

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING ORDINANCE NO. 13274 C.M.S. WHICH AWARDED CALIFORNIA WASTE SOLUTIONS, INC. ("CWS") AN EXCLUSIVE RESIDENTIAL RECYCLING COLLECTION SERVICES FRANCHISE CONTRACT ("RR FRANCHISE AGREEMENT"), TO AUTHORIZE AND APPROVE THE FIRST AMENDMENT TO THE RR FRANCHISE AGREEMENT WHICH WILL:

- (1) CLARIFY THE RATE FOR PREMIUM BACKYARD MULTI-FAMILY ("MFD") RECYCLING SERVICES FOR CARTS;**
- (2) MODIFY CERTAIN PROVISIONS AND SERVICES CWS PROVIDES UNDER THE RR FRANCHISE AGREEMENT AS DESCRIBED AND SPECIFIED IN THIS ORDINANCE AND FIRST AMENDMENT TO THE RR FRANCHISE AGREEMENT; AND**
- (3) ADOPT APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") FINDINGS**

WHEREAS, on May 22, 2015, pursuant to Ordinance No. 13274 C.M.S. (Amending Ordinance No. 13254 C.M.S.), the City of Oakland ("CITY") and California Waste Solutions, Inc. ("CONTRACTOR" or "CWS") entered into that certain Residential Recycling Collection Services Contract (the "RR Franchise Agreement"), pursuant to which CONTRACTOR commenced performance of services on July 1, 2015; and

WHEREAS, during the initial term of the Contract, disputes arose between CITY and CONTRACTOR regarding the maximum rates CONTRACTOR may charge Customers for certain services provided by CONTRACTOR under the Contract, resulting in a lawsuit filed by CITY against CONTRACTOR captioned *City of Oakland v. California Waste Solutions, Inc.*, Case No. RG17853559, Alameda County Superior Court; and

WHEREAS, CITY and CONTRACTOR are entering into a Settlement Agreement and Mutual Release (the "Settlement Agreement") that will terminate the dispute set forth in the *City of Oakland v. California Waste Solutions, Inc.* lawsuit; and

WHEREAS, the Settlement Agreement provides for the amendment of certain provisions of the RR Franchise Agreement", as specified in this Ordinance Amendment and in the First Amendment to the RR Franchise Agreement ("First Amendment), a draft of which is attached hereto as **Exhibit 1**; and

WHEREAS, the First Amendment will clarify the rate for Premium Backyard MFD Recycling Services, and will modify (a) the services specified within the RR Franchise Agreement and to be provided by CONTRACTOR and (b) the terms and conditions pursuant to which

CONTRACTOR provides such services, in each case in accordance with the terms and conditions of the RR Franchise Agreement, as modified by the First Amendment; and

WHEREAS, the City Council for the City of Oakland finds and determines that the requirements of the California Environmental Quality Act (“CEQA”) have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant to CEQA Guidelines section 15273; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council has independently reviewed and considered the CEQA exemption determinations and finds and determines that the action complies with the CEQA. The ordinance seeks to amend the existing RR Franchise Agreement to clarify the rates for Premium Backyard Multi-Family (“MFD”) Recycling Services for carts and modify certain provisions of the RR Franchise Agreement, which will enable the maintenance of this service within the applicable service area at specific rates. As such, the proposed amendments to the RR Franchise Agreement are statutorily exempt pursuant to CEQA Guidelines Section 15273(4) (Rates, Tolls, Fares and Charges obtaining funds for capital projects necessary to maintain service within an existing service area). The City Council hereby authorizes the City's Environmental Review Officer to file a Notice of Exemption.

SECTION 2. The City Council does hereby find and declare that the above recitals are true and correct and does hereby authorize amending Ordinance No. 13274 C.M.S. to clarify the rate for Premium Backyard MFD Recycling Services, as set forth in the rate table attached to this Ordinance as **Exhibit 2**.

SECTION 3. The City Council does hereby authorize amending Ordinance No. 13274 C.M.S. to modify: (a) the services described within the RR Franchise Agreement and to be provided by CONTRACTOR and (b) the terms and conditions pursuant to which CONTRACTOR provides such services, as to be specified in the First Amendment.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

Exhibit 1

DRAFT FIRST AMENDMENT OF RR FRANCHISE AGREEMENT

**FIRST AMENDMENT TO
RESIDENTIAL RECYCLING
COLLECTION SERVICES
CONTRACT**

Executed between

CITY OF OAKLAND

and

CALIFORNIA WASTE SOLUTIONS, INC.

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ARTICLE 1. CHANGES TO TEXT OF CONTRACT

36 The Contract modifications are as follows:

37 1. The above recitals are incorporated herein by reference and are made a part of this
38 Contract.39 2. Section 8.01 Material Diversion Standard is amended as follows:

40 Beginning with calendar year 2016 and annually thereafter, CONTRACTOR shall meet a
41 minimum material Diversion standard of ninety (90) percent by weight of the following: all
42 Recyclable Materials Collected under the terms of this Contract plus materials that are
43 not Recyclable Materials but which CONTRACTOR can and does Divert such as metal
44 pots, scrap metal, and other items. Compliance with this standard shall be determined
45 using the results of waste characterization studies as provided in Section 8.01.1 and
46 Processing Diversion studies as provided in Section 8.01.2, and the calculations as
47 provided in Section 8.01.3. Waste characterization studies and Processing Diversion
48 studies shall be conducted at the sole direction of CITY but not more than two (2) times
49 annually. After XXX,XX, 2021, CITY and CONTRACTOR may mutually agree in writing
50 to alternative methodologies to calculate CONTRACTOR's compliance with the
51 minimum material Diversion standard.

52 3. Section 8.01.1 Waste Characterization Studies is amended as follows:

53 Waste characterization studies shall determine by weight the percentage of Collected
54 materials that are: Recyclable Materials plus other materials which CONTRACTOR can
55 and does Divert, prior to Processing. Waste characterization studies shall be conducted
56 one (1) time in 2015, and two (2) times in each subsequent year of this Contract. The
57 average of the results of the two (2) waste characterization studies conducted in a
58 calendar year shall be used to calculate compliance with the standard in that year.
59 Waste characterization studies shall be performed by a qualified third party contractor
60 subject to CITY's approval, which shall not be unreasonably withheld. The studies shall
61 be conducted at the MRF and shall be of sufficient scope to meet industry practices and
62 standards. The study methodology shall be subject to CITY's approval, which shall not
63 be unreasonably withheld. CONTRACTOR shall provide full access to the conduct of the
64 waste characterization studies, and all data and products of the studies, to CITY and its
65 representatives. Annual expenditures for the cost of the studies shall be capped at thirty
66 thousand dollars (\$30,000) in 2015, and sixty thousand dollars (\$60,000) in 2016.
67 Beginning in 2017 the capped amount from the prior year shall be adjusted by the
68 Annual Rate adjustment as set forth in Section 7.07 herein and Table 4 of Exhibit 2 to
69 this Contract. After the Effective Date of the First Amendment, CONTRACTOR shall pay
70 the first half the first ten thousand dollars (\$10,000) of the capped amount each year,
71 and CITY shall pay the remaining amount each year up to the capped amount. In 2022,
72 the \$10,000 to be paid by CONTRACTOR shall be adjusted by the Annual Rate
73 adjustment as set forth in Section 7.07, and in subsequent years the amount from the
74 prior year shall be adjusted by the Annual Rate adjustment as set forth in Section 7.07.

75 4. Section 8.01.2 Processing Diversion Studies is amended as follows:

76 Processing Diversion studies shall determine by weight the percentage of Collected
77 materials that are Diverted through Processing. Processing Diversion studies shall be
78 conducted one (1) time in 2015, and two (2) times in each subsequent year of this
79 Contract. The average of the results of the two (2) Processing Diversion studies
80 conducted in a calendar year shall be used to calculate compliance with the standard in

81 that year. Processing Diversion studies shall be performed by a qualified third party
 82 contractor subject to CITY's approval, which shall not be unreasonably withheld. The
 83 studies shall be conducted at the MRF and shall be of sufficient scope to meet industry
 84 practices and standards. The studies shall use samples of material that consist
 85 exclusively of Collected Tonnage; use samples that are representative of all Collected
 86 Tonnage; replicate CONTRACTOR's normal operating conditions, including but not
 87 limited to the number of sorters and other staff, processing equipment, processing
 88 equipment speed, material depth on the processing line, material moisture content, and
 89 re-processing of residue, as verified by the third party contractor. The study methodology
 90 shall be subject to CITY's approval, which shall not be unreasonably withheld.
 91 CONTRACTOR shall provide full access to the conduct of the Processing Diversion
 92 studies, and all data and products of the studies, to CITY or its representatives. CITY
 93 shall pay for up to fifteen thousand dollars (\$15,000) toward the cost of the Processing
 94 Diversion study in 2015, and CONTRACTOR shall pay any cost above fifteen thousand
 95 dollars (\$15,000) in 2015. CONTRACTOR shall pay all expenses associated with the
 96 conduct of the Processing Diversion studies in each year after. After the Effective Date
 97 of the First Amendment, CITY shall pay all expenses associated with conducting the
 98 Processing Diversion studies.

- 99 5. Section 10.01.2 Accessibility is amended as follows:

100 CONTRACTOR shall Collect all Recyclable Materials Containers, and Used Oil
 101 and Used Oil Filter Containers as are readily accessible to CONTRACTOR's crew
 102 and vehicles and not blocked. However, CONTRACTOR shall provide "push
 103 services" for Bins, "Premium Backyard MFD Recycling Services" for Carts, and
 104 "key services" as necessary or upon request from any MFD Customer for their
 105 convenience during the provision of MFD Recycling Services. Push services for
 106 Bins and Premium Backyard MFD Recycling Services for Carts, shall include, but
 107 not be limited to, dismounting from the Collection vehicle for the purpose of moving
 108 the Bins or Carts from their storage location for Collection and returning the Bins
 109 or Carts to their storage location. Push services and Premium Backyard MFD
 110 Recycling Services may include unlocking and relocking the Bin, Cart, or
 111 enclosure. Key services shall include the provision of a master lock and key by
 112 CONTRACTOR to the Service address for the convenience of CONTRACTOR.
 113 CONTRACTOR shall be compensated for providing "push services" for Bins,
 114 "Premium Backyard MFD Recycling Services" for Carts, and/or "key services" in
 115 accordance with the approved Maximum Recycling Service Rates as provided in
 116 Amended Exhibit 1B, attached hereto and incorporated herein by reference, or as
 117 may be adjusted in accordance with the terms of the Contract.

- 118 6. Section 10.01.4 Premium Backyard MFD Recycling Services for Carts is added to the
 119 Contract, as follows:

120 CONTRACTOR shall provide Premium Backyard Recycling Services for Carts and Used
 121 Oil and Used Oil Filters to a MFD Service Address if requested by the MFD Customer for
 122 their convenience. CONTRACTOR shall be compensated for such services at the
 123 approved Maximum Recycling Service Rates provided in Amended Exhibit 1B, attached
 124 hereto and incorporated by reference herein, for Premium Backyard MFD Recycling
 125 Services for Carts.

- 126 7. Section 17.03 Community Outreach Budget is amended as follows:

127 CONTRACTOR shall be required to allocate or spend not more than Five Hundred
 128 Thousand Dollars (\$500,000) in the period ending December 31, 2015, to implement the

129 transitional outreach plan, and not more than Two Hundred Fifty Thousand Dollars
130 (\$250,000) per calendar year thereafter to implement the annual outreach plan until the
131 Effective Date of the First Amendment. After the Effective Date, CONTRACTOR shall be
132 required to allocate or spend not more than One Hundred Ninety Thousand Dollars
133 (\$190,000) per calendar year to implement the annual outreach plan. All such
134 expenditures require prior approval from CITY unless included in outreach plan. CITY
135 and CONTRACTOR may mutually agree to perform joint Community Outreach activities
136 using all or some of the annual Community Outreach budget. Public relations activity
137 costs cannot be applied to the Public Outreach budget. At the end of the calendar year,
138 the difference between the amount spent by CONTRACTOR and the maximum required
139 allocation shall be carried over to the following calendar year and be added to that year's
140 maximum amount. However, in the event CONTRACTOR has unspent funds at the end
141 of three (3) consecutive calendar years, the unspent funds shall be retained by
142 CONTRACTOR and deposited in a separate interest bearing Rate Stability Funds
143 account, whose interest accrues to the account. These rate stability funds may only be
144 used at the direction of CITY. Rate stability fund account balances, including balances
145 of zero (0) shall be reported to the Contract Manager no later than the tenth (10th) day of
146 February beginning in February of 2016 and annually thereafter during the term of this
147 Contract. The Community Outreach Budget shall include the cost of Contamination
148 audits.

149 8. Exhibit 1B to the Contract (Maximum Monthly Recycling Service Rates – MFD
150 Residential Recycling Collection) is amended to include the "Multi-Family
151 Backyard Cart Rate" for "Backyard Cart Services," as defined in the Settlement
152 Agreement, and shall be referred to in the Contract as "Premium Backyard MFD
153 Recycling Services," as shown in Amended Exhibit 1B. Exhibit 1B is also amended
154 to show that "Push Rates" are charged for "push services" provided to MFD Bin
155 Customers. Amended Exhibit 1B is attached to this First Amendment and
156 incorporated by reference herein.

157 **ARTICLE 2. FURTHER AMENDMENT**

158 No modification, amendment, or supplement to this First Amendment or the Contract as modified
159 by this First Amendment will be binding on the parties unless it is made in writing, duly authorized
160 by CONTRACTOR and CITY, and signed by both parties.

161 **ARTICLE 3. ENTIRE AMENDMENT; NO OTHER MODIFICATIONS**

162 This First Amendment contains the entire understanding of the Parties with respect to the subject
163 matter hereof and supersedes all prior and contemporaneous agreements and commitments with
164 respect thereto. Except as expressly modified by this First Amendment, all the terms and
165 conditions of the Contract shall remain in full force and effect, unmodified, and apply to this First
166 Amendment as though set forth herein, including, but not limited to, disputes, applicable law, and
167 venue provisions.

168 **ARTICLE 4. HEADINGS**

169 Headings in this document are for convenience of reference only and are not to be considered in
170 any interpretation of this First Amendment.

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ARTICLE 5. LEGAL REPRESENTATION

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Each of the parties has received the advice of legal counsel prior to signing this First Amendment.

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The parties agree that no provision or provisions may be subject to any rule of construction based

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upon any party being considered the party “drafting” this First Amendment.

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ARTICLE 6. SEVERABILITY/PARTIAL INVALIDITY

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If any term or provision of this First Amendment, or the application of any term or provision of this

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First Amendment to a particular situation, shall be finally found to be void, invalid, illegal or

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unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such

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term or provision shall remain in force and effect to the extent allowed by such ruling, and all other

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terms and provisions of this Agreement or the application of this Agreement to other situations shall

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remain in full force and effect.

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Notwithstanding the foregoing, if any material term or provision of this First Amendment or the

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application of such material term or condition to a particular situation is finally found to be void, invalid,

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illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in

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good faith and fully cooperate with each other to amend this First Amendment to carry out its intent.

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ARTICLE 7. EFFECTIVE DATE

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This First Amendment shall become effective at such time as it is properly executed by CITY and

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CONTRACTOR and approved by CITY’s Council, and a CITY Ordinance amending Ordinance

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No. 13274 C.M.S. is passed by CITY’s Council (the “Effective Date”). The modifications to the

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Contract in this First Amendment shall only apply to the CITY’s and CONTRACTOR’s

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performance obligations on and after the Effective Date of this First Amendment, and in no event

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shall any such modifications be applied retroactively.

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ARTICLE 8. COUNTERPARTS

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This First Amendment may be executed in counterparts with each counterpart being interpreted

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as an original, and all of which, taken together, shall constitute one and the same instrument. IN

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WITNESS WHEREOF, CITY and CONTRACTOR have executed this First Amendment on the

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day and year first written above.

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CITY OF OAKLAND

CALIFORNIA WASTE SOLUTIONS, INC.

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By: _____

By: _____

202

Edward Reiskin

David Duong

203

City Administrator

CEO & President

204

205

Date

Date

206

207

City of Oakland Business License Number



208

209

210 **The foregoing Contract has been reviewed and approval is recommended:**

211 Ordinance No. [REDACTED] C.M.S.

212 Approved by City Council

213 APPROVED AS TO FORM:

214 _____

215 Barbara J. Parker

216 City Attorney

217 BN 46562778v1

Date



Exhibit 2

Exhibit 1B Maximum Monthly Recycling Service Rates MFD Residential Recycling Collection					
A Residential Recycling Collection Services					
1	MFD Cost Per Dwelling Unit Per Month	\$ 9.20	per dwelling unit per month		
B Ancillary Services					
1	MFD Cart Excess Frequency Collection	\$ 44.04	each additional cart/occurrence		
2	MFD Bin Excess Frequency Collection	\$ 75.64	each additional bin/occurrence		
3	Additional Cart Exchange	\$ 59.88	each additional cart/occurrence		
4	Additional Cart Replacement	\$ 89.81	each additional cart/occurrence		
5	Additional Bin Exchange	\$ 64.86	each additional bin/occurrence		
6	Additional Bin Replacement	\$ 399.17	each additional bin/occurrence		
7	Premium Backyard MFD Recycling Services	\$ 27.85	monthly per cart		
C Push Rates		0-25 feet	26-50 feet	51-75 feet	76-100 feet
1	Push Rate (monthly per bin)	\$ 152.68	\$ 309.60	\$ 466.53	\$ 619.21
D Bin Cleaning		1-4 CY Bin	5+ CY Bin		
1	Cleaning Rate	\$ 84.82	\$ 106.03		
E Additional Services		Rates			
1	Key Service	\$ 41.91	each month/customer		
2	Difficult to Service Rate	\$ 84.82	each month/customer		
F Special Adjustments		Rates			
The following Special Adjustments shall only be applied to the rates on this Exhibit 1B as set forth below.					
1	RR Special CPI Deferral Adjustment (Year 2 Only)	% TBD	All Rates in Section A through E for Year 2.		
2	RR Special CPI Deferral Adjustment (Year 3 Only)	% TBD	All Rates in Section A through E for Year 3.		
3	RR Special \$0.97 Adjustment (Years 2-4 Only)	\$ 0.97	All Rates in Section A for Years 2 through 4.		
4	RR Local 6 Adjustment (Years 2-5 Only)	\$ 0.35	All Rates in Section A for Years 2 through 5.		
G Recyclable Materials Contamination Surcharge		Rates			
1	Contamination Rate - First Incident	\$ 25.00	Per Occurrence		
2	Contamination Rate - Subsequent Incidents	\$ 50.00	Per Occurrence		

NOTICE AND DIGEST

ORDINANCE AMENDING ORDINANCE NO. 13274 C.M.S. WHICH AWARDED CALIFORNIA WASTE SOLUTIONS, INC. (“CWS”) AN EXCLUSIVE RESIDENTIAL RECYCLING COLLECTION SERVICES FRANCHISE CONTRACT (“RR FRANCHISE AGREEMENT”), TO AUTHORIZE AND APPROVE THE FIRST AMENDMENT TO THE RR FRANCHISE AGREEMENT WHICH WILL:

- (1) CLARIFY THE RATE FOR PREMIUM BACKYARD MULTIFAMILY (“MFD”) RECYCLING SERVICES FOR CARTS, AND**
- (2) MODIFY CERTAIN PROVISIONS AND SERVICES CWS PROVIDES UNDER THE RR FRANCHISE AGREEMENT AS DESCRIBED AND SPECIFIED IN THIS ORDINANCE AND FIRST AMENDMENT TO THE RR FRANCHISE AGREEMENT; AND**
- (3) ADOPT APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”) FINDINGS**

This Ordinance will amend Oakland City Ordinance no. 13274 C.M.S. to authorize and approve the First Amendment of the Exclusive Residential Recycling Collection Services Franchise Contract (“RR Franchise Agreement”) between the City of Oakland and California Waste Solutions, Inc. (“CWS”) in order to: (1) Clarify the rate for Premium Backyard Multifamily (“MFD”) Recycling Services for carts, (2) Modify certain provisions and services CWS provides under the RR Franchise Agreement, and (3) Adopt Appropriate CEQA Findings.