

MEMORANDUM OF TERMS  
 BETWEEN  
 MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT  
 AND  
 VETERANS TRANSITION CENTER OF MONTEREY COUNTY  
 FOR  
 OPERATION OF THE LAST CHANCE MERCANTILE

This Memorandum of Terms summarizes the principal terms contemplated for an agreement between the Monterey Regional Waste Management District (“District” or “MRWMD”) and the Veterans Transition Center of Monterey County (“VTC”) for the operation of the Last Chance Mercantile (“LCM”) re-use retail store on behalf of the District and the District’s mission of “Turning Waste into Resources”. The parties envision an agreement that formalizes the relationship with respect to 1) the use of the District’s facilities and re-use materials donated to and/or salvaged by the District; 2) certain operating commitments that describe the expectations of both parties regarding key elements of the LCM operations; and 3) governance provisions that address maintenance of the relationship and resolution of disputes.

**USE OF FACILITIES**

<b>Form of agreement:</b>	Facilities lease and operating agreement.
<b>Description of facilities:</b>	Last Chance Mercantile facilities include an 8,000 square-foot building, a paved two-acre yard, and 74 customer parking spaces, including 2 handicap spaces, contiguous to the LCM building and yard.
<b>Term:</b>	Four years, plus two three-year extensions by mutual agreement.
<b>Consideration:</b>	The District selected VTC to operate the LCM to minimize the District’s financial risk, increase the diversion and reuse of donated/salvaged items, increase community awareness of the LCM reuse activities, and potentially develop pickup service in the communities. In lieu of a facilities lease payment, VTC accepts all financial risks related to store operations, including financial operating losses and employment obligations and risks. In addition, after the first year of operations, VTC agrees to fund a joint financial reserve equal to not less than 10% of net operating revenues, which will be administered jointly for the benefit of LCM operations.
<b>Utilities:</b>	Electricity, natural gas, water, and wastewater services; and access to internet service providers: not separately metered and contingent upon Utility Company supply; included at no additional charge.

Solid waste: No charge for surplus solid waste disposal provided VTC staff performs the following: 1) separating recyclable materials from all discarded LCM waste and making those recyclables available to the District; 2) tracking by weight the diversion of material sold through store; and 3) transferring unsold but usable items to resale facilities in other markets (excludes HHW re-use materials).

**Maintenance of facilities:** MRWMD maintains responsibility for the LCM structure with its roof, gutters, and heating systems; and yard paving and site drainage. VTC is responsible for the care and responsible use of the facility (example: upkeep of the interior surfaces, cleanliness and appearance of the bathrooms, care and maintenance of electrical fixtures located on the Demand Side of the Electrical Control panels (aka breaker boxes).

**Facilities improvements:** The District will upgrade the LCM heating system and improve the two bathrooms inside the building. The parties will discuss other improvements as the needs arise.

**Repairs for excess damage:** VTC will be responsible for repairing all damage beyond normal wear and tear.

**Licenses; health & safety:** VTC will comply with all necessary business licensing, legal and health and safety requirements related its operation of the LCM.

**Insurance:** VTC will meet the District's insurance requirements outlined in the attached Exhibit 1.

**Taxes:** VTC will be liable for 1) any possessory interest tax, or 2) any personal property taxes levied on VTC's inventory, furnishings, etc.

**Indemnification:** Mutual

## **OPERATING COMMITMENTS**

**Store Operating times:** Minimum: 35 hours, 5 days per week; open on Saturdays. Open only during normal MRWMD public operating hours (closed Sundays and certain holidays observed by the District).

**Store operating standards:** Hiring: VTC will extend hiring preference eligibility for any applicant formerly employed by the District and having been laid off in July 2020, provided their separation from employment with the District was favorable, or not for cause. VTC will extend a 5-point hiring preference for this category of applicants.

Employee apparel: VTC staff will wear appropriate PPE and apparel that differentiates them from District personnel.

- Integrating operations:** Each party will designate points of contact to ensure smooth integration of operations where necessary. Examples: transferring materials harvested from the tip floor, handling recyclable materials, safety, and facilities maintenance.
- Public health & Safety:** VTC will operate the store at all times in a way that is compliant with current best practice safety protocols and any public health guidance or directives.
- Store security and safety:** VTC will maintain secure cash management practices and follow District guidelines on facilities security practices. The parties will coordinate in the development of an LCM emergency management plan that integrates with the District's emergency management plan.
- Signage:** The District will be responsible for all exterior signage, including wayfinding signs. VTC will be responsible for interior signage and any temporary exterior promotional signs.
- Merchandising:** VTC will have sole responsibility for all store merchandising.
- Marketing** The parties will coordinate marketing activities to ensure optimization of the LCM. The general conditions of such coordination are outlined in the attached Exhibit 2.

## GOVERNANCE

- Joint oversight:** The parties will establish a joint LCM oversight committee to address issues of the business relationship, operations, and disputes. The LCM oversight committee will review material changes to operations, administer utilization of joint reserve funds, and address contract issues or disputes that may arise that are not clearly addressed by the formal dispute resolution provisions in the agreement. Immediately following execution of this agreement, the parties will jointly develop a charter for the LCM oversight committee.
- Reporting:** Quarterly reports: VTC will provide a quarterly report on LCM operations that includes commentary on store operations and a financial performance.
- Annual reports: VTC will provide an annual report on LCM operations that includes information on store operations, staffing and compensation, program impact, and financial performance.
- The LCM Oversight Committee will define report content.
- Audit rights:** The District shall have rights to audit VTC's operational practices and the financial records covering LCM operations only.

## EXHIBIT 1

### INSURANCE REQUIREMENTS

Without limiting Tenant's indemnification obligations to District under this Lease, Tenant shall provide and maintain for the duration of this Lease insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the leased premises. The cost of such insurance shall be borne by the Tenant.

#### 1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office Form CG0001.
- B. Automobile Liability covering all owned, non-owned and hired auto, Insurance Services Office Form CA0001.
- C. Workers Compensation, as required by State of California and Employer's Liability Insurance.
- D. Property Insurance against all risk or special form perils, including Replacement Cost and debris removal coverage for any Improvements, without deduction for depreciation, constructed or erected by Tenant, and the personal property of Lessee, its agents and employees.
- E. Pollution Legal Liability and Remediation and/or Errors & Omissions applicable to underground or above ground fuel storage tanks, fueling or refueling operations with a limit no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year. This policy shall be endorsed to cover materials to be transported by the Tenant.

#### 2. Minimum Limits of Insurance

Tenant shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability and Independent Contractors: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$2,000,000 and shall be a Per Location Aggregate. Fire Damage Limit (Any One Fire) \$300,000 and Medical Expense Limit (Any One Person) \$5,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage. Coverage will include contractual liability.
- C. Employers Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include a waiver of subrogation endorsement in favor of the District.
- D. Property: Full replacement cost with no coinsurance penalty provision.

#### 3. Deductibles and Self-Insured Retentions

Any liability deductible or self-insured retention must be declared to and approved by the District's General Manager or his or her designee. The property insurance deductible shall not exceed \$5,000 per occurrence and shall be borne by the Tenant.

#### 4. Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

- A. **Additional Insured Endorsement:** Any general liability policy provided by Tenant shall contain an additional insured endorsement applying coverage to the District, the members of the District Board of Directors and the officers, agents and employees of the District, individually and collectively.
- B. **Primary Insurance Endorsement:** For any claims related to this Lease, the Tenant's insurance coverage shall be primary insurance as respects the District, the members of the Board of Directors of the District and the officers, agents and employees of the District, individually and collectively. Any insurance or self-insurance maintained by the District, the members of the Board of Directors, the District's officers, officials or employees shall be excess of the Tenant's insurance and shall not contribute with it.
- C. **Notice of Cancellation:** Each required insurance policy shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the District at the address shown in section of the Lease entitled "Notices".

### General Provisions

#### 5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by District's Risk Manager.

#### 6. Evidence of Insurance

Prior to commencement of this Lease Tenant shall furnish the District with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Tenant shall furnish certified copies of the actual insurance policies specified herein, within thirty days after commencement of Lease. Thereafter, copies of renewal certificates and amendatory endorsements shall be furnished to District within thirty days of the expiration of the term of any required policy. Tenant shall permit District at all reasonable times to inspect any policies of insurance of Tenant which Tenant has not delivered to the District. Policies, renewal certificates and amendatory endorsements shall be delivered to the District at the address shown in the section of the Lease entitled "Notices."

#### 7. Failure to Obtain or Maintain Insurance

District's Remedies. Tenant's failure to provide insurance specified or failure to furnish certificates of insurance, amendatory endorsements and certified copies of policies, or failure to make premium payments required by such insurance, shall constitute a material breach of the Lease, and District may, at its option, terminate the Lease for any such default by Tenant.

#### **8. No Limitations of Obligations**

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Tenant, and any approval of said insurance by the District are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Tenant pursuant to the Lease, including, but not limited to, the provisions concerning indemnification.

#### **9. Review of Coverage**

District retains the right at any time to review the coverage, form and amount of insurance required herein and may require Tenant to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

#### **10. Sub-tenants' Insurance**

Tenant shall require any District-approved sub-tenant, of all or any portion of the Premises, to provide the insurance coverage described herein prior to its occupancy of the Premises.

## EXHIBIT 2

### MARKETING COORDINATION

- MRWMD to hand over access to LCM social media channels (Facebook, Instagram). Access to any new channels/outlets created by the VTC shall be shared with MRWMD and permanent access will be handed over upon termination of contract.
- VTC to handle all promotion of all materials/sales/events.
- MRWMD granted ability to speak about LCM as it relates to overall District mission and diversion.
- MRWMD will maintain a page on District website referencing LCM with evergreen information, will link out to social media channels.
- VTC responsible for monitoring/updating/responding to content on search engine/review websites (e.g. Google, Bing, Yelp)
- MRWMD to provide/maintain signage on the exterior of the facility (storefront)
- Promotion of LCM to be confined within the physical space of the store (with the exception of reopening announcement signage)