



Agenda Item No. 11.

Staff Report

Date: February 10, 2022

To: Mayor Robbins and Councilmembers

From: Christa Johnson, Town Manager

Subject: First Amendment to the Amended and Restated Franchise Agreement between the Town of Ross and Marin Sanitary Service

Recommendation

It is recommended that the Town Council adopt Resolution No. 2240 approving the First Amendment to the Amended and Restated Franchise Agreement between the Town of Ross and Marin Sanitary Service.

Background and Discussion

Senate Bill 1383 (SB 1383), the Short-Lived Climate Pollutant Reduction Act of 2016, is part of a statewide effort to reduce the emissions of short-lived climate pollutants (like methane gas) in various sections of California's economy. SB 1383 sets a target to divert 75% of organic waste from landfills and recover 20% of edible food for human consumption by 2025. SB 1383 requires all jurisdictions in California to adopt a mandatory organics recycling ordinance by March of 2022. CalRecycle created a model ordinance to satisfy this requirement and staff worked with R3 Consulting Group (R3) and legal counsel to customize the model ordinance for the Town of Ross. The ordinance (Ordinance 711) was adopted by the Town Council on December 9, 2021. It supports establishment of enforceable SB 1383 related requirements for organic waste generators, haulers, and others and contains similar language to other jurisdictions in Marin County.

The Town Council is asked to adopt a resolution approving the First Amendment to the Amended and Restated Franchise Agreement between the Town of Ross and Marin Sanitary Service (MSS) (Attachment 1). Ross's franchise agreement sets the services and standards for MSS to conduct waste management activities and bill customers. SB 1383 establishes specific services and ways to provide those services by waste haulers, and accordingly requires updates to the Franchise Agreement. This amendment reflects the additional requirements related to SB 1383 and makes

more explicit many of the services MSS offers. A summary of the items proposed in the amendment include:

- Full roll-out of three-container waste collection (including garbage, recycling and organics) to all customer types in compliance with SB 1383 requirements by January 1, 2024.
- Container labels to meet SB 1383 standards for all new containers put into service.
- Outreach and education, including development and distribution of materials.
- Evaluation of waiver requests for exemption from the requirement to subscribe to recycling and organics service (the Town retains the responsibility for approving such requests)
- Route reviews and notices for contamination monitoring.
- Site visits to customers to provide educational materials and assistance in proper sorting; and for customers not signed up for recycling or organics service to encourage them to subscribe.
- Reporting to the Town and State on compliance activities; and reports to the Town on observed noncompliance for Town enforcement action.

The proposed amendment was also prepared by R3 Consulting Group in consultation with staff from the Marin cities/towns that contract for service with MSS. The amendment template prepared by R3 was tailored to the Town of Ross and is attached to the proposed Resolution as Exhibit A.

Fiscal Impacts

There is no direct fiscal impact as a result of adopting this Resolution approving the amended agreement. However, the financial impact of implementing SB 1383 may range from small to significant for the Town and its solid waste ratepayers as a result of implementation and enforcement costs and future franchise agreements with waste haulers.

Environmental Review

Approval of the amended agreement are exempt from California Environmental Quality Act (CEQA) review because it does not constitute a project under CEQA pursuant to Guideline 15378 (b)(5), which provides that organizational and administrative activities of governments that will not result in physical changes in the environment are not considered projects for CEQA purposes.

Attachments

- Resolution No. 2240 Approving the First Amendment to the Amended and Restated Franchise Agreement between the Town of Ross and Marin Sanitary Services.

TOWN OF ROSS

RESOLUTION NO. 2240

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF ROSS APPROVING A FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT BETWEEN THE TOWN OF ROSS AND MARIN SANITARY SERVICE

WHEREAS, the Town of Ross and Marin Sanitary Service have entered into a written Amended and Restated Agreement for Collection, Removal and Disposal of Garbage, Rubbish, Waste Matter and Refuse ("Franchise Agreement") dated January 10, 2019; and

WHEREAS, the Town of Ross and Marin Sanitary Service now desire a first amendment to the Franchise Agreement to update Marin Sanitary Service services to comply with Senate Bill 1383, and

WHEREAS, the Town of Ross has determined that such adjustments are proper, in the best interest of all citizens, and will promote public health, safety and welfare; and

WHEREAS, on February 10, 2022 the Town Council conducted a duly noticed public meeting to consider approval of this amendment.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF ROSS DOES RESOLVE AS FOLLOWS:

The "First Amendment to the Amended and Restated Agreement of the Town of Ross with Marin Sanitary Service" attached hereto as "Exhibit A" and incorporated herein by reference, is hereby approved and shall be included as part of the Amended and Restated Agreement dated January 10, 2019. The Town Manager is hereby authorized to execute the First Amendment, subject to final approval as to form by the Town Attorney.

The foregoing Resolution was adopted at a regular meeting of the Town Council of the Town of Ross, held on the 10th day of February 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Elizabeth Robbins, Mayor

ATTEST:

Linda Lopez, Town Clerk

Exhibit A

First Amendment to the Amended and Restated Agreement for Collection, Removal and Disposal of Garbage, Rubbish, Waste Matter and Refuse between the Town of Ross and Marin Sanitary Service

FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT FOR
COLLECTION, REMOVAL AND DISPOSAL OF GARBAGE, RUBBISH, WASTE MATTER AND
REFUSE IN THE TOWN OF ROSS, CALIFORNIA

This First Amendment to the Amended and Restated Agreement for Collection, Removal and Disposal of Garbage, Rubbish, Waste Matter and Refuse in the Town of Ross, California (this "Amendment") is entered into as of February ____, 2022 between the Town of Ross ("Town") and Marin Sanitary Service, Inc. ("Contractor").

WHEREAS, Town and Contractor are parties to an Amended and Restated Agreement for Collection, Removal and Disposal of Garbage, Rubbish, Waste Matter and Refuse dated January 10, 2019 (such agreement as amended, the "Agreement");

WHEREAS, the parties wish to amend the Agreement to assist Town in complying with the Senate Bill 1383 Regulations("SB 1383") (as defined in Exhibit A to this Amendment);

WHEREAS, Town intends to implement a 3-container Organic Waste collection service as contemplated by Section 18984.1 of the SB 1383 Regulations.

NOW, THEREFORE, the parties agree 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. Town and Contractor acknowledge that Contractor'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 Contractor 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, Contractor shall continue and expand its Organic Waste collection service to existing customers within Town. By January 1, 2024, Contractor shall provide Organic Waste collection service to all of its customers within Town who are subscribed to and pay for Solid Waste collection service, unless (i) the customer is categorically exempted under Town'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 Town-issued waiver. Contractor 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 [Agency] will make the final determination on proper container size.
4. Container Colors.
 - 4.1. General Requirement. Contractor 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 color scheme: Garbage Containers for collection of Solid Waste, Recycling Containers for collection of Recyclable Materials, and Organics

Containers for collection of Organic Waste. In addition, Contractor 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. Contractor 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. Contractor 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, Contractor 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, Contractor shall inspect at least the following minimum number of Containers, but may inspect more if Contractor 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 Contractor to disturb the contents or open any bags. Contractor may select the Containers to be inspected at random, or (if mutually agreed with Town) by any other method not prohibited under the SB 1383 Regulations. For the avoidance of doubt, Contractor shall not be required to annually inspect every Container on a Hauler Route. Contractor shall include the results of each Route Review in its next regularly scheduled report to Town, 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

- 6.2. Notice of Contamination. If Contractor observes Prohibited Container Contaminants in a Container during a Route Review comprising ten percent or more of observable container volume, Contractor 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. Contractor 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, Contractor shall review the records of its Commercial and Multi-Family customers in Town 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. Contractor shall include the results of each compliance review in its next regularly scheduled report to Town, as required by Section 9.
- 7.2. Site Visit Requirement. Based on Contractor's review of the list of customers requiring site visit compiled in accordance with section 7.1 above, Contractor shall conduct an annual site visit to each Commercial and Multi-Family customer in Town that is determined to not be enrolled in 3-container organic waste collection service and not be eligible for a waiver based on the Town 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, Contractor 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.
- 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. Contractor 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 Town for edible food recovery outreach.
- 8.4. Educational materials provided pursuant to the above shall be translated into Spanish.

- 8.5. Contractor 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 Town on a periodic basis as required by Town.
9. Waivers. Contractor shall be responsible for the distribution, collection and evaluation of waiver applications as appropriate and provide the Town a recommendation to accept or deny waiver requests. Contractor shall develop waiver application forms and shall provide them to Town for Town approval prior to use. Contractor shall evaluate requests for exemption or waiver from the Act's requirements and provide the Town 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. Contractor shall provide Town with a list of Tier One commercial edible food generators located in their jurisdiction by January 1, 2022 and annually thereafter. Contractor shall provide Town 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, Contractor shall provide the following information to Town annually, by February 15 of the year following the reporting year:
- 11.1.1. For information provided by Contractor 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, Contractor 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.
 - (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 Contractor'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. Contractor'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 Town, 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 Contractor's process for determining the level of Container contamination under the Agreement.

11.1.5. Reports to Town 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 Town.

12. Section 18988.1 and 18988.2 Compliance. Contractor 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 Contractor, subject to Town approval of the amended list. Failure to comply with this provision will result in the levy of an Administrative Charge or Penalty as specified in Town Code and may result in Contractor being in default under this Agreement. Town hereby approves delivery of Organic Waste to such facility(ies). Contractor shall 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."

[Remainder of this page intentionally left blank]

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

Town of Ross

Marin Sanitary Service, Inc.

By: _____
Name: Christa Johnson
Title: Town Manager
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Ben Stock, Town Attorney

ATTEST:

Linda Lopez, Town Clerk

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 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 Contractor'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 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.

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.

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