

FIRST AMENDMENT
TO THE SOLID WASTE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF SOLANA BEACH AND EDCO WASTE & RECYCLING SERVICES, INC
DATED DECEMBER 8, 2021

This First Amendment to the Solid Waste Franchise Agreement between the City of Solana Beach and EDCO Waste and Recycling Services dated July 1, 2018 ("AGREEMENT") is made by and between the City of Solana Beach, hereinafter referred to as "CITY" and EDCO Waste and Recycling Services, hereinafter referred to as "FRANCHISEE," and together sometimes collectively referred to hereinafter as the "PARTIES." The date of this AGREEMENT is January 1, 2022.

Whereas, on December 31, 2017, Coast Management, Inc. assigned its Residential Franchise Agreement with the CITY dated August 1, 1993, and later amended, to the FRANCHISEE effective December 31, 2017; and

Whereas, on July 1, 2018, CITY and FRANCHISEE entered into the Amended and Restated Solid Waste Franchise Agreement which governs the removal of solid waste, recyclables, manure, green waste, and other compostables by FRANCHISEE within the CITY; and

Whereas, the PARTIES may only amend the AGREEMENT by a writing signed by both PARTIES pursuant to Section 13.5 of the AGREEMENT; and

Whereas, the State of California has, through enactment of AB 939 and subsequent related legislation including, but not limited to, the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826) and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote a reduction in landfill disposal and to maximize the use of feasible waste reduction, reuse, recycling, and composting options in order to reduce the amount of material that must be disposed; and

Whereas, SB 1383 establishes regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to support achievement of State-wide organic waste disposal reduction targets; and

Whereas, on August 25, 2021, the CITY amended Chapter 6.20 of the Solana Beach Municipal code adopting measures to implement the mandates required by SB 1383 and made the following findings:

(a) The storage, accumulation, collection and disposal of garbage, trash, litter, rubbish, debris and other discarded matter, goods and materials are a matter of great public concern, in that improper control of such matters creates a public nuisance, can lead to air pollution, fire hazards, illegal dumping, insect breeding and rat infestation and other conditions affecting the health, welfare and safety of the residents of this and surrounding cities. The city council further finds that the periodic collection of garbage, rubbish and other refuse and recyclable material from all residences and places of business in the city benefits all occupants of residences within the city and, therefore, the occupants as hereinafter

defined are made liable for the payment of fees for the mandatory service as may be from time to time approved by city council resolution. The city council further declares that the regulations provided in this chapter are designated to eliminate such problems. The city council is authorized to adopt this chapter pursuant to California Constitution Article XI, § 7 and Division 30 of California Public Resources Code (Waste Management) including, without limitation, Sections 40057, 40058, 40059, 49300 and 49500 et seq. (Ord. 333 § 2, 2005; Ord. 177 § 1, 1993)

(b) State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their Jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.

(c) State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires Jurisdictions to implement a Mandatory Commercial Recycling program.

(d) State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires Jurisdictions to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires Jurisdictions to implement a Mandatory Commercial Organics Recycling program.

(e) SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including Jurisdictions, residential households, Commercial Businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.

(f) SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires Jurisdictions to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

Whereas, the PARTIES desire to memorialize the impacts of the above-referenced amendments in the form of this First Amendment to the AGREEMENT.

NOW, THEREFORE, in consideration of the promises and of the covenants and conditions hereinafter contained, it is agreed between the PARTIES that the AGREEMENT is hereby amended as follows:

1. A new recital is hereby added to read as follows:

“WHEREAS, SB 1383 Regulations and amendments to Chapter 6.20 of the Solana Beach Municipal Code require the CITY to implement collection programs, meet processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor and enforce compliance, and fulfill other requirements; and, CITY has chosen to delegate some responsibilities to FRANCHISEE, acting as the CITY’s designee, through this AGREEMENT;”

2. ARTICLE 1. DEFINITIONS; DELEGATION OF AUTHORITY subsection A shall be revised to read as follows: “A. Whenever any term used in this Agreement has been defined by the provisions of the SOLANA BEACH Municipal Code, the definitions contained in said code shall govern the meaning of such words for the purpose of this Agreement.”
3. Article 3. TERM OF AGREEMENT subsection 3.1 Effective Date and Term of Agreement shall be amended as follows: The term of this agreement shall commence on January 1, 2022, and expire on December 31, 2027, provided however, that commencing January 1, 2023, and every year thereafter, automatic one-year extensions shall be applied to said Agreement, so that the term of the Agreement shall be a minimum of five years.
4. ARTICLE 5. WASTE COLLECTION SERVICES subsection 5.3 Scope of Service subsection (A) shall be amended as follows: “A. GENERAL. The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The scope of services supplied shall comply with the SOLANA BEACH Municipal Code as it may be amended from time to time.”
5. ARTICLE 5. WASTE COLLECTION SERVICES subsection 5.16 Solid Waste Containers subsection A. Residential. FRANCHISEE shall provide customers with a three-container organic waste collection program that complies with 14 CCR Section 18984.1, 18984.7, and 18984.8.
6. Subsection 5.20 under ARTICLE 5 is hereby added to the AGREEMENT to read as follows:

5.20 Organic Waste Collection Services; Operating and Reporting Requirements

A. **Organic Waste Materials to be Collected.** FRANCHISEE shall collect organic waste as required under applicable state laws and according to the SOLANA BEACH municipal code. Organic waste that is to be accepted for collection in the organics collection program include the following: food scraps, food-soiled paper, and yard trimmings. The PARTIES agree that materials may be added to or removed from this list from time to time by mutual consent or by amendment to the SOLANA BEACH Municipal Code. FRANCHISEE

shall not add or remove materials to or from this list without written approval from the City Manager or designee, or signed amendment to this AGREEMENT, and such approval shall not be unreasonably withheld. Compostable and biodegradable plastic, carpets, non-compostable paper, textiles, and prohibited container contaminants shall not be collected in the organics container.

B. Designated Organics Processing Facilities. During the term of the AGREEMENT, FRANCHISEE shall provide the identity of all processing facilities that will be used to manage recyclables and trash. Said list shall be updated annually in a report to the City Manager or designee.

C. Education and Outreach; Program Objectives. FRANCHISEE public education and outreach strategy shall focus on improving generators' understanding of the benefits of and opportunities for source reduction, reuse, and landfill disposal reduction. In general, FRANCHISEE-provided public education and outreach, which shall include all content required by this Section, should: (i) inform generators about the services that are provided under this AGREEMENT with specific focus on describing the methods and benefits of source reduction, reuse, and reduction of solid waste disposal; (ii) instruct generators on the proper method for placing materials in containers for collection and setting containers out for collection with specific focus on minimizing contamination of source separated recyclable materials and organics waste; (iii) clearly define excluded waste and educate generators about the hazards of such materials and their opportunities for proper handling; (iv) discourage generators from buying products if the product and its packaging are not readily reusable, recyclable, or compostable; (v) encourage the use of compost and mulch; and, (vi) encourage generators to purchase products/packaging made with recycled-content materials. The cumulative intended effect of these efforts is to reduce each generator's reliance on FRANCHISEE-provided solid waste container service and, ultimately, disposal, and FRANCHISEE agrees to support and not undermine or interfere with such efforts.

D. Franchisee Cooperation and/or Support for CITY or Third-Party Educational Efforts. FRANCHISEE acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. FRANCHISEE shall cooperate and coordinate with the City Manager or designee on public education activities to minimize duplicative, inconsistent, or untimely education campaigns. The FRANCHISEE shall cooperate with the implementation, expansion, or operation of public education and outreach programs or campaigns conducted by the CITY or their designee.

FRANCHISEE shall obtain approval from the City Manager or designee Manager on all FRANCHISEE provided public education materials outside of the CITY's education plan, including, but not limited to, print, radio, television, or internet media before publication, distribution, and/or release. CITY shall have the right to request that FRANCHISEE include

CITY identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.

E. Annual Notice of Requirements. Not less than once per year during each rate year, FRANCHISEE shall prepare information specified in 14 CCR Section 18985.1(a) and make available in an electronic format through the FRANCHISEE's website.

F. Procurement of Recovered Organic Waste Products. All Route Collection vehicles used by FRANCHISEE under this AGREEMENT shall be powered by Renewable Natural Gas (RNG) whether generated by FRANCHISEE's Anaerobic Digestion Facility or purchased. Upon CITY's request, FRANCHISEE shall obtain and provide the CITY with a written certification by an authorized representative certifying that the in-vessel digestion facility produces the RNG in quantities corresponding to City's Organics Wastes collected by FRANCHISEE consistent with the requirements of 14 CCR Section 18993.1(h). FRANCHISEE shall maintain records of the amount of RNG purchased and shall report this information to the CITY on a biannual basis. FRANCHISEE shall allow the CITY to report this RNG usage toward the CITY's fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.


G. Contamination Monitoring. FRANCHISEE shall perform contamination monitoring for prohibited container contaminants in a manner that is deemed appropriate by the CITY; complies with 14 CCR Sections 18984.5, 18984.11, 18998.1, and 18998.2, SOLANA BEACH Municipal Code Chapter 6.20, and other applicable law; and results in all routes being reviewed at least annually.

H. Reporting Requirements. FRANCHISEE shall provide access to and/or copies, as requested, of all records required by SB 1383 and the SOLANA BEACH Municipal Code to CITY on a quarterly basis, including the requirements of 14 CCR Sections 18984.4, 18984.6, 18984.14, and 18998.4.

I. Change in Laws. FRANCHISEE shall develop and, upon the City Council's approval, implement within a timely manner, programs to meet new requirements of local, state and federal laws. FRANCHISEE may request a rate increase or decrease as per this AGREEMENT.

7. Except as otherwise amended by the specific terms of this First Amendment, each and every term, condition, and obligation contained in this AGREEMENT is reaffirmed and remains in full force and effect.
8. This First Amendment may be executed in counterparts each of which shall be considered an original.

IN WITNESS WHEREOF, the PARTIES have executed this First Amendment of the AGREEMENT which shall become effective January 1, 2022.

BY:  _____ Dated 4/24/22

Steve South
President
EDCO Disposal

BY:  _____ Dated 2-7-22

Gregory Wade
City Manager
City of Solana Beach

Approved as to form:

BY:  _____ Dated 2-9-22

Johanna Canlas
City Attorney
City of Solana Beach