

AGREEMENT

35669.

THIS AGREEMENT is made and entered, in duplicate, as of August 26, 2020, pursuant to Resolution No. RES-12-0114 adopted by the City Council of the City of Long Beach at its meeting on August 18, 2020, by and between USA WASTE OF CALIFORNIA, INC., a Delaware corporation, doing business as WASTE MANAGEMENT ("Contractor"), located at 9081 Tujunga Avenue, Sun Valley, California 91352 and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, the City, as member of a joint powers authority ("JPA"), owns the Southeast Resource Recovery Facility ("SERRF") and is responsible for its operation and maintenance, including disposal of the ash it produces; and

WHEREAS, Contractor owns the El Sobrante landfill in Riverside County, which is the only landfill in Southern California which is permitted by the Regional Water Quality Control Board in Southern California to accept incinerator ash such as SERRF's; and

WHEREAS, no useful purpose would be served by conducting a competitive procurement process since Contractor is the only entity to provide ash disposal services and to do so would be an idle and useless act and an unnecessary expenditure of public funds; and

WHEREAS, City desires to have Contractor perform these specialized services, and Contractor is willing and able to do so on the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions in this Agreement, the parties agree as follows:

1. SCOPE OF WORK OR SERVICES.

A. Contractor shall furnish specialized services more particularly described in Exhibit "A", attached to this Agreement and incorporated by this reference, in accordance with the standards of the profession, and City shall pay for

1 these services in the manner described below, not to exceed Eight Million Dollars
2 (\$8,000,000) per year, at the rates or charges shown in Exhibit "A".

3 B. Contractor will invoice City monthly, based on the tonnage of
4 ash delivered or the minimum delivery commitment, as the case may be, by the
5 twentieth day of the month following the end of each calendar month. City will make
6 payment within thirty days from the date of invoice.

7 C. Contractor represents that Contractor has obtained all
8 necessary information on conditions and circumstances that may affect its
9 performance and has conducted site visits, if necessary.

10 D. By executing this Agreement, Contractor warrants that
11 Contractor (a) has thoroughly investigated and considered the scope of services to
12 be performed, (b) has carefully considered how the services should be performed,
13 and (c) fully understands the facilities, difficulties and restrictions attending
14 performance of the services under this Agreement. If the services involve work upon
15 any site, Contractor warrants that Contractor has or will investigate the site and is
16 or will be fully acquainted with the conditions there existing, prior to commencement
17 of services set forth in this Agreement. Except as otherwise provided in this
18 Agreement, should Contractor discover any latent or unknown conditions that will
19 materially affect the performance of the services set forth in this Agreement,
20 Contractor must immediately inform the City of that fact and may not proceed except
21 at Contractor's risk until written instructions are received from the City.

22 E. Contractor must adopt reasonable methods during the life of
23 the Agreement to furnish continuous protection to the work, and the equipment,
24 materials, papers, documents, plans, studies and other components to prevent
25 losses or damages, and will be responsible for all damages, to persons or property,
26 until acceptance of the work by the City, except those losses or damages as may
27 be caused by the City's own negligence.

28 F. CAUTION: Contractor shall not begin work until this

1 Agreement has been signed by both parties and until Contractor's evidence of
2 insurance has been delivered to and approved by City.

3 G. TERM. The term of this Agreement shall be for an initial four-
4 year term, commencing at midnight on January 1, 2021, and terminating at 11:59
5 p.m. on December 31, 2025 unless sooner terminated as provided in this
6 Agreement. Deliveries of ash from SERRF shall commence on or after January 1,
7 2021, through December 31, 2025. Thereafter, the term for ash deliveries may be
8 extended by mutual agreement of the parties.

9 2. EXTENSIONS. The City shall have the option to extend the term of
10 this Agreement for five (5) separate, consecutive periods of one (1) year each by giving
11 notice to Contractor of City's desire to extend within ninety (90) days prior to the expiration
12 of the original term or the extended term provided the parties mutually agree to extend the
13 term by written amendment(s) executed by the parties. This Agreement may be terminated
14 as set forth in Section 10 of this Agreement.

15 3. COORDINATION AND ORGANIZATION.

16 A. Contractor shall coordinate its performance with City's
17 representative, if any, named in Exhibit "B", attached to this Agreement and
18 incorporated by this reference. Contractor shall advise and inform City's
19 representative of the work in progress in sufficient detail so as to assist City's
20 representative in making presentations and in holding meetings on the Project. City
21 shall furnish to Contractor information or materials, if any, described in Exhibit "C",
22 attached to this Agreement and incorporated by this reference, and shall perform
23 any other tasks described in the Exhibit.

24 4. INDEPENDENT CONTRACTOR. In performing its services,
25 Contractor is and shall act as an independent Contractor and not an employee,
26 representative or agent of City. Contractor shall have control of Contractor's work and the
27 manner in which it is performed. Contractor shall be free to contract for similar services to
28 be performed for others during this Agreement; provided, however, that Contractor acts in

1 accordance with Section 9 and Section 11 of this Agreement. Contractor acknowledges
2 and agrees that (a) City will not withhold taxes of any kind from Contractor's compensation;
3 (b) City will not secure workers' compensation or pay unemployment insurance to, for or
4 on Contractor's behalf; and (c) City will not provide and Contractor is not entitled to any of
5 the usual and customary rights, benefits or privileges of City employees. Contractor
6 expressly warrants that neither Contractor nor any of Contractor's employees or agents
7 shall represent themselves to be employees or agents of City.

8 5. INSURANCE.

9 A. As a condition precedent to the effectiveness of this
10 Agreement, Contractor shall procure and maintain, at Contractor's expense for the
11 duration of this Agreement, from insurance companies that are admitted to write
12 insurance in California and have ratings of or equivalent to A:V by A.M. Best
13 Company or from authorized non-admitted insurance companies subject to Section
14 1763 of the California Insurance Code and that have ratings of or equivalent to A:VIII
15 by A.M. Best Company, the following insurance:

16 (a) Commercial general liability insurance (equivalent in scope to ISO
17 form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$5,000,000 per
18 each occurrence. Such coverage shall include but not be limited to liability from
19 XCU (explosion, underground and collapse), broad form contractual liability, cross
20 liability, independent contractors' liability, and products and completed operations
21 liability. City, its boards and commissions, and their officials, employees and agents
22 shall be named as additional insureds by endorsement (on City's endorsement form
23 or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or CG 20 26
24 11 85), and this insurance shall contain no special limitations on the scope of
25 protection given to City, its boards and commissions, and their officials, employees
26 and agents. This policy shall be endorsed to state that the insurer waives its right
27 of subrogation against City, its boards and commissions, and their officials,
28 employees and agents.

1 (b) Workers' Compensation insurance as required by the California
2 Labor Code and employer's liability insurance in an amount not less than
3 \$1,000,000. This policy shall be endorsed to state that the insurer waives its right
4 of subrogation against City, its boards and commissions, and their officials,
5 employees and agents.

6 (c) Commercial automobile liability insurance (equivalent in scope to
7 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not
8 less than \$5,000,000 combined single limit per accident.

9 B. Any self-insurance program, self-insured retention, or
10 deductible must be separately approved in writing by City's Risk Manager or
11 designee and shall protect City, its officials, employees and agents in the same
12 manner and to the same extent as they would have been protected had the policy
13 or policies not contained retention or deductible provisions.

14 C. Each insurance policy shall be endorsed to state that coverage
15 shall not be canceled except after thirty (30) days prior written notice to City and
16 non-renewed except after ten (10) days prior written notice to the City, shall be
17 primary and not contributing to any other insurance or self-insurance maintained by
18 City, and shall be endorsed to state that coverage maintained by City shall be
19 excess to and shall not contribute to insurance or self-insurance maintained by
20 Contractor. Contractor shall notify City in writing within five (5) business days after
21 any insurance has been voided by the insurer or cancelled by the insured.

22 D. If this coverage is written on a "claims made" basis, it must
23 provide for an extended reporting period of not less than one hundred eighty (180)
24 days, commencing on the date this Agreement expires or is terminated, unless
25 Contractor guarantees that Contractor will provide to City evidence of uninterrupted,
26 continuing coverage for a period of not less than three (3) years, commencing on
27 the date this Agreement expires or is terminated.

28 E. Contractor shall require that all subcontractors that Contractor

1 uses in the performance of these services maintain insurance in compliance with
2 this Section unless otherwise agreed in writing by City's Risk Manager or designee.

3 F. Prior to the start of performance, Contractor shall deliver to City
4 certificates of insurance and the endorsements for approval as to sufficiency and
5 form. In addition, Contractor shall, within thirty (30) days prior to expiration of the
6 insurance, furnish to City certificates of insurance and endorsements evidencing
7 renewal of the insurance. City reserves the right to require complete certified copies
8 of all policies of Contractor and Contractor's sub-Contractors and Contractors, at
9 any time. Contractor shall make available to City's Risk Manager or designee all
10 books, records and other information relating to this insurance, during normal
11 business hours.

12 G. Any modification or waiver of these insurance requirements
13 shall only be made with the approval of City's Risk Manager or designee. Not more
14 frequently than once a year, City's Risk Manager or designee may require that
15 Contractor, Contractor's sub-Contractors and Contractors change the amount,
16 scope or types of coverages required in this Section if, in his or her sole opinion, the
17 amount, scope or types of coverages are not adequate.

18 H. The procuring or existence of insurance shall not be construed
19 or deemed as a limitation on liability relating to Contractor's performance or as full
20 performance of or compliance with the indemnification provisions of this Agreement.

21 6. ASSIGNMENT AND SUBCONTRACTING. This Agreement
22 contemplates the services of Contractor and Contractor's employees, and the parties
23 acknowledge that a substantial inducement to City for entering this Agreement was and is
24 the professional reputation and competence of Contractor and Contractor's employees.
25 Contractor shall not assign its rights or delegate its duties under this Agreement, or any
26 interest in this Agreement, or any portion of it, without the prior approval of City, except that
27 Contractor may with the prior approval of the City Manager of City, assign any moneys due
28 or to become due Contractor under this Agreement. Any attempted assignment or

1 delegation shall be void, and any assignee or delegate shall acquire no right or interest by
2 reason of an attempted assignment or delegation. Furthermore, Contractor shall not
3 subcontract any portion of its performance without the prior approval of the City Manager
4 or designee, or substitute an approved sub-Contractor or Contractor without approval prior
5 to the substitution. Nothing stated in this Section shall prevent Contractor from employing
6 as many employees as Contractor deems necessary for performance of this Agreement.

7 7. CONFLICT OF INTEREST. Contractor, by executing this Agreement,
8 certifies that, at the time Contractor executes this Agreement and for its duration,
9 Contractor does not and will not perform services for any other client which would create a
10 conflict, whether monetary or otherwise, as between the interests of City and the interests
11 of that other client. And, Contractor shall obtain similar certifications from Contractor's
12 employees, sub-Contractors and Contractors.

13 8. MATERIALS. Contractor shall furnish all labor and supervision,
14 supplies, materials, tools, machinery, equipment, appliances, transportation and services
15 necessary to or used in the performance of Contractor's obligations under this Agreement,
16 except as stated in Exhibit "C".

17 9. OWNERSHIP OF DATA. All materials, information and data furnished
18 to Contractor in connection with this Agreement, including but not limited to documents,
19 estimates, calculations, studies, maps, graphs, charts, computer disks, computer source
20 documentation, samples, models, reports, summaries, drawings, designs, notes, plans,
21 information, material and memorandum ("Data") shall be the exclusive property of City.
22 Except with respect to Contractor's business proprietary and/or trade secret information,
23 documents and/or reports required to be provided by Contractor under this Agreement shall
24 be given to City, and City shall have the unrestricted right to use and disclose said
25 documents and/or reports in any manner and for any purpose without payment of further
26 compensation to Contractor. Copies of City's Data may be retained by Contractor but
27 Contractor warrants that said Data shall not be made available to any person or entity for
28 use without the prior approval of City. This warranty shall survive termination of this

1 Agreement for five (5) years.

2 10. TERMINATION. Either party shall have the right to terminate this
3 Agreement for any reason or no reason at any time by giving ninety (90) calendar days
4 prior notice to the other party. In the event of termination under this Section, City shall pay
5 Contractor for services satisfactorily performed and costs incurred up to the effective date
6 of termination for which Contractor has not been previously paid. The procedures for
7 payment in Section 1.B. with regard to invoices shall apply. On the effective date of
8 termination, Contractor shall deliver to City all of City's Data developed or accumulated in
9 the performance of this Agreement, whether in draft or final form, or in process. And,
10 Contractor acknowledges and agrees that City's obligation to make final payment is
11 conditioned on Contractor's delivery of the Data to City.

12 11. ADDITIONAL SERVICES.

13 A. From time to time during the term, City may desire to implement
14 new or additional solid waste handling services or programs. Examples include, but
15 are not limited to, disaster services, household hazardous waste collection, solid
16 waste collection, processing of ash to remove non-ferrous metals, or alternative
17 (e.g. conversion) technologies for recycling, reuse or energy production from solid
18 waste or other collected materials. In such event, the City agrees to provide
19 Contractor the opportunity to present a proposal to perform such new or additional
20 services or programs. If the additional services proposed include processing of ash
21 to remove ferrous or non-ferrous metals or both the City and Contractor agree that
22 the terms and conditions will include a revenue sharing arrangement based on term
23 and investment.

24 12. RETENTION OF FUNDS. Contractor authorizes the City to deduct
25 from any amount payable to Contractor (whether or not arising out of this Agreement) any
26 amounts the payment of which may be in dispute or that are necessary to compensate the
27 City for any losses, costs, liabilities or damages suffered by the City, and all amounts for
28 which the City may be liable to third parties, by reason of Contractor's negligent acts or

omissions in performing or failing to perform Contractor's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness exists that appears to be the basis for a claim of lien, the City may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the City to exercise the right to deduct or to withhold will not, however, affect the obligations of Contractor to insure, indemnify and protect the City as elsewhere provided in this Agreement.

13. AMENDMENT. This Agreement, including all Exhibits, shall not be amended, nor any provision or breach waived, except in writing signed by the parties which expressly refers to this Agreement.

14. LAW.

A. This Agreement shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws). Contractor shall comply with all laws, ordinances, rules and regulations of and obtain all permits, licenses and certificates required by all federal, state and local governmental authorities. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

B. If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

15. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter in this Agreement.

16. INDEMNITY. Contractor shall, with respect to services performed in connection with this Agreement, indemnify and hold harmless City, its Boards, Commissions, and their officials, employees and agents (collectively in this Section, "City")

1 from and against any and all liability, claims, allegations, demands, damage, loss, causes
2 of action, proceedings, penalties, costs and expenses (including attorney's fees, court
3 costs, and expert and witness fees) (collectively "Claims" or individually "Claim") arising,
4 directly or indirectly, in whole or in part, out of any negligent act or omission of Contractor,
5 its officers, employees, agents, sub-Contractors or anyone under Contractor's control
6 (collectively "Indemnitor"), breach of this Agreement by Indemnitor, misrepresentation or
7 willful misconduct by Indemnitor, and Claims by any employee of Indemnitor relating in any
8 way to workers' compensation. Independent of the duty to indemnify and as a free-
9 standing duty on the part of Contractor, Contractor shall defend City and shall continue this
10 defense until the Claim is resolved, whether by settlement, judgment or otherwise. No
11 finding or judgment of negligence, fault, breach or the like on the part of Indemnitor shall
12 be required for the duty to defend to arise. Notwithstanding the foregoing, Contractor's
13 duty to indemnify or defend under this Agreement shall not extend to Claims arising out of
14 City's, its officers, employees, agents, or subcontractor's gross negligence or willful
15 misconduct. Contractor shall notify City of any Claim within ten (10) days. Likewise, City
16 shall notify Contractor of any Claim, shall tender the defense of the Claim to Contractor,
17 and shall assist Contractor at Contractor's sole expense, as may be reasonably requested,
18 in the defense.

19 17. FORCE MAJEURE. If any party fails to perform its obligations
20 because of strikes, lockouts, labor disputes, embargoes, acts of God, pandemics, inability
21 to obtain labor or materials or reasonable substitutes for labor materials, governmental
22 restrictions, governmental regulations, governmental controls, judicial orders, enemy or
23 hostile governmental action, civil commotion, fire or other casualty, or other causes beyond
24 the reasonable control of the party obligated to perform, then that party's performance will
25 be excused for a period equal to the period of such cause for failure to perform.

26 18. AMBIGUITY. In the event of any conflict or ambiguity between this
27 Agreement and any Exhibit, the provisions of this Agreement shall govern.

28 19. COSTS. If there is any legal proceeding between the parties to

1 enforce or interpret this Agreement or to protect or establish any rights or remedies under
2 it, the prevailing party shall be entitled to its costs, including reasonable attorneys' fees.

3 20. NONDISCRIMINATION.

4 A. In connection with performance of this Agreement and subject
5 to applicable rules and regulations, Contractor shall not discriminate against any
6 employee or applicant for employment because of race, religion, national origin,
7 color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
8 disability. Contractor shall ensure that applicants are employed, and that employees
9 are treated during their employment, without regard to these bases. These actions
10 shall include, but not be limited to, the following: employment, upgrading, demotion
11 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay
12 or other forms of compensation; and selection for training, including apprenticeship.

13 B. It is the policy of City to encourage the participation of
14 Disadvantaged, Minority and Women-Owned Business Enterprises in City's
15 procurement process, and Contractor agrees to use its best efforts to carry out this
16 policy in its use of sub-contractors and Contractors to the fullest extent consistent
17 with the efficient performance of this Agreement. Contractor may rely on written
18 representations by sub-contractors and Contractors regarding their status.
19 Contractor shall report to City in May and in December or, in the case of short-term
20 agreements, prior to invoicing for final payment, the names of all sub-contractors
21 and Contractors hired by Contractor for this Project and information on whether or
22 not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as
23 defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

24 21. EQUAL BENEFITS ORDINANCE. Unless otherwise exempted in
25 accordance with the provisions of the Ordinance, this Agreement is subject to the
26 applicable provisions of the Equal Benefits Ordinance (EBO), section 2.73 et seq. of the
27 Long Beach Municipal Code, as amended from time to time.

28 A. During the performance of this Agreement, Contractor certifies

1 and represents that the Contractor will comply with the EBO. Contractor agrees to
2 post the following statement in conspicuous places at its place of business available
3 to employees and applicants for employment:

4 "During the performance of a contract with the City of Long Beach,
5 Contractor will provide equal benefits to employees with spouses and its
6 employees with domestic partners. Additional information about the City of
7 Long Beach's Equal Benefits Ordinance may be obtained from the City of
8 Long Beach Business Services Division at 562-570-6200."

9 B. The failure of the Contractor to comply with the EBO will be
10 deemed to be a material breach of the Agreement by the City.

11 C. If the Contractor fails to comply with the EBO, the City may
12 cancel, terminate or suspend the Agreement, in whole or in part, and monies due or
13 to become due under the Agreement may be retained by the City. The City may
14 also pursue any and all other remedies at law or in equity for any breach.

15 D. Failure to comply with the EBO may be used as evidence
16 against the Contractor in actions taken pursuant to the provisions of Long Beach
17 Municipal Code 2.93 et seq., Contractor Responsibility.

18 E. If the City determines that the Contractor has set up or used its
19 contracting entity for the purpose of evading the intent of the EBO, the City may
20 terminate the Agreement on behalf of the City. Violation of this provision may be
21 used as evidence against the Contractor in actions taken pursuant to the provisions
22 of Long Beach Municipal Code section 2.93 et seq., Contractor Responsibility.

23 22. NOTICES. Any notice or approval required by this Agreement shall
24 be in writing and personally delivered or deposited in the U.S. Postal Service, first class,
25 postage prepaid, addressed to Contractor at the address first stated above, and to City at
26 411 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager, with a copy
27 to the City Clerk at the same address. Notice of change of address shall be given in the
28 same manner as stated for other notices. Notice shall be deemed given on the date

1 deposited in the mail or on the date personal delivery is made, whichever occurs first.

2 23. WAIVER. The acceptance of any services or the payment of any
3 money by City shall not operate as a waiver of any provision of this Agreement or of any
4 right to damages or indemnity stated in this Agreement. The waiver of any breach of this
5 Agreement shall not constitute a waiver of any other or subsequent breach of this
6 Agreement.

7 24. CONTINUATION. Termination or expiration of this Agreement shall
8 not affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11,
9 18, 21 and 28 prior to termination or expiration of this Agreement.

10 25. TAX REPORTING. As required by federal and state law, City is
11 obligated to and will report the payment of compensation to Contractor on Form 1099-Misc.
12 Contractor shall be solely responsible for payment of all federal and state taxes resulting
13 from payments under this Agreement. Contractor shall submit Contractor's Employer
14 Identification Number (EIN), or Contractor's Social Security Number if Contractor does not
15 have an EIN, in writing to City's Accounts Payable, Department of Financial Management.
16 Contractor acknowledges and agrees that City has no obligation to pay Contractor until
17 Contractor provides one of these numbers.

18 26. ADVERTISING. Contractor shall not use the name of City, its officials
19 or employees in any advertising or solicitation for business or as a reference, without the
20 prior approval of the City Manager or designee.

21 27. AUDIT. City shall have the right at all reasonable times during the
22 term of this Agreement and for a period of five (5) years after termination or expiration of
23 this Agreement to examine, audit, inspect, review, extract information from and copy all
24 books, records, accounts and other documents of Contractor relating to Contractor's
25 performance of this Agreement.

26 28. THIRD PARTY BENEFICIARY. This Agreement is not intended or
27 designed to or entered for the purpose of creating any benefit or right for any person or
28 entity of any kind that is not a party to this Agreement.

1 29. INTERPRETATION. The terms of this Agreement should be
2 construed in accordance with the meaning of the language used and should not be
3 construed for or against either party by reason of the authorship of this Agreement or any
4 other rule of construction that might otherwise apply.

5 30. CONTRACTOR'S AUTHORITY TO EXECUTE. The persons
6 executing this Agreement on behalf of the Contractor warrant that (1) the Contractor is duly
7 organized and existing; (2) they are duly authorized to execute this Agreement on behalf
8 of the Contractor; (3) by so executing this Agreement, the Contractor is formally bound to
9 the provisions of this Agreement; and (4) the entering into this Agreement does not violate
10 any provision of any other Agreement to which the Contractor is bound.

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

IN WITNESS WHEREOF, the parties have caused this document to be duly
executed with all formalities required by law as of the date first stated above.

USA WASTE OF CALIFORNIA, INC., a
Delaware corporation, doing business as
WASTE MANAGEMENT

By [Signature]
Name Larry Metter
Title President-Southern California Area
By [Signature]
Name Doug Corcoran
Title Vice President

"Contractor"

CITY OF LONG BEACH, a municipal
corporation

By [Signature]
City Manager

"City" EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

This Agreement is approved as to form on Oct. 1, 2020.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy

EXHIBIT "A"

SCOPE OF SERVICES AND RATES

1. SERRF ASH DISPOSAL.

A. Deliveries. City shall transport or arrange for transportation of the SERRF ash to El Sobrante Landfill. City shall be solely responsible for payment of transportation costs from SERRF to El Sobrante Landfill. City agrees to comply with applicable requirements of any local jurisdiction regarding the delivery and disposal of waste at the El Sobrante Landfill, including but not limited to the requirements set forth in the First Amended and Restated Second El Sobrante Landfill Agreement dated August 6, 2018 ("El Sobrante Restated Second Agreement"), and specifically the applicable provisions of Sections 3.4.2, 4.1.2 and 9.24 of the Second El Sobrante Agreement, all of which are incorporated herein by this reference. A copy of those portions of the Second El Sobrante Agreement is attached hereto as Attachment 1.

B. Ownership. Ownership of the ash shall transfer from the City to Contractor upon acceptance at the El Sobrante Landfill. City will be responsible for removing any Non-conforming Material at its sole cost and expense, and will defend, indemnify and hold Waste Management harmless from any claims, fines, penalties or other liability arising from the delivery of Non-conforming materials. "Non-conforming Material" means material: (i) that is prohibited from acceptance at the El Sobrante Landfill by applicable law; (ii) that is or contains Hazardous Waste as defined under applicable law; (iii) that Contractor reasonably believes would, as a result of or upon receipt, be a violation of applicable law; (iv) in Contractor's reasonable judgment would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose them to potential liability; or (v) Special Waste, as that term is defined in applicable law.

C. Ash Testing. The City has certified that SERRF ash is non-

hazardous through a statistical analysis to the 95 percent confidence level of SERRF ash sampling results. SERRF ash quarterly sampling has been performed and results reported since 1992. This data has been used in the self certification. Beginning with the calendar quarter ending March 31, 2021, and each quarter thereafter, the City will provide to Contractor the quarterly ash sample results and certifications it submits to the Department of Toxic Substances Control ("DTSC"), and the State of California Department of Resources, Recycling and Recovery ("CalRecycle"), to certify the ash as a non-hazardous, non-designated waste. In addition, the City will perform any additional testing required by law to ensure the ash is not a designated waste, as defined in the California Water Code Section 13173, as needed. If at any time it is determined that the ash is either hazardous or designated, or is otherwise not acceptable for receipt at El Sobrante Landfill for the reasons provided in Paragraph B above, Contractor will inform the City and the parties agree to negotiate in good faith to undertake retests of the ash, or otherwise alter the characteristics of the ash to make it acceptable. If those efforts are unsuccessful, City shall remove and/or remediate the unacceptable ash delivered to El Sobrante Landfill at its sole cost and expense, and Contractor shall have no obligation to accept SERRF ash and the provisions of Paragraph E and F, below, shall be of no further force and effect. Nothing in the foregoing shall be deemed or interpreted as imposing any obligation or duty on Contractor to accept or undertake any costs, expenses or liability with respect to Non-conforming material.

D. Diversion. Contractor shall assure that all deliveries of acceptable ash that have been screened to remove ancillary waste materials receive diversion credit, consistent with laws and regulations as they exist on the effective date or may be amended in the future. For unscreened deliveries or ash, or if Contractor is unable to reuse the ash beneficially and therefore unable to report diversion credit, Contractor will accept ash from SERRF for disposal.

E. Delivery Commitment; Acceptance Commitment. City agrees

1 to deliver an average of not less than 60 tons per day for beneficial reuse or disposal,
2 calculated monthly. The average tons per day shall be calculated as total tons for
3 the month divided by total standard days for the month. Total tons for the month
4 shall be based upon El Sobrante Landfill scale records. Total standard days shall
5 be equal to 1 day for every weekday (Monday through Friday) and 0.50 of a day for
6 every Saturday within the month, except weeks with a defined holiday on a weekday
7 where the holiday shall not count as a standard day, but the subsequent Saturday
8 shall count as one full day. The defined holidays are New Year's Day, Memorial
9 Day, Fourth of July, Labor Day, Thanksgiving and Christmas. City shall not be
10 required to deliver ash up to 5 weekday days per year during scheduled shutdowns
11 of SERRF for maintenance, and such days will not be counted in the total standard
12 days for the respective month.

13 F. Minimum Charge. City will be obligated to pay Contractor for a
14 minimum of 60 tons per day, as a monthly average calculated in accordance with
15 the Paragraph, below, regardless of whether this minimum tonnage is actually
16 delivered.

17 G. Uniform Deliveries. City will use commercially reasonable
18 efforts to make daily deliveries on a reasonably uniform basis.

19 2. RATES AND PAYMENT.

20 A. The initial rates for handling and use of ash for beneficial reuse,
21 or for disposal, will be on a sliding scale, depending on amounts received, based on
22 the average tons per day as calculated in accordance with Paragraph E, above.
23 The initial rates are set forth below. The initial rates include all taxes, fees or
24 charges as of the effective date.

25 ///

26 ///

27 ///

28 ///

B. Tons Per Day (calculated over a month):

		Tons Per Day calculate d over a month								
Min			>200	>250	>300	>350	>400	>450	>500	>550
Max		<=200	=250	=300	=350	=400	=450	=500	=550	
Rate		\$57.4 6	\$46.3 4	\$43.57	\$41.65	\$40.24	\$39.17	\$38.32	\$37.64	\$37.07

C. The initial rates will be adjusted each July 1, beginning July 1, 2021, by the percent change in the Annual Los Angeles-Riverside-Orange CPI-U from 2 years prior to 1 year prior, except that the minimum adjustment shall be 0%. For example, the July 1, 2021 increase shall be the change in CPI-U from the annual average for the 12 months ending December 2019 to the annual average for the 12 months ending December 2020.

D. The initial rates, as adjusted, may be further adjusted by Contractor to reflect any new or increased taxes, fees or charges related to the delivery of ash at the El Sobrante Landfill, upon thirty days written notice to the City. During this thirty-day period, the City Manager will verify the accuracy of the proposed adjustment and the parties agree to negotiate in good faith to resolve any dispute regarding the adjustment amount.

EXHIBIT "B"

City's Representative:
Charles R. Tripp, Manager S.E.R.R.F.
(562) 570 -7841

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Lana Beach, CA 90802-4664

EXHIBIT "C"

Materials /Information Furnished: None