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City of Calexico  
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**Chairperson**  
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City of Holtville



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**John Hawk**  
County of Imperial  
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**David Aguirre**  
ICTC-Administrator  
**Cristi Lerma**  
Board Secretary

**300 S. IMPERIAL AVE., SUITE 6**  
**EL CENTRO, CA 92243-2875**  
**PHONE: 1-877-RECYCLE**  
**FAX: (760) 337-3184**  
[www.ivrma.org](http://www.ivrma.org)

**IMPERIAL VALLEY RESOURCE MANAGEMENT AGENCY**  
**AGENDA**

**LARGE CONFERENCE ROOM**  
**1503 N. IMPERIAL AVE., SUITE 104**  
**EL CENTRO, CA 92243**

**WEDNESDAY, SEPTEMBER 27, 2023**  
**6:00 PM (OR AFTER ICTC, LTA OR SAFE)**

**CHAIR: MIKE GOODSSELL**

**VICE CHAIR: LUIS PLANCARTE**

In compliance with the Brown Act and Government Code Section 54957.5, agenda materials distributed 72 hours prior to the meeting, which are public records relating to open session agenda items, will be available for inspection by members of the public prior to the meeting on the IVRMA's website: <http://ivrma.org/>

In compliance with the Americans with Disabilities Act, Government Code Section 54954.2, please contact the Secretary to the Board at (760) 592-4494 if special assistance is needed to participate in a Board meeting, including accessibility and translation services. Assistance is provided free of charge. Notification of at least 48 hours prior to the meeting time will assist staff in assuring reasonable arrangements can be made to provide assistance at the meeting.

To Join Zoom Meeting click on the following link:

<https://us06web.zoom.us/j/84890529325?pwd=r66NlgZqftV1LaydXEqASaMj6bibcg.1>

To Join by phone dial (669) 444-9171  
Meeting ID: 848 9052 9325  
Passcode: 915859

**I. CALL TO ORDER AND ROLL CALL**

**II. PUBLIC COMMENTS**

This is an opportunity for members of the public to address the Board on any subject matter within the Board's jurisdiction, but not an item on the agenda. Any action taken because of public comment shall be limited to direction to staff. Each speaker should contact the Secretary to the Board at (760) 592-4494 or by email to [cristilerma@imperialctc.org](mailto:cristilerma@imperialctc.org). When addressing the Board, state your name for the record prior to providing your comments. Please address the Board as a whole, through the Chairperson. Individuals will be given three (3) minutes to address the Board; groups or topics will be given a maximum of fifteen (15) minutes. Public comments will be limited to a maximum of 30 minutes. If additional time is required for public comments, they will be heard at the end of the meeting. Please remember to follow the Public Comment Code of Conduct: No profanity or obscenity, yelling or screaming, no slander or defamatory statements, no personal threats, or attacks, no hateful or demeaning language based on hate of a person's race, religion, sexual orientation, ethnicity, gender, or disability, respect all people that are present or watching, obey the direction of the Chair and Secretary to the Board.

**III. ACTION CALENDAR**

A. Minerva-MSW Consultants Three-Year Agreement Page 3

IVRMA staff forwards this item to the IVRMA Board for their review and approval after public comment, if any:

1. Authorize the Chairperson to sign the attached three-year agreement between IVRMA and Minerva-MSW Consultants.
2. Direct staff to move forward with the acquisition and implementation of the reporting software.

**IV. ADJOURNMENT**



300 S. IMPERIAL AVE., SUITE 6  
EL CENTRO, CA 92243-2875  
PHONE: (760) 337-4537  
FAX: (760) 337-3184

September 22, 2023

Mike Goodsell, Chairperson  
Imperial Valley Resource Management Agency  
300 S. Imperial Ave. Suite 6  
El Centro, CA 92243

SUBJECT: Minerva-MSW Consultants Three-Year Agreement

Dear Board Members:

The Imperial Valley Resource Management Agency (IVRMA) and its member agencies are required to complete annual SB1383 reporting to the state (Calrecycle). In its current capacity IVRMA and its member agencies gather reporting documentation, and the information is compiled by IVRMA for reporting purposes. The current process is labor intensive and requires several iterations and meetings to complete. If an effort to further simplify the reporting process, the IVRMA Technical Advisory Committee (TAC) proposed the use of a software. Several resource management agencies in other counties utilize similar software for reporting purposes. The software provides each of the agencies' access to enter in working data as needed and further facilitates the compilation of data.

IVRMA proceeded to conduct outreach to various software entities that offered the necessary software and services that IVRMA and its member agencies were seeking. IVRMA contacted various providers and requested proposal responses from those providers. Two interested firms submitted proposals offering their reporting software and services. IVRMA requested that both of the providers provide a demonstration of their software to the IVRMA TAC and offer a Q&A period. In addition, each firm provided a physical copy of their proposal including its related costs and references.

IVRMA contacted the provider references to assist with the decision to select a provider, in addition, the results were presented to all member agencies by virtue of the monthly TAC meeting. A recommendation was made and supported by member agencies to move forward with Minerva-MSW consultants to provide the Imperial County Region with their reporting software and services with a three-year contract. The long-term contract offers cost savings for membership dues in years to come. The software will be considered a reoccurring cost under Membership, but IVRMA will continue to pursue other funding efforts to minimize the impact towards yearly membership dues. Overall, the software creates the opportunity for a more effective and efficient annual reporting process.

**SERVING THE CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE,  
IMPERIAL, WESTMORLAND, AND IMPERIAL COUNTY**

IVRMA counsel has developed a three-year service agreement between IVRMA and MSW Consultants for the acquisition of regional reporting software and services. Fees associated with this contract are as follows.

<u>YEAR</u>	<u>ONE-TIME SETUP COST</u>	<u>ANNUAL COST</u>	<u>TOTAL COST</u>
FY23-24	\$3,500	\$50,400	\$53,900
FY24-25	\$0	\$50,400	\$50,400
FY25-26	\$0	\$50,400	\$50,400
	<b><u>TOTAL CONTRACT VALUE</u></b>		<b><u>\$154,700</u></b>

The Minerva-MSW consultants' proposal and agreement are attached for further review as required. Approval of the agreement is essential to initiate the implementation of the software and to start incorporating fiscal year 2023-24 reporting data as soon as possible. Once the agreement is approved by the board, Minerva-MSW consultants will immediately begin kick-off meetings with IVRMA and its member agencies to discuss the next steps.

With the time constraints in the development of this agreement, there was no opportunity to present the agreement at ICTC's Management Committee on September 13, 2023, for review. The costs for the software were incorporated into IVRMA FY23-24 budget. No additional cost is anticipated.

IVRMA forwards this item to the IVRMA Board for their review and approval after public comment, if any:

1. Authorize the Chairperson to sign the attached three-year agreement between IVRMA and Minverva-MSW Consultants.
2. Direct staff to move forward with the acquisition and implementation of the reporting software.

Sincerely,



David Aguirre  
Executive Director

DA/mg  
Attachment

1 **AGREEMENT FOR SERVICES**

2 **MSW Consultants, Inc.**

3 THIS AGREEMENT FOR SERVICES (“Agreement”), made and entered into this \_\_\_\_\_ day  
4 of \_\_\_\_\_, 2023, is by and between the **IMPERIAL VALLEY RESOURCE**  
5 **MANAGEMENT AGENCY** (“IVRMA”) and **MSW CONSULTANTS, INC.**, an active California  
6 corporation (“CONSULTANT”) (individually, “Party;” collectively, “Parties”).

7 **W I T N E S S E T H**

8 **WHEREAS**, IVRMA desires to retain a qualified individual, firm or business entity to provide  
9 professional services for CalRecycle regulatory solid waste recycling compliance commercial waste  
10 generator services (“the Project”); and

11 **WHEREAS**, IVRMA desires to engage CONSULTANT to provide services by reason of its  
12 qualifications and experience for performing such services, and CONSULTANT has offered to provide the  
13 required services for the Project on the terms and in the manner set forth herein.

14 **NOW, THEREFORE**, IVRMA and CONSULTANT have and hereby agree to the following:

15 1. **DEFINITIONS.**

16 1.1. “Proposal” shall mean CONSULTANT’s proposal entitled “Minerva SaaS Services Order  
17 Form and SaaS Services Agreement” dated August 29, 2023. The Proposal is attached as **Exhibit “A”** and  
18 incorporated herein by this reference.

19 2. **CONTRACT COORDINATION.**

20 CONSULTANT shall assign a single Contract Manager to have overall responsibility for the  
21 progress and execution of this Agreement. Craig Stroud is hereby designated as the Contract Manager for  
22 CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement  
23 require a substitute Contract Manager for any reason, the Contract Manager’s designee shall be subject to  
24 the prior written acceptance and approval of IVRMA.

25 3. **DESCRIPTION OF WORK.**

26 3.1. CONSULTANT shall provide all materials and labor to perform this Agreement. In the  
27 event of a conflict among this Agreement and the Proposal, this Agreement shall take precedence over the  
28 Proposal.

1           3.2.   CONSULTANT shall perform additional or extra work if required, utilizing the per hour  
2 rate set forth in **Exhibit "A"**.

3   4.       WORK TO BE PERFORMED BY CONSULTANT.

4           4.1.   CONSULTANT shall comply with all terms, conditions and requirements of the Proposal  
5 and this Agreement.

6           4.2.   CONSULTANT shall perform such other tasks as necessary and proper for the full  
7 performance of the obligations assumed by CONSULTANT hereunder.

8           4.3.   CONSULTANT shall:

9               4.3.1. Procure all permits and licenses, pay all charges and fees, and give all notices that  
10 may be necessary and incidental to the due and lawful prosecution of the services to be performed  
11 by CONSULTANT pursuant to this Agreement;

12               4.3.2. Use the standard of care usual to CONSULTANT's profession to keep itself fully  
13 informed of all applicable existing and proposed federal, state and local laws, ordinances,  
14 regulations, orders and decrees which may affect those engaged or employed under this Agreement,  
15 any materials used in CONSULTANT's performance under this Agreement or the conduct of the  
16 services under this Agreement;

17               4.3.3. At all times observe and comply with, and cause all of its employees to observe and  
18 comply with all of said laws, ordinances, regulations, orders and decrees mentioned above; and

19               4.3.4. Immediately report to IVRMA in writing any discrepancy or inconsistency it  
20 discovers in said laws, ordinances, regulations, orders and decrees mentioned above in relation to  
21 any plans, drawings, specifications or provisions of this Agreement.

22           4.4.   Any videotape, reports, information, data or other material given to, or prepared or  
23 assembled by, CONSULTANT pursuant to this Agreement shall be the property of IVRMA and shall not  
24 be made available to any individual or organization by CONSULTANT without the prior written approval  
25 of IVRMA. The preceding restriction shall not apply to information which is in the public domain, was  
26 previously known to CONSULTANT, was acquired by CONSULTANT from others who have no  
27 confidential relationship to IVRMA with respect to same, or which through no fault of CONSULTANT  
28 comes into the public domain. CONSULTANT shall not be restricted from releasing information,

1 including confidential information, in response to a subpoena, court order, or other legal process.  
2 CONSULTANT shall not be required to resist such subpoena, court order, or legal process, but shall  
3 promptly notify IVRMA in writing of the demand for information before responding to such demand.

4 5. REPRESENTATIONS BY CONSULTANT.

5 5.1. CONSULTANT understands and agrees that IVRMA has limited knowledge in the multiple  
6 areas specified in the Proposal. CONSULTANT has represented itself to have experience in these fields  
7 and understands that IVRMA is relying upon such representation.

8 5.2. Subject to 5.2.1, CONSULTANT represents and warrants that it is a lawful entity  
9 possessing all required licenses and authorities to do business in the State of California and perform all  
10 aspects of this Agreement.

11 5.2.1. CONSULTANT shall not commence any work pursuant to this Agreement or  
12 provide any other services, or materials, in connection therewith until CONSULTANT has received  
13 written authorization from IVRMA to do so.

14 5.3. CONSULTANT represents and warrants that the people executing this Agreement on behalf  
15 of CONSULTANT have the authority of CONSULTANT to sign this Agreement and bind  
16 CONSULTANT to the performance of all duties and obligations assumed by CONSULTANT herein.

17 5.4. CONSULTANT represents and warrants that any employee, contractor and/or agent who  
18 will be performing any of the duties and obligations of CONSULTANT herein possess all required licenses  
19 and authorities, as well as the experience and training, to perform such tasks.

20 5.5. CONSULTANT represents and warrants that the allegations contained in the Proposal are  
21 true and correct.

22 5.6. CONSULTANT understands that IVRMA considers the representations made herein to be  
23 material and would not enter into this Agreement with CONSULTANT if such representations were not  
24 made.

25 6. COMPENSATION.

26 The total compensation payable under this Agreement shall not exceed **\$154,700** unless otherwise  
27 previously agreed to by IVRMA.

28 ///

1 7. PAYMENT.

2 CONSULTANT will bill IVRMA on a time and material basis upon completion of the project or as  
3 set forth in the cost schedule attached hereto as **Exhibit "A"**. IVRMA shall pay CONSULTANT for  
4 completed and approved services upon presentation of its itemized billing.

5 8. METHOD OF PAYMENT.

6 8.1 CONSULTANT shall at any time prior to the 15th day of any month, submit to IVRMA a  
7 written claim for compensation for services performed. The claim shall be in a format approved by  
8 IVRMA. CONSULTANT may expect to receive payment within a reasonable time thereafter and in any  
9 event in the normal course of business within thirty (30) days after the claim is submitted.

10 9. TERM AND TIME FOR COMPLETION OF THE WORK.

11 9.1. This Agreement shall commence on the date first written above and shall remain in effect  
12 for three (3) years unless otherwise terminated as provided herein.

13 9.2. Program scheduling shall be as described in Exhibit "A" unless revisions to Exhibit "A" are  
14 approved by both IVRMA and CONSULTANT's Contract Manager. Time extensions may be allowed for  
15 delays caused by IVRMA, other governmental agencies, or factors not directly brought about by the  
16 negligence or lack of due care on the part of CONSULTANT.

17 10. SUSPENSION OF AGREEMENT.

18 IVRMA shall have the authority to suspend this Agreement, wholly or in part, for such period as  
19 deemed necessary due to unfavorable conditions or to the failure on the part of CONSULTANT to perform  
20 any provision of this Agreement. CONSULTANT will be paid the compensation due and payable to the  
21 date of suspension.

22 11. SUSPENSION AND/OR TERMINATION.

23 11.1. IVRMA retains the right to terminate this Agreement for any reason by notifying  
24 CONSULTANT in writing seven (7) days prior to termination and by paying the compensation due and  
25 payable to the date of termination; provided, however, if this Agreement is terminated for fault of  
26 CONSULTANT, IVRMA shall be obligated to compensate CONSULTANT only for that portion of  
27 CONSULTANT's services which have been performed in accordance with the terms and conditions of this  
28 Agreement. Said compensation is to be arrived at by mutual agreement between IVRMA and



1 CONSULTANT; should the Parties fail to agree on said compensation, an independent arbitrator shall be  
2 appointed and the decision of the arbitrator shall be binding upon the Parties.

3 11.2. Upon such termination, CONSULTANT shall immediately turn over to IVRMA any and all  
4 copies of videotapes, studies, sketches, drawings, computations and other data, whether or not completed,  
5 prepared by CONSULTANT in connection with this Agreement. Such materials shall become the  
6 permanent property of IVRMA.

7 12. INSPECTION.

8 CONSULTANT shall furnish IVRMA with every reasonable opportunity for IVRMA to ascertain  
9 that the services of CONSULTANT are being performed in accordance with the requirements and  
10 intentions of this Agreement. All work done and materials furnished, if any, shall be subject to IVRMA's  
11 inspection and approval. The inspection of such work shall not relieve CONSULTANT of any of its  
12 obligations to fulfill its Agreement as prescribed.

13 13. OWNERSHIP OF MATERIALS.

14 All original drawings, videotapes and other materials prepared by or in possession of  
15 CONSULTANT pursuant to this Agreement shall become the permanent property of IVRMA and shall be  
16 delivered to IVRMA upon demand.

17 14. INTEREST OF CONSULTANT.

18 14.1. CONSULTANT covenants that it presently has no interest, and shall not acquire any  
19 interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the  
20 performance of the services hereunder.

21 14.2. CONSULTANT covenants that, in the performance of this Agreement, no sub-contractor or  
22 person having such an interest shall be employed.

23 14.3. CONSULTANT certifies that no one who has or will have any financial interest pursuant to  
24 this Agreement is an officer or employee of IVRMA.

25 15. INDEMNIFICATION.

26 A. Indemnity for Professional Services. To the furthest extent allowed by law, Consultant  
27 shall indemnify, hold harmless and defend IVRMA and its members, board members, officers, officials,  
28 employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and

1 damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at  
2 any time and property damage), and from any and all claims, demands and actions in law or equity  
3 (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the  
4 negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents  
5 or volunteers in the performance of professional services under this Agreement.

6 B. Other Indemnities. Other than in the performance of professional services, and to the  
7 fullest extent allowed by law, Consultant shall indemnify, hold harmless and defend IVRMA and its  
8 members, board members, officers, officials, employees, agents and volunteers from any and all loss,  
9 liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,  
10 including but not limited to personal injury, death at any time and property damage), and from any and  
11 all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation  
12 expenses) arising or alleged to have arisen directly or indirectly out of performance of this Agreement.  
13 Consultant's obligations under the preceding sentence shall apply regardless of whether IVRMA or any  
14 of its members, board members, officers, officials, employees, agents or volunteers are negligent, but  
15 shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the  
16 gross negligence, or caused by the willful misconduct, of IVRMA, or any of its members, board  
17 members, officers, officials, employees, agents or volunteers.

18 C. If Consultant should subcontract all or any portion of the services to be performed under  
19 this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend  
20 IVRMA and its members, board members, officers, officials, employees, agents and volunteers in  
21 accordance with the terms of the preceding paragraphs.

22 D. This section shall survive termination or expiration of this Agreement.

23 16. INDEPENDENT CONTRACTOR.

24 In all situations and circumstances arising out of the terms and conditions of this Agreement,  
25 CONSULTANT is an independent contractor, and as an independent contractor, the following shall  
26 apply:

27 16.1. CONSULTANT is not an employee or agent of IVRMA and is only responsible for the  
28 requirements and results specified by this Agreement or any other agreement.

1           16.2. CONSULTANT shall be responsible to IVRMA only for the requirements and results  
2 specified by this Agreement and except as specifically provided in this Agreement, shall not be subject  
3 to IVRMA's control with respect to the physical actions or activities of CONSULTANT in fulfillment  
4 of the requirements of this Agreement.

5           16.3. CONSULTANT is not, and shall not be, entitled to receive from, or through, IVRMA,  
6 and IVRMA shall not provide, or be obligated to provide, CONSULTANT with Worker's  
7 Compensation coverage or any other type of employment or worker insurance or benefit coverage  
8 required or provided by any Federal, State or local law or regulation for, or normally afforded to, an  
9 employee of IVRMA.

10           16.4. CONSULTANT shall not be entitled to have IVRMA withhold or pay, and IVRMA shall  
11 not withhold or pay, on behalf of CONSULTANT, any tax or money relating to the Social Security Old  
12 Age Pension Program, Social Security Disability Program, or any other type of pension, annuity, or  
13 disability program required or provided by any Federal, State or local law or regulation.

14           16.5. CONSULTANT shall not be entitled to participate in, or receive any benefit from, or  
15 make any claim against any IVRMA fringe program, including, but not limited to, IVRMA's pension  
16 plan, medical and health care plan, dental plan, life insurance plan, or any other type of benefit program,  
17 plan, or coverage designated for, provided to, or offered to IVRMA's employee.

18           16.6. IVRMA shall not withhold or pay, on behalf of CONSULTANT, any Federal, State, or  
19 local tax, including, but not limited to, any personal income tax, owed by CONSULTANT.

20           16.7. CONSULTANT is, and at all times during the term of this Agreement, shall represent  
21 and conduct itself as an independent contractor, not as an employee of IVRMA.

22           16.8. CONSULTANT shall not have the authority, express or implied, to act on behalf of, bind  
23 or obligate IVRMA in any way without the written consent of IVRMA.

24 17. INSURANCE.

25           Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and  
26 effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by  
27 the California Insurance Commissioner to do business in the State of California and rated not less than  
28 "A- VII" in Best's Insurance Rating Guide, or (ii) as may be authorized in writing by IVRMA's

1 Executive Director or his/her designee at any time and in his/her sole discretion. The following policies  
2 of insurance are required:

3 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the  
4 most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form  
5 CG 00 01 and include insurance for “bodily injury,” “property damage” and “personal and advertising  
6 injury” with coverage for premises and operations (including the use of owned and non-owned  
7 equipment), products and completed operations, and contractual liability (including, without limitation,  
8 indemnity obligations under the Agreement) with limits of liability of not less than the following:

9 \$2,000,000 per occurrence for bodily injury and property damage

10 \$1,000,000 per occurrence for personal and advertising injury

11 \$4,000,000 aggregate for products and completed operations

12 \$4,000,000 general aggregate

13 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as  
14 the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01,  
15 and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code  
16 1 - Any Auto) with limits of liability of not less than \$2,000,000 per accident for bodily injury and  
17 property damage.

18 (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

19 (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000  
20 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

21 (v) PROFESSIONAL LIABILITY (Errors and Omissions) insurance appropriate to  
22 Consultant's profession, with limits of liability of \$2,000,000 per claim/occurrence and \$2,000,000  
23 policy aggregate.

24 In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the  
25 minimum limits of insurance set forth above, this insurance policy(ies) shall “follow form” and afford  
26 no less coverage than the primary insurance policy(ies).

27 Consultant shall be responsible for payment of any deductibles contained in any insurance policies  
28 required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.

1 Any deductibles or self-insured retentions must be declared to, and approved by, the IVRMA's  
2 Executive Director or his/her designee in his/her sole discretion. At the option of the IVRMA's  
3 Executive Director or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or  
4 self-insured retentions as respects IVRMA, its members, board members, officers, officials, employees  
5 and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the IVRMA's Executive  
6 Director or his/her designee in his/her sole discretion, guaranteeing payment of losses and related  
7 investigations, claim administration and defense expenses. At no time shall IVRMA be responsible for  
8 the payment of any deductibles or self-insured retentions.

9 All policies of insurance required hereunder shall be endorsed to provide that the coverage shall  
10 not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written  
11 notice has been given to IVRMA. Upon issuance by the insurer, broker, or agent of a notice of  
12 cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish IVRMA with a  
13 new certificate and applicable endorsements for such policy(ies). In the event any policy is due to  
14 expire during the work to be performed for IVRMA, Consultant shall provide a new certificate, and  
15 applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the  
16 expiration date of the expiring policy.

17 The General Liability and Automobile Liability insurance policies shall be written on an  
18 occurrence form. The General Liability (including ongoing operations and completed operations) and  
19 Automobile Liability insurance policies shall name IVRMA, its members, board members, officers,  
20 officials, employees and agents as an additional insured. All such policies of insurance shall be  
21 endorsed so Consultant's insurance shall be primary and no contribution shall be required of IVRMA, its  
22 members, board members, officers, officials, employees, agents or volunteers. The coverage(s) shall  
23 contain no special limitations on the scope of protection afforded to IVRMA, its members, board  
24 members, officers, officials, employees and agents. The Workers' Compensation insurance policy shall  
25 contain a waiver of subrogation as to IVRMA, its members, board members, officers, employees, agents  
26 and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability  
27 greater than those shown above, IVRMA requires and shall be entitled to the broader coverage and/or  
28

1 the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of  
2 the specified minimum limits of insurance and coverage shall be available to IVRMA.

3 If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made  
4 coverage form:

5 (i) The retroactive date must be shown, and must be before the effective date of this Agreement  
6 or the commencement of work by Consultant.

7 (ii) Insurance must be maintained and evidence of insurance must be provided for at least 5  
8 years after completion of the work or termination of the Agreement, whichever first occurs.

9 (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy  
10 form with a retroactive date prior to the effective date of the Agreement, or work commencement date,  
11 Consultant must purchase extended reporting period coverage for a minimum of 5 years after  
12 completion of the work or termination of the Agreement, whichever first occurs.

13 (iv) A copy of the claims reporting requirements must be submitted to IVRMA for review.

14 (v) These requirements shall survive expiration or termination of the Agreement.

15 Consultant shall furnish IVRMA with all certificate(s) and applicable endorsements effecting  
16 coverage required hereunder. **All certificates and applicable endorsements are to be received and**  
17 **approved by IVRMA's Executive Director or his/her designee in his/her sole discretion prior to**  
18 **IVRMA's execution of the AGREEMENT and before work commences.** Upon request of IVRMA,  
19 Consultant shall immediately furnish IVRMA with a complete copy of any insurance policy required  
20 under this Agreement, including all endorsements, with said copy certified by the underwriter to be a  
21 true and correct copy of the original policy. This requirement shall survive expiration or termination of  
22 this Agreement.

23 If at any time during the life of the Agreement or any extension, Consultant or any of its sub-  
24 Consultants fail to maintain any required insurance in full force and effect, all work under this  
25 Agreement shall be discontinued immediately, until notice is received by IVRMA that the required  
26 insurance has been restored to full force and effect and that the premiums therefore have been paid for a  
27 period satisfactory to IVRMA. Any failure to maintain the required insurance shall be sufficient cause  
28

1 for IVRMA to terminate this Agreement. No action taken by IVRMA hereunder shall in any way  
2 relieve Consultant of its responsibilities under this Agreement.

3 The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the  
4 liability of Consultant, including, without limitation, liability under the indemnity provisions of this  
5 Agreement. The duty to indemnify IVRMA shall apply to all claims and liability regardless of whether  
6 any insurance policies are applicable. The policy limits do not act as a limitation upon the policy limits  
7 do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or  
8 purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the  
9 liability of Consultant, its principals, officers, agents, employees, persons under the supervision of  
10 Consultant, vendors, suppliers, invitees, sub-Consultants, or anyone employed directly or indirectly by  
11 any of them.

12 If Consultant should subcontract all or any portion of the services to be performed under this  
13 Agreement, Consultant shall require each sub-Consultant to provide insurance protection in favor of  
14 IVRMA, its members, board members, officers, officials, employees, agents and volunteers in  
15 accordance with the terms of each of the preceding paragraphs, except that the sub-Consultant's  
16 certificates and endorsements shall be on file with Consultant and IVRMA prior to the commencement  
17 of any work by the sub-Consultant.

18 18. ASSIGNMENT.

19 Neither this Agreement nor any duties or obligations hereunder shall be assignable by  
20 CONSULTANT without the prior written consent of IVRMA. CONSULTANT may employ other  
21 specialists to perform services as required with prior approval by IVRMA.

22 19. NON-DISCRIMINATION.

23 During the performance of this Agreement, CONSULTANT shall not unlawfully discriminate  
24 against any employee or applicant for employment or employee of IVRMA or member of the public  
25 because of race, religion, color, national status, age, or sex. CONSULTANT shall ensure that the  
26 evaluation and treatment of its employees and applicants for employment and employees and members  
27 of the public are free of such discrimination. CONSULTANT shall comply with all provisions of the  
28 Fair Employment and Housing Act (Government Code §12900, *et seq.*). The applicable regulations of

1 the Fair Employment Housing Commission implementing Government Code §12900 set forth in  
2 Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this  
3 Agreement by reference and made a part hereof as if set forth in full. CONSULTANT shall abide by the  
4 Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and  
5 regulations issued pursuant to said Act. CONSULTANT shall also abide by the American Disabilities  
6 Act and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act.  
7 CONSULTANT shall give written notice of its obligations under this clause to labor organizations with  
8 which it has a collective bargain or other agreement. CONSULTANT shall include the non-  
9 discrimination and compliance provision of this paragraph in all subcontracts to perform work pursuant  
10 to this Agreement.

11 20. NOTICES AND REPORTS.

12 20.1. All notices and reports pursuant to this Agreement shall be in writing and may be given  
13 by personal delivery or by mailing by certified mail, addressed as follows:

14 **IVRMA**

15 Attn: Executive Director  
16 IVRMA  
17 300 S Imperial Avenue, Suite 6  
El Centro, CA 92243

**CONSULTANT**

Attn: Project Manager  
MSW Consultants, Inc.  
41760 Ivy St. Suite 203  
Murrieta, CA 92562

18 20.2. All notices and reports pursuant to this Agreement may be given by personal delivery or  
19 by mailing by certified mail at such other address as either Party may designate in a notice to the other  
20 Party given in such manner.

21 20.3. Any notice given by mail shall be considered given when deposited in the United States  
22 Mail, postage prepaid, addressed as provided herein.

23 21. ENTIRE AGREEMENT.

24 This Agreement contains the entire agreement between IVRMA and CONSULTANT relating to  
25 the transactions contemplated hereby and supersedes all prior or contemporaneous agreements,  
26 understandings, provisions, negotiations, representations, or statements, either written or oral.

27 ///

28 ///



1 22. MODIFICATION.

2 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid  
3 unless the same is in writing and signed by both parties.

4 23. PARTIAL INVALIDITY.

5 If any provision in this Agreement is held by a court of competent jurisdiction to be invalid,  
6 void, or unenforceable, the remaining provisions will nevertheless continue in full force without being  
7 impaired or invalidated in any way.

8 24. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.

9 As used in this Agreement and whenever required by the context thereof, each number, both  
10 singular and plural, shall include all numbers, and each gender shall include a gender. CONSULTANT  
11 as used in this Agreement or in any other document referred to in or made a part of this Agreement shall  
12 likewise include both singular and the plural, a corporation, a partnership, individual, firm or person  
13 acting in any fiduciary capacity as executor, administrator, trustee or in any other representative capacity  
14 or any other entity. All covenants herein contained on the part of CONSULTANT shall be joint and  
15 several if more than one person, firm or entity executes the Agreement.

16 25. WAIVER.

17 No waiver of any breach or of any of the covenants or conditions of this Agreement shall be  
18 construed to be a waiver of any other breach or to be a consent to any further or succeeding breach of  
19 the same or any other covenant or condition.

20 26. CHOICE OF LAW.

21 This Agreement shall be governed by the laws of the State of California. This Agreement is  
22 made and entered into in Imperial County, California. Any action brought by either Party with respect  
23 to this Agreement shall be brought in a court of competent jurisdiction within said County.

24 27. ATTORNEY'S FEES.

25 If either Party herein brings an action to enforce the terms thereof or declare rights hereunder,  
26 each Party in any such action, on trial or appeal, shall bear its own attorney's fees and costs.

27 ///

28 ///

1 28. AUTHORITY.

2 Each individual executing this Agreement on behalf of CONSULTANT represents and warrants  
3 that:

4 28.1. He/She is duly authorized to execute and deliver this Agreement on behalf of  
5 CONSULTANT;

6 28.2. Such execution and delivery is in accordance with the terms of the Articles of  
7 Incorporation or Partnership, any by-laws or Resolutions of CONSULTANT and;

8 28.3. This Agreement is binding upon CONSULTANT accordance with its terms.

9 29. COUNTERPARTS.

10 This Agreement may be executed in counterparts.

11 30. REVIEW OF AGREEMENT TERMS.

12 This Agreement has been reviewed and revised by legal counsel for both IVRMA and  
13 CONSULTANT, and no presumption or rule that ambiguities shall be construed against the drafting  
14 Party shall apply to the interpretation or enforcement of the same or any subsequent amendments  
15 thereto.

16 31. NON-APPROPRIATION.

17 31.1. All obligations of IVRMA are subject to appropriation of resources by various federal,  
18 State, and local agencies, including but not limited to the U.S. Department of Transportation  
19 (“DOT”) and the California Department of Transportation (“Caltrans”).

20 31.2. This Agreement is valid and enforceable only if sufficient funds are made available to  
21 IVRMA for the purposes of this Project. In addition, this Agreement is subject to any additional  
22 restrictions, limitations, conditions, or any statute enacted by Congress, State Legislature, or  
23 IVRMA, and any regulations prescribed therefrom, that may affect the provisions, terms, or  
24 funding of this Agreement.

25 31.3. If sufficient funds for the Project are not appropriated, this Agreement may be amended  
26 or terminated in order to reflect said reduction in funding.

27 ///

28 ///

1 32. PREVAILING WAGE.

2 32.1. CONSULTANT acknowledges that any work that qualifies as a “public work” within the  
3 meaning of California Labor Code section 1720 shall cause CONSULTANT, and its sub-  
4 consultants, to comply with the provisions of California Labor Code sections 1775 et seq.

5 32.2. When applicable, copies of the prevailing rate of per diem wages shall be on file at  
6 IVRMA and available to any interested party upon request. CONSULTANT shall post copies of  
7 the prevailing wage rate of per diem wages at the Project site.

8 32.3. CONSULTANT hereby acknowledges and stipulates to the following:

9 32.3.1. CONSULTANT has reviewed and agrees to comply with the provisions of Labor  
10 Code section 1776 regarding retention and inspection of payroll records and  
11 noncompliance penalties; and

12 32.3.2. CONSULTANT has reviewed and agrees to comply with the provisions of Labor  
13 Code section 1777.5 regarding employment of registered apprentices; and

14 32.3.3. CONSULTANT has reviewed and agrees to comply with the provisions of Labor  
15 Code section 1810 regarding the legal day’s work; and

16 32.3.4. CONSULTANT has reviewed and agrees to comply with the provisions of Labor  
17 Code section 1813 regarding forfeiture for violations of the maximum hours per day and  
18 per week provisions contained in the same chapter.

19 32.3.5. CONSULTANT has reviewed and agrees to comply with any applicable  
20 provisions for those Projects subject to Department of Industrial Relations (DIR)  
21 Monitoring and Enforcement of prevailing wages. IVRMA hereby notifies  
22 CONSULTANT that CONSULTANT is responsible for complying with the requirements  
23 of Senate Bill 854 (SB854) regarding certified payroll record reporting. Further  
24 information concerning the requirements of SB854 is available on the DIR website  
25 located at: <http://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

26 33. WORKERS’ COMPENSATION CERTIFICATION.

27 33.1. Prior to the commencement of work, CONSULTANT shall sign and file with IVRMA  
28 the following certification: “I am aware of the provisions of California Labor Code §§3700 et

1 seq. which require every employer to be insured against liability for workers' compensation or to  
2 undertake self-insurance in accordance with the provisions of that code, and I will comply with  
3 such provisions before commencing the performance of the work of this contract.”

4 33.2. This certification is included in this Agreement and signature of the Agreement shall  
5 constitute signing and filing of the certificate.

6 33.3. CONSULTANT understands and agrees that any and all employees, regardless of hire  
7 date, shall be covered by Workers' Compensation pursuant to statutory requirements prior to  
8 beginning work on the Project.

9 33.4. If CONSULTANT has no employees, initial here: \_\_\_\_\_.

10 34. DISADVANTAGED BUSINESS ENTITY COMPLIANCE.

11 34.1. When applicable, CONSULTANT represents and warrants that it has fully read the  
12 applicable Disadvantaged Business Enterprise (“DBE”) requirements pertaining to this Project  
13 and has fully and accurately completed any and all required DBE forms.

14 34.2. CONSULTANT represents and warrants that it will comply with all applicable DBE  
15 requirements for this Project.

16 34.3. CONSULTANT shall comply with any applicable DBE provisions attached hereto as  
17 **Exhibit “D”** and incorporated by this reference as though fully set forth herein.

18 34.4. If any state or federal funds are withheld from IVRMA or not reimbursed to IVRMA due  
19 to CONSULTANT’s failure to either comply with the DBE requirements set forth in the RFP  
20 and this Agreement, or to meet the mandatory DBE goals as determined by IVRMA, Caltrans,  
21 the Federal Highway Administration, and/or any other state or federal agency contributing funds  
22 to the Project, then CONSULTANT shall fully reimburse IVRMA the amount of funding lost.  
23 IVRMA reserves the right to deduct any such loss in funding from the amount of compensation  
24 due to CONSULTANT under this Agreement.

25 34.5. In addition to the above, CONSULTANT’s failure to comply with DBE  
26 requirements/goals shall subject it to such sanctions as are permitted by law, which may include,  
27 but shall not be limited to the following:

28 34.5.1. Termination of this Agreement;


1 34.5.2. Withholding monthly progress payments;  
2 34.5.3. Compensatory, special, incidental, liquidated and other damages; and/or  
3 34.5.4. Designation of CONSULTANT as "nonresponsible," and disqualification from  
4 bidding on future public works projects advertised by IVRMA.

5 **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first  
6 above written.

7 **IMPERIAL VALLEY RESOURCE**  
8 **MANAGEMENT AGENCY**

**MSW CONSULTANTS, INC.**

9  
10 By: \_\_\_\_\_  
11 MIKE GOODSSELL  
12 Chair of the Board of Directors

By:  \_\_\_\_\_  
13 DAVID DAVIS  
14 President

15 **ATTEST:**

16 By: \_\_\_\_\_  
17 CRISTI LERMA  
18 Secretary to IVRMA

19 **APPROVED AS TO FORM:**

20 By: \_\_\_\_\_  
21 ERIC HAVENS  
22 IVRMA Counsel  
23  
24  
25  
26  
27  
28

**Minerva® SaaS Services ORDER FORM**

<p><b>Customer:</b> Imperial Valley Resource Management Agency (IVRMA)</p>	<p><b>Contact:</b> Maricela Galarza</p>
<p><b>Address:</b> 300 Imperial Ave. Ste.# 6 El Centro, CA 92243</p>	<p><b>Email:</b> maricelagalarza@imperialctc.org <b>Phone:</b> (760) 337-4537</p>
<p><b>Services:</b> Minerva subscription (“The Services”)</p>	<p><b>Initial Service Term:</b> 36 months, commencing on the date of this agreement.</p>
<p><b>Service Capacity:</b> To provide for CalRecycle regulatory solid waste recycling compliance for commercial waste generators with a minimum of 4 Data Imports per year per hauler.</p>	<p><b>Implementation Services:</b> Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work (“SOW”) attached as Exhibit A (“Implementation Services”), and Customer shall pay Company the Implementation Fee in accordance with the terms herein.</p>
<p><b>Service Fees:</b> Annual Subscription Fee for the Software Subscription is billed upon initiation of Implementation Services, subject to the terms of Section 4 herein. <b>Data Schema Creation Fees:</b> billed upon receipt of inconsistent hauler data report from initial/prior period, subject to the terms of Section 4 herein.</p>	<p><b>Implementation Fee:</b> (onetime): Payable upon execution of the Agreement, subject to the terms of Section 4 herein.</p>

**ORDER FORM – ANNUAL SUBSCRIPTION FEE  
(on following page)**

**ORDER FORM – ANNUAL SUBSCRIPTION FEE**

<b>Annual Subscription Fee</b>	<b>Three Year Price</b>
Software subscription (includes up to 52 service data imports for each hauler per year)	\$56,000
Multi-year Discount (10%)	(\$5,600)
<b>Total Recurring Subscription Fee</b>	<b>\$50,400</b>
Implementation Fee includes: Account setup, *data schema creation, hauler/jurisdiction outreach, and Standard Microsoft SSO setup for each jurisdiction	\$3,500
*New Data Schema Creation Fee: ONLY if non-standard reports are provided in future periods by a hauler	\$500
Custom developed features at the City’s request will be quoted on a project basis and require written approval, at the following rate:	\$200/hr
<b>Total Fees in year one</b>	<b>\$53,900</b>
<b>3-year contract value</b>	<b>\$154,700</b>

## SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this 29 day of August 2023 (the "Effective Date") between MSW Consultants, Inc. with a place of business at 41760 Ivy St., Suite 203, Murrieta CA 92562 ("Company") and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form unless expressly identifying this Agreement, specifically referencing the provisions of this Agreement to be altered or superseded and signed by the parties after the date hereof.

MSW Consultants, Inc.

Imperial Valley Resource  
Management Agency (IVRMA)

Name: David Davis, CMA

Name: David Aguirre

Title: President

Title: Executive Director

Date: August 29, 2023

Date: September 22, 2023



## **TERMS AND CONDITIONS**

### **1 SAAS SERVICES AND SUPPORT**

1.1 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services.

1.2 Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with Company's standard practice.

### **2 RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with its intended functionality and all applicable laws and regulations. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer will be responsible for any and all activities made pursuant to the user access granted to Customer's hereunder and any of its users' or Equipment or the access credentials to the Services. Customer shall, and shall ensure its users, use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Company promptly of any unauthorized access or use, Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

### **3 CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all related improvements, enhancements or modifications, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (a) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (b) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

#### **4 PAYMENT OF FEES**

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). Notwithstanding the foregoing, all Data Import Fees set forth in the Order Form are estimates only and are, at any time during the Term, subject to reasonable increases based on then-current Company fees for Data Imports ('Data Import' is defined as a single-tab Excel worksheet or CSV file. Types of data imports include hauler service level data, past outreach activities, and edible food generator lists.) If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income.

#### **5 TERM AND TERMINATION**

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **6 WARRANTY AND DISCLAIMER**

6.1 Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. Except as expressly set forth in this section, the services and implementation services are provided "as is" and company disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.

## **7 INSURANCE**

7.1 Company and its subcontractors will maintain for the duration of the Agreement at their sole expense the following insurance, which will be full coverage, not subject to self-insurance provisions:

7.2 Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Company in the contract and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

## **8 LIMITATION OF LIABILITY**

8.1 Customer acknowledges, understands and agrees that Company utilizes third party hardware, software and hosting solutions in connection with the Services ("Third Party Solutions") in order to economically provide the Services to Customer. Customer recognizes that the quality of the Services is dependent upon such Third Party Solutions and that Company does not have nor exercise significant bargaining power with such Third Party Solutions so as to reasonably control the Customer's experience resulting from such Third Party Solutions, and therefore notwithstanding any other provision of this Agreement to the contrary, agrees that Company shall not be liable or in breach of this Agreement to the extent such liability or breach is the result of the acts or omissions of Third Party Solutions or their providers.

8.2 Notwithstanding anything to the contrary, except for bodily injury of a person, company and its suppliers (including but not limited to all equipment and technology suppliers), officers, affiliates, representatives, contractors and employees shall not be responsible or liable with respect to any subject matter of this agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory: (a) for error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business; (b) for any indirect, exemplary, incidental, special or consequential damages; (c) for any matter beyond company's reasonable control; or (d) for any amounts that, together with amounts associated with all other claims, exceed the fees paid by customer to company for the services under this agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not company has been advised of the possibility of such damages and whether or not subject to the indemnification obligations of company hereunder.

## **9 MISCELLANEOUS**

9.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of California.

## **EXHIBIT A**

### **Statement of Work**

#### **Implementation Services:**

- During the setup and on-boarding process, our staff will:
- Schedule a kickoff meeting with the jurisdiction to coordinate the on-boarding process.
- Work with each jurisdiction and hauler and staff to obtain commercial service data export file using an existing hauler billing system query and gaining an understanding of the available containers and materials by jurisdiction. Requires consistent data query from hauler for each on-going upload.
- Create initial City/hauler specific data schema's to import service data consistently over time.
- Setup jurisdictions & hauler users and establish user access via established jurisdiction/company email.
- Setup and train users on full functionality of the system.

#### **Base subscription includes:**

#### **Implementation Record**

- Records organized by year, regulatory category, and sub-category for easy navigation, adding new records, status review and auditing.
- Easily include file attachments such as photos, documents, and spreadsheet records.
- Quick reference regulatory text to see what is required for each sub-category.
- View summary list by entire Implementation Record, listing category and sub-category. Click to view uploaded documents.

#### **Reporting**

- Compliance Dashboard with visual status indicators, EAR metrics, and simple 1 click filtered reports for SB 1383 (SLCP), AB 1826 (MORe), and AB 341 (MCR).
- Desktop Compliance Reviews become very quick and easy to determine where to focus attention.
- Advanced, transparent, generator location-based reporting accounting for all active accounts and services a generator may have, even multiple haulers.
- Reports can be exported as .xlsx or .csv files as raw data or analyzed graph tables or can be printed directly from the browser.
- Reports can be filtered by thirty-four (34) different variables like "hauler", or "Container System", or "Regulation Compliance Status" allowing quick and specific customizable reports.

### **Compliance Matrix Tracking**

- Tracks the SLCP, MORE, & MCR compliance status of individual commercial waste generators by location and account.
- Tracks the specific organic material types (per SB 1383) generated and the recycling status for each, ensuring that all non-waivered generators have the containers needed to recycle all organic waste generated.
- Identifies which generators recycling have a SLCP 1, 2, 3, or 3+ container collection system, and tracks MORE & MCR alternative compliance methods like self-hauling and 3<sup>rd</sup> party recycling.
- Issue and integrate waivers and exemptions with status monitoring, issue date tracking, and automatic compliance updates.

### **Edible Food**

- Mark accounts as edible food generators and link them to edible food recoverers.
- Dynamic fields assist in determining edible food generator, tier 1, tier 2, or unregulated status.
- Easy export of commercial edible food generator, and jurisdiction edible food recoverer lists for addition to the Implementation Record.
- Realtime calculation of the total number of commercial edible food recoverers.

### **Education and Outreach**

- Location linked assets such as notes, photos, documents, waivers and more that remain accessible even as haulers change account numbers, services or information.
- Facilitates mobile site visit documentation, uploading of documents and photos right from a tablet.
- Outreach history per location independent of hauler billing system account level changes.

### **Data Importing System**

- MSW works with your hauler (and staff as needed) to obtain compliance related billing system data.
- Intuitive data importing using existing consistent hauler billing system data query. No template required. Includes four (4) imports per year.
- Includes ability to import residential account information.



**System Capabilities**

- Microsoft Azure, cloud-based, encrypted, data protection and backup.
- Standard Microsoft SSO included. (Federation with one or more Identity Providers can be added at an additional cost)
- Designed for use on desktop and tablet.

**Subscription includes:**

- Unlimited jurisdiction users and hauler users.
- User training provided via Microsoft Teams.
- Friendly local technical and user support Monday - Friday 9-5 via phone or email.
  - We drive setup through account initialization and direct hauler correspondence.
  - User support for “how to” questions and “best practices”.
  - Data related questions.
  - Regulatory treatment questions.

**Product Roadmap**

As part of its subscription, the City will enjoy planned enhancements to Minerva® at no additional cost during the term of the contract.