

## AMENDMENT NO. 1 TO AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT

This Amendment No. 1 to Amended and Restated Exclusive Franchise Agreement, dated June 16, 2021 (the “**Amendment**”), between the City of Santee, a California municipal corporation and charter city (the “**City**”) and USA Waste of California, Inc., a Delaware corporation, a Waste Management Company, (the “**Contractor**,” and together with the City, the “**Parties**,” and each, a “**Party**”).

**WHEREAS**, the Parties have entered into that certain Amended and Restated Exclusive Franchise Agreement, dated August 12, 2020 (the “**Existing Agreement**”);

**WHEREAS**, the Parties hereto desire to amend the Existing Agreement to correct two inadvertent errors, on the terms and subject to the conditions set forth herein; and

**WHEREAS**, pursuant to Section 17.7 of the Existing Agreement, the amendments contemplated by the Parties must be contained in a written agreement signed by an authorized representative of each Party.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements and consideration contained herein, City and Contractor hereby agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.

2. Amendments to the Existing Agreement. As of the Effective Date (defined below), the Existing Agreement is hereby amended or modified as follows:

(a) Section 3.8 of the Existing Agreement is hereby amended by incorporating the following new text in bold format and deleting text in ~~strikeout~~ format:

3.8 San Diego River Clean Up Contribution / Highway 52 Coalition. Concurrently with the Recycling Initiative Fee, Contractor shall contribute the sum of Twelve Thousand Dollars (\$12,000) to the City to be used for San Diego River clean-up and mitigation efforts and contribute the sum of Eighteen Thousand Dollars (\$18,000) to the City to be used for the Highway 52 Coalition. These payments shall be made for calendar year ~~2019~~ **2021** and all future calendar years during the Term.

(b) Section 8.3.1 of the Existing Agreement is hereby amended by incorporating the following new text in bold format and deleting text in ~~strikeout~~ format:

8.3.1 Adjustment Calculation. Effective on ~~July~~ **January** 1 of each year **beginning January 1, 2022**, an annual permissive Consumer Price Index (“CPI”) adjustment to the rates approved by the City Council may be made by the Contractor. The annual permissive CPI adjustment for the portion of each rate representing Contractor’s costs of collecting Organics, Solid Waste, and Recyclables shall be the quotient of the Consumer Price Index for San Diego-Carlsbad, California for all urban consumers from the current ~~March~~ **September** divided by the Consumer Price Index for San Diego-Carlsbad, California for all urban consumers for the previous ~~March~~ **September**, subtracted by one and expressed

as a percentage. If the CPI adjustment calculations exceed a positive four percent (4%), the portion of the calculated adjustment over a positive four percent (4%) shall be multiplied by .70. The product of this calculation shall be added to four percent (4%). This sum shall be the annual permissive CPI adjustment for the collection portion of the rates.

The annual permissive CPI adjustment for the portion of each rate representing Contractor's costs of processing and disposal costs shall be calculated in the same manner as the collection portion of the rates. Below is illustrative example of the adjustment process:

IF: CPI index in Year 1 is 100 and CPI index in Year 2 is 105. Rate in Year 1 is 10 (7 for collection and 3 for processing/disposal).

Collection Component  $(105/100)=1.05-1 \Rightarrow 5\%$ ;  $5\%-4\%=1\%$ ;  $(1*.7)=.7$ ;  
.7+4=4.7%

Processing/Disposal Component  $(105/100)=1.05 \Rightarrow 5\%$ ;  $5\%-4\%=1\%$ ;  $(1*.7)=.7$ ;  
.7+4=4.7%

$7*1.047 + 3*1.047 = \$10.47$

Notwithstanding the above, the minimum annual permissive CPI adjustment shall never be less than one (1%) percent. In the event that the index used to calculate the permissive CPI adjustment is amended or modified, the Parties shall use its successor. If no successor is available, the Parties shall meet and confer on a reasonable replacement.

3. Effective Date; Limited Effect. This Amendment will become effective on the date first written above (the "**Effective Date**"). Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement.

4. Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

(a) It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment; and

(b) The execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party, have been duly authorized by all necessary action on the part of such Party.

5. Miscellaneous.

(a) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed

counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.

(b) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

**CITY OF SANTEE**

By: Marlene D. Best  
Name: Marlene D. Best  
Title: City Manager

**USA WASTE OF CALIFORNIA, INC.**

By: Larry Matter  
Name: Larry Matter  
Title: President-Southern California Area

**APPROVED AS TO FORM:**

BEST BEST & KRIEGER LLP

By: MA

Shawn Hagerty, City Attorney

Date: June 16, 2021