

FIRST AMENDMENT

TO

EXCLUSIVE FRANCHISE AGREEMENT

BETWEEN

CITY OF CARSON

AND

WASTE RESOURCE TECHNOLOGIES, INC.

FOR

INTEGRATED SOLID WASTE MANAGEMENT SERVICE

**FIRST AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT
FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES**

THIS FIRST AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES (“First Amendment”) is made and entered into this ____ day of September, 2019 by and between **WASTE RESOURCE TECHNOLOGIES, INC.**, a Delaware corporation ("**Franchisee**" or "**WRT**") and **THE CITY OF CARSON**, a municipal corporation of the State of California ("**City**"). City and Franchisee are occasionally herein referred to each as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, on March 15, 2018, City and WRT entered into that certain *EXCLUSIVE FRANCHISE AGREEMENT FOR PROVISION OF SOLID WASTE HANDLING SERVICES* ("**WRT Franchise Agreement**");

WHEREAS, on March 15, 2018, **USA Waste of California, Inc.** ("**USA Waste**") filed an action against City and WRT, captioned *USA WASTE OF CALIFORNIA, INC., dba Waste Management L.A. Metro Hauling, a Delaware corporation v. CITY OF CARSON et al.*, Los Angeles Superior Court Case No. BS172744, in which USA Waste sought a writ of mandate voiding the WRT Franchise Agreement on the grounds that the award to WRT was unlawful, procedurally unfair, arbitrary and capricious ("**RFP Action**");

WHEREAS, on about May 22, 2018 USA Waste filed another action against the City and WRT, captioned *USA WASTE OF CALIFORNIA, INC., dba Waste Management L.A. Metro Hauling, a Delaware corporation v. CITY OF CARSON*, Los Angeles Superior Court Case No. BS173645, in which USA Waste sought a writ of mandate compelling City to honor and recognize its right to continue commercial and industrial waste hauling services in the City of Carson pursuant to California Public Resource Code Section 49520 ("**Continuation Rights Action**");

WHEREAS, City and WRT desire to resolve the claims brought by USA Waste in the RFP Action and the Continuation Rights Action (collectively "**the Litigation**");

WHEREAS, City, WRT and USA Waste have agreed to settle the Litigation on certain terms and conditions that are memorialized in a written Settlement Agreement and Releases ("**Settlement Agreement**");

WHEREAS, the terms of the Settlement Agreement require WRT to deliver a portion of the Solid Waste it collects in the City of Carson to the MRF/TS owned and operated by USA Waste in the City ("**Carson Transfer Station**"), and

WHEREAS, the covenant that WRT use the Carson Transfer Station along with certain other duties and obligations set forth in the Settlement Agreement require amendments to the duties and obligations of WRT contained in the WRT Franchise Agreement,

NOW, THEREFORE, for the purposes set forth above, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree to amend the terms of the WRT Franchise Agreement as set forth below.

AMENDMENTS

1. A new Section 3.3.2(g) is added to the WRT Franchise Agreement to read as follows:

(g) *Temporary Reduction in Administrative Fees.* Notwithstanding the provisions in Section 3.3.2(b)-(e), above, and only for the period beginning July 1, 2018 and ending December 31, 2019, the Administrative Fees shall be limited to Eighty Percent (80%) of the amounts set forth in the Franchise Agreement (“the Reduced Administrative Fees”). The Reduced Administrative Fees are due and payable as set forth in Section 3.3.4(a) of the Franchise Agreement. City acknowledges that Franchisee has already paid the Reduced Administrative Fee due and owing through June 30, 2019.

2. Section 5.1.1 of the WRT Franchise Agreement is amended as follows (deletions shown in ~~strike through~~, additions shown in underline):

5.1.1 *Diversion Processing; Facilities.* To facilitate Franchisee’s Diversion obligations hereunder, the Parties agree that Solid Waste, Recyclables, and Organic Waste shall be delivered to one or more of the recovery facilities (Transfer Stations and/or Materials Recovery Facilities) identified in Franchisee’s proposal (**Exhibit E**) for Diversion recovery prior to final disposal at a Disposal Site. Franchisee shall direct all source-separable or separated Organic Wastes to an Organics processing facility, as approved by the City Manager, capable of meeting the requirements AB 1826 and any other applicable Refuse Impact Reduction Law. The list and descriptions of facilities in **Exhibit E** to be utilized prior to final disposition at a Disposal Site may be amended at any time with the written concurrence of the City Manager, ~~excepting that any use, operation or acquisition of a recovery facility by Franchisee within the City of Carson jurisdictional boundaries shall require prior approval by the City Council.~~ However, Franchisee agrees to use Reasonable Business Efforts to maximize the amount of Solid Waste, Recyclables and Organic Wastes processed at Waste Resources Recovery, Inc. (“WRR”), located at 357 West Compton Boulevard, Gardena, CA 90248, and WRR will reserve tipping capacity for such Carson-generated materials at WRR.

3. A new Section 5.5 is added to the Agreement as follows:

5.5 Relief Arising From Required Use of USA Waste Transfer Station

Notwithstanding the provisions in Sections 5.1 through 5.3, above, and only for the period beginning July 1, 2018 and ending December 31, 2022, Franchisee is relieved of its obligations to meet the Diversion requirements set forth in Sections 5.1 through 5.3, above, and Section 5200 of the Carson Municipal Code. Nothing in this Section 5.5 relieves Franchisee of its obligations related to Diversion education, Diversion program development, Diversion reporting requirements, or Diversion of Solid Waste not delivered to the Carson Materials Recovery Facility /Transfer Station located at 135-401 Francisco Street, 19803-19809 Main Street, 19821 Main Street and 19831 Main Street, Carson, CA 90745 (“**Carson Transfer Station**”).

4. The first paragraph of Section 7.2.2 of the WRT Franchise Agreement is amended as follows (deletions shown in ~~strike through~~, additions shown in underline):

7.2.2 COLA Adjustments; Government Code § 53756. Subject to the requirements of Proposition 218 and this Agreement, the Maximum Rate Schedule may be

adjusted to account for annual inflationary increases to all regular, weekly service rates for both Single-Family Residential Units and Commercial and Industrial Units in an amount equal to the annual percent change in the CPI. This adjustment (the "COLA Adjustment") shall be made each July 1st and shall be equal to the percentage change in CPI-U CUSR0000SEHG02 (Garbage and Trash Collection, US City Average, not seasonally adjusted) for the year that ended the immediately preceding March 31 ~~for Los Angeles-Riverside-Orange counties, base year 1967~~. The COLA Adjustment calculation is [current rate X (1 + the percentage change in CPI-U) = new rate]. Notwithstanding the above, the COLA Adjustment to the Maximum Rate Schedule shall be subject to the following requirements:

5. Exhibit E of the WRT Franchise Agreement is deleted in its entirety and replaced with the Exhibit E attached to this First Amendment.
6. Exhibit G of the WRT Franchise Agreement is deleted in its entirety and replaced with the Exhibit G attached to this First Amendment.
7. Except as provided in this First Amendment, the terms and conditions of the WRT Franchise Agreement shall remain in full force and effect.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY:

CITY OF CARSON, a California municipal corporation

By: _____

Sharon Landers, City Manager

APPROVED AS TO FORM:

By: _____

Sunny K. Soltani, City Attorney

WRT:

WASTE RESOURCES TECHNOLOGIES, INC., a Delaware corporation

By: _____

Name:

Title:

By: _____

Name:

Title:

Two corporate officer signatures required when WRT is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. WRT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO WRT'S BUSINESS ENTITY.

EXHIBIT E

LIST OF TRANSFER AND MATERIAL RECOVERY FACILITIES

Alameda Recycling & Metals 1230 Alameda Street Wilmington, CA 90744	Amigos Nursery 1420 East 92nd Street Los Angeles, CA 90002
B&B Pallets 439 Carlin Avenue Compton, CA 90222	California Waste Services (CWS) 621 W. 152nd Street Gardena, CA 90247
Downey Area Recycling & Transfer (DART) 9770 Washburn Road Downey, CA 90241	Green Wise Soil Technologies (GWST) 10120 Miller Way South Gate, CA 90280
LA Fiber 4920 South Boyle Avenue Vernon, CA 900058	Potential Industries 922 East E Street Wilmington, CA 90744
Puente Hills Materials Recovery Facility (PHMRF) 13130 Crossroads Parkway South Whittier, CA 91746	SA Recycling 16815 Main Street Gardena, CA 90248
South Bay Recycling 15001 South San Pedro St. Gardena, CA 90248	Waste Resources Recovery 357 W. Compton Blvd. Gardena, CA 90248
WestRock 20502 Denker Avenue Torrance, CA 90501	USA Waste Carson Transfer Station 321 West Francisco Street Carson, CA

EXHIBIT G

LIST OF DESIGNATED DISPOSAL SITES

Chiquita Canyon Landfill

29201 Henry Mayo Dr.
Castaic, CA 91384

Southeast Resource Recovery Facility (SERRF)

120 Pier S Avenue
Long Beach, CA 90802

Antelope Valley Recycling and Disposal Facility

1200 West City Ranch Road
Palmdale, CA

El Sobrante Landfill

10910 Dawson Canyon Road
Corona, CA

Lancaster Landfill and Recycling Center

600 East Avenue F
Lancaster, CA

Simi Valley Landfill and Recycling Center

2801 North Madera Road
Simi Valley, CA