

**MEMORANDUM OF UNDERSTANDING FOR PRELIMINARY
IMPLEMENTATION OF SB 1383 PROGRAMS PURSUANT TO
AMENDED AND RESTATED FRANCHISE AGREEMENT BETWEEN
CITY OF MENIFEE AND USA WASTE OF CALIFORNIA, INC., dba
WASTE MANAGEMENT OF THE INLAND EMPIRE FOR SOLID
WASTE HANDLING SERVICES**

This Memorandum of Understanding (the “MOU”) to the Amended and Restated Agreement for Solid Waste Handling Services between the City of Menifee (hereinafter “City”) and USA Waste of California, Inc., dba Waste Management of the Inland Empire (hereinafter “Contractor”) is made and entered so as to be effective as of July 1, 2022.

RECITALS

A. City and Contractor have entered that certain Amended and Restated Agreement for Solid Waste Handling Services effective as of April 1, 2020 (the “Agreement”).

B. As of the Effective Date of the Agreement, Senate Bill (SB) 1383 had become effective, but its implementing regulations, now found in the California Code of Regulations (the “SB 1383 Regulations”) had not yet been adopted.

C. SB 1383 together with the SB 1383 Regulations, generally speaking, create an obligation upon the City to adopt programs to reduce methane emissions including by imposing requirements for the diversion of organic waste from landfills, and may delegate such programs in their franchise agreements for solid waste handling services.

D. Section 8.3.5 of the Agreement contemplated the adoption of the SB 1383 Regulations and included an acknowledgment by the Parties that the Agreement would need to be modified to require implementation of an SB 1383 Organics recycling program. It further provided that City and Contractor will meet and confer regarding the SB 1383 Regulations to determine what specific programs would be required to be added to the Agreement, and to arrive at a fair and reasonable adjustment to the maximum rates set forth in Exhibit A of the Agreement in order to compensate Contractor for implementing such programs.

E. While SB 1383 and the SB 1383 Regulations initially required implementation of their provisions by January 1, 2022, as a result of various factors, including specifically the COVID 19 pandemic, the Legislature adopted SB 619 which allows a city to delay such implementation if it adopts a Notice of Intention to Comply (“NOIC”), and thereafter complies with the schedule set forth in such NOIC.

F. City desires to comply with SB 1383 and the SB 1383 Regulations and to implement required programs as quickly as reasonably possible, but found that it could not strictly comply with the initially required timelines and accordingly adopted an NOIC. In connection therewith it determined that it, along with Contractor, could and would implement a program pursuant to SB 1383 and the SB 1383 Regulations for Collection and processing of Organic Waste for Customers at Single Family Dwellings as of July 1, 2022, while at the same time delaying both (i) full implementation of all the requirements of SB 1383 and the

SB 1383 Regulations and (ii) the adoption of a formal amendment to the Agreement to fully set forth all of the rights and obligations of the Parties related to such implementation.

G. The parties now desire to enter this MOU for the purpose of memorializing their preliminary agreement for the implementation of SB 1383 related programs for Customers at Single Family Dwellings (the “Residential 1383 Program.”). In adopting this MOU, the Parties recognize and acknowledge that upon adoption of a formal amendment to the Agreement as contemplated by Section 8.3.5 thereto, it is anticipated that such amendment will include significant additional detail related to the terms and provisions of the Residential 1383 Program set forth herein, as well as additional terms and provisions not addressed herein. Moreover, the parties acknowledge that the adjustment to the maximum rates which Contractor may charge Customers related to the Residential 1383 Program as set forth herein may be further adjusted and refined to ensure the intent of Section 8.3.5 is met in connection with ensuring Contractor is compensated in a fair and reasonable manner for implementing the Residential 1383 Program.

H. The provisions set forth in the MOU shall automatically expire upon the effective date of a formal amendment to the Agreement to be adopted by the Parties pursuant to Section 8.3.5 of the Agreement for purposes of implementing SB 1383 and the SB 1383 Regulations.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein, and intending to be legally bound hereby, the parties agree as follows:

SECTION 1. Preliminary Residential 1383 Program.

(A) Program basics: Effective July 1, 2022 Contractor shall implement a program whereby Customers at Single Family Dwellings which currently receive Solid Waste Handling Services using a three Cart system will be directed to place Organic Waste in their existing Green Waste Carts. In accordance with Section 1(C) below, Contractor shall use Smart Truck® technology in connection with all Organic Waste Collected to facilitate the contamination monitoring and route reviews required by the SB 1383 Regulations, and to facilitate City’s enforcement efforts.

(B) Organic Waste Processing. Except as otherwise provided herein, Organic Waste Collected in Green Waste Carts hereunder shall be delivered by Contractor for processing to the South Valley Organic Composting Facility, located in Tulare County, and the Ecology Composting located in Arizona. Organic Waste shall be processed in a manner that complies with SB 1383 and the SB 1383 Regulations.

(C) Maximum Rate Adjustment for SB 1383 Implementation:

(i) Two Year Implementation Schedule for Typical Customers: Contractor’s proposed preliminary adjustment to maximum rates to implement the Residential 1383 Program, which City accepts for purposes of this MOU, is \$2.24 per month per Single Family Dwelling to be implemented over two years as follows:

(a) In addition to the CPI based adjustment to maximum rates related to Customers at Single Family Dwellings, an additional amount equal to \$1.12 shall

be added to such maximum rate, effective July 1, 2022, to address costs associated with implementing the Residential 1383 Program as set forth herein.

(b) In addition to the CPI based adjustment to maximum rates related to Customers at Single Family Dwellings, an additional amount equal to \$1.12 shall be added to such maximum rate, effective July 1, 2023, to address costs associated with implementing the Residential 1383 Program as set forth herein.

(ii) Three Year Implementation for Customers Eligible for Senior Discount: The above noted \$2.24 per month when applied to Customers who qualify for the 9% Senior Discount set forth in Section 8.2.11 of the Agreement shall be implemented over a three-year period as follows:

(a) In addition to the CPI based adjustment to maximum rates related to Customers at Single Family Dwellings, an additional amount equal to \$.74 shall be added to such maximum rate, effective July 1, 2022, to address costs associated with implementing the Residential 1383 Program as set forth herein.

(b) In addition to the CPI based adjustment to maximum rates related to Customers at Single Family Dwellings, an additional amount equal to \$.75 shall be added to such maximum rate, effective July 1, 2023, to address costs associated with implementing the Residential 1383 Program as set forth herein.

(c) In addition to the CPI based adjustment to maximum rates related to Customers at Single Family Dwellings, an additional amount equal to \$.75 shall be added to such maximum rate, effective July 1, 2024, to address costs associated with implementing the Residential 1383 Program as set forth herein.

(iii) Container Contamination Fee. In addition to the foregoing, a Container contamination fee of \$10/per instance is added to Exhibit A and may be charged by Contractor in connection with a Recycling Container or Organic Waste Container that are contaminated with materials placed in a Recycling Container or Organic Waste Container other than those Recyclable Materials or Organic Waste (as applicable) are appropriate for Collection therein as follows:

First and Second Occurrence. For the first and second occurrence of contamination for a particular Container (e.g., Recyclable Materials or Organic Waste) within any 12-month period, Contractor shall collect the contaminated Container and shall deliver to the Customer a contamination violation notice. This notice shall be delivered by phone, U.S. mail, e-mail, or in person (which may be a container tag) and shall (i) contain instructions on the proper procedures for sorting Recyclable Materials or Organic Waste and (ii) notice that for the third and subsequent incidents of excess contamination, the Customer may be charged a contamination fee for the contaminated Container, and that, in connection with Commercial Customers, Contractor may also require an increase in the Container size, frequency or require an additional Container and charge the Commercial Customer for such service in accordance with the rates as set forth in Exhibit A.

Third and Subsequent Occurrences. For the third or subsequent occurrence of contamination for a particular Container (e.g., Recyclable Materials or Organic Waste) within any 12-month period of contamination, Contractor shall collect the contaminated Container and may charge the Customer a contamination fee as set forth in Exhibit A. Contractor may also increase the Container size or collection frequency.

(iv) City Manager Approval of Additional Adjustments and Changes. The City Manager is authorized to approve: (1) adjustments to maximum rates, and the related implementation schedules, set forth in Section 1(C)(i) and Section 1(C)(ii) of this Section 1 to take into account changes in processing charges incurred by Contractor at the South Valley Organic Composting Facility or the Ecology Composting Facility; (2) modifications to the scope of services or additional services to be provided or implemented by Contractor under the Residential 1383 Program as agreed by the Parties and related adjustments to maximum rates pursuant to Section 8.3.5 of the Agreement; and (3) delivery of Organic Waste to a processing facility other than the South Valley Organic Composting Facility or the Ecology Composting Facility and related adjustments to maximum rates pursuant to Section 8.3.5 of the Agreement and Section 2 of this MOU.

(D) Education and Outreach. Contractor shall provide education and outreach to Customers regarding the Residential 1383 Program, using materials and in a manner to be mutually agreed upon by the Parties, which shall at a minimum comply with the requirements of the SB 1383 Regulations. Contractor's obligation in this regard shall include not only advance information related to implementation of the Residential 1383 Program, but shall also include providing notices to Customers who's Carts are contaminated in accordance with Section 1(C)(iii) of this Section 1.

(E) Reporting. Contractor shall collect data and provide reports to City related to the Residential 1383 Program of a type and in a manner to be mutually agreed upon by the Parties, which shall at a minimum include data and reports related to route reviews and contamination monitoring and such other data as may otherwise be reasonably necessary for City and Contractor to comply with the requirements of the SB 1383 Regulations.

(F) Contamination Monitoring and Route Audits. Contractor, utilizing Smart Truck® technology, shall provide contamination monitoring and route reviews that comply with the requirements of the SB 1383 Regulations.

(G) Carts. Any Carts delivered to Customers following the effective date hereof shall comply with the requirements of the SB 1383 Regulations.

SECTION 2. Flow Control Option

City shall have the authority to choose the location for the delivery and/or disposal of Organic Waste Collected pursuant to the Residential 1383 Program (hereinafter City's "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for processing of Organic Waste hereunder, and waives any and all rights to challenge City's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution. Notwithstanding any provision of this MOU to the contrary, at any time during the

effectiveness of this MOU the City Manager may provide Contractor ninety (90) days advance notice in writing that City desires to exercise its Flow Control Option with regard to Organic Waste. In the event City so notifies Contractor, Contractor shall be entitled to an adjustment to the maximum rates set forth in Exhibit A of the Agreement and the Parties shall work together to arrive at an adjustment to the maximum rates related to the Residential 1383 Program set forth above or any future programs relating to SB 1383 and SB 1383 requirements, either upward or downward as the case may be, to reflect any increased or decreased costs Contractor incurs as a result of the resulting change.

SECTION 3. Termination. This MOU shall automatically terminate and be of no further force or effect upon the effective date of a subsequent amendment to the Agreement, to be adopted by the Parties pursuant to Section 8.3.5 of the Agreement.

SECTION 4. Unaffected Provisions of Agreement Remain in Full Force. All provisions of the Agreement, excepting for those expressly impacted by this MOU, shall remain unchanged and in full force and effect. Any capitalized terms used in this MOU but that are not defined herein shall have the meanings ascribed to them in the Agreement, unless such definition conflicts with 14 CCR Section 18982, in which case the definition in 14 CCR Section 18982 shall control.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding so as to be effective as of July 1, 2022.

CITY OF MENIFEE

DocuSigned by:
By: *Jeffrey*
A96907ED91464CU...

~~Mayor~~ City Manager

ATTEST:

DocuSigned by:
By: *Stephanie Rosser*
E7870041604C481...

City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: *Jeffrey T. Melching, City Attorney*
DABE8686180C4BB...

City Attorney

**USA WASTE OF CALIFORNIA, INC., dba
Waste Management of the Inland Empire**

DocuSigned by:
By: *Michael Hammer*
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Its: President - Southern California Area