

## DEFERRED PAYMENT AGREEMENT

THIS AGREEMENT, is entered into, to be effective February 1, 2023 by and between Orange County Sanitation District ("OC San"), a county sanitation district duly organized and existing pursuant to Section 4700 et. seq. of the Health & Safety Code of the State of California and Nor-Cal Beverage Co., Inc. ("Permittee").

### RECITALS

A. OC San is a wastewater treatment agency which owns and operates wastewater treatment facilities which receive, treat and discharge, through an ocean outfall, wastewater received from dischargers within its jurisdictional boundaries. In the course of its wastewater treatment operations, and pursuant to Ordinance No. OCSD-53 Wastewater Discharge Regulations ("OC San's Ordinance"), OC San issues industrial wastewater discharge permits to certain persons/entities which discharge wastewater into the OC San's sewerage system.

B. As part of the OC San's wastewater treatment operations, OC San imposes user fees on permittees, requiring such permittees to pay their share of the OC San's costs of conveying, treating and disposing of wastewater discharged by such permittees.

C. Permittee is the holder of an industrial wastewater discharge permit issued by OC San and is responsible for paying user fees for the cost of conveying, treating and disposing of wastewater discharged from Permittee's facility located at 1226 N. Olive St, Anaheim, CA 92801.

D. OC San has issued to Permittee Invoice No. 912804 in the amount of \$986,149.55 for user fees then due and owing to the OC San.

E. Permittee has failed to pay the presently owing sum of \$986,149.55 and has requested additional time to pay this outstanding obligation.

F. Pursuant to Resolution No. OC SAN 21-05, OC San is authorized to enter

into deferred payment agreements for limited sums and of limited duration, pursuant to approval by the OC San's Board of Directors.

G. The OC San intends to provide additional time for Permittee to pay to OC San the amounts presently due on Invoice No. 912804. in accordance with the requirements of Resolution No. OC SAN 21-05.

NOW, THEREFORE, in consideration of the facts recited above and the conditions, covenants and promises set forth below, OC San and Nor-Cal Beverage Co., Inc. agree as follows:

AGREEMENT

1. Permittee shall make payments (including principal and interest) to the OC San, pursuant to the payment schedule in Appendix A.

2. Permittee shall pay to OC San all other invoices issued by the OC San during the term of this Agreement in accordance with the provisions of OC San's Ordinance.

3. If any payment described in Paragraph 1 herein is not received by the OC San on or before the due date specified, or if any payment described in Paragraph 2 herein is not received by OC San in accordance with the provisions of OC San's Ordinance, the entire balance then owing shall become immediately due and payable and interest at the rate of ten percent (10%) per annum shall accrue on any such unpaid balance from the date of acceleration until the date that the balance due is fully paid to the OC San.

4. Permittee acknowledges that the failure to pay current invoices, or failure to pay any installment in accordance with the schedule set forth in Paragraph 1 herein, may be grounds for suspension of any industrial wastewater discharge permit issued to Permittee by OC San, and shall additionally be deemed a breach of this Agreement, thereby giving rise to all legal remedies available to OC San. Permittee agrees that by executing this Deferred Payment Agreement, Permittee waives the right to an

administrative hearing for non-payment of invoices or any other means to challenge the amount owed, and further agrees that failure to pay OC San in accordance with the terms of this Agreement will result in immediate permit suspension until such time as the all outstanding amounts owed are current.

5. In consideration of the foregoing, OC San agrees to refrain from instituting collection or permit suspension or revocation proceedings, which remedies are presently available to the OC San as a result of Permittee's current failure to pay Invoice No. 910969. This provision to refrain from instituting such proceedings shall be effective with regard only to Invoice No. 910969 for so long as Permittee remains in compliance with the terms of this Agreement.

6. Should any litigation be commenced between the OC San and Permittee regarding enforcement of this Agreement, or the rights and any duties of the parties in relation thereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney fees and costs in the litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

7. Nothing in this Agreement shall affect Permittee's obligation to pay current and/or future charges for use of OC San's sewerage system or Permittee's obligation to comply with all other conditions and requirements of its industrial wastewater discharge permit and the OC San's Ordinance.

8. Nothing herein shall affect the OC San's right to enforce all requirements and conditions of the OC San's Ordinance.

9. This Agreement is made only for the benefit of the parties hereto. It is not intended that any right under this Agreement shall accrue to any third person.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

Orange County Sanitation District

BY:

\_\_\_\_\_  
Chad P. Wanke  
Chair, Board of Directors

Attest:

Nor-Cal Beverage Co., Inc.

BY:

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Kelly A. Lore  
Clerk of the Board

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Kevin Koontz  
Chief Financial Officer