

THIRD AMENDMENT AND RESTATEMENT OF THE  
AGREEMENT BETWEEN  
THE CITY OF MORENO VALLEY AND  
WASTE MANAGEMENT OF THE INLAND EMPIRE

A division of  
USA WASTE OF CALIFORNIA, INC.  
(a Delaware Corporation)

FOR  
THE PROVISION OF  
INTEGRATED WASTE MANAGEMENT SERVICES

JULY 1, 2022

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**THIRD AMENDMENT AND RESTATEMENT OF  
THE AGREEMENT BETWEEN THE CITY OF  
MORENO VALLEY AND USA WASTE OF  
CALIFORNIA, INC., A DELAWARE  
CORPORATION, DBA WASTE MANAGEMENT  
OF THE INLAND EMPIRE FOR THE PROVISION  
OF INTEGRATED WASTE MANAGEMENT  
SERVICES**

This Third Amendment and Restatement of the Franchise Agreement ("Agreement") is entered into this 1<sup>st</sup> day of July 2022, by and between the City of MORENO VALLEY ("City") and USA Waste of California, Inc., a Delaware Corporation, dba Waste Management of the Inland Empire (Contractor), for Integrated Waste Management Services.

**RECITALS**

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste and construction debris handling within their jurisdictions; and

**WHEREAS**, Pursuant to California Public Resources Code Section 40059 (a)(1), the City Council of City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified enterprise for the collection, transportation; recycling, composting, and disposal of Solid Waste from commercial and residential premises in City; and

**WHEREAS**, the City Council of City declares its intention of maintaining reasonable rates for the collection, transportation, recycling, composting, and disposal of Solid Waste and construction debris and for providing temporary bin/roll-off services to commercial and residential premises within City of MORENO VALLEY; and

**WHEREAS**, City and Contractor entered into a Franchise Agreement ("1991 Agreement") on April 16, 1991 for the Collection, Transportation, Recycling and Disposal of Solid Waste within City; and

**WHEREAS**, said "1991 Agreement" was mutually amended and restated on March 26, 2002 and the second amendment and restatement on June 10, 2008; and

**WHEREAS**, City and Contractor wish to further amend and restate the "1991 Agreement" as amended and restated on March 26, 2002 and the second amendment and restatement on June 10, 2008; and

**WHEREAS**, the State of California has found and declared that the amount of Solid

Waste generated in California, coupled with diminishing Disposal capacity and interest in minimizing potential environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has enacted AB 939 and subsequent related legislation including, but not limited to the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), 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; and

**WHEREAS**, SB 1383 Regulations require the City to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to the Contractor, acting as the City's designee, through this Agreement; and

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

## **SECTION 1. GRANT OF EXCLUSIVE FRANCHISE**

This Agreement grants an exclusive franchise as provided herein and pursuant to Moreno Valley Municipal Code Chapter 6.02 (herein after, Chapter 6.02), of the City of Moreno Valley (hereinafter referred to as "City") and the California Public Resources Code Section 40059 (a)(1) to USA Waste of California, Inc., a Delaware Corporation, dba Waste Management of the Inland Empire (hereinafter referred to as "Contractor") for the collection, transportation, recycling, composting, and disposal of Solid Waste, Recyclable Solid Waste, Green Waste, Special Waste and Construction and Demolition Waste and for providing temporary bin/roll off services for all commercial and residential premises within City (hereinafter referred to as "Integrated Waste Management Services"). City reserves the right to amend Chapter 6.02 6.03 and the terms of this Agreement in any manner necessary for the safety or welfare of the public or to protect the public interests. This Agreement shall be in force and effect beginning July 1, 2022, within the corporate limits of City as they now or may hereafter exist, as shown in Exhibit "A", Franchise Area.

## **SECTION 2. DEFINITIONS**

Whenever any term used in this Agreement has been defined by Chapter 6.02, 6.03, California Public Resources Code, or California Code of Regulations, the definitions in Chapter 6.02, 6.03, Public Resources Code, or the California Code of Regulations shall apply unless the term is otherwise specifically defined in this Agreement.

"AB 341" means the Assembly Bill 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, relating to Solid Waste, as amended, supplemented, superseded and replaced from time to time.

"AB 876" means the Assembly Bill approved by the Governor of the State of California on October 8, 2015, which added Section 418214 to the Public Resources Code, relating to Solid Waste as amended, supplemented, superseded, and replaced from time to time.

"AB 901" means Assembly Bill approved by the Governor of the State of California on October 10, 2015, which amended Section 41821.5 of, amended, renumbered and added Section 41821.6 of, and added Sections 41821.7 and 41821.8 to, the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

"AB 939" shall mean the California Integrated Waste Management Act of 1989, as it may be amended from time to time.

“AB 1594” means the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which amended Sections 40507 and 41781.3 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.

“AB 1826” means the Assembly Bill 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.

“Back-Haul” means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, as defined in 14 CCR Section 18982(a)(66)(A).

“Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials.

"Bins or Commercial Bins" shall mean those containers provided by Contractor for commercial and multi-family residential premises. Bins are of two types: (1) Front-end containers (usually 3 cubic yards in size) which are picked up by refuse trucks by means of front loading apparatus; and (2) Roll-off containers (usually 40 cubic yards in size) which are picked up by trucks using rear loading winches onto rails.

"Bulky Waste" means discarded furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with Freon, ranges, washers, dryers, water heaters, dishwashers, air conditioner units with CFCs, televisions, electronic appliances, small household appliances and other similar items commonly known as "white goods"), waste tires (up to four per individual request), and oversized yard wastesuch as tree trunks and large branches if no larger than two feet (2) in diameter and four feet (4) in length and similar large items discarded from residential service recipients; "Bulky waste" does not include large items such as car bodies, camper shells, mobile homes, trailers, Jacuzzi tubs or spas, or any other items that cannot be safely lifted and collected by one person. In addition, bulky wastes do not include any hazardous waste, special waste, or any other item or items that in the future may be banned by regulation.

“CalRecycle” means California’s Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on jurisdictions and other regulated entities.

"City Limits" means the boundaries of the City - together with all amendments and changes thereto, which boundaries are shown by maps incorporated herein by reference and which are on file in the office of the City Clerk of the City Council.

“Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-

stock company, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility, as defined in 14 CCR Section 18982(a)(6), with the exception that Multi-Family is excluded from the definition of Commercial Business for the purposes of this Agreement.

“Commercial Edible Food Generators” includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, as defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, as specified by 14 CCR Section 18982(a)(7).

"Commercial Premises" means all premises in the City other than residential premises. The term "Commercial Premises" includes, but is not limited to, stores; offices; federal, state, county and local governmental facilities, including, but not limited to schools, school district offices, special districts and water districts (to the extent provided by law); restaurants; rooming houses; hotels; motels; churches; manufacturing, processing, assembly shops or plants, or other industrial facilities; hospitals; clinics; and convalescent centers and nursing homes (non-medical waste only).

"Commercial Solid Waste" means all types of Solid Waste, including Green Waste and Recyclable Solid Waste, but no hazardous waste or medical waste generated or accumulated at Commercial premises. Commercial Solid Wastes does not include Residential Solid Waste from Single Family Premises.

“Community Composting” means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); as defined in 14 CCR Section 18982(a)(8).

"Construction and Demolition Waste" means discarded building materials, recyclable construction and demolition materials, wood, packaging, plaster, rock or brick, drywall, cement and rubble resulting from construction, remodeling, repair, and demolition operations. "Construction and Demolition Waste" does not include asbestos-containing materials or asbestos waste. For purposes of this Agreement, Construction and Demolition Waste shall be considered Solid Waste or Recyclable Solid Waste.

"Contractor" means USA Waste of California, Inc. a Delaware Corporation, dba Waste Management of the Inland Empire the entity granted the Franchise pursuant to this Agreement.

"CPI" shall mean the Consumer Price Index as determined by the United States Department of Labor, Bureau of Labor Statistics. For the purposes of this agreement, "CPI" shall refer to the Consumer Price Index for all Urban Consumers for the Los Angeles-Riverside-Orange County area.

"Curbside" means a location for placement of containers that provides for safe and

efficient access by collection equipment.

“Edible Food” means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

“Food Recovery” means actions to collect and distribute food for human consumption which otherwise would be disposed, as otherwise in 14 CCR Section 18982(a)(24).

“Food Recovery Organization” means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- a. A food bank as defined in Section 113783 of the Health and Safety Code;
- b. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- c. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

“Food Recovery Service” means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; as defined in 14 CCR Section 18982(a)(26).

“Food Scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells.

“Food-Soiled Paper” means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

“Food Waste” means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics.

"Franchise" means the exclusive right and privilege granted by this Agreement.

"Franchise Fee" means the fee or assessment imposed by the City on Contractor for the privilege of providing services pursuant to this Agreement and which, among other things, is also intended in part to offset the City's expense in administering this franchise and to compensate City for damage to its streets, sidewalks, curbs and gutters and other infrastructure resulting from Contractor's exercise of this franchise, the expenses of administering the program, reporting requirements under AB 939 and other related expenses.

“Gray Container Waste” means Solid Waste that is collected in a Gray Container that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b) as defined in 14 CCR Section 17402(a)(6.5).

“Green Container” has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and Collection of SSGCOW.

"Green Waste or Yard Waste" means leaves, grass, clippings, brush and branches generated from landscapes or gardens at Residential or Commercial Premises, and incidental pieces of untreated scrap lumber no longer than twenty-four inches (24"), separated from other Residential Solid Waste. Green Waste includes Holiday Trees but does not include stumps or branches exceeding four inches (4") in diameter or four feet (4') in length or palm tree fronds.

"Green Waste Containers" means containers provided and owned by the Contractor for service recipients for the temporary accumulation of Green Waste.

"Hazardous Waste" means any substance, waste or mixture of wastes defined as a Hazardous Substance or Hazardous Waste pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § § 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq., and all future amendments to either of them, or as defined by regulations promulgated by the State of California. Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or Solid Waste, the term Hazardous Waste shall be construed to have the broader, more encompassing definition.

“High Diversion Organic Waste Processing Facility” means a High Diversion Organic Waste Processing Facility as defined in 14 CCR Section 18982(a)(33).

“Mulch” means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4)

“Multi-Family” means of, from, or pertaining to residential Premises with five (5) or more dwelling units. Multi-Family Premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses. References to “Multi-Family Dwelling Unit” refer to an individual residential unit of the Multi-Family Premises.

"Multi-Family Bins" means containers (usually 3 cubic yards in size) intended to be utilized for the temporary accumulation and collection of Residential Solid Waste from Multi-Family Units.

"Multi-Family Premises" means residential units of five (5) units or more such as apartments, condominiums and townhouses, other than Single Family Premises, which

typically utilize Multi-Family Bins, for the temporary accumulation and collection of Residential Solid Waste.

“Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, bio-solids, digestate, and sludge’s, as defined in 14 CCR Section 18982(a)(46). Bio-solids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

“Paper Products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; as defined in 14 CCR Section 18982(a)(51). Paper Products, when source separated, shall be considered Source Separated Recyclable Materials.

“Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; as defined in 14 CCR Section 18982(a)(54). Printing and Writing Papers, when source separated, shall be considered Source Separated Recyclable Materials.

“Processing” means the controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, as defined in 14 CCR Section 17402(a)(20).

“Prohibited Container Contaminants” means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the City’s Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or SSGCOW to be placed in City’s Green Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.

“Recycle” or “Recycling” means the process of Collecting, sorting, cleansing, treating, and reconfiguring materials for the purpose of returning them to the economic mainstream in the form of raw material for new, Reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

"Recyclable Material" means a commodity which is sold for compensation (i.e. the generator receives a payment from the recycler net of any transportation or processing costs), or given away, but which is not discarded into the residential waste stream. A

Recyclable Material which is not sold for compensation or given away, or which is discarded into the residential waste stream, loses its character as a Recyclable Material and becomes Recyclable Solid Waste subject to this Agreement.

"Recyclables" shall mean products or substances, including but not limited to paper, cardboard, metal, glass, plastic, or other substances capable of being re-processed, reused or resold, which have passed through their originally intended usage.

"Recyclables Containers" shall mean containers provided and owned by Contractor for service recipients for the temporary accumulation of the Recyclable Solid Waste.

"Recyclable Solid Waste" shall mean Solid Waste which contains Recyclables separated from the remaining Solid Waste stream in Recyclables Containers, except those Recyclables which are sold for compensation or given away by the waste generator.

"Recycled" means the act of having processed Recyclable Solid Waste into a form suitable for reuse and having marketed those processed materials for a use consistent with the requirements of AB 939. The act of marketing does not require that revenue be generated from the processed materials.

"Renewable Natural Gas" or "RNG" means gas derived from Organic Waste that has been diverted from a Landfill and Processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, as defined in 14 CCR Section 18982(a)(62).

"Residential Premises" includes Single Family Premises, Multi-Family Premises, including apartments and condominiums, but does not include hotels or motels.

"Residential Solid Waste" means all types of Solid Waste, including any household products with the characteristics of Hazardous Waste which may be found to have been placed in the residential Solid Waste stream, including Green Waste and Recyclable Solid Waste placed for collection by service recipients, which originates from Single Family or Multi-Family Premises located within the City and which is to be collected pursuant to this Agreement.

"SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

"SB 1383 Regulations" or "SB 1383 Regulatory" refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended

portions of regulations of 14 CCR and 27 CCR.

“Self-Hauler” or “Self-Haul” means a Person who hauls Solid Waste, Organic Waste, or recovered material they have generated to another Person, as defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who Back-Hauls waste.

"Shared Bin Service" means commercial premises that generate very small quantities of Solid Waste may be allowed to share a bin with neighboring commercial businesses as deemed appropriate by the Contractor. Shared Bin Service shall designate one individual or entity as the responsible party for payment of the monthly bill. Any shared account shall have prior approval by the Contractor.

“Single-Family” or “Single-Family Dwelling” or “SFD” means any residential Premises with less than five (5) units.

"Single-Family Containers" means any container for the temporary accumulation and collection of Solid Waste, source-separated Recyclable Solid Wastes, and source-separated Green Waste delivered by Contractor to Single Family Premises covered by this Agreement. Contractor shall retain ownership of all Containers, which it delivers to service recipients.

"Single-Family Premises" generally means a detached building, or each unit of multi-family dwelling (having 4 or fewer distinct living units), with kitchen facilities, which utilizes one or more Solid Waste containers or cans, but not a Multi-Family Bin, for the temporary accumulation and collection of Residential Solid Waste.

"Solid Waste" shall mean all waste that is acceptable for disposal in a Class III Landfill, not including Special Waste as defined herein and/or waste designated for Class I or Class II Landfills.

“Source Separated” means materials, including commingled Recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or Processing those materials for Recycling or Reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace, as defined in 14 CCR Section 17402.5(b)(4).

“Source Separated Blue Container Organic Waste” or “SSBCOW” means Source Separated Organic Waste that can be placed in a Blue Container that is limited to the Collection of those Organic Wastes and Non-Organic Recyclables as defined in 14 CCR Section 18982(a)(43); as defined by 14 CCR Section 17402(a)(26.7). The accepted types of SSBCOW and process for modifying the accepted types of SSBCOW are specified in Article 5. Paper Products and Printing and Writing Papers, when source separated, shall be considered SSBCOW.

“Source Separated Green Container Organic Waste” or “SSGCOW” means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate Collection of Organic Waste by the Generator, excluding SSBCOW. The accepted types of SSGCOW and process for modifying the accepted types of SSGCOW are specified in Article 5. SSGCOW is a subset of Organic Waste.

“Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and SSBCOW. The accepted types of Source Separated Recyclable Materials and process for modifying the accepted types of Source Separated Recyclable Materials are specified in Article 5.

"Special Wastes" shall mean all the items and materials, which are set forth in Exhibit B, Special Wastes.

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket.
- B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- G. A local education agency with an on-site food facility.

**SECTION 3. ACCEPTANCE: WAIVER**

Contractor agrees to be bound by and comply with all requirements of the City of Moreno Valley Municipal Code Chapter 6.02, 6.03, and this Agreement. As of the effective date of this Agreement, Contractor agrees that, as part of the consideration for entering to this Agreement, upon execution of this Agreement Contractor does not have any right or claim to serve City or any part of City with regard to continuation rights under Section 49520 of the Public Resources Code.

**SECTION 4. FRANCHISE AREA**

The Franchise Area granted by this Agreement shall include all Commercial and Residential premises located within the corporate boundaries of City, as they now or may hereafter exist.

**SECTION 5. SERVICES PROVIDED BY CONTRACTOR**

A Single Family Premises. Contractor shall provide 100% automated services using a Single Family Container system for Solid Waste (refuse), Recyclable Solid Waste (recyclables) and Green Waste. Mechanized shall mean that Contractor shall provide collector trucks that are capable of picking up containers, emptying them into collector trucks and then returning them to the curbside.

Parameters of this service shall include:

1. Weekly Service. Once each week, Contractor shall collect the Solid Waste, Recyclable Solid Waste and Green Waste (except bulky items and household hazardous waste, subject to terms hereinafter) which have been placed, kept, or accumulated in Single Family Containers (provided by Contractor) at Single Family Premises and placed at curbside prior to Contractor's normal weekly collection time. All Solid Waste, Green Waste and Recyclable Solid Waste must be placed within containers at curbside, without obstructions, to permit collection. City agrees to use its best efforts to enforce parking and other ordinances to facilitate this curbside collection system. Contractor may negotiate and bill for special pickup procedures above and beyond the normal services described above with customers for an additional fee in an amount approved by the City Manager.
2. Collection Containers. Contractor will provide each Single-Family Premises with three (3) containers each: one 96-gallon for Solid Waste, one 96-gallon for Recyclable Solid Waste, and one 96-gallon for Green Waste collection. The basic charge for single-family service shall include these three (3) sized containers. A customer may request a 64-gallon Recyclable Solid Waste container in lieu of the 96-gallon recyclable container without any change in the basic rate for service. A customer may also request a 64-gallon container for green waste in addition to the 96-gallon provided green waste container for no additional charge. If a customer requests additional

containers beyond that stated above, Contractor will charge the appropriate monthly fee, as set forth in Exhibit "C" of this Agreement. An alternate 64-gallon sized container for Solid Waste or Green Waste shall be available for a customer where on-site space is limited and shall be charged at the same monthly rate as the 96-gallon container. The Contractor shall, at no charge, repair or replace any provided container, which becomes unusable by reason of wear and tear. Contractor shall charge the actual replacement or repair cost to each Single-Family Premise, however, for replacement or repair of provided containers, which are stolen or damaged beyond repair. Notwithstanding the foregoing, any reference to the capacity or volume of Containers in this Agreement shall be approximations, as actual volume may vary by depending on manufacturer.

Effective January 1, 2022, contractor shall demonstrate good faith in phasing out the traditional Maroon, Grey, and Green single-family residential containers, to be in compliance with the state mandated Grey, Blue, and Green containers. Notwithstanding the foregoing, Contractor is not required to replace functional containers that do not comply with the color requirements under this Agreement and applicable law prior to the end of the useful life of such containers, or January 1, 2036, whichever comes first.

- B. Multi-Family Premises. Contractor shall provide bin service for all Solid Waste, Green Waste and Recyclable Solid Waste generated at all Multi-Family Premises. Parameters of the service shall include collection and recycling programs as follows:
1. Multi-Family Weekly Service. Not less than once per week, and more frequently if required to handle the waste stream of the premises where the bins are located, Contractor shall collect the Solid Waste (including bulky items which have been placed in a closed bin), Green Waste and Recyclable Solid Waste which have been placed for collection in Multi-Family Bins.
  2. Optional Multi-Family Service. Where space prohibits collection by Multi-Family Bins, by mutual consent between the City and the Contractor, Multi-Family Premises, may receive Single Family service as outlined above for the same rates as approved for Single Family Premises.
- C. Commercial Premises. Not less often than once per week, and more frequently if required to handle the waste stream of the Commercial Premises where the bins are located, Contractor shall collect the Solid Waste, Green Waste, and Recyclable Solid Waste, which have been placed for collection in Commercial Bins.
- D. Construction and Temporary Bin/Roll-off Services. Contractor shall provide construction and temporary bin/roll-off services upon request of a customer.

E. AB 341, AB 1826, and SB 1383 Compliance Requirements.

1. Collection of Organics: Contractor shall provide organics collection service to all single-family residential, multi-family, and commercial properties. Properties may be exempt through City's Self-Haul permit program or proof of exemption via City managed AB 341, AB 1826, and SB 1383 Implementation tracking.
2. Annual Notice of Requirements. Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Contractor to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website.
3. Billing Inserts. Upon City request, Contractor agrees to insert and distribute brochures, newsletters, or other information developed by the City as inserts in Contractor's Customer invoices at no additional charge to the City. Upon City's request, Contractor shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City as attachments to Customer invoices at no additional charge to the City. Contractor shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City's request for such inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.
4. Multi-Family and Commercial Customer Signage. Contractor shall provide all Multi-Family and Commercial Customers with Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste or Mixed Waste program guidelines, including posters to be placed in Collection areas and enclosures and other community areas at each Premises or building where Discarded Materials are stored.
5. Annual Multi-Family Dwelling Unit Notices. Prior to the Commencement Date of this Agreement, Contractor shall obtain and track in its Customer information system(s) the number and addresses of dwelling units at each Multi-Family Premises serviced by Contractor. Contractor shall maintain this database by auditing the data at least once every 2 years. At least annually, commencing no later than January 1, 2022, Contractor shall prepare and distribute notices to each Multi-Family Dwelling Unit at Multi-Family Premises serviced by Contractor. The annual notices shall be a minimum of 4 pages (which may include the front and back of a single printed sheet), and shall

include information on regulations governing Discarded Materials, Hazardous Waste, and toxic waste; City and State requirements to properly separate Discarded Materials (such as requirements of the City Code and of State statutes and corresponding regulations, including, but not limited to, AB 341, AB 1826, and SB 1383); instructions on properly separating materials; waste prevention; services available; and any other information required by the City or by State regulations (including SB 1383 Regulatory requirements for education, pursuant to 14 CCR, Division 7, Chapter 12, Article 4). As an alternative, Contractor may comply with these requirements through preparation and distribution of an annual newsletter distributed to each Multi-Family Dwelling Unit that provides the same information. Contractor shall make notices and newsletters available in an electronic format through the Contractor's website. Contractor may provide an electronic version of the notices rather than a printed version, if requested by the Customer.

6. Beginning July 1, 2022, and annually thereafter, Contractor representative shall follow up with Multi-Family and Commercial Generators who are required to participate in Source Separated Recyclable Materials and SSGCOW Collection service under Applicable Law, including but not limited to AB 341, AB 1826, and SB 1383 and corresponding regulations. The Contractor shall ensure that these Generators are participating in the Source Separated Recyclable Materials and SSGCOW Collection Service. If the Generator is not in compliance or not participating, the Contractor representative shall assist the Customers with selecting appropriate Containers and Container sizing, identify acceptable Discarded Materials Collection services as set forth in the Agreement, and attempt to resolve any logistical barriers to providing Source Separated Recyclable Materials and SSGCOW Collection service. Contractor shall provide ongoing, on-site training for Commercial Generators' staff, including, but not limited to: management, kitchen staff, service employees, and janitorial staff; and Multi-Family Customers' staff, including but not limited to: the Property Manager, janitorial staff, maintenance, and any other on-site staff members or contractors that handle Discarded Materials.
7. Contractor shall, at its sole expense, participate in and/or plan, organize, and conduct direct Generator outreach, including, but not limited to: workshops, community events, and meetings to support Generator compliance with the Source Separated Recyclable Materials and SSGCOW separation and Collection program participation requirements under this Agreement, and State statutes and corresponding regulations, including, but not limited to, AB 341, AB 1826, and SB 1383.
8. The Contractor shall conduct a sufficient number of compliance reviews, Hauler Route reviews, and inspections of Generators, to adequately determine the Generators' overall compliance with SB 1383 Regulations, AB 1826, and AB 341. The number of reviews shall be decided by the Contractor in total and/or for each review type and the timeframe, provided that the route reviews comply with 14 CCR Section 18984.5. City reserves the right to

require additional inspections, if the City determines that the amount of inspections conducted by the Contractor is insufficient. City may require the Contractor to prioritize inspections of entities that the City determines are more likely to be out of compliance.

9. Contractor shall commence an investigation, within ninety (90) days or insert shorter timeframe if desired of receiving a complaint in the following circumstances: (i) upon Contractor receipt of a complaint that an entity may not be compliant with SB 1383 Regulations and if City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a complaint received by City, in which City determines that the allegations against the entity, if true, would constitute a violation of SB 1383 Regulations. Contractor is required to investigate complaints against Customers and Generators, but not against Food Recovery Organizations, Food Recovery Services, and other entities regulated by SB 1383 Regulations.
10. Contractor's duty to defend and indemnify herein includes payment of all fines and/or penalties imposed by CalRecycle, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations are not met by the Contractor with respect to the Discarded Materials Collected under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement, or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports required by AB 939, AB 341, AB 1826, and/or SB 1383 and corresponding regulations in a timely manner. The provisions of this Section shall survive the termination or expiration of this Agreement.

F. Additional Services

1. Bulky Goods Pick up for Single Family Residential Premises. Contractor shall provide to all Single-Family Premises within the City Limits a weekly Bulky Waste disposal service. Residents will be limited to one item per week per household, and shall call the Contractor's business office two days prior to normal collection day to request such service. Residential premises may set out up to four (4) bulky items at one time at a single collection, thereby satisfying four (4) separate weekly one (1) bulky item collections. Compensation for the special pick up service described in this section is included in the "basic rate" set forth in Exhibit "C". Bulky goods collection shall take place on a premises' regularly scheduled service day by appointment made with a minimum 48 hours' notice to Contractor. Single Family Premises that desire additional Bulky goods collection beyond this free service, shall have the option of either purchasing a Bin for temporary collection or purchase additional curbside pickups at the rates set forth in Exhibit "C". Such additional pickups shall also require a minimum 48-hour prior notice to Contractor.

2. Bulky Item Pick-Ups for Multifamily Residential and Businesses. Contractor shall continue to provide existing single-family residential bulky item pick-ups. Contractor shall provide up to (5) five bulky item pick-ups for multifamily residential and commercial properties free of charge. Multifamily residential and commercial property owners/tenants shall be able to request bulky item pick-ups. Multi-Family Residential and Commercial Generators that desire additional Bulky goods collection beyond this free service, shall have the option of either purchasing a Bin for temporary collection or purchase additional curbside pickups at the rates set forth in Exhibit "C". Such additional pickups shall also require a minimum 48-hour prior notice to Contractor.
  
3. Excess Pick-ups for Single Family Residential Premises. Periodic Excessive Refuse: Customers may set out for collection additional containers or yard bags of refuse, up to 5 additional containers or yard bags per set out, up to three (3) times per calendar year. One such collection shall occur on the first regularly scheduled collection following the Christmas Holiday. The other two (2) collections may be chosen throughout the year by each customer. The Contractor shall "tag" the customer's refuse container noting the extra collection and if the collection exceeds the two annual collections; and if it does exceed the limits, the Contractor may leave the refuse at the collection point, or may collect the additional containers or yard bags for a fee as set forth in Exhibit C.  
  
Periodic Excessive Recyclables: Customers may set out for collection additional containers, clear yard bags, or bundles of recyclables, up to 5 additional containers, hard bags, or bundles per set out, up to three (3) times per calendar year. One such collection shall occur on the first regularly scheduled collection following the Christmas Holiday. The other two (2) collections may be chosen throughout the year by the customer. The Contractor shall "tag" the customer's recycling container noting the extra collection and if the collection exceeds the two annual collections, that an additional Contractor supplied container is required.
  
4. Rental Bin Services. Contractor shall provide Bins (typically 3 cubic yard size) for use by households and Residential Premises, as well as Commercial Premises, for the purpose of temporary cleanups. This service shall be provided at an additional cost to the customer requesting such services and as noted in Exhibit "C". Items deemed not acceptable for this collection to include any dead animal, dirt, earth, Hazardous Waste or Biohazardous Waste. All Solid Waste placed in the containers must fit into the container, and not exceed the dimensions of the container.
  
5. Christmas Tree Pickup. Contractor shall pick up from Single Family Premises, curbside, all Christmas trees, usually for two (2) weeks following said holiday each year (said times may be changed at the direction of the City Manager). Trees taller than 5 foot in length, shall be cut in half by

customer. The trees shall be diverted from the landfill, either by deposit at a composting facility, a tree farm or nursery, or a grinding operation.

6. Solid Waste and Recycling Collection at City Facilities. Contractor, at City's sole option, shall provide refuse collection and recycling to the following locations within the City, at no charge to the City or the entities listed:
  - City Fire Stations
  - City Public Safety Facility
  - City Hall, Other City Public Buildings (including but not limited to senior centers, libraries, museums, and the like)
  - Conference and Recreation Center
  - Public Works Yard and City Parks
7. Temporary Bin/Roll-Off Services. Contractor shall provide temporary bin/roll-off services to customers for cleanups, moving, extensive yard work, minor construction projects, etc. according to the rate schedule in the approved rate structure as that rate may be amended by the City Council.
8. Backyard Physically Disabled Pickup. Contractor shall provide free, special backyard collection services, at Single-Family collection rates, to customers in Single Family Premises subject to the following restrictions and conditions. Eligible participants must (1) be physically unable to move waste collection containers (such handicap or inability verified by a medical certificate); and (2) annually sign a sworn statement that there is no other able-bodied person in the household. City and Contractor shall review this program annually.
9. Household Hazardous Waste Services. As requested by the City on a date or dates mutually agreed upon by the Parties and designated as "Residential Hazardous Waste Roundup Day," Contractor will conduct a residential hazardous waste roundup at a central location or locations designated by the City Contractor agrees to prepare all applications and manifests and to obtain all necessary approvals. Compensation for this service shall be subject to agreement between the Parties, the costs to be shared equally by the City and Contractor. However, the City's costs shall be passed through to the customers.
10. Waste Oil Collection. Upon the direction of City, Contractor shall collect up to two (2) gallons of waste oil per month, on each day designated for the collection of recyclables, from residential customers which has been placed in a City approved used oil container. Residential customers must place any waste oil in a motor oil container and heavy-duty zip lock bag for used motor oil filters. Contractor shall not be required to provide any oil collection containers to customers.
11. Illegal Roadside Bulky Item Removal. Contractor shall collect all abandoned bulky waste items located on public property within 25 feet of the paved City rights-of-

way that are part of the contractor's regular route within 48 hours of notification by the City. The City may also collect such items from the right-of-way or on public property that pose a hazard and deposit them in roll-off boxes provided by the Contractor at the City Corporate Yard. Contractor shall collect those items within 48 hours following notification. City agrees to work with the Contractor to identify chronic illegal dumping sites to mitigate and eliminate waste dumped at these sites.

12. Electronic Waste Collection. Electronic waste ("E-waste") shall be included in the bulky item collections in the residential sector. Contractor shall provide for the collection of computers (terminals, monitors, and peripherals), stereo systems (home and automotive), television sets, DVDs, VCRs, cellular phones, and other electronic devices that are categorized as E-waste by the California Integrated Waste Management Board. A maximum of three items shall be collected for free. Residents may make arrangements with Contractor to collect items at other times throughout the year at a cost agreed upon by the City.
13. Litter Abatement Partnership. City and Contractor will work cooperatively to develop a program to address litter abatement within the City. At no charge to the City, Contractor shall provide the City with one collection vehicle and four staff members for eight hours per month to assist in the City's litter abatement efforts. Contractor will coordinate with the City to identify target areas for litter collection.
14. Free Residential Disposal Day. Contractor shall offer to City residents one (1) disposal day per calendar quarter whereby Contractor shall offer one free-pass to dispose of Solid Waste at the Moreno Valley Transfer Station. The free disposal day shall occur between 8 am and 12 pm on a day selected by Contractor in its sole discretion. To be eligible for the free disposal day, each City resident must provide to Contractor proof that they are residents of the City, which may include providing an invoice issued by Contractor showing a service address in the City.

G. Recycling Programs, Service Commencement, AB939 Topics, Facility and Revenue Considerations (through both the collection of Recyclable Solid Waste and the Sale or donation of Recyclable Materials).

1. Contractor will use its best efforts to perform the recycling activities provided for in this Agreement. In addition, Contractor shall suggest and respond to the City's requests to implement alternatives identified in the City's Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE) to increase the amount of diversion, upon mutual agreement of the parties. Contractor shall provide City with written reports in a form adequate to meet City's reporting requirements to the California Integrated Waste Management Board throughout the term of this Agreement.
2. The Contractor shall deliver and replace recycling containers with appropriate educational materials.

3. Recyclables to be Collected. The following Recyclables shall be collected in the Residential Premises recycling collection program:

- Newspaper
- High Density Polyethylene (HDPE)/Polyethylene Terephthalate (PETE) Colored & Clear Plastic
- Mixed Paper Junk mail/magazines)
- Chipboard, Cardboard and Phone Books
- Rigid Containers, defined as Aluminum Cans, HOPE and Pet Plastics, all Colors of Glass Containers and Bi-Metal Cans
- Compostable Green Waste

The Recyclables items listed may be amended by approval of the City Manager, and the parties agree to negotiate with respect to an adjustment of the rates to reflect any increased or decreased costs.

4. Commercial Recycling Programs. In order to promote commercial recycling activities, the Contractor will work directly with the City Manager's appointee to provide the opportunity for each Commercial and Multi-Family Residential customer to recycle. Contractor agrees to provide commercial bins as necessary to handle each premises' needs.

5. Current practice in the State of California, through the Department of Conservation, is to return Redemption Revenues to Curbside Recycling Program Operators. As long as this practice continues, the following shall be available to the City:

The City may direct special services equal in value to 25% of any annual revenues from this State reimbursement for specific City related recycling education programs, community betterment programs, or neighborhood clean-up programs, at the discretion of the City Manager, or his/her designee. Any such direction for services shall be available only within the calendar year of the disbursement of said State funds.

6. Handling of Materials. Contractor and City acknowledge the importance of substantial improvement in the rate of diversion by commercial/industrial customers. To address this issue, Contractor agrees to do the following:

- Establish a recycling system to sort recyclable materials at the customer's site or sort, either through its own facilities or through a third-party processor, commercial waste generated within the City; and
- Establish a system to sort for recycling diversion, either through its own facilities or a third-party processor, construction and demolition debris

generated within the city and handled by Contractor. This system shall include, but not be limited to, providing generators with the ability to sort their debris on the construction site and for materials not separated at the site but handled by Contractor to be sorted for recyclable content after collection.

Upon agreement by both parties, such programs may be modified from time to time to reflect changes in solid waste regulations, market conditions and technologies. City and grantee agree to negotiate in good faith all rates for C&D and commercial waste processing costs.

Both of these systems are to be operational by July 1, 2022

- H. Annual Administrative Cost Reimbursement. Contractor will provide annual funding of up to \$150,000 (adjusted annually by CPI) to the City, effective July 1, 2022. This funding will be applied toward the salary and benefits of a City position specifically tasked with managing solid waste and recycling programs, coordinating education and outreach activities, and assisting in the enforcement of the franchise agreement and Illegal Hauling Ordinance. This funding will be provided quarterly by the Contractor after receiving an agreed upon invoice and appropriate back up information. This funding shall be provided for the term of the contract.
- I. Contractor Service Standards. It is the intent of this agreement to ensure that the Contractor provides a high quality level of solid waste, recyclable material, and green waste collection service for residential and commercial sectors of the service area. To this end, all complaints received by the City and reported to the Contractor shall be promptly resolved. Repetitive violations of these standards shall be considered unsatisfactory performance under terms of the agreement and shall subject Contractor to provisions of Sections 10 and 11. The minimum service standards for the Contractor are as follows:
1. Customer Service.
    - All residential, commercial, and roll-off customers receive a welcome package outlining their complete collection program.
    - Calls shall be answered within an average of 20 seconds or less (excluding holiday weeks).
    - Abandon rate shall be 3% or less.
    - All permanent commercial and industrial customers shall receive a phone call one month after service is started to ensure customer satisfaction.
  2. Residential Service.
    - One Missed Pick Up (MPU) per 1,000 customers served.
    - 95% of all MPUs will be recovered within one business day of call received.
    - All customers with an MPU will be contacted the following day to ensure customer is satisfied and has no other issues.

- Non-Emergency bin exchanges (i.e., for old or dirty bins) completed on next service day following notification.
  - Emergency bin exchanges (i.e., for broken wheels or cracked bins) completed within 48 hours of call received.
3. Commercial/Industrial Service.
- One Missed Pick Up (MPU) per 1,000 customers served.
  - 95% of all MPUs will be recovered within one business day of call received.
  - All customers with an MPU will be contacted the following day to ensure customer is satisfied and has no other issues.
  - Haul or Call - if a bin is inaccessible, Contractor will contact customer while the driver is on site to make arrangements for collection.
  - Non-Emergency bin exchanges (i.e., for old or dirty bins) completed within 5 business days following notification.
  - Emergency bin exchanges (i.e., for broken wheels or cracked bins) completed within 48 hours of call received.
  - Extra pick up for commercial service is completed within 24 hours of call received.
- J. Transfer, Processing and Disposal. Contractor shall Transport all Discarded Materials to the Approved Facilities and shall Transfer, Process, and Dispose of Discarded Materials in accordance with this Section. The Approved Facilities shall comply with the following requirements.
1. Approved Transfer Facility. Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste Collected in accordance with this Agreement.
  2. Approved Source Separated Recyclable Materials Processing Facility (Blue Containers). Contractor's Approved Recyclables Processing Facility shall be a Facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Blue Container.
  3. Approved Organic Waste Processing Facility (Green Containers). Contractor's Approved Organic Waste Processing Facility shall be a Facility that Processes Single-Family, Multi-Family, and Commercial SSGCOW to recover Source Separated Organic Waste.
  4. Approved Disposal Facility (Gray Containers). Contractor's Approved Disposal Facility shall be a Disposal Facility that accepts Single-Family, Multi-Family, and Commercial Gray Container Waste Collected in accordance with this Agreement for Disposal.

Contractor shall pay all costs for the Transport, Transfer, Processing, and/or Disposal of Discarded Materials Collected in accordance with this Agreement.

Contractor's compensation for such services is included in the Rates charged to Customers.

Contractor must show good faith in mitigating transportation of collected materials to local processing and/or disposal facilities within a two-hundred-mile radius if applicable.

K. Contamination Monitoring.

Contractor shall the use of the internet and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Gray Containers by video or digitally for purposes of identifying the presence of Prohibited Container Contaminants Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the following contamination noticing procedures and report back to the city for record keeping purposes:

First and Second Occurrence. For the first and second occurrence within any one Calendar Year of contamination for a particular Collection Container (e.g., Recyclable Materials or Organic Waste), Contractor shall collect the contaminated Collection Container (as Solid Waste) and shall deliver to the Generator a contamination violation notice to the contaminated container that contains instructions on the proper procedures for sorting Recyclable Materials or Organic Waste. Contractor shall notify the Generator by phone, U.S. mail, e-mail, or in person (which may be a container tag) that for the third and subsequent incidents of excess contamination the Generator may be charged a contamination fee for the contaminated Collection Container, and Contractor may increase the Collection Container size, or require an additional Collection Container. Contractor's representative shall also contact the Generator by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that the Generator has the appropriate level of service for proper collection of Recyclable Materials and Organic Waste. Contractor shall document the contamination issue.

Third and Subsequent Occurrences. For the third or subsequent occurrence within any one Calendar Year of contamination for a particular Collection Container (e.g., Recyclable Materials or Organic Waste), Contractor shall collect the contaminated Container (as Solid Waste) and may charge the Generator a contamination fee as set forth in Exhibit 1. Contractor shall continue providing the Recyclable Materials or Organic Waste Collection Services. Contractor provide (or have provided) photographic documentation to the Generator that clearly shows the Generator's contamination and written notices of contamination as described above. Contractor may increase the Collection Container size or collection frequency and impose a contamination surcharge on the account for a period of six months or until the Generator has demonstrated no contamination for a period of six consecutive months. Contractor shall document the contamination issue. City shall consult with Contractor and consider, and pursue as applicable, appropriate legal remedies against offending Generator in order to secure discontinuance of the contamination.

L. Inspection and Enforcement.

Contractor shall be responsible for providing education materials related to AB 341, AB 1826, and SB 1383 enforcement. The City will work with the Contractor to implement an enforcement process for all properties noncompliance with AB 341, AB 1826, and SB 1383.

M. Provision of recovered organic waste.

Contractor and City agree to use good faith efforts to determine the amount of procured Organic Waste products that the City is required to obtain in order to comply with Applicable Law. Upon determination of such amounts of procured Organic Waste products, Contractor and City will enter into good faith negotiations to determine a reasonable rate for Contractor to provide such products to the City.

Any such Mulch provided by Contractor shall be of a color specified by the City to the extent that the color specified by the City is locally commercially available. City will notify contractor as to the City's needs for delivery of finished Mulch throughout the calendar year. Contractor shall deliver Mulch within 90 days upon request of City to any accessible location within City limits in accordance with the agreed upon rate. If City does not take delivery of Mulch made available by contractor within 90 calendar days of the end of the calendar year, contractor's obligation to deliver Mulch for said calendar year shall be deemed to be satisfied. Any of the 16,707 tons of bulk Mulch allotment that is not requested by the City during the calendar year shall not carry over into the next calendar year.

N. Diversion requirements.

Contractor shall provide all services in compliance with AB 939, AB 341, AB 1826, and SB 1383, as applicable to such service. Contractor shall demonstrate good faith in collaborating with the City to assist the State of California in meeting a 75% reduction of organics waste landfill disposal by 2025, in accordance with SB 1383.

**SECTION 6. MANDATORY SERVICE REQUIREMENT**

Pursuant to Chapters 6.02 and 6.03, and except as provided below, all owners, occupants or other persons responsible for the day-to-day operation of premises within City Limits shall make arrangements to obtain Solid Waste collection service from Contractor. However, any person who has a validly issued self-hauling permit from the City need not obtain service from Contractor so long as they fully comply with the terms and conditions of the self-hauling permit.

Contractor shall be responsible to bill all customers (Residential, Commercial, Construction, Special and all others). However, the City retains the ability of said billing function for Single-Family and Multi-Family Premises by means of placing solid waste collection assessments on the Riverside County Assessor's annual property taxrolls.

Contractor agrees to pay all fees charged by the County of Riverside in connection with the establishment of this secured tax roll billing and collection programs.

**SECTION 7. FRANCHISE TERM**

- A. The term of this Agreement shall be for a period of ten (10) years and shall commence on July 1, 2022 and end on June 30, 2032.
- B. On July 1, 2032 and on July 1st of each subsequent year, the term of this Agreement shall be automatically extended for an additional year ("automatic extension") so that the remaining term of the Agreement shall remain at a minimum of ten (10) years (the "Term Extension"). Should either party wish to terminate the "automatic extension", such party shall give the other party written notice to that effect at least thirty (30) days prior to July 1st, of any year; provided, however, that Contractor shall have the entire Term Extension to wind down its operations in the City. Such notice shall terminate the "automatic extension" provisions and the Agreement shall remain in effect only for the ten (10) year balance term.

**SECTION 8. FRANCHISE TRANSFERABLE: CITY CONSENT REQUIRED**

- A. The franchise granted by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Contractor, either by act of the Contractor or by operation of law, without the prior written consent of the City expressed by resolution of the City Council. Any attempt by Contractor to assign this franchise without the consent of the City shall be void.
- B. City consent is required for any change in ownership of Contractor. "Change in ownership" shall mean any acquisition of more than twenty-five percent (25%) of Contractor's voting stock by a person, or group of persons acting in concert, who do not already own twenty-five percent (25%) or more of the voting stock. However, a change of ownership shall not include the acquisition of Contractor's voting stock by an entity affiliated with Contractor.
- C. The City shall not unreasonably withhold its consent to a transfer or change of ownership of the franchise granted by this Agreement. The City may impose reasonable conditions of approval on a transfer, including, but not limited to conditions requiring acceptance of amendments to this Agreement.
- D. Any transfer or change in ownership of the Contractor occurring without prior City approval shall constitute a material breach of this Agreement.

**SECTION 9. BILLING AND FRANCHISE FEES.**

A. Billing

1. The Contractor shall bill all Residential and Commercial Premises for all services, whether regular or special. Contractor shall provide itemized bills, distinctly showing charges for all classifications of services including the charges for late payment. Billings may be made monthly in advance for Commercial and all Bin service customers, and may be made three (3) months in advance for all residential customers.

The Contractor may bill separately for special services not expressly denoted in this Agreement (i.e., steam cleaning of containers/bins or special equipment rentals).

2. City may at City's sole option, elect to bill Single Family Premises for Solid Waste collection services as described herein. If City elects to do so, the parties agree to negotiate in good faith the cost of said service. Alternatively, City and Contractor may enter into a separate agreement regarding billing services.
3. Delinquent Accounts. Contractor may not, without the written approval of the City, discontinue service to any customer for nonpayment of fees and charges. Persons who have not remitted required payments within 60 days after the date of billing shall be notified by Contractor on forms which contain a statement that if payment is not made within 15 days from the date of the notice of delinquent and unpaid charges, including a basic penalty and interest, may be placed on the Riverside County Assessor's annual secured property tax rolls and that amount would then become a lien on the property.

The City has elected in accordance with state law to place delinquent and unpaid solid waste collection assessments on the Riverside County Assessor's annual secured property tax rolls by ordinance; however, Contractor understands and agrees that the City has no obligation to foreclose on any tax bill.

Contractor shall pay all fees charged by the County of Riverside in connection with the establishment of this secured tax roll billing and collection program, and shall pay all direct and indirect costs incurred by the City in processing delinquent and unpaid assessments through the secured property tax roll procedure.

4. Refunds. Contractor shall refund to each customer, on a pro-rata basis, any advance service payments made by such customer for service not provided when service is discontinued by the customer.

B. Franchise Fees

The monthly Franchise Fee shall be equal to twelve and a half percent (12.5%) of Contractor's gross revenues received under this Agreement, including revenues received from the sale of recyclable solid waste. The total monthly Franchise Fee shall be payable by Contractor to City not more than 30 days after the last day of each calendar month.

The foregoing percentage rates of the franchise fees may be adjusted annually during the term of this Agreement by the City Council. All franchise fees shall be added by Contractor to its billings to residential, multi-family, and commercial/industrial customers on the customary "pass through" basis.

C. Franchise Extension Fee

Contractor shall provide a one-time lump sum payment in the amount of \$6,000,000 to the City within 30 days of the date that both parties execute this Agreement, when the exclusive franchise agreement is extended in accordance with Section 7. This one-time lump sum payment will be utilized to fund personnel, projects, and programs within the City.

D. SB 1383 Regulatory Reimbursement

Contractor shall pay City an annual State Compliance Administration Reimbursement, in the amount of \$100,000 per year in increments of \$25,000 per quarter. The State Compliance Administration Reimbursement shall be increased annually, starting July 1, 2022.

**SECTION 10. IMPOSITION OF DAMAGES OR TERMINATION.**

- A. If the City Manager determines that the Contractor's performance pursuant to this Agreement has not been in material conformance with reasonable industry standards which are obtained in similar cities in Southern California or with the provisions of this Agreement, City Manager shall advise Contractor, in writing of such deficiencies. The City Manager shall, in such written instrument; set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by the Contractor of such written notice. The City Manager shall review the Contractor's response and refer the matter to the City Council or decide the matter and notify the Contractor of that decision, in writing. A decision or order of the City Manager shall be final and binding on Contractor if the Contractor fails to file a "Notice of Appeal" with the City Clerk within 30 days of receipt of the City Manager's decision. In the event that any deficiency cannot reasonably be cured within the time specified by the City Manager or within sixty (60) days, as applicable, Contractor shall not be deemed to have breached this Agreement if Contractor has begun the process

to and pursues the cure of any such deficiency within sixty (60) days.

- B. The City Clerk, in such case, may set the matter for hearing. The City Clerk shall give Contractor, and any other person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard.

Based on the evidence presented at the public hearing, the City Council shall determine by resolution whether this Agreement should be terminated or liquidated damages imposed. If, based upon the record, the City Council determines that the performance of Contractor is in breach of any material term of this Agreement the City Council may terminate this Agreement or impose liquidated damages. Contractor's performance under its franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

- C. This right of termination or to impose liquidated damages is in addition to any other rights of City upon failure of Contractor to perform its obligations under this Agreement.
- D. Termination of Franchise. The City reserves the right to terminate this Agreement, following notice and opportunity to correct as described above, or impose liquidated damages in the event of any of the following:
  1. If the Contractor practices, or attempts to practice any fraud or deceit upon the City.
  2. If the Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of contractor in a bankruptcy proceeding.
  3. If the Contractor fails to maintain in full force and effect the worker's compensation, liability, indemnification coverage, or cash bond as required by this Agreement.
  4. If the Contractor fails to comply with any orders of any regulatory body having City over the Contractor relative to this Agreement, provided that the Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which no breach of this Agreement shall be deemed to have occurred.
  5. If the Contractor ceases to provide collection services as required under this Agreement over all or a substantial portion of the City for a period of seven (7) days or more, except when occurring for reason not within the control of the Contractor.

6. If the Contractor fails to make any payments required under this Agreement, City shall notify contractor in writing of such nonpayment. Within ninety (90) business days following receipt by Contractor of such notice, Contractor shall correct such nonpayment. If Contractor fails to correct such nonpayment, within said 90-day time period, City, upon thirty (30) business days prior written notice, shall have any of the rights and remedies described herein.
7. Any failure of the Contractor to comply with an order of the hearing officer made pursuant to Section 11.

E. Liquidated Damages.

1. The City finds, and the Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a material breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) Substantial damage results to members of the public who are denied services or denied quality or reliable services; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
2. After providing notice and opportunity to cure as described above, the City Council may, in its discretion, assess liquidated damages not to exceed the sum of Seven Hundred Fifty Dollars (\$750.00) per day, for each calendar day that service is not provided in material conformance with this Agreement. The amount of the liquidated damages shall be increased by the past year's consumer price index on March 1 and effective July 1 of each year.

**SECTION 11. ADMINISTRATIVE HEARING PROCEDURES.**

- A. Upon the filing of a Notice of Appeal pursuant to Section 10.A., or if the Contractor should allege a breach of the Agreement by the City, the City Council may either set the matter for hearing or refer the matter to a hearing officer.

- B. The hearing shall be conducted according to California Code of Civil Procedure Section 1280, et seq. The exclusive venue shall be in Riverside County, California. A hearing officer to whom a matter is referred shall have the authority to (i) order the City or Contractor to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (ii) assess damages upon the City or the Contractor consistent with the terms of this Agreement; or (iii) find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes either party from terminating this Agreement and/or imposing liquidated damages. For any occurrence or series of related occurrences, the damages awarded shall be reasonably related to the seriousness of the breach.
- C. The party losing the hearing shall be liable for the hearing officer's fees.
- D. The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties otherwise agree in writing. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties in writing, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure Section 1283.05 shall apply.
- E. Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.
- F. Within ten (10) days after the conclusion of the hearing, the hearing officer shall issue a report with findings and recommendations to the City Council. Within thirty (30) days of receipt of the hearing officer's report, the City Council by Resolution shall either adopt the hearing officer's report or issue its own findings and conclusions. Contractor may thereafter appeal the decision of the City Council to the Superior Court within sixty (60) days. If no appeal is taken within that time period, the decision of the City Council shall become final. All penalties and sanctions shall be stayed until the time for all appeals has expired.

## **SECTION 12. CITY'S ADDITIONAL REMEDIES**

In addition to the remedies set forth in Section 10 and 11, above, City Shall have the following rights and remedies following a material breach by Contractor which is not

remedied following notice and opportunity to cure pursuant to Section 10.A.

- A. To rent or lease equipment from Contractor at its fair and reasonable rental value for the purpose of collecting, transporting, recycling, composting, and disposing of Solid Waste, Green Waste or Recyclable Solid Waste which Contractor is obligated to collect, transport, recycle, compost, and dispose of for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to possess the equipment. If City exercises its rights under this Section, City shall pay to Contractor the reasonable rental value of the equipment so taken for the period of City's possession thereof.
- B. The right to license others to perform the services otherwise to be performed by Contractor here under or to perform such services itself.
- C. The right to obtain damages and/or injunctive relief.

**SECTION 13. RIGHTS OF CITY TO PERFORM DURING EMERGENCY.**

- A. Should Contractor, for any reason whatsoever, except the occurrence or existence of an event of "Force Majeure", refuse or be unable to collect, transport, recycle, compost, and dispose, and provide temporary bin/roll-off services for any or all of the Solid Waste, Green Waste, and Recyclable Solid Waste which it is obligated to collect under this Agreement for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste, Green Waste and Recyclable Solid Waste should accumulate in City to such an extent, or in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety, or welfare, then in such event City shall have the right, upon twenty-four (24) hour prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor, and to use such equipment and facilities to collect, recycle, compost, and transport any or all Solid Waste, Green Waste and Recyclable Solid Waste which Contractor would otherwise be obligated to collect, recycle, compost, transport, and dispose of pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to effect such a transfer of possession for City's use.
- B. Contractor agrees that, in such event, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge, provided that City agrees that, in such event, it assumes complete responsibility for the safe, proper and normal use and operation of such equipment and facilities. City agrees that it shall immediately relinquish possession of all of the above-mentioned property to Contractor upon receipt of written notice from Contractor that it is able to resume its normal responsibilities under this Agreement.

**SECTION 14. PRIVACY**

- A. Contractor shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers, or the composition or contents of a customer's waste stream, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the request of a law enforcement agency, the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses, which may be required by AB 939, AB 341, AB 1826, and SB 1383.
- B. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of customers.
- C. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State law.

## **SECTION 15. REPORTS**

- A. Annual Reports. Within sixty (60) days after the end of each calendar year, the Contractor will submit a written annual report, in a form approved by the City Manager, including, but not limited to, the following information:
  - 1. A summary of the previous year's activities including, but not limited to, services began or discontinued during the reporting year, and the number of customers for each class of service.
  - 2. A report, in a form satisfactory to the City, on the City's progress in meeting and maintaining its ability to meet its goals, under AB939, AB 341, AB 1826, and SB 1383, along with any recommended changes.
  - 3. A revenue statement setting annual revenue (stated by quarter) received from the sale of recyclables collected pursuant to this Agreement and Franchise Fees, including the basis for the calculation thereof.
  - 4. A revenue statement pertaining to delinquency tax roll receipts and both Parties net revenue receipts.
  - 5. Contractor shall conduct a Waste Characterization Study once every twelve months upon the request of the City. The study shall include a sampling of the residential curbside recyclable materials generated within the City of Moreno Valley and shall be performed by a bona fide processing center acceptable to both the City and Waste Management. At a minimum, the report shall include the following information: the weight of each recyclable commodity, the percentage of each commodity as a percentage of the total load, the total weight sampled and the listing of each commodity tested.

- B. Failure to Report. The refusal, failure or neglect of the Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by the Contractor in such report shall be deemed a material breach of this Agreement.

## **SECTION 16. COMPENSATION**

- A. Contractor Service Rates. Contractor shall provide the services described in this Agreement in accordance with the rates, as set forth in the "Schedule of Services and Rates", which is attached as Exhibit "C", and as may be amended.
- B. Landfill Fees and Green Waste Disposal / Processing Rate. In addition to the Contractor Service Fees set forth in Exhibit "C", Contractor may recover from each customer a pro-rata portion of gate, tipping, AB 939, local enforcement agency and other fees (herein collectively referred to as "tipping fees") charged by landfills, transfer stations, material recovery facilities (MRF's), transformation facilities and/or other lawful disposal sites for Solid Waste and Green Waste collected, transported or disposed of by Contractor and processed at a transfer station and/or disposed of at a landfill or transformation facility pursuant to this Franchise Agreement.
- C. Special Waste Services. Contractor may also charge fees for performance of Special Waste Services (e.g., the hauling and disposal of Special Wastes defined in Exhibit B) as agreed upon in separate contracts between Contractor and each customer requesting such special service. Special handling and special equipment shall also be subject to additional fees. Contractor shall provide a schedule of all such fees and payments to the City Manager.
- D. Redelivery Fees. Contractor may charge a redelivery fee for Containers. Contractor shall provide a schedule of all such fees and payments to the City Manager for approval.
- E. Modification and Adjustment of Rates. Subject to the City Council's confirmation of Contractor's CPI adjustment calculations, the Contractor Service Rates shall be adjusted to reflect changes in the Consumer Price Index (CPI).

This annual adjustment shall be effective July 1<sup>st</sup> each year and shall consider the change of the CPI from March of the preceding year to March of the year in review. The CPI adjustment shall be equal to the amount derived by multiplying the previous rate by (b) the percentage increase or decrease in the Consumer Price for all urban consumers within the Los Angeles - Anaheim - Riverside Metropolitan area (the CPI Index).

In addition, landfill and green waste processing costs shall be adjusted

according to a direct "pass-through" of the actual Contractor's costs on a pro-rata basis to each customer.

- F. Notice of Rate Increases. The Contractor shall provide the City and customers, at least 30 days in advance of the beginning of a billing period, written notice of the implementation of changes in any of its rates and charges which are not subject to regulation by the City.
- G. Resolution of Disputes Regarding Rate Adjustments. Any dispute regarding the Annual Rate Adjustment and Landfill or Green Waste Rate Adjustment, or the computation thereof, or any other dispute regarding Contractor's reimbursement for fees, special services, or extraordinary costs described in Exhibit "C", shall be decided by the City Manager or the City Council as appropriate, in their reasonable judgment. The rates in effect at the time such dispute is submitted to the City Council shall remain in effect pending resolution of such dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall reasonably be determined by the City Council.
- H. Extraordinary Costs. In addition to, and not in lieu of, the annual CPI increase or decrease described above, Contractor shall also be entitled to rate increases or decreases in an amount equal to Contractor's extraordinary increases or decreases in performing its cost of collection, landfill, or green waste processing/disposal services. Such extraordinary cost increases or decreases shall be subject to City Council approval which approval shall not be unreasonably withheld, and may be applied retroactively in the City Council's discretion. Such extraordinary increases or decreases in its costs of collection shall include, by way of example and not by way of limitation: (1) a change in the location of the sites to which the Contractor transports Solid Waste or Green Waste for processing/disposal; (2) new or increased taxes or fees payable by Contractor based on its operations hereunder by a governmental body; (3) changes in the local, state, or federal laws governing collection, separation, transportation or disposal of Solid Waste; (4) material increases in fuel and/ or labor costs.

## **SECTION 17. COLLECTION EQUIPMENT**

- A. Contractor shall provide an adequate number of vehicles and equipment for the collection, transportation, recycling, and disposal of Solid Waste, Green Waste, and Recyclable Solid Waste for which it is responsible under this Agreement. The equipment of Contractor used under this Agreement shall be subject to inspection by City on a semiannual basis but shall not be subject to any permit fees therefor.
- B. All vehicles used by Contractor under this Agreement shall be registered with the Department of Motor Vehicles of the State of California shall be kept clean and in good repair and shall be uniformly painted. No collection vehicles shall be older than twelve- (12) years. A sufficient supply of parts must be kept on hand to ensure timely and continuous fulfillment of this Agreement.

- C. All bins and containers provided shall be kept in a reasonable condition and appearance.
- D. Solid Waste collection vehicles shall be washed at least once every seven (7) calendar days.
- E. Contractor's identity, a local or toll free telephone number, and vehicle number shall be visibly displayed on all vehicles in letters and figures not less than three inches (3") high.

**SECTION 18. PUBLIC ACCESS TO CONTRACTOR**

- A. Office Hours. Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday. A representative of Contractor shall be available during office hours for communication with the public at Contractor's principal office. In the event that normal business problems cannot be rectified over the telephone, a representative of Contractor shall agree to meet with the customer at a location agreeable to Contractor and the customer. Contractor shall maintain a local or toll free telephone number during both normal office hours and after-hours, and an answering service during all hours other than normal office hours.
- B. Holiday Schedule. If the day of collection on any given route falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving. Day or Christmas Day, Contractor shall provide collection services for such route on the workday next following such Holiday and shall not provide collection services on such Holiday.
- C. Hours of Collection. Collection service for single and multi-family residential shall not start before 6:00 a.m. or continue after 6:00 p.m., six (6) days per week excluding Sunday. Collection service hours are subject to change by the City Council in the exercise of its reasonable discretion.
- D. Public Access to Contractor. Contractor shall provide a local office for response to all customer inquiries. "Local" shall be defined as an office within Western San Bernardino or Western Riverside Counties of the State of California.
- E. Service Complaints.
  - 1. All Customer complaints shall be directed to Contractor. Contractor shall record all complaints received by mail, by telephone; or in person (including date, name, address of complainant, and nature of complaint) and what action was taken to resolve the complaint. Contractor agrees to use its best efforts to resolve all complaints by the close of the next business day following the date on which such complaint is received.
  - 2. Contractor will maintain records listing the date of customer complaints, the customer, describing the nature of the complaint or request, and when and

what action was taken by the Contractor to resolve the complaint. All such records shall be maintained for a period of three (3) years, and shall be available for inspection by City Contractor's log of such consumer complaints shall be available and delivered monthly upon request to the City Manager or the City Manager's designated representative.

- F. Government Liaison Person. The Contractor shall designate a "government liaison person" who shall be responsible for working with the City Manager or the City Manager's designated representative to resolve customer complaints.

## **SECTION 19. RESOLUTION OF DISPUTED CUSTOMER COMPLAINTS**

- A. A customer dissatisfied with Contractor's handling of a complaint may ask the City to review the complaint. To obtain this review, the customer must request City review within 30 days of receipt of Contractor's response to the Complaint, or within 45 days of submitting the complaint to the Contractor, if the Contractor has failed to respond to the complaint. The City may extend the time to request review for good cause.
- B. Before reviewing the complaint, the City Manager shall refer it to the Contractor. If the Contractor fails to cure the complaint within ten (10) days, the City Manager shall review the customer's complaint and determine if further action is warranted. The City Manager may request written statements from the Contractor and customer, and/or oral presentations.
- C. The City Manager shall determine if the customer's complaint is unresolved, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach.
- D. The City Manager may delegate these duties to a designee. The decision of the City Manager or his designee shall be final on any matter under **One Thousand Dollars (\$1,000.00)**. In the event of a decision on a matter awarding **One Thousand Dollars (\$1,000.00) or more**, Contractor may seek review pursuant to Section 11, above.

## **SECTION 20. OWNERSHIP OF SOLID WASTE**

- A. Once Solid Waste, Green Waste, and Recyclable Solid Waste is placed in bins/roll-offs for collection, or containers at curbside, ownership shall transfer to Contractor, subject to the terms of this Agreement, or by operation of law. Contractor is hereby granted the right to retain, recycle, compost, dispose of, and otherwise use such Solid Waste, Green Waste, and Recyclable Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting therefrom. The Solid Waste, Green Waste, and Recyclable Solid Waste or any part thereof, which is disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station,

or material recovery facility) shall become the property of the owner or operator of the disposal site or sites once deposited there by Contractor. At no time does City obtain any right of ownership or possession of Solid Waste, Green Waste, or Recyclable Solid Waste placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that City has such rights.

## **SECTION 21. INDEMNIFICATION, INSURANCE and BONDS**

### **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto).
3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession.

### **Minimum Limits of Insurance**

Consultant shall maintain limits of liability of not less than:

1. General Liability:
  - a. \$1,000,000 per occurrence for bodily injury and property damage
  - b. \$1,000,000 per occurrence for personal and advertising injury
  - c. \$2,000,000 aggregate for products and completed operations aggregate
  - d. \$2,000,000 general aggregate
2. Automobile Liability:
  - a. \$1,000,000 per accident for bodily injury and property damage
3. Employer's Liability:
  - a. \$1,000,000 each accident for bodily injury
  - b. \$1,000,000 disease each employee

- c. \$1,000,000 disease policy limit
- 4. Professional Liability (Errors and Omissions):
  - a. \$1,000,000 per claim/occurrence
  - b. \$2,000,000 policy aggregate

### **Umbrella or Excess Insurance**

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

### **Deductibles and Self-Insured Retentions**

Contractor shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and Contractor shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers; or (ii) Contractor shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

### **Other Insurance Provisions**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City of Moreno Valley, Moreno Valley Community Services District, Moreno Valley Housing Authority and each of their officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City of Moreno Valley, Moreno Valley Community Services District, Moreno Valley Housing Authority and each of their officers, officials, employees, agents and volunteers.
3. Consultant's insurance coverage shall be primary and no contribution shall be required of City.
  - a. The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Consultant and its insurer shall waive any right of subrogation against City of Moreno Valley, Moreno Valley

Community Services District, Moreno Valley Housing Authority and each of their officers, officials, employees, agents and volunteers.

4. If the Professional Liability (Errors and Omissions) insurance policy is written on a claims made form.
5. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
6. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 3-year discovery period.
7. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of 3 years following the expiration or termination of the Agreement.
8. A copy of the claims reporting requirements must be submitted to City for review.
9. These requirements shall survive expiration or termination of the Agreement.
  - a. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

#### **Acceptability of Insurers**

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-, VII" in Best's Insurance Rating Guide; or authorized by the City Manager or his/her designee.

#### **Verification of Coverage**

Consultant shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City Manager or his/her designee prior to City's execution of the Agreement and before work commences.

- F. Performance Bond or Letter of Credit. Contractor shall furnish a corporate surety bond as security for performance under this Franchise Agreement. The amount of the bond shall be \$300,000. Premium for the above described bond shall be paid by the Contractor. A certificate from the surety showing that the bond premiums have been paid in full shall accompany the bond. The surety on the bond shall be a company authorized to do business in the State of California. The cost of the performance bond shall be the sole responsibility of Contractor. The performance bond shall be released upon the expiration of the term of this Agreement.

## **SECTION 22. CONTRACTOR'S BOOKS AND RECORDS: AUDITS**

- A. Contractor shall maintain in auditable form certain records specifically relating to the services provided hereunder, including, but not limited to, customer lists, billing records, accounts receivable records, maps, (AB939, AB 341, AB 1826, SB 1383) compliance records and customer complaints, for the full term of this Agreement, and an additional period of not less than three (3) years. The City shall have the right, upon five (5) business days advance notice, to inspect all maps, (AB939, AB 341, AB 1826, SB 1383) compliance records, customer complaints, and other like materials of the Contractor that reasonably relate to Contractor's compliance with the provisions of this Agreement. Such records shall be made available to City at Contractor's regular place of business.
- B. Should examination or audit of Contractor's records reveal an underpayment of any fee or payment required under this Agreement, the amount of such underpayment shall become due and payable not later than fifteen (15) days after written notice of such underpayment is sent. Should any underpayment to City of more than three percent (3%) be discovered, the Contractor shall bear the entire cost of the audit.

## **SECTION 23. GENERAL PROVISIONS**

- A. Force Majeure. Contractor shall not be in default under this Agreement in the event that the collection, transportation, recycling, composting, and disposal of Solid Waste, Green Waste or Recyclable Solid Waste provided by the Contractor is interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, pandemics, epidemics, explosions, natural disasters such as floods, earthquakes, landslides, fires, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of Contractor (each a "Force Majeure Event"). It is specifically understood that "other catastrophic events", does include strikes, lockouts, and other labor disturbances; provided, however, that in the event such a labor disturbance interrupts collection, transportation, recycling, composting, and disposal of Solid Waste, Green Waste, or Recyclable Solid Waste by Contractor as required under this Agreement, City may elect to exercise its rights under Section 13 in accordance with the terms set forth therein. Further, with regard to labor disturbances, Contractor shall provide a reasonably satisfactory level of performance during the pendency thereof, but

Contractor shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes, Collection times, or similar matters, provided, however, that in no event shall more than seven (7) calendar days elapse between pickups for customers.

Other catastrophic events do not include the financial inability of the Contractor to perform or failure of the Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the negligent acts or omissions of the Contractor.

B. Independent Contractor. Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, Contractors, and sub-contractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or sub-contractors shall obtain any rights to retirement or other benefits which accrue to City employees.

C. Pavement Damage. Contractor shall not be responsible for any damage to City's driving surfaces, whether or not paved, resulting from the weight of vehicles providing solid waste collection services at the location of bins and containers on public or private property; provided that at the time such damage is caused, the vehicle causing the damage is in full compliance with all applicable laws and regulations restricting the weight of the vehicle and its contents.

D. Right of Entry. Contractor shall have the right, until receipt of written notice revoking permission to pass is delivered to Contractor, to enter or drive on any public or private street, court, place, easement, or other private property necessary for the purpose of providing the collection, transportation, recycling, composting, and disposal of Solid Waste, Green Waste and Recyclable Solid Waste pursuant to this Agreement.

E. Law to Govern: Venue. The law of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside. In the event of litigation in U.S. District Court, exclusive venue shall lie in the Central District of California.

F. Fees and Gratuities. Contractor shall not, nor may it permit any agent, employee, or sub-contractor to request, solicit, or demand either directly or indirectly, any compensation or gratuity for services except as otherwise provided for under this Agreement.

G. Changes in Law and Amendment. This Agreement is intended to assist the City in carrying out its obligations to comply with the provisions of the California Integrated Waste Management Act of 1989, (AB939) as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board (the "Regulations"), as they from time to time may be amended. In the event that AB939 or other State or Federal laws or regulations enacted after this Agreement has been executed,

prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. Except as otherwise provided herein, no other amendment or modification of this Agreement shall be valid unless in writing duly executed by the parties.

It is precisely agreed upon by City and Contractor, that this Agreement for "Integrated Waste Management Services", fully and completely replaces and supersedes in their entirety the previous Franchise Agreement dated April 16, 1991 with updates and amendments dated April 14, 1999, November 24, 1991, October 1, 1995, March 26, 2002 and June 10, 2008.

H. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, oral or written, relative to said subject matter. Contractor shall comply with those provisions of the City of Moreno Valley Municipal Code which are applicable, and with any and all amendments to such applicable provisions during the term of the Agreement.

I. Compliance with Moreno Valley Municipal Code. Contractor shall comply with those provisions of Chapters 6.02 and 6.03, which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

J. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by telecopier (fax), or United States Certified Mail, postage prepaid, return receipt requested, and addressed as follows:

To City:

City of Moreno Valley  
14177 Frederick  
P.O. BOX 88005 (92552-0805)  
Moreno Valley, CA 92553  
Attn: Purchasing & Sustainability  
(951) 413-3190

To  
Contractor:

USA Waste of California, Inc.  
17700 Indian Avenue  
Moreno Valley, California 92551  
Attn: District Manager  
(951) 242-0421

Copy to:

or to such other addresses as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States Mail.

- K. Savings Clause and Entirety. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provision of this Agreement.
- L. Exhibits. Incorporated Exhibits "A" through "C" are attached to and incorporated into this Agreement by reference.
- M. Identification Required. Contractor shall provide its employees, contractors and subcontractors with identification for all individuals who may make personal contact with residents of City. Contractor shall provide a list of current employees, contractors, and subcontractors to City upon request. City may require the Contractor to notify customers yearly of the form of said identification.
- N. Pronouns. All pronouns and any variations thereof shall be deemed to refer to masculine, feminine or neuter, singular or plural, except where the context of this Agreement clearly indicates otherwise.

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

**City of Moreno Valley**

USA Waste of California, Inc., a Delaware Corporation, dba Waste Management of the Inland Empire

BY: \_\_\_\_\_  
Mike Lee, City Manager  
\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
(President or Vice President)  
\_\_\_\_\_  
Date

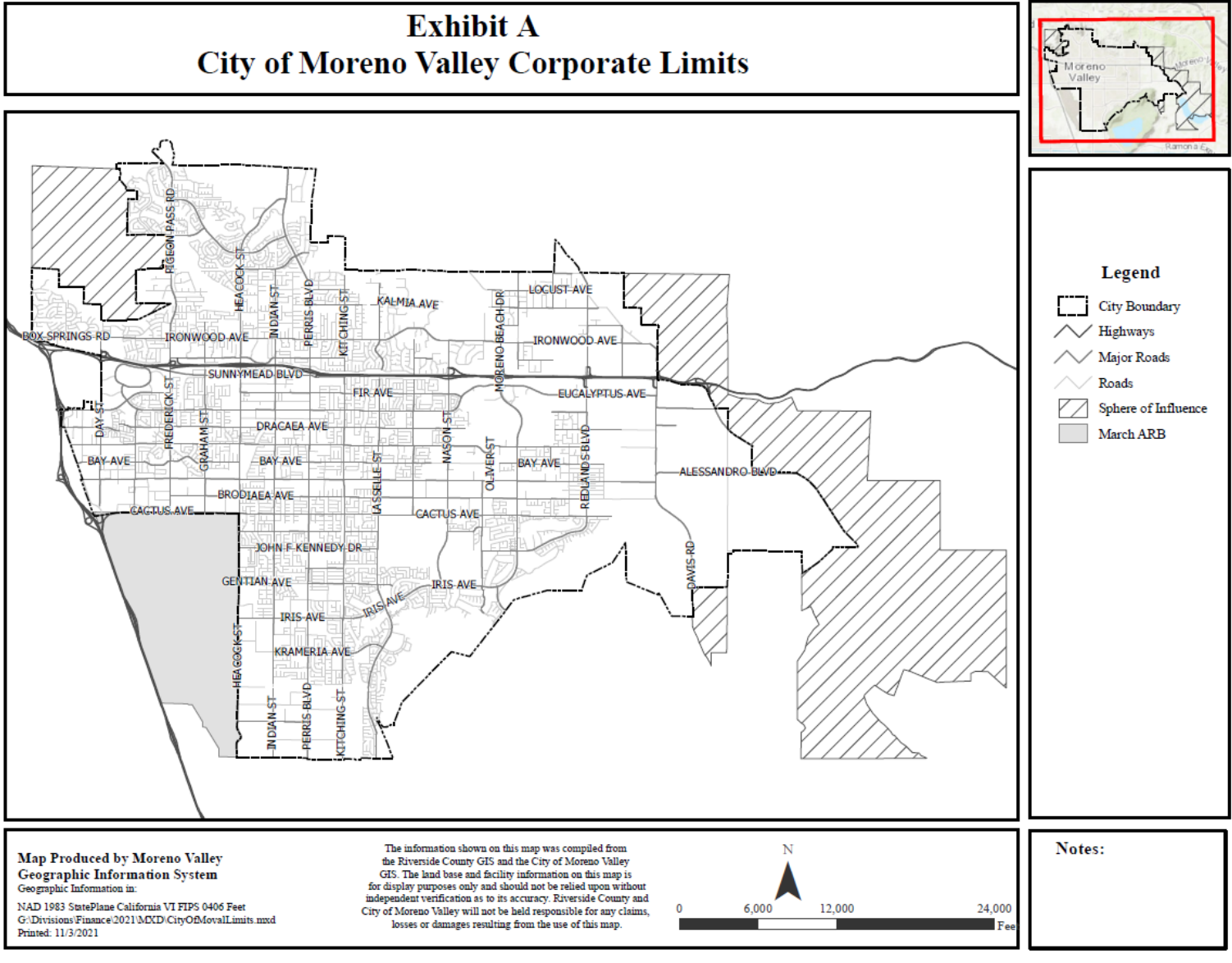
<p><b><u>INTERNAL USE ONLY</u></b></p> <p>APPROVED AS TO LEGAL FORM:</p> <p>_____ City Attorney _____ Date</p> <p>RECOMMENDED FOR APPROVAL:</p> <p>_____ Assistant City Manager/CFO _____ Date</p>
--

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
(Corporate Secretary)  
\_\_\_\_\_  
Date

# EXHIBIT "A"

## FRANCHISE AREA

All portions of the City shown on the existing Official Map of the City of Moreno Valley Corporate Limits on file at the City of Moreno Valley or as subsequently modified by future annexations.



## EXHIBIT "B"

### SPECIAL WASTES

- Flammable waste
- Containerized waste (e.g. drum, barrel, portable tank, box, pail, etc.).
- Waste Transported in a bulk tanker
- Liquid Waste
- Sewage sludge
- Waste from a pollution control process and/or industrial process.
- Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or any other special wastes
- Contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation, or disposal of any other special wastes
- Dead animals and/or slaughterhouse waste
- Manure
- Waste water
- Explosive substances
- Radioactive Materials
- Hazardous Materials as defined by state and federal law
- Friable and/or nonfriable asbestos waste
- Empty containers which have been used for pesticides, herbicides, fungicides, or rodenticides
- Waste which is prohibited from disposal at a Class III Landfill.
- Waste which has been rejected from disposal at a landfill

**EXHIBIT "C"**

2021/2022 RATE SHEET  
CITY OF MORENO VALLEY

DRAFT