

## **SECOND AMENDMENT TO SOLID WASTE SERVICES AGREEMENT**

THIS SECOND AMENDMENT TO SOLID WASTE SERVICES AGREEMENT (this "Amendment"), by and between the TOWN OF MAMMOTH LAKES, a municipal corporation of the state of California (the "Town"), and MAMMOTH DISPOSAL COMPANY, a California corporation ("Contractor"), is entered into as of January 17, 2024. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Solid Waste Services Agreement, dated October 1, 2020 (the "Agreement"), by and between the Town and Contractor.

### **RECITALS**

WHEREAS, the Town and Contractor entered into the Agreement, whereby the Town and Contractor agreed that Contractor would provide for the Collection, transportation, Processing, and Disposal of Solid Waste generated within the incorporate limits of the Town, upon the terms and conditions set forth in the Agreement;

WHEREAS, the Town and Contractor entered into that certain First Amendment to Solid Waste Services Agreement, dated November 16, 2022 (the "First Amendment"), in order to address material increases in the CPI-U;

WHEREAS, with Benton Crossing Landfill closing December 31, 2022, and per the Agreement, Contractor started hauling all municipal solid waste from the Town to Russell Pass Landfill in Fallon, Nevada, effective January 1, 2023;

WHEREAS, in order to facilitate the hauling, Contractor hired Cherokee Trucking to perform the transfer brokerage pursuant to a one-year agreement;

WHEREAS, Cherokee Trucking has provided Contractor notice on October 24, 2023 that it will no longer provide brokerage beginning on January 1, 2024;

WHEREAS, Contractor solicited new bids for the transfer brokerage work and selected SRT as the most responsive bidder;

WHEREAS, SRT's rates for brokerage are higher than those charged by Cherokee Trucking and become effective January 1, 2024;

WHEREAS, to cover this brokerage rate increase, Contractor has formally requested a one-time amendment to the Agreement to permit an adjustment to Contractor's rates; and

WHEREAS, the parties desire to amend the Agreement on a one-time basis to provide for an increase to Contractor's rates pursuant to Section 22.B. of the Agreement to address the increase in brokerage costs starting on February 1, 2024.

## AMENDMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE TO AMEND THE AGREEMENT, AS FOLLOWS:

1. **Incorporation of Recitals.** The foregoing recitals are agreed to, accepted and incorporated herein by reference.

2. **One-Time Amendment to Section 22.** In the first paragraph of Section 22 of the Agreement, the phrase "...the rates for the period January 1, 2021 through December 31, 2025..." is hereby amended to read "...the rates for the period "February 1, 2024 through December 31, 2027" shall be as set forth in Exhibit B, ...

3. **One-Time Amendment adding the following to Section 22.B. (Rate Adjustments).** The Town and Contractor hereby agree to amend Section 22.B (Rate Adjustments) of the Agreement to provide that, effective February 1, 2024, and notwithstanding the timetables for Contractor requesting rate increases or for such increases to take effect which are set forth in Sections 22.B and 22.C of the Agreement:

(a) Contractor's rates have hereby increased by \$214,487 (which includes any franchise fee owed by Contractor) (or 2.94% of the rate) to cover increased brokerage costs;

(b) Contractor's rates have hereby increased by \$297,999 (or 4.48% of the rate) to cover increases in the Fuel Surcharge Component (franchise fee is excluded from this rate);

(c) Contractor may request Town approval of a fuel surcharge twice per year, as set forth below. Town may request such supporting information as it deems relevant to the request, including without limitation information regarding the brokerage provider, SRT's fuel surcharge billing. The request will not be unreasonably denied. Town's decision regarding any request may be made at the staff level, provided that Town staff may request the Town Council to consider the request. Such portion of a request as is granted shall be known as the "Fuel Surcharge Component" of the rates. No request or combination of requests shall result in the Fuel Surcharge Component increasing the rates for any customer by more than a cumulative 6.1% in any calendar year. The Fuel Surcharge Component shall be a separate line item on customer billing and no franchise fee will be paid by Contractor on the Fuel Surcharge Component;

(d) Contractor's brokerage provider, SRT's fuel costs will be averaged over a 6-month period each February and August. Contractor shall make its request for a Fuel Surcharge Component not later than April 1<sup>st</sup> and October 1<sup>st</sup> each year, providing time for review and implementation on July 1<sup>st</sup> and January 1<sup>st</sup>, respectively; and

(e) Contractor's request for a Fuel Surcharge Component will be based on a published index used by the brokerage provider (<https://www.eia.gov/petroleum/gasdiesel/>), subject to the limit on aggregate increases set forth in subsection (c) above.

4. **Counterparts.** This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

5. **Ratification.** All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term “Agreement” in this Amendment and in the original Agreement shall include the terms contained in this Amendment.

6. **Conflicting Provisions.** In the event of any conflict between the original terms of the Agreement and this Amendment, the terms of this Amendment shall prevail.

7. **Authorization.** Each party executing this Amendment represents and warrants that it is duly authorized to cause this Amendment to be executed and delivered.

*[Remainder of page intentionally left blank;  
Signature page immediately follows.]*

IN WITNESS THEREOF, the Town and Contractor have executed this Second Amendment to Solid Waste Services Agreement this 17<sup>th</sup> day of January 2024.

**TOWN:**

**TOWN OF MAMMOTH LAKES**

By: \_\_\_\_\_  
Bill Sauser  
Mayor

**ATTEST:**

By: \_\_\_\_\_  
Jamie Gray  
Town Clerk

**CONTRACTOR:**

**MAMMOTH DISPOSAL COMPANY**

By: \_\_\_\_\_  
Daniel Schooler  
Regional Vice President

By: \_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_