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APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. 13676 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, DEC 21 2021

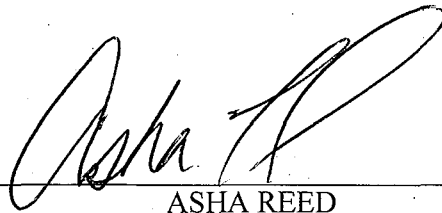
PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT FORTUNATO BAS — 8

NOES – 0

ABSENT – 0

ABSTENTION – 0

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

Introduction Date  
**DEC 07 2021**

Date of Attestation: January 14, 2022

**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.**

1 **FIRST AMENDMENT TO THE RESIDENTIAL RECYCLING**  
2 **COLLECTION SERVICE CONTRACT**

3 This First Amendment, by and between the CITY OF OAKLAND, in the State of California,  
4 hereinafter referred to as "CITY" and CALIFORNIA WASTE SOLUTIONS, INC., a California  
5 corporation, hereinafter referred to as "CONTRACTOR", (collectively referred to as the "Parties")  
6 is made and entered into as of the date that this First Amendment is approved by CITY's Council  
7 and a CITY Ordinance amending Ordinance No. 13274 C.M.S. is passed by CITY's Council (the  
8 "Effective Date).

9 **RECITALS**

10 WHEREAS, on May 22, 2015, pursuant to CITY Ordinance No. 13274 C.M.S. (Amending CITY  
11 Ordinance No. 13254 C.M.S.), CITY and CONTRACTOR entered into that certain Residential  
12 Recycling Collection Services Contract (the "Contract"), pursuant to which CONTRACTOR  
13 commenced performance of services on July 1, 2015;

14 WHEREAS, during the initial term of the Contract, disputes arose between CITY and  
15 CONTRACTOR regarding, amongst other matters, the maximum rates CONTRACTOR may  
16 charge Customers for certain services provided by CONTRACTOR under the Contract, resulting  
17 in a lawsuit filed by CITY against CONTRACTOR, together with a cross-complaint filed by  
18 CONTRACTOR against CITY, captioned *City of Oakland v. California Waste Solutions, Inc.*, Case  
19 No. RG17853559, Alameda County Superior Court;

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

23 WHEREAS, the Settlement Agreement provides for the amendment of certain provisions of the  
24 Residential Recycling Collection Services Contract, as specified in this First Amendment to the  
25 Contract ("First Amendment");

26 WHEREAS, this First Amendment will modify (a) the services specified within the Contract and to  
27 be provided by CONTRACTOR and (b) the terms and conditions pursuant to which  
28 CONTRACTOR provides such services, in each case in accordance with the terms and conditions  
29 of the Contract, as modified by this First Amendment; and

30 WHEREAS, this First Amendment has been developed by and is satisfactory to CITY and  
31 CONTRACTOR.

32 NOW THEREFORE, in consideration of the mutual covenants, conditions and consideration  
33 contained herein, CITY and CONTRACTOR hereby agree as hereinafter set forth:

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**ARTICLE 1. CHANGES TO TEXT OF CONTRACT**

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The Contract modifications are as follows:

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1. The above recitals are incorporated herein by reference and are made a part of this Contract.

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2. Section 8.01 Material Diversion Standard is amended as follows:

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

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

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

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

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

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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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174 Each of the parties has received the advice of legal counsel prior to signing this First Amendment.  
175 The parties agree that no provision or provisions may be subject to any rule of construction based  
176 upon any party being considered the party "drafting" this First Amendment.

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**ARTICLE 6. SEVERABILITY/PARTIAL INVALIDITY**

178 If any term or provision of this First Amendment, or the application of any term or provision of this  
179 First Amendment to a particular situation, shall be finally found to be void, invalid, illegal or  
180 unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such  
181 term or provision shall remain in force and effect to the extent allowed by such ruling, and all other  
182 terms and provisions of this Agreement or the application of this Agreement to other situations shall  
183 remain in full force and effect.

184 Notwithstanding the foregoing, if any material term or provision of this First Amendment or the  
185 application of such material term or condition to a particular situation is finally found to be void, invalid,  
186 illegal or unenforceable by a court of competent jurisdiction, then the parties hereto agree to work in  
187 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**

189 This First Amendment shall become effective at such time as it is properly executed by CITY and  
190 CONTRACTOR and approved by CITY's Council, and a CITY Ordinance amending Ordinance  
191 No. 13274 C.M.S. is passed by CITY's Council (the "Effective Date"). The modifications to the  
192 Contract in this First Amendment shall only apply to the CITY's and CONTRACTOR's  
193 performance obligations on and after the Effective Date of this First Amendment, and in no event  
194 shall any such modifications be applied retroactively.

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**ARTICLE 8. COUNTERPARTS**

196 This First Amendment may be executed in counterparts with each counterpart being interpreted  
197 as an original, and all of which, taken together, shall constitute one and the same instrument. IN  
198 WITNESS WHEREOF, CITY and CONTRACTOR have executed this First Amendment on the  
199 day and year first written above.

200 CITY OF OAKLAND

CALIFORNIA WASTE SOLUTIONS, INC.

201 By: \_\_\_\_\_  
202 Edward Reiskin  
203 City Administrator

By: \_\_\_\_\_  
David Duong  
CEO & President

204 \_\_\_\_\_  
205 Date

\_\_\_\_\_  
Date

206 \_\_\_\_\_  
207 \_\_\_\_\_

City of Oakland Business License Number



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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:

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215 \_\_\_\_\_  
Barbara J. Parker

\_\_\_\_\_ Date

216 City Attorney

217 BN 46562778v1



**Exhibit 2**

<b>Exhibit 1B Maximum Monthly Recycling Service Rates MFD Residential Recycling Collection</b>					
<b>A Residential Recycling Collection Services</b>					
1	MFD Cost Per Dwelling Unit Per Month	\$ 9.20	per dwelling unit per month		
<b>B Ancillary Services</b>					
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		
<b>C Push Rates</b>		<b>0-25 feet</b>	<b>26-50 feet</b>	<b>51-75 feet</b>	<b>76-100 feet</b>
1	Push Rate (monthly per bin)	\$ 152.68	\$ 309.60	\$ 466.53	\$ 619.21
<b>D Bin Cleaning</b>		<b>1-4 CY Bin</b>	<b>5+ CY Bin</b>		
1	Cleaning Rate	\$ 84.82	\$ 106.03		
<b>E Additional Services</b>		<b>Rates</b>			
1	Key Service	\$ 41.91	each month/customer		
2	Difficult to Service Rate	\$ 84.82	each month/customer		
<b>F Special Adjustments</b>		<b>Rates</b>			
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.		
<b>G Recyclable Materials Contamination Surcharge</b>		<b>Rates</b>			
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.