and

WHEREAS, the parties desire to amend the Contract to establish an S.B. 1383 compliance support fund through which the transfer of necessary revenues can be made from the Contractor to the City on a continuing basis in order to achieve and maintain compliance with legal mandates on organic waste methane emissions which compliance will help to protect the environment; and

WHEREAS, Section 22 of the Contract currently states that Contractor shall cooperate with the City in meeting the source reduction and recycling mandates of A.B. 939 applicable to services performed under the Contract and therefore is a similar requirement in the Contract to the creation of a support fund to meet the requirements of S.B. 1383;

NOW THEREFORE BE IT RESOLVED that the City and the Contractor agree as follows:

Section 1. Section 22 shall be removed and replaced to read as follows:

Contractor shall assist the City with source reduction and recycling mandates of AB 939 as applied to the City of Sonoma. City agrees to cooperate with Contractor in achieving said compliance.

Contractor shall also assist the City with compliance with the public education, outreach, reporting, recordkeeping, monitoring, and other requirements of organic waste methane emissions mandates under S.B. 1383 (Short-Lived Climate Pollutants bill) on an ongoing basis through funds received under this Contract by transferring on or before May 1 of each year 1% of total rate revenues for the immediately preceding Rate Year (but not less than the amount of \$20,000 in any given year) to the City to be placed in a separate fund (“S.B. 1383 Support Fund”) created by the City for this purpose. The annual transfer of funds shall be utilized by the City to finance those continuing efforts necessary to maintain compliance with S.B. 1383 requirements in coordination with the activities required to be performed by the Contractor under the terms of this Contract, which are being funded through the rate revenues being received through this franchise. The funds transferred to the City under this paragraph shall constitute an “extraordinary circumstance” under Section 9 for each year that the S.B. 1383 Support Fund remains in effect. In the event that the S.B. 1383 Support Fund terminates, the Contractor shall demonstrate that the deduction of 1% shall be made to the rates charged for the next Rate Year period through its annual rate adjustment application.

Section 2. All other terms and conditions of said October 19, 1994 Contract as amended, shall continue in full force and effect.

Section 3. The Recitals are incorporated into this Agreement.

CITY OF SONOMA

CONTRACTOR

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Cathy Capriola, City Manager

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John D. Curotto, Jr., President

ATTEST:

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Rebekah Barr, City Clerk

APPROVED AS FORM:

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City Attorney