



Marin Sanitary Service
CONSERVATION — OUR EARTH, OUR MISSION, OUR JOB

AGREEMENT BETWEEN
THE CENTRAL MARIN SANITATION AGENCY
AND
MARIN SANITARY SERVICE /1050 Andersen Dr.
FOR THE
CENTRAL MARIN FOOD-TO-ENERGY PROGRAM

June 2022

** 5 year Contract

** Expires 2027

TABLE OF CONTENTS

RECITALS 3

ARTICLE 1. DEFINITIONS..... 5

ARTICLE 2. REPRESENTATIONS AND WARRANTIES..... 11

 2.01 Of CMSA..... 11

 2.02 Of MSS 11

ARTICLE 3. THE PARTIES.....13

 3.01 Independent Contractor.....13

 3.02 Parties in Interest13

 3.03 Binding on Successors.13

 3.04 Confidentiality of Information..... 13

 3.05 Sole Responsibility..... 13

ARTICLE 4. TERM OF AGREEMENT 14

 4.01 Term 14

 4.02 Term Extensions 14

 4.03 Survival of Certain Provisions..... 14

ARTICLE 5. PREPARATION, DELIVERY, AND ACCEPTANCE OF FOOD WASTE 15

 5.01 Delivered Food Waste 15

 5.02 Acceptance of Food Waste..... 15

ARTICLE 6. OTHER PROGRAM COMMITMENTS 17

 6.01 Facility Operations..... 17

 6.02 MSS Program Guarantee 17

 6.03 General Operations 18

 6.04 Disposal of Pomace, Residual of Digested Food Solids, and
 Unacceptable Materials 18

 6.05 Records 19

 6.06 MSS Right to Tour and Inspect Facility..... 19

 6.07 CMSA Right to Tour, Inspect, and Monitor Transfer Station 19

 6.08 Ongoing Evolution of Program 19

ARTICLE 7. COMPENSATION 20

 7.01 General 20

 7.02 Disposal Fee and Fee Escalation..... 20

 7.03 Facility Corrective Maintenance Expense Reimbursement 20

 7.04 Revenue Sharing..... 20

ARTICLE 8. INSURANCE	21
8.01 Insurance Requirements	21
ARTICLE 9. INDEMNITY.....	23
9.01 MSS Indemnification.....	23
9.02 CMSA Indemnification.....	23
ARTICLE 10. BREACHES, DEFAULTS, AND MEET & CONFER.....	24
10.01 Breaches	24
10.02 Default.....	24
10.03 Request to Meet and Confer.....	25
10.04 Remedy of Breach, Other Remedies.....	25
10.05 Waiver	26
10.06 Determination of Remedy or Cure of Breach or Default	26
10.07 Uncontrollable Circumstances	26
ARTICLE 11. TERMINATION	27
11.01 Parties' Right to Suspend or Terminate	27
ARTICLE 12. OTHER PROVISIONS	28
12.01 Notices.....	28
12.02 Authorized Representatives.....	28
12.03 Assignment.....	28
12.04 Conflicting Provisions	28
12.05 Governing Law.....	29
12.06 Amendments.....	29
12.07 Venue; Attorney's Fees	29
12.08 Entire Agreement.....	29
12.09 Savings Clause	29

EXHIBITS

- Exhibit A: MSS Participant Assessment & Contamination
Control Procedures for Food Waste Delivered to CMSA
- Exhibit B: Food Waste Program Participant Agreement
- Exhibit C: Service Areas

**AGREEMENT BETWEEN
THE CENTRAL MARIN SANITATION AGENCY
AND
MARIN SANITARY SERVICE
FOR THE
CENTRAL MARIN FOOD-TO-ENERGY PROGRAM**

This Agreement is entered into and executed as of the ___ day of June 2022 (the “Effective Date”), by and between the Central Marin Sanitation Agency (“CMSA”) a joint powers authority in Marin County, and Marin Sanitary Service (“MSS”), a corporation formed under the laws in the State of California, (together referred to as the “Parties” or “Party”).

RECITALS

WHEREAS, the State of California (“State”) through enactment of the California Integrated Waste Management Act of 1989, has directed all local agencies to promote recycling and to maximize the use of feasible source reduction, recycling, and composting options in order to reduce the amount of municipal solid waste that must be disposed of by landfill; and

WHEREAS, organic food waste is one of the largest components of landfilled material; and

WHEREAS, SB 1383 requires a 75% reduction in the level of the statewide disposal of organic waste from the 2014 level by 2025;

WHEREAS, CMSA is a regional wastewater treatment agency located in San Rafael that provides wastewater, resource recovery, and environmental services to the residents and businesses in San Rafael, Larkspur, Corte Madera, Ross, Fairfax, San Anselmo, and unincorporated areas in the Central Marin County, including San Quentin State Prison; and

WHEREAS, MSS is the solid waste company that serves many residents and businesses in Central Marin County, and has a similar service area as CMSA; and

WHEREAS, CMSA has two anaerobic digesters that produce biogas for use as renewable fuel in a cogeneration system to produce renewable electricity to power CMSA’s facilities, with excess power delivered to the utility grid and sold to MCE; and

WHEREAS, CMSA and MSS partnered with the City of San Rafael in 2008 to conduct a Methane Capture Feasibility Study that showed MSS could then collect up to 15 tons of commercial food waste per day in the MSS Service Area (as defined below), and that food waste could be processed in the CMSA digesters to produce additional biogas; and

WHEREAS, in January 2014, CMSA and MSS implemented a Central Marin Food-to-Energy (F2E) program in accordance with that certain Agreement Between The Central Marin Sanitation Agency and Marin Sanitary Service, Inc. for Commercial Food Waste Processing and Disposal Services dated May 20, 2013 (the "Original Agreement") that has successfully reduced greenhouse gas emissions, reduced use of landfill volume, and saved electricity and natural gas resources within Central Marin County; and

WHEREAS, to assist its jurisdictions to comply with the SB 1383 organic waste landfill diversion requirements, MSS plans to collect and process additional commercial food waste, and wishes to deliver it to CMSA's Facility; and

WHEREAS, CMSA's Facility has the capacity to accept the current daily and weekly amounts of commercially generated food waste from the MSS Service Area and possibly more in the future, in accordance with the terms of this Agreement; and

WHEREAS, the Parties agree to cooperate with each other in good faith to implement or amend this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, guarantees and conditions contained in this Agreement and for other good and valuable consideration, CMSA and MSS agree as follows:

ARTICLE 1. DEFINITIONS

Accept (or **Acceptance** or other variations thereof) is the transfer of ownership of Food Waste from MSS to CMSA.

Agreement means this Agreement, including all exhibits and attachments that are incorporated herein by reference. This Agreement may be amended and supplemented pursuant to Section 12.06.

Applicable Law means all statutes, rules, regulations, permits, orders, or requirements of the Federal, State, County, and local government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site, or the performance of the Parties' respective obligations hereunder in effect as of the Execution Date and as amended and/or enacted hereinafter.

Change in Law means the occurrence of any event or change in Applicable Law as follows:

(1) the adoption, promulgation, amendment, modification, rescission, revision or repeal of any Applicable Law or change in judicial or administrative interpretation thereof occurring after the Execution Date hereof; or

(2) any order or judgment of any Federal, State, or local court, administrative agency or governmental body issued after the Execution Date hereof if:

(i) such order or judgment is not the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and

(ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as willful misconduct or negligent action of such Party); or

(3) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any permit or approval after the Execution Date; or

(4) the failure of a governmental authority or agency to issue, or the suspension, termination or rejection of, any permit or approval after the Execution Date hereof.

CMSA Service Area the service area served by CMSA as outlined in green on Exhibit C attached hereto.

Collectors means MSS and those business entities engaged by MSS to collect Food Waste from commercial food waste generators.

Commercial Food Waste Generator means those restaurants, grocery stores, markets, and other food processing businesses participating in MSS' Food-to-Energy program

Common Service Area means that portion of the CMSA Service Area that lies within the MSS Service Area.

Contract Year means CMSA's fiscal year of July 1 of one year to June 30 of the following year.

Delivery (Deliver or Delivered or other variations thereof) means arrival of MSS at the Site entrance during Facility Receiving Hours for the purposes of delivering Food Waste to CMSA.

Disposal means depositing of Pomace or Residual of Digested Food Solids for beneficial use, including, but not limited to composting, land application, alternative daily cover at authorized landfills, or dumping at an authorized landfill.

Facility means the CMSA's wastewater treatment plant located at 1301 Andersen Drive, San Rafael, California.

Facility Receiving Hours are hours when the CMSA will be open to Accept Food Waste at the Facility as defined in Section 6.03.

Food Waste means organic consumer food materials acceptable for Pre-processing that is collected from Commercial Food Waste Generators within the MSS Service Area, or within the respective service areas of other Marin County solid waste haulers that contract with MSS for Food Waste Pre-processing services. Food Waste includes fruits, vegetables, meat, seafood, small bones, dairy, eggs, breads, pastas, sauces, cooking oil, grease, tea bags, coffee grounds and filters, and other related food waste materials. Food Waste from outside the MSS Service Area may be delivered to the Facility by MSS or different solid waste companies.

Force Majeure event includes but is not limited to floods, earthquakes, epidemics, pandemics, government orders and restrictions, and other extraordinary acts of nature, war or insurrection, riots, or other similar catastrophic events, not caused or maintained by the Party seeking relief, which event is not reasonably within the ability of that Party to intervene in or control to the extent that such event has a materially adverse effect on the ability of that Party to perform its obligations hereunder. No event, the effects of which could have been prevented by reasonable precautions, including compliance with Applicable Laws, shall be a Force Majeure event. No failure of performance by CMSA, MSS, their respective contractors or other Collectors shall be a Force Majeure event unless such failure is itself caused by a Force Majeure event as to CMSA, MSS, their respective contractors and/or other Collectors.

Hazardous Waste means materials that are hazardous, including but not limited to:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by

Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522;

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related Federal, State and local laws and regulations;

(3) materials regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related Federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and regulations promulgated thereunder; and

(5) materials regulated under any future additional or substitute Federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or Hazardous Waste; with the exception that Hazardous Waste, for the purpose of this Agreement, shall specifically exclude Household Hazardous Waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of "Hazardous Waste," for purposes of collection, transportation, processing and/or disposal, the more restrictive definition shall be employed for purposes of this Agreement.

Holidays are New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day or any other day that CMSA gives MSS seventy-two (72) hours' prior written notice that the Facility will not be in operation that day.

Household Hazardous Waste are those wastes resulting from products used by the general public for household purposes which, because of their quantity, concentration, or physical or chemical characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

Labor Action means labor unrest, including strike, work stoppage, lock-out, slowdown, sick-out, picketing, industrial disturbance, and any other concerted job action.

Liquid Organic Waste means all other processed, screened, liquid materials that are received at the Facility for codigestion, including but not limited to Fats, Oils, and Grease (FOG), food waste slurry, soy whey, brewery and winery wastewater, and other food and beverage manufacturing wastewater.

Notice (or **Notify** or other variation thereof) means written notice given by one Party to the other Party in relation to the execution of the various obligations of both Parties under this Agreement.

MSS Service Area means the geographical area where the residents and businesses that MSS serves are located as of the date this Agreement is executed by CMSA as outlined in red on Exhibit C attached hereto.

Permits means all Federal, State and local, statutory or regulatory approvals, or other measures or mechanisms necessary for either Party to be in full legal compliance in the performance of all their obligations, as renewed or amended from time to time.

Person includes any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a county, a municipality or special district, or any other entity whatsoever.

Pomace means material resulting from processing the Food Waste through the Facility's paddle finisher after acceptance and prior to digestion, that requires recycling or Disposal.

Pre-process means the handling, removal of Unacceptable Materials, and processing of the Food Waste by MSS at its Transfer Station prior to delivery to the Facility.

Process (or **Processing** or any other variation thereof) means the handling, digestion, and Disposal of Food Waste and Pomace and Residual of Digested Food Solids by CMSA at the Facility after Acceptance.

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation that such Person has undertaken to satisfy.

Residual of Digested Food Solids means material remaining after digestion and dewatering of Food Waste that requires Disposal.

Site means the parcel of land on which the Facility is situated.

Ton means a unit of measure for weight equivalent to two thousand (2,000) standard pounds (where each pound contains 16 ounces).

Transfer Station means MSS' transfer station at 1050 Andersen Drive, San Rafael, at which the Food Waste is Pre-processed before it is transported to the Facility.

Unacceptable Material(s) means wastes or other materials that CMSA cannot Process as part of the Food Waste and are considered contamination, including but not limited to plastic, styrofoam, glass, metal, bones, paper, cardboard, wood, yard waste, cans, straps, ropes, cords, wires, bottles or

any other material in quantities that would impact CMSA's ability to process Food Waste or meet regulatory compliance.

De minimis quantities of these wastes materials which under typical operating circumstances would not significantly disrupt Facility operations will not be considered Unacceptable Materials. At the execution date of this Agreement, CMSA has determined that De minimus quantities of contamination over a 12 month period result in less than \$29,500 of unplanned corrective maintenance, which includes unclogging and repairing pumping systems among other tasks. This definition may evolve over time by mutual agreement of the Parties to reflect new methods that allow processing of additional materials.

Uncontrollable Circumstance(s) means any act, event, or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility, the Transfer Station or either Party, which materially and adversely affects the ability of either Party to perform any of its obligations under this Agreement, including:

(1) The failure of any appropriate Federal, State, or local public agency or private utility having operational jurisdiction in the area in which the Facility or the Transfer Station is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility or the Transfer Station which are required for Facility operations or Transfer Station operations; or

(2) A Change in Law or applicable regulations, such as including without limitation changes to the Facility's Air Permit conditions; or

(3) The suspension or interruption of either Party's operations as a result of any release, spill, power outage, contamination, migration or presence of any Hazardous Waste, petroleum and petroleum products or as a result of any release, spill, contamination of toxic materials where the Party is not liable for the release, spill or contamination, or a potentially responsible party. The suspension of operations due to a release, spill or contamination where the Party's liability for the release, spill or contamination arises solely from Party's status as the operator of the facility or owner of the property will be considered an Uncontrollable Circumstance; or

(4) A treatment process upset to the Facility that prevents the use of the digesters, or a disruption to the Transfer Station operation or similar event not related to Food Waste processing and; or

(5) A Force Majeure event that temporarily or permanently interrupts Facility operations or Transfer Station operations; or

(6) A Facility equipment or control system failure that interrupts the ability of the Facility to receive and process the Food Waste; or

(7) A Transfer Station equipment failure that interrupts the ability of the Transfer Station to receive, preprocess, or transport Food Waste.

The following are excluded from Uncontrollable Circumstances, without limitation, unless caused by an Uncontrollable Circumstance listed above:

(1) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;

(2) The consequences of errors on the part of either Party, its employees, agents, subcontractors or affiliates, including errors in plans and specifications that should reasonably have been identified;

(3) The failure of either Party to secure and/or maintain the necessary regulatory permits for delivery and processing of Food Waste;

(4) The lack of fitness for use, or the failure to properly maintain, of any materials, equipment or parts constituting any portion of the Facility or the Transfer Station; and

(5) Labor Actions of or affecting the employees or contractors (including, in the case of MSS, other Collectors) of the Party that is asserting Uncontrollable Circumstances.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Of CMSA. CMSA represents and warrants as of the date hereof:

a. **Status.** CMSA is a publicly owned utility formed under the California Joint Exercise of Powers Act.

b. **Authority and Authorization.** CMSA has full legal right, power, and authority to execute this Agreement and perform its obligations hereunder. This Agreement has been duly executed by CMSA and constitutes a legal, valid, and binding obligation of CMSA enforceable against CMSA in accordance with its terms. CMSA has complied with Applicable Law in entering into this Agreement.

c. **No Conflicts.** The execution by the CMSA of this Agreement, the performance by the CMSA of its obligations under, and the fulfillment by the CMSA of the terms and conditions of, this Agreement does not knowingly (1) conflict with, violate or result in a breach of any Applicable Law; or (2) conflict with, violate, or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which CMSA is a Party or by which CMSA or any of its properties or assets are bound, or constitute a Default thereunder.

d. **No Approvals.** CMSA warrants that all legally required Permits and approvals of whatsoever nature have been secured for CMSA to provide services hereunder and meet CMSA's obligations, and CMSA further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all permits, and approvals which are legally required for CMSA to provide such services and meet its obligations.

e. **No Litigation.** There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of CMSA's knowledge, threatened, against CMSA wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by CMSA of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce, this Agreement or any other agreement or instrument entered into by CMSA in connection with the transactions contemplated hereby.

f. **Public Works.** The services requested by CMSA under this Agreement do not constitute a "public work" and are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of the regulations promulgated thereunder.

2.02 Of MSS. MSS represents and warrants as of the date hereof:

a. **Status.** MSS is a corporation, duly organized and validly existing under the laws of the State of California.

b. **Authority and Authorization.** MSS has full legal right, power and authority to execute this Agreement, and perform its obligations hereunder. This Agreement has been duly executed by MSS and upon execution constitutes a legal, valid, and binding obligation of MSS enforceable against MSS in accordance with its terms and in accordance with MSS' corporate resolution. MSS has complied with

Applicable Law in entering into this Agreement. Notwithstanding the foregoing, MSS does not have the authority to act for, or to waive any rights of, any of the jurisdictions in the MSS Service Area with respect to the Food Waste delivered to the Facility.

c. No Conflicts. Neither the execution by MSS of this Agreement, the performance by MSS of its obligations hereunder, nor the fulfillment by MSS of the terms and conditions hereof: (1) conflicts with, violates, or results in a breach of Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which MSS is a Party or by which MSS or any of its properties or assets are bound, or constitutes a Default thereunder.

d. No Approvals. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by MSS.

e. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of MSS's knowledge, threatened, against MSS that would materially adversely affect the performance by MSS of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by MSS in connection with the transactions contemplated hereby.

ARTICLE 3. THE PARTIES

3.01 Independent Contractor.

The Parties intend that each will perform its obligations as an independent contractor and neither as a partner of or joint venturer with the other. No agents, employees, contractors, consultants, licensees, agents or invitees of a Party will be deemed to be employees, contractors, licensees, agents or invitees or agents of the other Party.

3.02 Parties in Interest.

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their respective representatives, successors, and permitted assigns.

3.03 Binding on Successors.

Subject to Section 12.03 below, the provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

3.04 Confidentiality of Information.

The Parties acknowledge and agree that information submitted by either Party pursuant to this Agreement may be subject to compulsory disclosure upon request from a member of the public under the California Public Records Act, Government Code Section 6250 *et seq.*

3.05 Sole Responsibility.

Each Party shall be solely responsible for the acts and omissions of its officers, employees, contractors, and agents.

ARTICLE 4. TERM OF AGREEMENT

4.01 Term.

This Agreement shall become effective on the date its been executed by both Parties and will continue in effect for approximately five (5) years thereafter (the "Term") unless terminated earlier by either Party in accordance with Article 7 or 11. The first year of the Term will end on June 30, 2023 and the fifth year of the Term will end on June 30, 2027.

4.02 Term Extensions.

a. **Agreement to Extend.** The Parties may agree in writing to extend this Agreement on mutually acceptable terms after the end of the initial Term. Each extension will be of at least 12 months in duration and will be part of the Term. The Parties shall endeavor to commit to an extension at least ninety (90) days before the expiration of the then-current Term.

b. **Agreement in Full Effect.** All provisions of this Agreement shall remain in effect during any extension.

4.03 Survival of Certain Provisions.

All indemnifications provided for herein and any other rights and obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination including, but not limited to, the following provisions: Section 6.05 (Records and Reports), Article 8 (Insurance) and Article 9 (Indemnity).

ARTICLE 5. PREPARATION, DELIVERY, AND ACCEPTANCE OF FOOD WASTE

5.01 Delivered Food Waste.

MSS will use Reasonable Business Efforts and will employ specified procedures to ensure that all Food Waste Delivered to CMSA's Facility has been Pre-processed, is free of Unacceptable Materials, and is acceptable based on CMSA's requirements for its Food Waste processes and its Facility processes as set forth in this Agreement.

a. **Grinding of Food Waste.** Before Delivery, the Food Waste must be ground into pieces approximately one inch square in size or smaller, through a hammermill or like equipment.

b. **Preventing Contamination of Loads.** MSS will use Reasonable Business Efforts to prevent Unacceptable Materials from being included in Food Waste Delivered to CMSA, including, but not limited to, the education of those Collectors and Commercial Food Waste Generators who utilize MSS' services, and the termination of the Delivery to the Facility of Food Waste collected from Commercial Food Waste Generators who fail to comply with the Unacceptable Waste requirements of this Agreement. MSS will require its Commercial Food Waste Generators to sign a Food Waste Program Participation Agreement (Exhibit B) that acknowledges both the requirements of this Agreement, as well as the Participant Assessment and Contamination Controls procedures which are attached to this Agreement as Exhibit A.

5.02 Acceptance of Food Waste.

a. **Acceptance and Ownership of Food Waste.** CMSA shall accept an aggregate of up to 20 tons per day, or 90 tons per week, of Food Waste from MSS during the Term. CMSA and MSS agree to discuss adjusting these maximum amounts based on MSS' stated plans to expand in commercial food waste collection program.

Notwithstanding the above, CMSA shall have the right but not the obligation to inspect each and every load of Food Waste to confirm that no Unacceptable Materials are contained therein. Food Waste will be deemed Accepted unless CMSA rejects the materials as they are being offloaded or immediately after offloading at the Facility. If the Food Waste is contaminated in a manner that could not be ascertained upon visual inspection during dumping but CMSA notifies MSS prior to completion of processing that the Food Waste contains Unacceptable Materials, it shall have the right to reject the remainder of that load of Food Waste.

b. Rejection of Unacceptable Material.

(1) Inspection. CMSA may use Reasonable Business Efforts to detect and discover Unacceptable Material.

(2) Rejection of Contaminated Loads. CMSA may reject any loads containing Unacceptable Materials, if a qualified CMSA representative observes Unacceptable Materials discharged into the Food Waste receiving tank and believes, using their professional judgment, that the Unacceptable Materials are of a type or quantity that will disrupt Facility operations

(e.g., by clogging pipelines or damaging equipment or impacting the digestion process, the biogas utilization process, or the disposability of dewatered biosolids).

Should CMSA reject any Delivered loads of Food Waste at the Facility due to the presence of Unacceptable Materials, CMSA shall immediately upon discovery notify the delivery truck driver and the MSS authorized representative (as defined below) verbally, identifying CMSA's reason for rejection of the Delivered Food Waste and identifying the specific MSS truck that Delivered the rejected Food Waste, if possible. If CMSA rejects Food Waste Delivered to the Facility per Section 5.02.a, MSS will promptly remove the rejected Food Waste from the Facility at its own expense.

ARTICLE 6. OTHER PROGRAM COMMITMENTS

6.01 Facility Operations.

a. **Operating Throughput Commitment.** MSS estimates a maximum of twenty (20) tons of Food Waste per day or ninety (90) tons of Food Waste per week (after the required Pre-processing and including the weight of any dilution water that may be added at MSS' facility).

b. **Vehicle Turnaround.** CMSA will use Reasonable Business Efforts to allow MSS' vehicles to enter, position their vehicles for dumping, dump their load of Food Waste (including Facility clean up), turnaround and exit the Facility within an average of sixty (60) minutes or less after arriving at the Facility absent vehicle breakdown, driver negligence, lack of cooperation on the part of the driver, or driver parking to use restrooms, telephone or other driver or truck-related issues, and provided that the truck arrives at the Facility during Facility Receiving Hours.

c. **Facility Clean-up.** MSS will clean and wash down the Facility's Food Waste receiving area after each load of Food Waste is dumped into its underground receiving tank. Upon completion of the dumping and cleaning, all debris and liquid waste that may have spilled during the dumping operation shall be removed and the area left in a clean and orderly state. Washdown water, hoses, brooms, and a dumpster are located at the Facility's Food Waste receiving area and may be used by MSS for Facility clean-up. If MSS fails to clean up its debris and/or liquid waste, CMSA shall be entitled to charge MSS the sum of One Hundred Dollars (\$100.00) for each delivery that MSS fails to clean-up.

6.02 MSS Program Guarantee.

a. **Quantity.** MSS shall make Reasonable Business Efforts to deliver to CMSA one hundred percent (100%) of the Food Waste collected from Collectors and Commercial Food Waste Generators in the Common Service Area, not including loads which may have to be rejected due to the presence of Unacceptable Materials. MSS will not materially reduce the scope of the Food Waste program without the prior written agreement of CMSA, which agreement shall not be unreasonably withheld. The Parties acknowledge that some restaurants or food processors in the Common Service Area will not participate in the Food Waste program because they are either not interested in participating or are unable to provide uncontaminated Food Waste. MSS is authorized to deliver Food Waste collected from Collectors and Commercial Food Waste Generators in portions of the MSS Service Area that are outside the Common Service Area, subject to the other provisions of this Agreement.

b. **Expansion of Program.** MSS further commits to seek expansion of its Food Waste collection program by encouraging other Marin County solid waste haulers to collect commercial food waste from their service areas, sharing education materials, and offering to Pre-process their collected Food Waste at the Transfer Station for MSS' Pre-processing and Delivery to the Facility.

c. **Permits.** MSS will be responsible at its own expense for any and all permits required for the collection and Pre-processing of Food Waste, and delivery of Food Waste to the Facility as well as the disposal of rejected Food Waste and debris and liquid waste spilled during loading into the vehicles and transportation to the Facility.

6.03 General Operations.

a. **Facility Receiving Hours.** Unless otherwise agreed upon by the Parties in advance, CMSA shall receive Food Waste from MSS at the Facility between the hours of 6:00 a.m. and 4:00 p.m. each Monday through Friday, and between the hours of 9:00 a.m. and 12:00 p.m. on Saturdays, excluding Holidays.

b. **Notification in Emergency.** It is the responsibility of MSS to Notify CMSA of emergencies, and changes in scheduling of the delivery of Food Waste.

c. **Scale Operation.** The MSS Transfer Station operator will weigh each Food Waste delivery vehicle before and after loading for (1) CMSA billing purposes, and (2) to determine the amount of materials received. The scale weight information for each delivery vehicle will be provided to CMSA at the time of each Delivery to the Facility. Upon request, MSS will provide verification that the scales are routinely calibrated and certified by Marin County.

d. **Continuous Operations.** CMSA shall keep open and operate the Facility continuously and uninterrupted, during Facility Receiving Hours, except when CMSA is prevented from doing so by any Uncontrollable Circumstance, rejection of Unacceptable Material, performing scheduled maintenance of the Food Waste processing equipment, or if a CMSA digester is out-of-service or has a processing disruption or other related wastewater treatment plant processes, such as biosolids disposal or dewatering centrate processing. may be negatively impacted by the Food Waste.

e. **Traffic Flow.** CMSA shall direct traffic upon entry to the Site so that MSS' vehicles travel, queue, unload, and exit in a safe manner.

6.04 Disposal of Pomace, Residual of Digested Food Solids, and Unacceptable Materials.

a. **Pomace.** MSS will legally dispose of all Pomace from the Facility processing. CMSA will verbally notify the MSS authorized representative that the Facility's Pomace storage container needs to be emptied along with a written reminder sent to the MSS' email address set forth below in Section 12.01. MSS will pay its proportionate share of the pomace disposal fee which will be based on the tons of MSS delivered Food Waste divided by the total tons of Food Waste received by the Facility since the last Pomace storage container disposal.

b. **Residual of Digested Food Solids.** CMSA at its own expense will dispose of the Residual of Digested Food Solids through compost, alternative daily cover at landfills, land application, landfill direct disposal, or any other disposal/reuse method consistent with State of California regulations.

c. **Unacceptable Materials.** At its own expense, CMSA cleans the Facility's food waste storage tank quarterly and deposits debris and Unacceptable Materials into debris bins. So long as MSS is the only supplier of Food Waste to the Facility, MSS at its own expense will remove the storage bins from the Facility and dispose of the removed debris and Unacceptable Materials. MSS will pay its proportionate share of the Unacceptable Material disposal fee which will be based on the tons of MSS delivered Food Waste divided by the total tons of Food Waste received by the Facility during the prior quarter.

6.05 Records.

a. General Record Keeping. CMSA and MSS shall each maintain such records related to their individual performances under this Agreement as shall be reasonably necessary to develop the reports required by this Agreement. CMSA and MSS agree to receive input from the other if necessary on data collection, information and record keeping, and reporting activities required to comply with Applicable Laws and to meet their reporting and Food Waste program management needs. Each of CMSA and MSS shall provide the other with copies of all such records promptly upon request.

CMSA and MSS shall maintain records required to conduct their own operations, to support requests either may make of the other, and to respond to reasonable requests for information necessary to conduct their respective businesses. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as fire, water damage, theft, and earthquake. Electronically maintained data/records shall be protected and backed up in order to ensure complete and accurate retrieval of information.

b. Retention of Records. Unless otherwise herein required, CMSA and MSS shall retain all documents required to be maintained by this Agreement for at least five (5) years after the expiration or earlier termination of this Agreement. Alternatively, either Party may send its records and data to the other Party after the normal retention period has expired. Records and data that are specifically directed to be retained shall be made available to either Party upon receipt of a written request.

6.06 MSS Right to Tour and Inspect Facility.

MSS and its designated representative(s) have the right, to enter, observe, and tour the Facility on reasonable notice during Facility Receiving Hours. MSS can also be accompanied on such tours by county supervisors, city council members, regulators, representatives from educational organizations, and public relations or media representatives. MSS and its representatives or guests will comply with CMSA's safety and security rules at all times while on the Facility site.

6.07 CMSA Right to Tour, Inspect, and Monitor Transfer Station.

CMSA and its designated representative(s) have the right, to enter, observe, tour, inspect and monitor the Transfer Station and its operations on reasonable notice to MSS, Monday through Friday, during normal operating hours with legal holidays and weekends excluded. CMSA and its representatives will comply with MSS' safety and security rules at all times while on the Transfer Station site.

6.08 Ongoing Evolution of Program.

Periodically and when necessary during the Term, the Parties will meet to discuss the ongoing evolution of the Food-to-Energy program. The Parties agree to use good faith efforts to resolve issues that arise based on concerns or impacts identified during the Term.

ARTICLE 7. COMPENSATION

7.01 General.

CMSA's compensation provided for in this Article will be the full, entire and complete compensation due to CMSA pursuant to this Agreement for all labor, equipment, material and supplies, taxes, insurance, bonds, overhead, transport, Acceptance, Processing, Residual of Digested Food Solids Disposal, and all other things necessary to perform the services required by this Agreement in the manner and at the time prescribed. MSS is not obligated to reimburse CMSA for any losses that CMSA may incur due to fluctuations in the costs of processing Food Waste.

7.02 Disposal Fee and Fee Escalation.

The Delivery fee at the Facility will be \$26.00 per ton of Food Waste from the Effective date until June 30, 2023. The Delivery fee shall be adjusted at the beginning of each Contract Year starting with July 1, 2023 by the amount of the annual percentage change in the Consumer Price Index for Water and Sewer and Trash Collection, U.S. city average, Bureau of Labor Statistics Series I.D. CUSR0000SEHG.

7.03 Facility Corrective Maintenance Expense Reimbursement.

MSS will reimburse CMSA annually for its proportionate share of Facility corrective maintenance expenses caused by delivery of Food Waste containing Unacceptable Materials in excess of De minimus amounts. Reimbursement proportioning will be determined by the annual tons of Food Waste delivered by MSS divided by the total annual tons on Food Waste received by the Facility.

7.04 Revenue from Food Waste Digestion.

The Parties agree that CMSA will retain all revenue and Renewable Energy Credits (RECs) realized from the sale of electricity generated by the codigestion of Food Waste.

If the Parties identify and pursue any potential future revenue stream associated with organics diversion, carbon capture, codigestion of organicste, or similar activity, they will meet and confer on sharing the revenues.

ARTICLE 8. INSURANCE

8.01 Insurance Requirements.

a. **Insurance.** Each Party shall purchase and maintain, in full force and effect during the Term adequate insurance that shall be no less than the types and amounts of insurance coverage listed below. Each Party's insurers must provide the other Party with thirty (30) calendar days' Notice of any cancellation or reduction in coverage and name the other Party, and its Board of Commissioners or Directors and its employees as additional insureds. Each Party, for itself and its Collectors and contractors, shall supply certificates of insurance and additional insured endorsement to the other Party showing compliance with this Article 8 prior to the delivery of any Food Waste to the Facility. The terms and obligations of this Article shall survive termination of this Agreement.

b. **Workers' Compensation Insurance.** Each Party shall purchase and maintain during the Term, Workers' Compensation and Employer's Liability insurance policy for all of its employees working on this project. Each Party shall ensure that its Collectors and contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during this Agreement, Workers' Compensation and Employer's Liability insurance.

c. **Comprehensive General Liability Insurance.** Each Party shall purchase and maintain during the Term Comprehensive General Liability insurance policy in the amount of one million dollars (\$1,000,000) for combined single limit coverage for bodily injury, personal injury, and property damage. Each Party shall ensure that its Collectors and contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during the Term, General Liability insurance that meets or exceeds the requirements of this Agreement.

The following coverages or endorsements must be indicated on the certificate:

- (1) The other Party, its Commissioners or Directors, officers and employees are named as additional insureds in the policy;
- (2) The coverage is primary to any other insurance carried by the other Party;
- (3) The policy covers contractual liability for the assumption of liability of others;
- (4) The policy is written on an occurrence basis;
- (5) The policy covers broad form property damage liability
- (6) The policy covers personal injury (libel, slander, and trespass) liability;
- (7) The policy will not be canceled nor reduced without thirty (30) days' written notice to the other Party.
- (8) The policy(ies) cover(s) products and completed operations.

d. Automobile Liability Insurance. Each Party shall purchase and maintain an Automobile Liability insurance policy that shall apply to all owned, hired, and non-owned autos, vehicles and trailers. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Each Party shall ensure that its Collectors and contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during the Term, Automobile Liability insurance that meets or exceeds the requirements of this Agreement.

e. Pollution Liability Insurance. Each Party shall purchase and maintain a Pollution Liability insurance policy with limits not less than \$1,000,000 per occurrence and in the aggregate for bodily injury and property damage. Each Party shall ensure that its Collectors and contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during the Term, Pollution Liability insurance that meets or exceeds the requirements of this Agreement.

f. Amounts of Insurance. The amounts of insurance shall not be less than the following:

General Liability – one million dollars (\$1,000,000) per occurrence

Auto Liability – one million dollars (\$1,000,000) per occurrence

Worker's Compensation – State statutory limit

Pollution Liability – one million dollars (\$1,000,000) per occurrence

ARTICLE 9. INDEMNITY

9.01 MSS Indemnification.

MSS, to the greatest extent allowed by Applicable Law, will protect, hold free and harmless, defend and indemnify CMSA, including its Board of Commissioners, individual commissioners, employees, consultants, and agents (collectively "indemnitees" or individually "indemnitee") from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including reasonable attorney's fees, resulting from injury to or death sustained by any person (including MSS' or its subcontractors' employees) or damage to property of any kind, which injury, death or damage arises out of or is in any way connected with MSS', its Collectors' or its contractors' performance of any part of this Agreement. MSS' aforesaid indemnity, defense and save harmless agreement shall apply to any acts or omissions, or negligent conduct, whether active or passive, on the part of one or more of the indemnitees, except that said obligation of indemnity and hold harmless of an indemnitee shall not be applicable to injury, death or damage to property arising from the sole negligence or willful misconduct of that specific indemnitee. This indemnification, defense and hold harmless obligation shall extend to claims asserted after expiration or earlier termination, for whatever reason, of this Agreement.

9.02 CMSA Indemnification.

CMSA, to the greatest extent allowed by Applicable Law, will protect, hold free and harmless, defend and indemnify MSS, its Board of Directors, individual Directors, officers and employees (collectively "indemnitees" or individually "indemnitee") from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including reasonable attorney's fees, resulting from injury to or death sustained by any person (including CMSA's employees) or damage to property of any kind, which injury, death or damage arises out of or is in any way connected with CMSA's or its contractors' performance of any part of this Agreement. CMSA's aforesaid indemnity, defense and save harmless agreement shall apply to any acts or omissions, or negligent conduct, whether active or passive, on the part of one or more of the indemnitees, except that said obligation of indemnity and hold harmless of an indemnitee shall not be applicable to injury, death or damage to property arising from the sole negligence or willful misconduct of that specific indemnitee. This indemnification, defense and hold harmless obligation shall extend to claims asserted after expiration or earlier termination, for whatever reason, of this Agreement.

ARTICLE 10. BREACHES, DEFAULTS, MEET AND CONFER

10.01 Breaches.

a. **Definition.** A breach is a material failure to perform any of the material obligations set forth in this Agreement.

b. **Notice of Breach.** Either Party shall promptly Notify the other Party regarding the occurrence of a breach as soon as such breach becomes known to the Noticing Party. Such Notice shall be given in writing.

c. **Cure of Breach** MSS and CMSA shall begin cure of any breach that it commits as soon as possible after it becomes aware of its breach. Upon receiving written Notice of a breach, the breaching Party shall proceed to cure such breach as follows:

(1) Immediately, if the breach is such that in the determination of either CMSA or MSS, the health, welfare or safety of the public is endangered thereby, unless immediate cure is impossible, in which event the Party required to cure shall Notify the other Party, and the other Party may seek substitute services.

(2) Within thirty (30) calendar days of receiving Notice of the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) calendar days to cure, the breaching Party shall not be in default so long as it promptly commences to cure its breach, secures written agreement from the other Party to extend the thirty (30) calendar day cure period (which the other Party shall not unreasonably refuse), and provides the other Party, no less than weekly, written status of progress in curing such breach, and diligently proceeds to complete same.

10.02 Default.

a. **Events of CMSA Default.** Each of the following shall constitute an event of default by CMSA.

(1) **Uncured Breach of Agreement.** CMSA fails to cure any breach as specified in Section 10.01.

(2) **Repeated Pattern of the same Breaches.** CMSA commits the same breach at least three (3) times during any twelve-month period during the Term.

b. **Notice of Default.** CMSA shall be in default from the date of receipt of a Notice from the MSS identifying such default.

c. **Events of MSS Default.** Each of the following shall constitute an event of default by MSS.

(1) **Uncured Breach of Agreement.** MSS fails to cure any breach as specified in Section 10.01.

(2) **Repeated Pattern of Breaches.** MSS commits the same breach at least three (3) times during any twelve-month period during the Term.

d. **Notice of Default.** MSS shall be in default from the date of receipt of a Notice from CMSA identifying such default.

10.03 Request to Meet and Confer.

If any breach occurs that materially affects this Agreement or a Party's ability to perform under this Agreement or a change in Applicable law that affects either Party's ability to receive diversion credits under AB 939, either Party shall send Notice to the other Party describing the problem and requesting a meet and confer meeting. The Parties may choose to meet in person or by teleconference. The meet and confer process is intended to be a prerequisite to sending a Notice of Breach.

If either Party does not agree to meet and confer, does not appear at the meet and confer meeting, or if the Parties are not able to correct the breach or solve the problem resulting from a change in the Applicable Law within a reasonable period of time not to exceed thirty (30) days after the meet and confer, unless the time period is extended by mutual agreement, the aggrieved Party may send a Notice of Breach.

Notwithstanding the above, there is no requirement that the meet and confer process be used for a failure to pay, or for emergencies or urgent matters of public health.

10.04. Remedy for Breach, Other Remedies.

The Parties shall be entitled to all available monetary or equitable remedies, including specific performance and injunctive relief.

a. **MSS Remedies in the Event of CMSA Default.** Upon CMSA's failure to cure a breach pursuant to Section 10.01 or default pursuant to Section 10.02, MSS shall, in addition to its right to collect monetary damages, have the following rights:

(1) Waive Default. To, at its sole discretion, waive the CMSA breach or default in writing.

(2) Termination. Terminate the Agreement in accordance with Article 11, provided that no termination shall be effective until MSS has given written Notice to CMSA of its decision to terminate the Agreement.

(3) All Other Available Remedies. In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which MSS shall be entitled, according to proof.

(4) Damages Survive. If CMSA owes any damages upon MSS's termination of this Agreement, CMSA's liability under this Section 10.03 shall survive termination.

b. CMSA Remedies in the Event of MSS Default. Upon MSS' failure to cure a breach pursuant to Section 10.01 or default pursuant to Section 10.02, CMSA shall, in addition to its right to collect monetary damages, have the following rights:

(1) Waive Default. To, at its sole discretion, waive the MSS breach or default in writing.

(2) Termination. Terminate the Agreement in accordance with Article 11, provided that no termination shall be effective until CMSA shall have given written Notice to MSS of its decision to terminate the Agreement.

(3) All Other Available Remedies. In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which CMSA shall be entitled, according to proof.

(4) Damages Survive. If MSS owes any damages upon CMSA's termination of this Agreement, MSS's liability under this Section 10.03 shall survive termination.

10.05 Waiver.

A waiver by one Party of one breach or default by the other Party shall not be deemed to be a waiver of any other breach or default by that Party, including ones with respect to the same obligations hereunder, and including new incidents of the same breach or default. The subsequent acceptance of any damages or other money paid hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or default.

10.06 Determination of Remedy or Cure of Breach or Default.

Upon request of either Party, an event of breach or default shall be considered remedied or cured upon signature by both Parties of a written agreement specifying the event and stating that remedy and/or cure of such event has been completed.

10.07 Uncontrollable Circumstances.

a. Performance Excused. Neither Party shall be in breach of its obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such obligations due to an Uncontrollable Circumstance if such Party exerted Reasonable Business Efforts to prevent such Uncontrollable Circumstance, and such Party expeditiously takes all actions within its control to end, or to ameliorate the effects of such Uncontrollable Circumstance as soon as possible.

b. Notice. The Party claiming excuse from performance of its obligations based on an Uncontrollable Circumstance shall Notify the other Party as soon as is reasonably possible, but in no event later than three (3) working days after the occurrence of the event constituting the Uncontrollable Circumstance. The Notice shall include a description of the event, the nature of the obligations for which the Party claiming Uncontrollable Circumstance seeks excuse from performance, the expected duration of the inability to perform and proposed mitigation measures.

ARTICLE 11. TERMINATION

11.01 Parties' Right to Suspend or Terminate.

a. **Suspension.** Either Party shall have the right to suspend this Agreement, in whole or in part, upon the occurrence of a default under Article 10 regarding an occurrence that endangers public health, welfare or safety, provided such suspension is for no longer than forty-five (45) calendar days.

b. **Termination.** MSS or CMSA have the right to terminate this Agreement for the following events:

(1) Occurrence of a default, or a breach which is not cured within the time frame specified, as set forth in Article 10. The terminating Party shall provide a 30-day notice.

(2) For any reason by providing a 12-month notice

c. **Payments Upon Termination.** Upon termination, CMSA shall accept as full payment for services rendered to the date of termination any payments required based on the portion of work actually performed. If MSS has made any payment for services that have not been performed, then CMSA shall promptly repay to MSS that amount.

ARTICLE 12. OTHER PROVISIONS

12.01 Notices.

Except as otherwise specified in this Agreement, all communications made hereunder to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective physical or email addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section.

If to MSS:

MSS Director of Operations
Attn: Justin Wilcock
1050 Andersen Drive
San Rafael, California 94901
Telephone: (415) 755-9528
Email: justin.wilcock@MarinSanitary.com

If to CMSA:

CMSA General Manager
Attn: Jason Dow
1301 Andersen Drive
San Rafael, California 94901
Telephone: (415) 459-1455
Email: jdow@cmsa.us

12.02 Authorized Representatives.

a. **MSS.** For purposes of this Agreement, the MSS authorized representative will be its Director of Operations or her/his designee.

b. **CMSA.** For purposes of this Agreement, CMSA's authorized representative will be its General Manager.

12.03 Assignment.

Neither Party may assign its rights or responsibilities under this Agreement to any other Person without the consent of the other Party, which consent will not be unreasonably withheld.

12.04 Conflicting Provisions.

In the event the provisions of this Agreement herein conflict with those of the Exhibits hereto, the provisions of this Agreement shall prevail.

12.05 Governing Law.

This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, irrespective of choice of law principles.

12.06 Amendments.

The Parties may change, modify, supplement, or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties.

12.07 Venue; Attorneys' Fees.

The exclusive venue for any legal proceedings shall be Marin County, or, in case of federal jurisdiction, Federal District Court, Northern District. The prevailing Party in any dispute arising under or in connection with this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the other Party.

12.08 Entire Agreement.

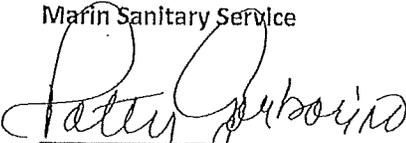
This Agreement contains the entire Agreement between the Parties with respect to the transactions contemplated hereby. All Exhibits are hereby incorporated into this Agreement by reference. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions, including the Prior Agreement except with respect to periods prior to the Effective Date. However, nothing in this paragraph shall supersede or diminish the representations and warranties as contained in Article 2. This Agreement shall not be interpreted for or against either Party, it having been prepared with the participation of both Parties.

12.09 Savings Clause.

If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term, or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision will remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations will remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement on the date first above written.

Marin Sanitary Service

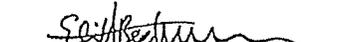


Patty Garbarino, President

22 June 22

Date

Central Marin Sanitation Agency



Eli Beckman, Commission Chair

6/17/22

Date



MSS Secretary

6/22/2022

Date



Dean DiGiovanni, Vice-Chair

6/20/22

Date

