



MONTARA WATER AND SANITARY DISTRICT AGENDA

For Regular Meeting Of: **December 2, 2021**

TO: BOARD OF DIRECTORS

FROM: Clemens Heldmaier, General Manager 

SUBJECT: Review and Possible Action Concerning Second Amendment to Solid Waste Franchise Agreement with Recology of the Coast

Staff recommends that the District approve a second amendment to the District's exclusive franchise agreement with Recology of the Coast containing certain revisions necessitated under the District's Organic Waste Ordinance in conformance with the SB 1383 Organic Waste Regulations.

The revisions include a change in maximum rates effective January 1, 2022 as adopted by the District in the previous Prop 218 public hearing item, as well as agreement by Recology to comply with the requirements of SB1393 that are binding on all waste haulers. The agreement sets forth those requirements in Exhibit G, titled "SB1383 Matters" which describes the collection services, compliance reviews, education and outreach and reporting to be provided by Recology. The term of the agreement remains unchanged and expires December 31, 2027.

The attached draft Second Amendment to Franchise Agreement has been negotiated, reviewed and approved by District's General Counsel.

RECOMMENDATION:

Adopt Resolution No. ___, *Resolution Approving and Authorizing Execution of Second Amendment to Franchise Agreement for Solid Waste and Recycling Services*

Attachments

Second Amendment to Franchise Agreement
Resolution

SECOND AMENDMENT TO FRANCHISE AGREEMENT

This **SECOND AMENDMENT** to the Franchise Agreement hereinafter referenced is entered into and effective as of _____, 2021 between the Montara Water and Sanitary District, a public agency ("District"), and Recology of the Coast, a California corporation ("Contractor").

WHEREAS, District and Contractor are parties to that certain Franchise Agreement for Solid Waste and Recycling Services effective October 1, 2013, as amended by that certain First Amendment to Franchise Agreement dated October 1, 2017 ("Agreement"), and wish to further amend the Agreement as set forth herein.

NOW, THEREFORE, the parties agree as follows:

1. The Agreement is hereby amended to replace all references within the Agreement to Yard Waste with Mixed Organics, other than the definition of Yard Waste in Exhibit A of the Agreement which shall remain a reference to Yard Waste.

2. Section 2.1 of the Agreement is hereby amended to read as follows:

"2.1 Grant and Acceptance of Franchise. District hereby grants to Contractor the exclusive right and privilege to Collect, transport, and Dispose of Solid Waste, and to Collect, transport, process, and market Recyclable Material and Mixed Organics, accumulating in District's Service Area. Contractor hereby accepts the foregoing right and privilege, subject to the terms, covenants and conditions of this Agreement."

3. Section 4.04.1 of the Agreement is hereby amended to read as follows:

"4.04.1 Collection. Contractor shall collect Mixed Organics from Single Family Dwelling Residential Service Recipients weekly on the regularly scheduled day of the week for such Collection as posted on Contractor's website. Contractor shall provide and service one (1) ninety-six gallon capacity wheeled cart for each Single Family Dwelling for Mixed Organics Collection. Contractor shall collect Mixed Organics from Commercial, Industrial, Institutional and Multi-Family Dwelling Service Recipients between one (1) and six (6) days per week as subscribed for by such Service Recipients.

Effective January 1, 2022, Contractor shall terminate service on any customer-provided Containers. Contractor shall include a description of Composting Programs in Contractor's Education and Public Awareness Program pursuant to Section 5.05."

4. Section 4.6.2 of the Agreement is hereby amended to read as follows:

"4.6.2 Commercial, Industrial, and Institutional. Collection of Solid Waste, Recyclable Material, and Mixed Organics from Premises occupied by Commercial, Industrial, and Institutional Service Recipients shall be made on the Premises at a location or locations specified or approved by Contractor, giving due regard to sanitation, Collection vehicle clearance, aesthetics, Contractor's cost considerations, and similar criteria.

5. Exhibit A of the Agreement is hereby amended to add the following definitions:

“**Food Waste**’ means food scraps, food trimmings and other putrescible waste that results from food production, preparation, cooking, storage, consumption and/or handling, and that has been Source Separated. Food Waste includes but is not limited to meat, fish, dairy, fruit, vegetable and grain waste, and food-soiled paper.”

“**Mixed Organics**’ means Source Separated organic material consisting of any combination of Food Waste and Yard Waste.”

6. Exhibit D of the Agreement is hereby deleted and replaced in its entirety with Exhibit D (Schedule of Maximum Refuse Collection and Recycling Fees and Charges) attached hereto.

7. Exhibit G (SB 1383 Matters) attached hereto is hereby added in its entirety as Exhibit G to the Agreement. As a condition of approval of this Second Amendment, Contractor agrees to comply with the requirements contained in California Code of Regulations (CCR), Title 14, Division 7, Chapter 12, Article 3 as they appear on the date of this Second Amendment that are binding on Contractor by operation of law and with the SB 1383 matters expressly delegated to Contractor by this Second Amendment.

8. Pursuant to Section 4.09 of the Agreement and Section 18988.1(a)(1) of the SB 1383 Regulations, Contractor hereby notifies District that Contractor is transporting Mixed Organics collected under the Agreement to Ox Mountain Sanitary Landfill located at 12310 San Mateo Road, Half Moon Bay, California 94044 and Recyclable Material collected under the Agreement to GreenWaste Recovery located at 625 Charles Street, San Jose, California 95112. District hereby approves Contractor’s use of such facilities.

9. Except as expressly modified by this Second Amendment, all terms and conditions of the Agreement shall remain unchanged and in full force and effect. Capitalized terms used but not defined herein shall have the meanings given to them in the Agreement. All references in this Second Amendment to Articles, Sections and Exhibits refer to articles, sections and exhibits of the Agreement.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Second Amendment to Franchise Agreement as of the date first written above.

Montara Water and Sanitary District

Recology of the Coast

By: _____
Scott Boyd
President

By: _____
Salvatore M. Coniglio
Chief Executive Officer

Countersigned: _____
Ric Lohman
Secretary

EXHIBIT D

SCHEDULE OF MAXIMUM REFUSE COLLECTION AND RECYCLING FEES
AND CHARGES

(Effective January 1, 2022)

[To be added.]

EXHIBIT G

SB 1383 RELATED MATTERS

1. Definitions. In addition to the terms defined in Exhibit "A" of this Agreement, the following terms are defined as follows and clarify for the purposes of this Agreement any definitions that also appear in the District's Organic Waste Disposal Reduction Ordinance as set forth in Chapter II, Article 8 of the Montara Water and Sanitary District Code:
 - 1.1. "Blue Container" means a Container colored as follows: (a) the lid shall be blue, or (b) the body shall be blue and the lid shall be either blue, gray, or black. Hardware such as hinges and wheels may be any color.
 - 1.2. "Gray Container" means a Container colored as follows: (a) the lid shall be gray or black, or (b) the body shall be gray or black and the lid shall be gray or black. Hardware such as hinges and wheels may be any color.
 - 1.3. "Green Container" means a Container colored as follows: (a) the lid shall be green, or (b) the body shall be green and the lid shall be green, gray, or black. Hardware such as hinges and wheels may be any color.
 - 1.4. "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 Mixed Organics collection services (not on-call or Bulky Item), excluding compactor collection services, within the Service Area.
 - 1.5. "Prohibited Container Contaminants" means any of the following:
 - 1.5.1. Non-Mixed Organics placed in the Green Container, including but not limited to textiles and carpets, manure, biosolids, digestate, sludges, non-compostable paper, Construction & Demolition Debris, and Hazardous Waste;
 - 1.5.2. Mixed Organics placed in the Gray Container that is specifically identified under the Agreement for collection in the Green Container or Blue Container;
 - 1.5.3. Mixed Organics placed in the Blue Container or other colored Container designated by Contractor for Recyclable Material that is specifically identified under the Agreement for collection in the Green Container. Paper products and printing and writing paper may be considered acceptable and not considered Prohibited Container Contaminants if they are placed in the Blue Container.
 - 1.6. "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.

1.7. "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.

2. Container Colors.

2.1. General Requirement. Contractor shall ensure that each Container that it newly purchases after January 1, 2022 and provides to a Customer for regularly scheduled collection under this Agreement conforms to the following color scheme: Gray Containers for collection of Solid Waste, Blue Containers for collection of Recyclable Materials, and Green Containers for collection of Mixed Organics. 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.

2.2. Specific Material Types. Paper products and printing and writing paper, each as defined in the SB 1383 Regulations, may be placed in either the Blue Container or the Green Container.

3. Container Labels.

3.1. General Requirement. Contractor shall ensure that each Container (or Container lid) that it newly purchases after January 1, 2022 and provides to a Customer for regularly scheduled collection under this 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.

4. Route Reviews.

4.1. General Requirement. At least once annually, beginning in 2022, Contractor shall conduct a Route Review for each Hauler Route. For each Route Review of a Hauler Route, Contractor shall inspect a number of Containers equal to 2% of the number of Customers on the Hauler Route (rounded down to the nearest whole number), or 25 Containers, whichever is less. Only one (1) Container per Customer shall be counted towards the above threshold. For example, if a Mixed Organics Hauler Route has 2,000 Customers, Contractor would inspect one (1) Mixed Organics Container each for 25 Mixed Organics Customers on that Hauler Route. Contractor may, but shall not be required to, inspect more than the above number of Containers. Each inspection shall involve observing the contents of the Container (whether by lifting the lid, using a camera, or other method deemed appropriate by Contractor), 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 District) 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 reports to District, as required by Section 7.

4.2. Notice of Contamination. If Contractor finds Prohibited Container Contaminants in a Container during a Route Review, Contractor shall notify the Customer of the violation in writing. The written notice shall include information regarding the Customer's 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. Contractor may dispose of the contents of any Container found to contain Prohibited Container Contaminants. The notice shall be provided in English and Spanish.

5. Compliance Reviews.

5.1. General Requirement. At least once annually, beginning in 2022, Contractor shall review the records of its Commercial and Multi-Family Customers in District that are subscribed for at least two (2) cubic yards per week of combined Solid Waste, Mixed Organics and Recyclable Materials service, to determine whether such Customers are subscribed for Mixed Organics collection service or have an applicable waiver. Contractor shall include the results of each compliance review in its reports to District, as required by Section 7.

6. Education & Outreach.

6.1. Prior to February 1, 2022, and annually thereafter, Contractor shall provide the following to all its Mixed Organics Customers under the Agreement:

6.1.1. Information on the Mixed Organics Customer's requirements to properly separate materials in appropriate containers.

6.1.2. Information on methods for: the prevention of Mixed Organics generation, recycling Mixed Organics on-site, sending Mixed Organics to community composting, and any other local requirements regarding Mixed Organics.

6.1.3. Information regarding the methane reduction benefits of reducing the landfill disposal of Mixed Organics, and the methods of Mixed Organics recovery contemplated by the Agreement.

6.1.4. Information regarding how to recover Mixed Organics.

6.1.5. Information related to the public health and safety and environmental impacts associated with the landfill disposal of Mixed Organics.

6.2. 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.

6.3. Educational materials provided pursuant to the above shall be translated into Spanish.

7. Reporting.

- 7.1. Beginning January 1, 2022, Contractor shall provide the following information to District on at least a quarterly basis:
- 7.1.1. For information provided by Contractor pursuant to Section 6 above:
- (a) Copies of all such information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, mass emails, and other mass 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.
 - (d) Notwithstanding any other provision, Contractor shall not be required to track or provide copies of emails, texts, or other electronic communications with individual Customers (e.g. if a CSR answers a customer question).
- 7.1.2. 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) For Route Reviews, (i) a description of each Hauler Route reviewed, including Contractor's route number and a description of the Hauler Route area, (ii) a list of the account names and addresses where Container inspections were performed, and (iii) the results of such review (i.e. the addresses where any Prohibited Container Contaminants were found).
 - (d) For Compliance Reviews, the results of such review (i.e. Contractor's findings as to whether the Customers reviewed are subscribed for Mixed Organics collection service, have an applicable waiver, or neither), and any relevant evidence supporting such findings (e.g. a spreadsheet based on Contractor's account records summarizing the reviewed Customers' service levels and waiver status).
 - (e) Copies of any educational materials issued pursuant to such reviews (other than notices of Prohibited Container Contaminants, which are covered below).
- 7.1.3. Documentation relating to observed Prohibited Container Contaminants, whether observed during Route Reviews or otherwise:
- (a) Copies of the form of each notice issued by Contractor 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).

- (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.
- (d) For the avoidance of doubt, the notices of Prohibited Container Contaminants referred to in this subsection include both the notices issued during Route Reviews under Section 4 above, as well as the notices issued by drivers for nonconforming Solid Waste, Recycling Material, or Mixed Organics issued under Section 4.08 of the Agreement.

7.1.4. A description of Contractor's process for determining the level of Container contamination under the Agreement.

RESOLUTION NO. ____

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF
SECOND AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID
WASTE AND RECYCLING SERVICES (Recology of the Coast)**

WHEREAS, the Montara Water and Sanitary District and Recology of the Coast entered into that certain agreement entitled, "Franchise Agreement between the Montara Water and Sanitary District and Recology of the Coast for Solid Waste and Recycling Services", effective October 1, 2013, as amended by that certain First Amendment to Franchise Agreement dated October 1, 2017 ("Agreement");and

WHEREAS, a proposed second amendment to the Agreement hereinafter referenced has been presented to and reviewed by this Board; and

WHEREAS, this Board hereby determines that said second amendment is in the public interest and should be approved and executed on behalf of the District;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE MONTARA
WATER AND SANITARY DISTRICT, A PUBLIC AGENCY IN THE COUNTY OF SAN
MATEO, CALIFORNIA, AS FOLLOWS:**

That certain agreement by and between the Montara Water and Sanitary District, a public agency in the County of San Mateo, California, and Recology of the Coast, a California Corporation, entitled "Second Amendment to Franchise Agreement" (form dated 12/02/21), a copy of which is on file in the District Administrative Offices, to which reference is hereby made for the full particulars thereof, is hereby approved, and the President and Secretary of this Board are hereby authorized and directed to execute said agreement, and to attest thereto, respectively, for and on behalf of the District.

President, Montara Water and Sanitary District

COUNTERSIGNED:

Secretary, Montara Water and Sanitary District

RESOLUTION NO. ____

**RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF
SECOND AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID
WASTE AND RECYCLING SERVICES (Recology of the Coast)**

* * * *

I HEREBY CERTIFY that the foregoing Resolution No. ____ duly and regularly adopted and passed by the Board of the Montara Water and Sanitary District, County of San Mateo, California, at a Regular Adjourned Meeting thereof held on the 2nd day of December 2021, by the following vote:

AYES, Directors:

ABSTENTION:

NOES, Directors:

ABSENT, Directors:

Secretary, Montara Water and Sanitary District