



July 15, 2024

Mr. Bruce Moe  
City Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

Dear Mr. Bruce Moe,

We hope this letter finds you well. As you are aware, WM has previously requested an extraordinary increase due to significant and unforeseen wage increases. In your response letter dated June 26, 2024, staff declined our request and recommended that WM seek a contract amendment for an extraordinary increase. WM respectfully disagrees with the need for a contract amendment for an extraordinary rate adjustment related to an unforeseen labor increase and is seeking immediate relief from the City Council. Under Section 5.5, the Agreement grants the Council the sole judgment and absolute discretion as to whether an adjustment to the maximum rates is to be made. As such, WM requests an extraordinary adjustment of 4.01% to service rates equal to \$256,098 annually. This equates to an average estimated \$0.63 per home, per month.

In respond to the June 26, 2024 letter (letter), we want to stress that our extraordinary request is not due to inaccurate assessments of our processing costs in our response to the City's RFP; instead, it is due to unforeseen and uncontrollable circumstances outside our immediate control.

Since the COVID-19 pandemic, the waste and recycling industry has continued to suffer from an acute shortage of qualified employees – particularly commercial driver's license (CDL) drivers – due to the closure of driving schools, resulting in fewer certified and skilled drivers in the talent pipeline and changes in the law regarding driving records. To ensure we can recruit and retain quality talent, WM has made considerable wage and benefit enhancements in support of the unionized drivers servicing Manhattan Beach. These are covered under a Collective Bargaining Agreement (CBA).

The most recent CBA covering Manhattan Beach's drivers includes an average increase of 25%. This unprecedented increase greatly exceed the annual cost changes calculated by the yearly rate adjustment formula. Council consideration on a labor increase will allow WM to keep up with the rising cost of doing business in Manhattan Beach while maintaining the same great level of service.

Also in response to the letter, WM will submit a formal request to amend the Agreement to address some areas of concern, including but not limited to the 50% minimum diversion requirement. To provide the Council with some context, we describe the issues below.

### **Ongoing Diversion Challenges**

One of the significant challenges we face is the recent change in law, specifically Assembly Bill 1857 (AB 1857), which has made it impossible for us to meet the 50% diversion

requirement. The removal of diversion credit for transformation facilities has significantly impacted our ability to achieve the required diversion rate. HF&H, in their recent Contract Year 2021 audit, HF&H recommended that the City and WM meet and confer regarding compliance with the diversion requirement in future years due to transformation no longer counting as diversion.

One potential solution is reducing the minimum diversion requirement from 50% to 40% and allowing WM to capture and report third-party recycling data and construction and demolition tonnage towards the diversion requirement. Our research has revealed an average of 247.62 monthly tons that are being self-hauled or recycled by third parties in Manhattan Beach but have yet to be previously reported to CalRecycle.

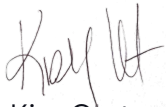
In our contract amendment request, we will not only request that the diversion requirement be addressed but also request the revision of service rates related to commercial organics collection, container roll-out service, and other contractual items now outdated in this Post SB 1383 implementation era.

We appreciate your immediate consideration of our extraordinary labor rate adjustment. Our goal is to find mutually beneficial solutions that will allow us to continue delivering industry-leading waste, recycling, and organics services to the City.

As stated in our current contract, the expiration date is set for June 2027. We understand that this decision may require further discussions and consideration, and we are open to engaging in a meaningful dialogue if necessary. If we are unable to find an equitable resolution and considering the significance of the circumstances, we respectfully request that the city goes out to bid. We believe this course of action will be in all parties' best interest.

We greatly appreciate your understanding and support. Please do not hesitate to reach out to us if you have any further questions. Thank you in advance for your attention to this matter.

Sincerely,



Kim Ohrt  
Public Sector Territory Manager

CC:

Honorable Mayor Franklin  
Honorable Mayor Pro Tem Howorth  
Honorable Councilmember Lesser  
Honorable Councilmember Napolitano  
Honorable Councilmember Montgomery  
Erick Lee, Public Works Director  
Anna Luke-Jones, Public Works Senior Management Analyst

Attachments: A, B, C, and D



**WM**  
1970 E 213<sup>th</sup> St  
Long Beach, CA 90810

March 22, 2024

Erick Lee, Director of Public Works  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

**Re: 2024/2025 Rate Adjustment Request**

Dear Mr. Lee,

Pursuant to Sections 5.3 and 5.4 of the Franchise Agreement between USA Waste of California, Inc. dba Waste Management (WM) and the City of Manhattan Beach, we respectfully request an adjustment of service rates effective July 1, 2024.

**Summary of Adjustments Requested:**

- Calculated adjustment due to changes in CPI: 7.3%
- Requested extraordinary adjustment to residential rates: 2.51%
- Requested extraordinary adjustment to commercial rates: 5.4%

**Extraordinary Rate Adjustment Request to Offset Increased Labor Costs**

As summarized above, WM is requesting an extraordinary adjustment to service rates in accordance with Agreement Section 5.5 to offset significant increases in labor costs.

Since the COVID-19 pandemic, the waste and recycling industry has continued to suffer from an acute shortage of qualified employees – particularly commercial driver’s license (CDL) drivers. To ensure we can recruit and retain quality talent, WM has made considerable wage and benefit enhancements in support of the unionized drivers servicing Manhattan Beach. These are covered under a Collective Bargaining Agreement (CBA).

The most recent CBA covering Manhattan Beach’s drivers includes an average wage increase of 21.58%; an increase in company contributions to the union pension fund of 100%; and a 9.62% increase in the company's contribution towards each employee's monthly health and welfare premium, which is controlled by the union-sponsored health fund and is not within WM’s ability to control costs. These unprecedented percentage increases greatly exceed the annual cost changes calculated by the annual rate adjustment formula.

Considering these significant, unavoidable, and uncontrollable increases to the cost of providing service in Manhattan Beach, an extraordinary rate adjustment would be an appropriate remedy. As such, we are respectfully requesting an additional adjustment of 2.51% to residential rates and 5.4% to commercial rates. Approving this request will alleviate the financial strain placed on the franchise and allow WM to retain the trained, courteous drivers your residents and businesses know and trust. If approved by the City, WM will submit an updated rate sheet with the above-mentioned adjustments.

**Clarification of Services and Rates for Manhattan Beach’s Commercial and Industrial Customers**

Chargeable Commercial Organic Waste Collection

From the introduction of commercial organic waste collection under Assembly Bill (AB) 1826 to the current regulations today under Senate Bill (SB) 1383, the number of customers required to subscribe to such services has increased from 10 to 653, an increase well over 6,000%. This increase in customer demand for service, coupled with the increased cost of collection, and the rising costs of processing has led to commercial organic services no longer being viable to offer without charge. To sustain this service, we propose commercial organic waste collection be added as a chargeable service at a rate of \$42.00 per month per 64-gallon organics cart serviced one time per week. This proposed rate reflects the cost of providing this value-added service and is in keeping with the current rates for similar service in surrounding jurisdictions.

<b>Jurisdiction</b>	<b>Service Level</b>	<b>Organics Rate</b>
City of Los Angeles (Playa Del Rey & San Pedro)	64-gallon cart serviced 1x/week	\$111.03
Lomita	64-gallon cart serviced 1x/week	\$102.79
Redondo Beach	35-gallon cart serviced 1x/week	\$46.26
Manhattan Beach (Proposed)	64-gallon cart serviced 1x/week	\$42.00
Palos Verdes Estates	64-gallon cart serviced 1x/week	\$40.83
Marina Del Rey	64-gallon cart serviced 1x/week	\$38.76
Manhattan Beach (Current)	64-gallon cart serviced 1x/week	\$0

Commercial Roll-out Service

With its high density and narrow alleyways, certain Manhattan Beach’s commercial customers require additional time and labor to safely and properly service. Known in the

industry as “roll-out” service, this refers to the physical relocation of waste and recycling containers between enclosures and the point of service. In some cases, this distance can reach up to 40 feet in length, which means that many of our routes require a driver and helper to provide service. Adoption of rates applied only to those customers that require specialized service, maintains the lowest possible rate and maximum value to those customers that do not require specialized services. To properly account for this labor-intensive, value-added service, we respectfully request the addition of the proposed roll-out rates as follows:

<b>Roll-out Distances</b>	<b>Charge Per Container x Collection Frequency</b>
0 to 5 ft.	\$0
6 ft. to 25 ft.	\$10
26 ft. to 40 ft.	\$20

WM is proud to be a sustainability partner with Manhattan Beach and is dedicated to assisting the City in compliance with state mandates and maximizing diversion. We thank you for taking the time to review our request.

Respectfully,



Erick Quintero  
Sr. Account Executive, Public Sector



March 31, 2023

Mr. Bruce Moe, City Manager  
City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266

**Re: 2023 – 2024 Rate Adjustment & Contract Amendment Request**

Dear Mr. Moe,

We want to thank you in advance for your assistance with the annual rate adjustment process. According to Sections 5.3 and 5.4 of the Franchise Agreement between WM and the City of Manhattan Beach, we respectfully request an adjustment of service rates effective July 1, 2023.

**Summary of Adjustments Requested**

- **2023 CPI of 5.2%**
- **2023 Extraordinary Increase of 2.5%**

**Extraordinary Rate Increase Rationale**

Prior to the passage of Assembly Bill 1857 (AB 1857), municipalities could receive up to 10% of total solid waste generation as diversion credit with the use of a transformation facility. AB 1857 removed the 10% diversion credit from transformation. With the loss of an diversion outlet like SERRF, WM has limited outlets to meet the contractual diversion requirements.

To offset the loss of SERRF diversion, WM launched a pilot program that diverts organic-rich trash loads to the organics extrusion press (OREX) in Sun Valley, CA. The goal of the pilot program was to divert material from landfills. The utilization of OREX compared to that of SERRF has resulted in increased operating costs to WM.

WM requests an extraordinary price increase of 2.5% to offset the increased operating costs associated with processing material at the OREX facility.



The calculations and supporting documentation for the contractual and extraordinary rate adjustment requests are enclosed with this letter.

**In addition to the rate adjustment requests, WM proposes the following six (6) modifications to the franchise agreement via a contract amendment.**

### **1. Realign Diversion Percentage**

According to Section 3.8.1 of the franchise agreement between WM and the City, WM respectfully requests a revision of the hauler collected 50% diversion requirement. Change in state law like AB 1857 and Senate Bill 1383 (SB 1383) has negatively impacted our ability to maintain the existing contractual diversion requirement.

Although SB 1383 is geared towards maximizing organics diversion, it also allows customers to be exempt from an organics collection program due to physical space constraints. Space is a highly valued commodity and asset in the downtown area, meaning that many businesses have been or will be exempt from an organics program even though food waste is generated. The impact of these waivers is less organic material collected by WM and lost diversion.

### **2. Inclusion of Third-Party Recycling and Back Hauling Recycling Tonnage**

Currently, WM is unable to capture third-party recycling and back-hauling tonnage. Larger businesses like Target and Bristol Farms tend to have established corporate back-hauling programs where recycling and organics are transported to a local distribution center for collection by a recycler. These larger generators would not use WM for their recycling needs, thus, negatively impacting the tons WM collects and reports to the City.

Allowing WM to track and capture third-party and back-hauling recycling will lead to enhanced City reporting to the Los Angeles Regional Agency and CalRecycle.

### **3. Exclusivity of Construction and Demolition (C&D)**

All C&D tonnage collected and processed by WM is not reported to the City under the exclusive franchise tonnage report. The reasoning is that the solid waste agreement does not allow WM to capture temporary construction and demolition debris tonnage into our reporting to the City, as temporary roll-off service is an excluded item under Section 2.9 – Limitations on Scope of Franchise.



Adding temporary C&D into the exclusivity of the solid waste agreement will allow the City to more closely control CalGreen diversion requirements and allow WM to report C&D tonnage under the exclusive franchise.

#### **4. Modification to Contract Section 3.5 – Commercial Mixed Waste Processing**

According to the Agreement, WM shall process all mixed commercial bin and permanent roll-off box trash to recover recyclable materials from customers not participating in WM's recycling program. With the current state of recycling contamination, buyers of recycling commodities are in the market for clean recyclables that do not require further processing. Mixed waste processing of recyclable material means higher contamination, resulting in a higher percentage of material being landfilled.

Additionally, WM's infrastructure is configured to maximize the amount diverted from a source-separated collection stream and was not developed to support mixed waste processing. Collecting mixed waste recycling containers within our existing source-separated recycling routes jeopardizes the cleanliness of our recycling stream.

WM has found that source-separated collection yields the most success and ensures that more recyclables are diverted from landfills. Therefore, WM proposes that the City consider modifying this contract section.

#### **5. Modification to Contract Section 3.2.7 – Customer Rebates from Sale of Recyclable Materials**

Since the passage of China's National Sword Policy, recycling markets have been volatile and unpredictable at best. The recycling market volatility and increased recycling processing costs have resulted in a net financial loss. To offset the higher recycling processing costs, the limited recycling revenue streams from the materials sold in domestic and international markets are essential for WM to keep service rates stable.

Additionally, providing recycling market pricing and processing costs requires WM to disclose confidential data that allows us to be competitive in the recycling industry.

#### **6. Modification to Contract Section 3.7.1.9 – Cart Labeling**

The adoption of SB 1383 represents the most comprehensive revision to California's solid waste and recycling programs in more than three decades. Included among the changes is the standardization of collection container colors statewide. This change is intended to improve recycling participation rates by eliminating the existing container color variations from community to community.





The proposed color scheme for carts will be dark charcoal/black bodies with different color lids representing each waste stream. In addition, carts will no longer include the City logo labeling requirement to allow for cart procurement standardization, resulting in inventory flexibility and adaptability to offset existing supply chain disruptions. The proposed change aims to improve the customer experience and avoid any potential delays in cart deliveries due to inventory. The change in carts will only apply to new carts deployed in the City on a customer-by-customer basis as WM receives requests for cart replacements.

### **WM's Manhattan Beach Presence and Support - 2022 Service Highlights**

WM is proud to be a partner to the City of Manhattan Beach and is committed to assisting the City in complying with state mandates, increasing diversion, being stewards of the environment, and being active participants in the community. We want to take this opportunity to highlight just a few of our mutual successes:

- Ongoing partnership with Manhattan Beach Unified School District. WM is working with local schools on battery collection events, shoe donations, zero waste lunch programs, touch a truck events, and recycling facility tours.
- Collaboration with the Downtown Manhattan Beach Business and Professional Association to ensure consistent service to customers.
- Participation in community events to promote recycling best practices, sustainability, and community safety. Some of the events include Hometown Fair, Pier Lighting Celebration, Holiday Fireworks Show, and the local Farmers Market.
- WM Shred Events resulted in 8.42 tons of paper products diverted from landfills.

We are privileged to be a reliable partner to the City of Manhattan Beach and are grateful for the confidence and support you have given us. WM aims to work collaboratively with the City to address diversion and compliance with current and upcoming regulatory changes.

Respectfully,

A handwritten signature in black ink, appearing to read 'Erick Quintero', with a long horizontal flourish extending to the right.

Erick Quintero  
Public Sector Services Manager



January 31, 2024

Mr. Erick Lee, Public Works Director  
City of Manhattan Beach  
3621 Bell Avenue  
Manhattan Beach, CA 90266

**Re: Contract Amendment Request Follow-Up**

Dear Mr. Lee,

As a continuation of our ongoing discussion related to the hauler diversion requirement, and in light of HF&H's recommendation in their recent audit of the franchise agreement, we respectfully request your approval to include the impact of third-party recycling within the contractual diversion reporting and overall diversion percentage. Pursuant to Section 3.8.1, WM requests that the City allow for the inclusion of third-party recycling and construction and demolition tonnage and that the minimum hauler diversion percentage be amended to 40%.

**Third-Party Recycling Process & Findings**

As a follow to your June 13<sup>th</sup> request to provide third-party and back-hauling tonnage data collected, WM conducted site visits with all businesses to identify reuse and recycling efforts outside of what we collect. We found that an average of 247.62 tons per month are diverted from businesses that neither WM nor the City are reporting to CalRecycle. These recycling efforts include recycled cardboard bails by Ralphs and Vons, recycled grease by Ralphs, and recycled electronics by Target.

To quantify the average monthly tonnage, WM used a volume-to-weight conversion factor file produced by the U.S. Environmental Protection Agency Office of Resource Conversation and Recovery. CalRecycle has accepted the use of this publication and the conversion methodology in lieu of physical weight tickets in other jurisdictions. In addition to the initial data gathering, WM continues to visit each property to quantify any changes in recycling activity or tonnage on a monthly basis.



Manhattan Beach has always been a leader in sustainability in the region, and we want to ensure those efforts are highlighted at the state level. Even with the loss of diversion credit from transformation facilities due to the passage of Assembly Bill 1857, including third-party and back-hauling efforts will increase diversion from 36.2% to 41.2% for calendar year 2023. This 5% increase in diversion is currently going unreported by the City to CalRecycle. Including third-party recycling data will provide CalRecycle an accurate view of recycling efforts in the City.

### **Construction and Demolition**

WM requests that temporary construction and demolition tons be included in our diversion reporting. Including third-party recycling and construction and demolition data will provide CalRecycle with an accurate view of recycling efforts in the City and would increase diversion by approximately 5.3%.

Enclosed with this request is the supporting monthly data for WM's ongoing site visit efforts to quantify third-party and back-hauling efforts in the City of Manhattan Beach and an amended 2023 hauler diversion report inclusive of these tons. We look forward to reviewing this request and supporting data in the near future.

Respectfully,

A handwritten signature in black ink, appearing to read 'Erick Quintero'.

Erick Quintero  
Senior Account Executive – Public Sector

Attachments:  
Initial Site Visit Report  
Monthly Reports

**Objective 2: Confirm that WM diverted a minimum of 50% of hauler-collected waste during calendar year 2021 as required in Section 3.8.1.**

**Finding:**

Finding 2: WM was assessed liquidated damages due to diverting 43.2% of tons collected in the City in 2021, short of the 50% requirement. However, WM revised its “Tonnage/Diversion Report 2021,” subsequent to the assessment of liquidated damages, resulting in additional liquidated damages of \$3,765.50.

**Recommendation:** We recommend the City and WM meet and confer regarding compliance with the diversion requirement in future years due to transformation no longer counting as diversion.

**Objective 3.1: Confirm WM maintained and provided the City its complaint documentation summary on a monthly basis, as required by Section 4.2.3, for the period from July 1, 2020 – June 30, 2021, and responded to complaints within one business day of receipt.**

**Findings:**

Finding 3.1a: WM maintained all information required for customer service complaints.

Finding 3.1b: HF&H noted errors in the number of complaint call-ins included in the Monthly Service Summary Report for three of the four months tested.

**Recommendation:** HF&H recommends WM review its process for tabulating complaints for the Monthly Service Summary Report to ensure the reported numbers accurately reflect the detail Compliments & Complaints Report.

**Objective 3.1: Confirm WM maintained and provided the City its complaint documentation summary on a monthly basis, as required by Section 4.2.3, for the period from July 1, 2020 – June 30, 2021, and responded to complaints within one business day of receipt.**

**Findings:**

Finding 3.2a: The 21 missed pick-up call-ins from January 2023 detail tested by HF&H were collected in the recovery time.

Finding 3.2b: WM asserted it will report all missed pick-up calls, including those WM collected within the recovery period.

## Summary of WM Requests to City of Manhattan Beach

Contract Issue	RFP Response	Contract Language	Requested Amendment	Staff Response
<p>Unforeseen Collective Bargaining Agreement Labor Wage and Benefit Increase</p> <p>Y1 increase approx. 21% (approx. 25% blended value of wages/health/pension)</p> <p>Uncontrollable and unforeseen event due to drivers' shortage, closure driving schools, change in law of driver records, and post pandemic issues.</p>	<p>N/A</p>	<p>Extraordinary rate increase language. The contract states that company may request extraordinary rate adjustments no more than once per year. City Council has the sole judgement and absolute discretion on making a final determination as to where an adjustment to the maximum rates will be made.</p>	<p>1) Approve the rate increase request for Teamsters 395 wage and benefit increase retroactive to July 22.</p> <p>(Attachment A – dated March 22, 2024)</p>	<p>Denied</p>
<p>Commercial Organic Rates</p>	<p>In the Pre-SB 1383 implementation era, WM requested flexibility from the City to allow for extraordinary adjustments related to change in processing costs for recyclables and organic waste.</p>	<p>Section 3.3.2.1 states that commercial organic waste carts and bins are to be at no additional charge to the customer.</p>	<p>1) Allow WM to add charges to commercial organics collection. Rate based on surrounding market average. Rather than seek an extraordinary rate adjustment for increased organics processing costs we are requesting a charge for commercial organics collection.</p> <p>(Attachment A – dated March 22, 2024)</p>	<p>Denied</p>
<p>Commercial Roll-out Service</p>	<p>N/A</p>	<p>Section 3.1.3.4 states that company may not charge an additional fee for scout service or push-out service.</p>	<p>1) Allow WM to add charges for commercial scout and roll-out services.</p> <p>(Attachment A – dated March 22, 2024)</p>	<p>Denied</p>
<p>Diversion Requirement of 50%.</p> <p>The material sent to SERFF is no longer counted as diversion due to a change in law that was uncontrollable.</p>	<p>WM proposed a 46% diversion with 50% being a "stretch goal" that clearly stated SERRF be one of the diversion strategies that will allow WM to meet a 50% minimum diversion goal.</p>	<p>Section 3.8.1 of the Agreement defines the minimum diversion requirement as 50% of hauler collected material and states that WM shall divert material through recycling, organics collection, mixed waste processing, and transformation facilities.</p>	<p>1) Amend the diversion requirement of 50% due to change in law.</p> <p>(Attachment B) – dated March 31, 2023</p> <p>(Attachment C) – dated January 31, 2024</p>	<p>Denied all requests.</p> <p>HF&amp;H submitted their audit findings and made the recommendation to address the diversion requirement.</p>

## Summary of WM Requests to City of Manhattan Beach

			<p>2) Offer alternative diversion solution to send material to OREX.</p> <p>(Attachment B) – dated March 31, 2023</p>	(Attachment D) – February 5, 2024
<p>Diversion Requirement of 50%.</p> <p>The contract does not consider third-party diversion towards the minimum diversion rate. WM collects the MSW but is not allowed to count the diversion from these same customers.</p>	<p>While WM did not address the limitation of including 3<sup>rd</sup> party diversion in the RFP diversion, through site visits they have learned that there is a significant amount of 3<sup>rd</sup> party diversion.</p>	<p>The agreement clearly states, “third-party diversion shall not be considered towards the minimum diversion rate.”</p>	<p>1) Allow for third-party and back-hauling tonnage to be counted towards the minimum diversion requirement, improving overall diversion reporting to Cal Recycle.</p> <p>(Attachment B) – dated March 31, 2023</p> <p>(Attachment C) – dated January 31, 2024</p>	Denied

### Example of Alternative Solutions to Reduce WM Costs

- 1) Remove the Annual Contract Compliance Audits for the rest of the contract term based on the latest audit findings.
  - a. Contract Language allows the city to decide if an audit should be completed.
  - b. Cost \$80,000 first audit, subsequent audits adjusted by CPI annually. This cost is passed on to the hauler for 3<sup>rd</sup> party consultant HF&H conducts.
    - i. Contract Year 2020-2021, completed 2022.
      1. Findings nominal, 99.5% accuracy
    - ii. Contract Year 2022-2023, completed 2023.
      1. Initial findings nominal
  - c. The costs of the audits are not warranted every year because there have been no findings.
- 2) Eliminate Distribution of lunch boxes annually
- 3) Minimize Free Services (City Facilities, Roll Off Services & Free Recycling to all Schools)
- 4) Eliminate Green Business Certification & Composting Classes