

RESOLUTION NO. 20-09

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute, With Adjusted Terms, An Extension Of The Collection Service Agreement For Solid Waste Services Executed Between The City Of Emeryville And Waste Management Of Alameda County, Inc., Dated February 1, 2011 For An Additional Ten (10) Years From January 1, 2021 To December 31, 2030

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act") and subsequent additions and amendments (codified at California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Management within the jurisdiction; and

WHEREAS, on December 21, 2010 the City Council approved Resolution No. 10-204 authorizing a Franchise Agreement with Waste Management of Alameda County, Inc. (WMAC) for Solid Waste Collection and Diversion Services (Agreement) for a term starting February 1, 2011 and ending December 31, 2020; and

WHEREAS, said Agreement was executed on February 1, 2011 to provide for the collection, transportation, recycling, composting and/ or disposal of solid waste, including, but not limited to, the frequency and means of such collection, transportation, recycling, composting and/or disposal, and the charges and fees therefore be provided by contract for the public health, safety and well-being; and

WHEREAS, a review of the Agreement performed in 2019 by HF&H Consultants, LLC determined that WMAC met the requirement in Article 13 of the Agreement that no more than 8,000 tons of material shall be sent to landfill by December 31, 2020, thereby enabling the City to exercise its option to extend the term of the Agreement for up to two additional five (5) year periods; and

WHEREAS, on March 19, 2019, the City Council directed the City Manager to send notice to WMAC of the City's intent to exercise its option to extend the Agreement and to execute the necessary documents for the extension of the Agreement; and

WHEREAS, WMAC and the City have negotiated the terms of a ten (10) year extension to the Agreement as set forth in Exhibit A; and

WHEREAS, it is in the best interest of the residents and businesses of Emeryville to continue to receive favorable rates, reliable service, and materials diversion from the landfill; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville that the City Council of the City of Emeryville authorizes the City Manager to execute the necessary documents for the extension of the Agreement with adjusted terms as set forth in Exhibit A attached hereto.

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, February 4, 2020, by the following vote:

| | | |
|----------|----------|---|
| AYES: | <u>5</u> | Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina |
| NOES: | <u>0</u> | |
| ABSTAIN: | <u>0</u> | |
| ABSENT: | <u>0</u> | |


MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY

**AMENDMENT TO FRANCHISE AGREEMENT
FOR SOLID WASTE COLLECTION AND DIVERSION SERVICES**

THIS AMENDMENT TO FRANCHISE AMENDMENT (the "Amendment") is made and entered into as of this _____, 2020 by and between the City of Emeryville, a municipal corporation ("City"), and Waste Management of Alameda County, Inc., a California corporation ("Contractor").

WHEREAS, City and Contractor entered into a Franchise Agreement for Solid Waste Collection and Diversion Services (the "Agreement") dated February 1, 2011, and wish to modify the Agreement as provided below.

Now, therefore, in consideration of the mutual covenants, conditions and consideration contained herein, the City and Contractor hereby agree as set forth below:

1. Initial Term of Agreement. Section 5.01 of the Agreement is hereby replaced by the following:

"The initial term of this Agreement shall be for a period commencing on February 1, 2011 and terminating at midnight on December 31, 2030."

2. Contamination in Recyclables or Compostable Materials Containers. Section 6.03.2 is hereby added to the Agreement:

"6.03.2 CONTRACTOR is not obligated to collect Containers which are contaminated. For purposes of this Agreement, a Container is contaminated when, based on visual or digital inspection, (i) a Recyclables Container has more than 10% non-Recyclables (volume of the container) or any amount of Unacceptable Waste, or (ii) a Compostable Materials Container has more than 3% non-Compostable Materials (volume of the container) or any amount of Unacceptable Waste.

If CONTRACTOR elects to collect a contaminated Container, it may send (by mail and e-mail) a notice of violation. If the Customer has received at least two (2) notices of violation for a particular service (i.e., Recyclables or Compostable Materials), CONTRACTOR may charge the Customer the Contamination Rate set forth in Exhibit 3 for each subsequent violation; provided, however, CONTRACTOR must have photographic evidence of the contamination (which will be provided to the Customer). It will be assumed that Customers receive notices of violation on the third day after mailing. The Contamination Fee may be included on the Customer's regular invoice or billed separately. CONTRACTOR may dispose of the contents of a contaminated Container it elects to collect.

Customers may contact CONTRACTOR at the telephone number indicated on CONTRACTOR invoices and all notices regarding any questions or disputes. Contamination videos or images will be made available to Customers. Contamination

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Customers may contact CONTRACTOR at the telephone number indicated on CONTRACTOR invoices and all notices regarding any questions or disputes. Contamination videos or images will be made available to Customers. Contamination

Fees will be credited to Customers billed in error, including where there are blurry images, no visible contamination, incorrect Container association (Customer will be exempt from receiving any charges until Container is appropriately linked to the correct address), and where CONTRACTOR failed to follow the protocol set forth in Exhibit 3 attached hereto.

If the customer has not had a violation in 1 year since their most recent incident, the fee will reset to the lowest incident fee.

Changes in the nature of what materials are accepted as Recyclables and Compostables must be mutually agreed and public education, agreed upon between CONTRACTOR and the City, must be conducted before any Contamination Fee is imposed on a customer resulting from improper disposal of the changed materials.”

3. Overage Fees. The following is hereby added as Section 6.03.3 of the Agreement:

“For purposes of this Agreement, a container has an “overage” when materials exceed the “water line” of the container. CONTRACTOR may charge overage fees as set forth in the Agreement. When CONTRACTOR charges an overage fee, it will send the Customer a notice (by mail or e-mail) of the violation and have photographic evidence of the overage (which will be provided to the Customer). It will be assumed that Customers receive notices of the violation on the third day after mailing. The overage fee may be included on the Customer’s regular invoice or billed separately. Customers may contact CONTRACTOR at the telephone number indicated on CONTRACTOR invoices and all notices regarding any questions or disputes. Overage fees will be credited to Customers billed in error, including where there are blurry images, no visible overage, or incorrect Container association (Customer will be exempt from receiving any charges until Container is appropriately linked to the correct address).”

4. The following is hereby added as Section 6.08.2.1 of the Agreement:

“If a category of Recyclables has had a Negative Value for at least three months, and CONTRACTOR does not have the ability to stockpile such material at its processing facility due to permitting or space constraints, then CONTRACTOR may petition the City to either temporarily dispose of such material or, if there is a current market, obtain additional compensation from the City to continue to process and divert. For purposes of this section, material will have a Negative Value if the average price (see table below), plus any applicable CRV, for the most recent three-month period prior to the petition is negative.

CONTRACTOR petitions under this section will include documentation reasonably necessary for City to verify CONTRACTOR’s calculations including verification of CONTRACTOR’S inability to stockpile the material. CONTRACTOR will give City staff at least 10 days’ notice of a petition. The City will then have 60 days after submittal to respond to a properly submitted CONTRACTOR petition. If a CONTRACTOR petition is based on negatively valued materials, the City may elect to either permit

CONTRACTOR to temporarily dispose of the materials or require that CONTRACTOR continue to process and divert but permit CONTRACTOR to receive additional compensation.

The additional compensation would be made through the annual adjustments to CONTRACTOR's rates for the applicable customer base generating the materials. Any annual adjustments to the rates resulting from the application of this Section must be finalized no later than October 1st each calendar year and may increase rates by no more than .5% each year. The notice of annual rate increase shall include explanation of any portions of the increase that are attributable to this section. The additional compensation would equal tons of the commodity received since CITY's approval of CONTRACTOR's petition (based on most recent composition analysis) x dollar amount by which the commodity's value is negative for such period. Values of the categories of Recyclables will be determined as follows:

| Category | Single stream materials | Index/Value |
|------------------------|--|--|
| Mixed Paper | Phone books; magazines; gloss inserts and pamphlets; newspaper; mail; uncoated paperboard; uncoated printing; writing and office paper | PPW Mixed Paper #54 |
| Cardboard | Old corrugated containers/cardboard (uncoated) | PPW OCC #11 |
| Aluminum beverage cans | Aluminum cans - empty | SMP for Aluminum Cans (Sorted, Baled, picked up) |
| Steel/tin cans | Steel and tin cans - empty | SMP for Steel Cans (Sorted, Baled, picked up) |
| Plastic #1 | PET bottles with the symbol #1 - with screw tops only – empty | SMP for PET curbside |
| Plastic #2 Natural | Natural HDPE bottles with the symbol #2 - empty | SMP for Natural HDPE (baled, picked up) |
| Plastic #2 Colored | Colored HDPE bottles with the symbol #2 - empty | SMP for Colored HDPE (baled, picked up) |
| Plastic #5 | PP plastic bottles and tubs with the symbol #5 - empty | SMP PP post-consumer |
| Glass | Glass food and beverage containers - brown, clear and green – empty | SMP 3 Mix |

If an index above is discontinued, the parties will mutually agree on a replacement index. If City has approved CONTRACTOR's temporary disposal of materials as provided above, then CONTRACTOR will give City monthly updates as to the value for the previous month. If the value becomes positive, on average, for a three-month period, then

CONTRACTOR will resume processing and diverting such material beginning with the month following that three-month period.”

5. Contractor’s Personnel. The following is hereby added as Section 16.10 of the Agreement:

“CONTRACTOR will hire and retain one additional outreach/compliance staff member dedicated to Emeryville’s customers. This person will focus on public outreach and education in preparation for SB 1383 regulations (when finalized), as well as a protocol for reporting and record maintenance of the field reviews and public education activities they will be performing. This person will also assist the City with the identification of Tier 1 and Tier 2 commercial edible food generators and the provision of information on the available food recovery programs, generator requirements, and food recovery organizations and services. Depending on the state of the requirements in the future, it may be appropriate to lower the amount of required staff dedicated to these activities as less issues are identified. CONTRACTOR and City will mutually agree on any decrease in staffing. Implementation of all other requirements of SB 1383, when finalized, will be subject to Section 21.01. However CONTRACTOR agrees that once the SB 1383 requirements for color changes to carts and bins are finalized, it will provide City with cost estimates for replacement of all carts and bins, in addition to costs for replacement of just lids, taking into account the normal annual costs of cart and lid replacement regularly borne by CONTRACTOR.”

6. Compliance with Law. Section 24.01 of the Agreement is hereby replaced by the following:

“Compliance with Law. CONTRACTOR shall comply, at its expense, fully and faithfully with all local, state, and federal laws, ordinances, regulations and permit requirements, including CITY Legislation, as they may be amended from time to time, applicable to its performance under this Agreement; including, but not limited to, local, state, and federal laws, ordinances, and regulations related to Collection, Disposal, and processing of Solid Waste; laws, ordinances, and regulations related to privacy and protecting the confidentiality of personal information of customers; and laws, ordinances, and regulations related to protection or contamination of the environment.”

7. Rates. Exhibit 1 (Approved Rates and Charges) of the Agreement is hereby replaced by the Exhibit 1 attached hereto. With regard to the RRI adjustment that would occur on January 1, 2021 pursuant to Section 12.09.1 of the Agreement, instead of such adjustment, the Collection Services rates, fees and surcharges will be increased by 10%. RRI adjustments for other years will otherwise occur pursuant to Section 12.09.1.

8. Notice. The second CONTRACTOR notice address in Section 32.07.2 is hereby replaced by the following:

Waste Management
Attn. Legal Counsel

222 S. Mill Avenue, Suite 333
Tempe, AZ 85281

9. Refuse Rate Index. Exhibit 2 (Refuse Rate Index) of the Agreement is hereby replaced by the Exhibit 2 attached hereto.

10. Liquidated Damages. The following liquidated damages are hereby added to Section 23.03:

“vv. Failure to properly notify a customer of an incident of contamination (Section 6.03.2) or an incident of overage charge (Section 6.03.3): \$100 per incident

ww. Failure to properly credit a customer billed in error for an overage (Section 6.03.3) or contamination charge (Section 6.03.2): \$100 per incident”

11. Except as otherwise provided in this Amendment, all other terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the CITY and CONTRACTOR have duly authorized execution of this Amendment, and have executed the Amendment as of the dates set forth below.

CITY OF EMERYVILLE

WASTE MANAGEMENT OF
ALAMEDA COUNTY, INC.

By: _____

By: _____
Barry Skolnick, President

APPROVED AS TO FORM:



EXHIBIT 1
Approved Rates and Charges

EXHIBIT 2
Refuse Rate Index (RRI)

The “Refuse Rate Index” adjustment shall be calculated in the following manner:

The expenses of collection services for the designated fiscal period shall be prepared in a format set forth in the Operating Cost Statement, provided below.

The expenses of collection services shall be broken down into the following six Cost Categories: Local 70 & 1546 Labor and Benefits, CNG Fuel, Vehicle Replacement, Vehicle Maintenance, All Other and Disposal.

The Data Sources below will be used to calculate the “RRI Percentage Change” for each Cost Category. The RRI Percentage Change will be based on the year over year average change ending in September in each Data Source. In the event any index is discontinued, a successor index shall be selected by the parties that is most closely equivalent to the discontinued index as recommended by the BLS. The Labor and Benefits cost category is changed based on the year over year change in the hourly wage rate, pension contribution cost and health & welfare premium costs. The Disposal cost category is changed based on the change in the disposal rate per ton calculated in accordance with the terms of the City’s Disposal Services Agreement.

For each RRI adjustment, each Cost Category will be assigned an Item Weight percentage based on its proportionate share of all expenses in the Operating Cost Statement for Waste Management of Alameda County, Inc.

The Weighted Percentage Change for each Cost Category will equal the RRI Percentage Change x its Item Weight.

The annual RRI adjustment will be the sum of each Cost Category’s Weighted Percentage Change.

See below sample calculation.

| Item# | Category | Data Source | RRI Percentage Change | Item Weight | Weighted Percentage Change |
|---|--|---|-----------------------|----------------|----------------------------|
| 1 | Local 70 & 1546 Union Labor & Benefits | Union Wage & Benefit Calculation | 3.02% | 26.19% | 0.79% |
| 2 | CNG Index | PG&E Schedule G-NGV1 https://www.pge.com/tariffs/GRF_SHTML#GNGV! | -1.34% | 2.45% | -0.03% |
| 3 | Vehicle Replacement | Series ID: pcu336211336211 Truck, bus, car and other vehicle bodies, for sale separately | 1.53% | 3.97% | 0.06% |
| 4 | Vehicle Maintenance | Series ID: pcu3339243339243 Parts and attachments for industrial work trucks | 0.88% | 1.18% | 0.01% |
| 5 | CPI All Items (Including non-union labor & benefits) | Series ID: cuura422sa0 as of 1/1/18 replaced by Series ID: CUURS49BSA0 Consumer Price Index, All Urban Consumers, All Items Bay Area | 3.22% | 34.12% | 1.10% |
| 6 | Disposal | Disposal rate under the CITY's Disposal Service Agreement | 2.84% | 32.09% | 0.91% |
| Proposed Extension rate adjustment | | | | 100.00% | 2.84% |

Note that in accordance with Section 12.09.3 of the Agreement, the RRI adjustment shall never be more than 5% nor less than 0% during the term of the Agreement.

| Example of Union Labor Increase | | | | | | | |
|---------------------------------|---------|---|---|------------------------------------|---------------|----------------|----------|
| Union | Rate | Prior Period | Current Period | Prior Period | Prior Period | Current Period | Increase |
| Local 70 | | Average Current Hourly Wage Rate / Monthly Cost | Average Current Hourly Wage Rate / Monthly Cost | # Employees at end of period | Costs | Costs | |
| Wages | Hrly | \$ 38.13 | \$ 39.46 | 250 | \$ 19,827,600 | \$ 20,521,566 | |
| Pension | Hrly | \$ 12.51 | \$ 12.95 | 250 | \$ 6,505,200 | \$ 6,732,882 | |
| Health & Welfare | Monthly | \$ 2,123.00 | \$ 2,123.00 | 250 | \$ 6,369,000 | \$ 6,369,000 | |
| | | | | | | | |
| Local 1546 | | | | | | | |
| Wages | Hrly | \$ 44.42 | \$ 45.97 | 50 | \$ 4,619,680 | \$ 4,781,369 | |
| Pension | Hrly | \$ 8.86 | \$ 9.30 | 50 | \$ 921,440 | \$ 967,512 | |
| Health & Welfare | Hrly | \$ 12.62 | \$ 13.25 | 50 | \$ 1,312,590 | \$ 1,378,220 | |
| | | | | | \$ 39,555,510 | \$ 40,750,549 | 3.02% |

Operating Cost Statement:

The following costs will be included in the Operating Cost Statement:

- Labor and Benefits:** All labor accounts for WMAC's employees domiciled at 172-98th Avenue, Oakland, CA. who are members of Local 70, Local 1546 Salaries, Wages – hourly & overtime, Bonuses, Commissions, Other Compensation, Compensated Absences & Vacation, Severance, Health & Welfare Insurance Premiums, Pension & Retirement Benefits, Workers Compensation costs, Payroll Taxes Other employee costs including safety gear, related to the services provided under this Contract.
- CNG Fuel:** All fuel costs (CNG, diesel, gas).
- Vehicle Replacement:** Collection and collection related vehicle depreciation accounts.

Vehicle lease and rental accounts related to collection or collection related vehicles.
- Vehicle Maintenance:** All collection and collection related vehicle paint, Tires, Parts & Supplies, Lubricants, Third Party Services, Other Maintenance accounts.
- All Other:** All other expense accounts related to the services provided under this Agreement not included above. This category includes, but not limited to, all insurance (e.g., general liability, fire, truck damage, and extended coverage); rent on property; truck licenses and

permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; office supplies; printing; postage; trade association dues and subscription; seminars & education; advertising; travel costs; taxes; and miscellaneous other items.

Disposal: All disposal accounts.

Exhibit 3
Contamination Notification and Surcharge Protocol