

**REIMBURSEMENT AGREEMENT
FOR CITY SERVICES AND
PROFESSIONAL CONSULTANT SERVICES
BY AND BETWEEN THE CITY OF HAWAIIAN GARDENS
AND WASTE RESOURCES, INC.**

This Reimbursement Agreement (“Agreement”) is made this 25th day of May, 2021 (“Effective Date”), by and between the City of Hawaiian Gardens, a California municipal corporation (“City”), and Waste Resources, Inc., a California corporation (“WRI”). City and WRI are sometimes individually referred to herein as “Party” and collectively as “Parties.”

RECITALS

This Agreement is made with respect to the following facts:

A. WRI is the solid waste hauler within the City of Hawaiian Gardens, County of Los Angeles, California, pursuant to that certain Exclusive Solid Waste Services Franchise Agreement, dated July 1, 2018 (“Franchise Agreement”), as the assignee of Commercial Waste Resources.

B. The City and WRI have been discussing a potential rate increase under the Franchise Agreement. To facilitate the consideration of this rate increase (including a related Franchise Agreement amendment) (the “Rate Increase”), the City intends to engage consultants necessary for purposes of public education, Proposition 218 compliance, the attendant Franchise Agreement amendment, and related work (“Rate Increase Work”).

C. The Rate Increase Work will require significant efforts on the part of the City, City staff, and City consultants, including but not limited to, preparation of Proposition 218 noticing documents, the Franchise Agreement amendment, communication documents for the public, and all other documents and items required to process and evaluate the Rate Increase Work; attendance at public meetings and meetings with the WRI and/or its representatives related to the Rate Increase Work; legal costs of drafting and reviewing the documents required by the Rate Increase Work; and any other costs and expenses necessary to Rate Increase Work, all in the City’s sole discretion (“Rate Increase Work Costs”).

D. As a condition to the City’s agreement to proceed with the Rate Increase Work, WRI has agreed to reimburse the City for the Rate Increase Work Costs in the manner and amounts set forth in this Agreement. WRI’s reimbursement of the City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently proceed with the Rate Increase Work.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and WRI agree as follows:

1. Incorporation of Recitals. The Parties agree that the Recitals constitute the factual basis upon which the City and WRI have entered into this Agreement. The City and WRI each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length herein.

2. Reimbursement of Entitlement Package Costs. WRI shall, in accordance with the terms of this Agreement, reimburse the City for One Hundred Percent (100%) of the Rate Increase Work Costs. WRI shall satisfy its reimbursement obligation as follows:

a. Within five (5) days of the Effective Date, WRI shall provide to the City an initial deposit of twenty thousand dollars (\$20,000) which the City shall draw upon to pay the Rate Increase Work Costs (“Deposit”).

b. WRI shall be responsible for ensuring that the Deposit remains adequate to cover the ongoing Rate Increase Work Costs. To assist WRI in meeting this obligation, City shall immediately notify WRI in writing any time the Deposit drops below five thousand dollars (\$5,000). Within five (5) working days of receiving City’s written notice, WRI shall provide the funds necessary to increase the Deposit to twenty thousand dollars (\$20,000). In the event WRI fails to provide the funds necessary to increase the Deposit within the required five (5) working day period, the City shall cease any work on or related to the Rate Increase Work and shall recommence such work upon payment of the required funds.

c. City and WRI hereby acknowledge and agree that WRI’s duty to reimburse the City is not contingent upon the approval or disapproval of the Rate Increase, or upon the result of any action of the City. The City does not guarantee the approval of the Rate Increase.

d. Within fourteen (14) days after final action on the Rate Increase by the City, or early termination pursuant to Section 4 of this Agreement, below, the City shall provide to WRI an invoice indicating the remaining Deposit balance, and a check for the remaining balance, if any. In the event the Deposit balance is negative, the invoice shall indicate the amount owed to the City by WRI, and WRI shall pay the City the total amount owed within five (5) days of receipt of the invoice.

e. In the event any of the actions taken by the City as part of, or related to the Rate Increase Work are challenged, the City and WRI shall enter into a separate reimbursement agreement addressing WRI’s reimbursement of City costs related to any such challenge.

3. Term. The term of this Agreement shall commence on the Effective Date and shall terminate when all work required to process the Rate Increase Work has been completed to the City’s reasonable satisfaction, and WRI has satisfied all of its obligations under this Agreement including, without limitation, the obligation to reimburse the City for all Rate Increase Work Costs, whether or not paid by the City prior to the date of termination.

4. Early Termination. The City may terminate this Agreement prior to the term set forth in Section 3, above, without cost or liability to the City, upon fourteen (14) days' prior written notice to WRI. WRI may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 3 above upon fourteen (14) days' prior written notice to the City; provided, however, that WRI must first have satisfied all of its obligations under this Agreement to the date of termination regarding reimbursement to the City (including payment of all Rate Increase Work Costs) and has given the City written notice withdrawing its intent to seek the Rate Increase. In the event of early termination, WRI's obligation to reimburse the City as provided in this Agreement shall survive the termination of this Agreement. The City and WRI shall consult with the other prior to providing any such notice to terminate this Agreement and determine whether the issues giving rise to the potential notice to terminate may be resolved in a good faith manner.

Within two (2) City working days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating WRI's decision to terminate this Agreement, the City shall cease any work related to the Rate Increase Work.

5. Remedies Upon Default. An event of default shall be deemed to exist upon the occurrence of all three of the following:

(i) Either the City or WRI has, without legal justification or excuse, breached any one or more of its obligations under this Agreement; and

(ii) The nondefaulting Party has sent written notice to the Party claimed to be in default, specifying the default and what actions the nondefaulting Party asserts should be taken to remedy the default; and

(iii) The Party claimed to be in default has not, within ten (10) days following receipt of the written notice described above, either corrected the default or taken actions, reasonably satisfactory to the nondefaulting Party, to remedy the default within a reasonable period of time, but in no event longer than thirty (30) days after receipt of the written notice described above.

Following an event of default, the nondefaulting Party may exercise any and all remedies available to it pursuant to this Agreement, or at law or in equity, including, without limitation, instituting an action for damages, injunctive relief, or specific performance.

6. Legal Challenges; Indemnification. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of the proposed Rate Increase. WRI may, however, in its sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and WRI shall be responsible and reimburse the City for whatever legal fees and expert or other costs, in their entirety, including actual attorneys' fees, which may be incurred by the City in defense of such action or proceeding. The City shall have the absolute

right to retain such legal counsel as the City deems necessary and appropriate, and WRI shall reimburse the City for any and all attorneys' fees and expert or other costs incurred by the City as a result of such third party action or proceeding. WRI may, at any time, notify City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, WRI shall be obligated to reimburse City for any and all costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, WRI shall have no further obligation to reimburse City for its attorney fees and expert or other costs.

Notwithstanding any provision herein to the contrary, WRI agrees to indemnify, defend and hold harmless the City and its officials, officers, employees, consultants, contractors, and agents from and against any order, award, or judgment against the City for attorneys' fees, costs or damages resulting from the consideration and any approval of the Rate Increase, including without limitation any appeal, except to the extent arising from the gross negligence or willful misconduct of the City and/or its officials, officers, employees, and agents.

The right and obligations in this Section 6 shall survive termination or expiration of this Agreement.

7. Nonwaiver of Rights or Remedies. The failure of a Party to exercise any one or more of its rights or remedies under this Agreement shall not constitute a waiver of that Party's right to enforce that right or seek that remedy in the future. No course of conduct or act of forbearance on any one or more occasions by any party to this Agreement shall preclude that party from asserting any right or remedy available to it in the future. No course of conduct or act of forbearance on any one or more occasions shall be deemed to be an implied modification of the terms of this Agreement.

8. Successors and Assigns. This Agreement and each of its terms shall be binding upon the City, WRI, and their respective officers, elected officials, employees, agents, contractors, consultants, and permitted successors and assigns. WRI may not assign its rights or obligations hereunder except upon written notice to the City within ten (10) days of the date of such assignment indicating the name and address of the assignee. Upon such notice and the assumption by the assignee, in writing delivered to the City, of the rights, duties and obligations of WRI arising under or from this Agreement, WRI shall be released of all future duties or obligations arising under this Agreement.

9. Third Party Beneficiaries. This Agreement does not confer any rights to any third party and further agree that no third party has any rights to enforce any provision of this Agreement.

10. Jurisdiction and Venue. This Agreement is executed and is to be performed in the City of Hawaiian Gardens, Los Angeles County, California, and any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Los

Angeles, California. The City and WRI each consent to the personal jurisdiction of the court in any such action or proceeding.

11. Time is of the Essence. Except as otherwise expressly stated, time is of the essence in the performance of every act required pursuant to this Agreement.

12. Covenant of Further Assurances. The City and WRI shall take all other actions and execute all other documents which are reasonably necessary to effectuate this Agreement.

13. Interpretation. The City and WRI agree that this Agreement is the product of mutual negotiations and is an arms-length transaction. Each Party has negotiated this Agreement with the advice and assistance of legal counsel of its own choosing. It is further agreed that this Agreement is a product of mutual drafting efforts by both the City and WRI. Accordingly, the rule that ambiguities in a document shall be construed against the drafter of the document shall have no application to this Agreement. In construing and interpreting this Agreement, the finder of fact shall give effect to the mutual intention of the City and WRI, notwithstanding such ambiguity, and may refer to the facts and circumstances under which this Agreement is made and such other extraneous evidence as may assist the finder of fact in ascertaining the intent of the City and WRI.

14. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and WRI both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

15. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

16. Representations of Authority. Each Party signing this Agreement on behalf of a Party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that Party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the Party on whose behalf he or she signs.

17. Attorneys' Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

18. Notices. Notices required under this Agreement shall be sent to the following:

If to the City:

City of Hawaiian Gardens
21815 Pioneer Blvd.
Hawaiian Gardens, CA 90716

Attention: City Manager
Email: linda@hgcity.org

With aa copy to:

Best Best & Krieger LLP
18101 Von Karman Avenue, Suite 1000
Irvine, CA 92612
Attention: Megan Garibaldi, City Attorney
Email: megan.garibaldi@bbklaw.com

If to WRI:

Waste Resources, Inc.
P.O. Box 2410
Gardena, CA 90247
Attention: Tommy Gendal, Chief Operating Officer
Email: tgendal@wasteresource.tech

Copy to:

Waste Resources, Inc.
P.O. Box 2410
Gardena, CA 90247
Attention: John Telesio, Governmental Affairs

Director

Email: jatelesio@thebreaoffice.com

Notices given to the other Party pursuant to this Agreement shall be deemed received as follows:

(i) If sent by United States Mail - three (3) calendar days after deposit into the United States Mail, first class postage prepaid.

(ii) If by email - upon transmission and actual receipt by the receiving Party, if before 5pm, and the following business day, if received after 5pm; provided, however, that concurrent notice shall be given through United States Mail.

(iii) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section may be changed upon written notice of such change to either the City or WRI, as appropriate.

[Signatures on Following Page]

**SIGNATURE PAGE FOR REIMBURSEMENT AGREEMENT FOR CITY SERVICES
AND PROFESSIONAL CONSULTANT SERVICES
BETWEEN CITY OF HAWAIIAN GARDENS AND WASTE RESOURCES, INC.**

CITY OF HAWAIIAN GARDENS
a California municipal corporation

By: 
Linda Hollinsworth, Interim City Manager

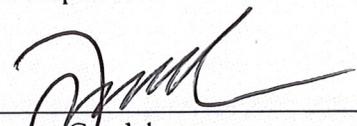
ATTEST:

By: 
Acting City Clerk

APPROVED AS TO FORM:

By: 
Megan Garibaldi, City Attorney

WASTE RESOURCES, INC.
a California corporation

By: 
Tommy Gendal
Chief Operating Officer

By: 
Kosti Shirvanian
Chief Executive Officer