

## **RESOLUTION NO. 21-014**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA TO CONSIDER AND APPROVE A RESIDENTIAL AND COMMERCIAL WASTE MANAGEMENT SERVICES RATE ADJUSTMENT FOLLOWING NOTICED MAJORITY PROTEST HEARING AND APPROVING AN ATTENDANT SECOND AMENDMENT TO FRANCHISE AGREEMENT FOR SOLID WASTE SERVICES

**WHEREAS**, effective March 15, 2018 the City of Carson (City) elected to exclusively negotiate a Franchise Agreement for Integrated Residential and Commercial Waste Management Services (Agreement) between the City and Waste Resources Technologies, (WRT); and

**WHEREAS**, under the Agreement, WRT is the exclusive franchise refuse hauler for the City and collects, transports, processes, and disposes of all solid waste and recyclables which are generated or accumulated within the City; and

**WHEREAS**, in November 2019, WRT provided the City a comprehensive schedule of customer rates for non-hazardous solid waste handling services for all property owners in the City, including a proposed rate adjustment for residential and commercial solid waste collection services; and

**WHEREAS**, the rates proposed by WRT in November 2019 were reviewed, analyzed and negotiated between WRT and the City (through a City subcommittee consisting of two Councilmembers). At the conclusion of such analyses, the City and WRT agreed to process the proposed rate structure attendant to this resolution and present such rate structure to the City's citizenry; and

**WHEREAS**, under the proposed rate adjustment, commencing July 1, 2021, residential and commercial charges for solid waste handling services would change in order to cover certain direct and unforeseen costs incurred by WRT as a

result of legal obstructions to WRT's transition into providing City solid waste services and the fiscal impacts of the COVID-19 pandemic. Under the proposed rate adjustment, commencing July 1, 2021, residential and commercial charges would increase by an increase of approximately 7.95%; and

**WHEREAS**, it is legally unsettled whether California Constitution Article XIID's ("Proposition 218") requirements apply to refuse services provided by private, third-party franchised waste haulers (as opposed to refuse services provided directly by a government agency). Nonetheless, in the interest of public outreach and transparency, the City of Carson has traditionally followed the Proposition 218 process, even for franchised, private waste haulers; and

**WHEREAS**, on December 30, 2020, a "Notice of Public Hearing" was mailed to all residential and commercial property owners served by WRT, as required by Proposition 218; and

**WHEREAS**, the Notice of Public Hearing instructed residential and commercial property owners on how to file a protest on the proposed water rates, in accordance with Proposition 218; and

**WHEREAS**, the City Council of the City of Carson held a fair and noticed public majority protest hearing as described in the Notice of Public Hearing on February 16, 2021, to consider the proposed residential and commercial solid waste collection services rate structure to be applied to commercial rate increases pursuant to the requirements under Proposition 218; and

**WHEREAS**, at said public hearing, all interested residential and commercial property owners were afforded the opportunity to protest the residential component of the proposed new refuse rate schedule. A majority protest against the residential and commercial component of the comprehensive refuse rate structure was not received by the City Council.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON,  
CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. The foregoing Recitals are hereby found to be true and correct and incorporated herein by this reference.

Section 2. The Council hereby ratifies the Proposition 218 process and adopts the refuse rates proposed by WRT as set forth in the Notice of Public Hearing mailed to all residential and commercial property owners on December 30, 2020, and pursuant to Proposition 218 finds as follows:

- a) *Fee for Service Provided Only:* Revenues derived from the fee may not be used for any purpose other than that for which the fee was imposed. The fees collected are used to pay WRT for the refuse collection and disposal services it provides to the City's residential and commercial customers, and WRT's accrual of direct and unforeseen costs incurred by WRT as a result of legal obstructions to WRT's transition into providing City solid waste services and the fiscal impacts of the COVID-19 pandemic. This conclusion is further supported by all findings of fact presented at the City Council hearing, including without limitation those facts stated in the accompanying staff report, all of which evidence is incorporated herein by this reference.
- b) *Fee not to Exceed Cost of Service:* Revenues derived from the fee may not exceed the funds required to provide refuse service. The City's cost for refuse service is established by the Agreement, which permits WRT to recover its actual costs. It is found that WRT accrued direct and unforeseen costs of service as a result of legal obstructions to WRT's transition into providing City solid waste services and the fiscal impacts of the COVID-19 pandemic. This conclusion is further supported by all findings of fact presented at the City Council hearing, including without limitation those facts stated in the accompanying staff report, all of which evidence is incorporated herein by this reference.
- c) *Fee not to Exceed Proportional Cost:* The amount of the fee may not exceed the proportional cost of the refuse service attributable to the parcel. WRT proposes that the proposed refuse rates are reasonably proportional and cost-based, and meet the general requirements of fairness and equity under Proposition 218. In the course of analyzing the rates attendant to this resolution, a City subcommittee, consisting of two Councilmembers, retained the services of an independent auditor/consultant for purposes of reviewing and verifying the rate structure proposed by WRT, which independent audit supports the rate structure. This conclusion is further supported by all findings of fact presented at the City Council hearing, including without limitation those

facts stated in the accompanying staff report, all of which evidence is incorporated herein by this reference.

Section 3. The Council has fully considered this matter and has:

- i. Reviewed the information submitted herewith regarding the proposed solid waste service rate adjustment for residential and commercial accounts, the parcels to which the proposed fee adjustment would apply, and the reasons and basis for the adjustment and the fees;
- ii. Provided notice of the proposed fee adjustment to the record owners (or renters responsible for payment of the fee) of all parcels to which the proposed fee adjustment would apply in accordance with Article XIID of the California Constitution;
- iii. Heard and received all written protests from any owners (or renters) of real property subject to the fee;
- iv. Taken and received oral and documentary evidence pertaining to the proposed fee adjustment; and
- v. Been fully informed of this matter.

Section 4. The Council finds that insufficient written protests were presented to prevent the residential and commercial component of the proposed WRT refuse rate schedule from being imposed.

Section 5. The Council finds that based on these facts and the circumstances and information received during the public hearing, the changes in residential and commercial refuse rates proposed by WRT are necessary and are hereby adopted, contingent upon there being no majority protest from a majority of all property owners under an omnibus protest by all those permitted to protest the proposed new rate system. (*Morgan v. Imperial Irrigation District* (2014) 223 Cal.App.4th 892.) Said refuse rates shall take effect on July 1, 2021.

Section 6. The Council hereby adopts that "Second Amendment to Exclusive Franchise Agreement between City of Carson and Waste Resource Technologies, Inc. for Integrated Solid Waste Management Service," attached hereto as Exhibit A, which Amendment includes the new WRT rate structure.

Section 7. This Resolution shall become effective thirty (30) days from the adoption of this Resolution.

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council this 16<sup>th</sup> day of February, 2021.

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MAYOR LULA DAVIS-HOLMES

ATTEST:

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CITY CLERK DONESIA GAUSE

APPROVED AS TO FORM:

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City Attorney

**SECOND AMENDMENT**

TO

**EXCLUSIVE FRANCHISE AGREEMENT**

BETWEEN

**CITY OF CARSON**

AND

**WASTE RESOURCE TECHNOLOGIES, INC.**

FOR

**INTEGRATED SOLID WASTE MANAGEMENT SERVICE**

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

**THIS SECOND AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES** (“**Second Amendment**”) is made and entered into this \_\_\_\_ day of December, 2020 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**, in September 2019 City and WRT desire to resolve the claims brought by USA Waste in the RFP Action and the Continuation Rights Action (collectively “**USA Waste Litigation**”);

**WHEREAS**, in the course of the USA Waste Litigation, the City and WRT Parties entered into a series of reimbursement agreements, culminating in a “**Second Amended Reimbursement Agreement**” dated December 13, 2018 (“**Reimbursement Arrangement**”),

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

**WHEREAS**, WRT claims that it incurred costs and suffered monetary losses as the result of the USA Waste Litigation and the COVID-19 pandemic (“**WRT’s Cost Recovery Claims**”);

**WHEREAS**, WRT and the City have agreed to resolve WRT's Cost Recovery Claims on certain terms and conditions that are memorialized in a written Settlement Agreement and Releases (**"WRT/Carson Settlement Agreement"**); and

**WHEREAS**, the WRT/Carson 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. Exhibit A of the Agreement is deleted in its entirety and replaced with the Exhibit A attached to this Second Amendment.

2. Section 1.2.20 of the Agreement is hereby revised in its entirety to read as follows:

"1.2.20 CPI. "CPI" means the Consumer Price Index for Trash and Garbage Collection - CUUR0000SEHG02, U.S. City average."

3. Except as provided in this Second Amendment, the terms and conditions of the 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:\_\_\_\_\_

MAYOR LULA DAVIS-HOLMES

**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 A**  
**MAXIMUM RATE SCHEDULE**

**Residential**

Standard Service (96/96/96)	\$22.53
Each additional 64-gallon refuse cart	50% of 64-gallon Rate
Each additional 96-gallon refuse cart	50% of 96-gallon Rate
Walkout service for eligible customers	No Charge
Walkout service for ineligible customers	\$29.69
Senior Citizen 32-gallon cart	\$8.64
Senior Citizen 64-gallon cart	\$11.87
Senior Citizen 96-gallon cart	\$16.19
Extra Bulky(s) Each	\$16.75
Extra Sharps Kit over 1 per Quarter	\$16.19

**Commercial/Multi-Family**

Bin Size	Collections per Week							Extra Dump
	1x	2x	3x	4x	5x	6x	7x	
2 cubic yards	\$170.02	\$340.04	\$510.06	\$680.09	\$850.11	\$1,020.13	\$1,190.15	\$34.44
3 cubic yards	\$188.91	\$377.83	\$566.74	\$755.65	\$944.56	\$1,133.48	\$1,322.39	\$47.50
4 cubic yards	\$255.03	\$510.06	\$765.10	\$782.64	\$978.03	\$1,174.50	\$1,381.76	\$31.85
6 cubic yards	\$321.15	\$642.30	\$963.45	\$1,284.61	\$1,605.76	\$1,926.91	\$2,248.06	\$68.87
Recycling Cart for Bin Customers		Per Cart / Per Pickup / Per Day (Monthly)						\$52.90
Scout / Push Out Service		Per Cart / Per Pickup / Per Day (Monthly)						\$35.62
Locking Bins		Installation						\$59.37
		Per Cart / Per Unlock / Per Week (Monthly)						\$29.69

*Note: Recycling is 50% of above refuse rates*

**Mobile Home Park**

Bin Size	Collections per Week							Extra Dump
	1x	2x	3x	4x	5x	6x	7x	
2 cubic yards	\$59.37	\$189.99	\$274.19	\$358.39	\$442.60	\$526.80	\$669.29	\$33.46
3 cubic yards	\$99.31	\$198.63	\$287.15	\$375.67	\$464.19	\$552.70	\$684.40	\$45.34
4 cubic yards	\$140.34	\$280.67	\$410.21	\$539.75	\$669.29	\$798.83	\$955.36	\$48.58
6 cubic yards	\$174.88	\$349.76	\$513.84	\$677.93	\$842.01	\$1,006.09	\$1,187.45	\$65.85
Recycling Cart for Bin Customers		Per Cart / Per Pickup / Per Day (Monthly)						\$53.44
Scout / Push Out Service		Per Cart / Per Pickup / Per Day (Monthly)						\$35.62
Locking Bins		Installation						\$59.37
		Per Cart / Per Unlock / Per Week (Monthly)						\$29.69

*Note: Recycling is 50% of above refuse rates*

## Senior Housing Complex

Bin Size	Collections per Week							Extra Dump
	1x	2x	3x	4x	5x	6x	7x	
2 cubic yards	\$61.53	\$123.06	\$173.80	\$224.54	\$275.27	\$326.01	\$399.42	\$32.39
3 cubic yards	\$65.85	\$131.70	\$186.75	\$241.81	\$296.86	\$351.92	\$429.64	\$43.18
4 cubic yards	\$91.76	\$183.52	\$264.48	\$345.44	\$426.40	\$507.37	\$615.32	\$45.34
6 cubic yards	\$128.46	\$256.92	\$374.59	\$492.25	\$609.92	\$727.58	\$874.40	\$57.21
Recycling Cart for Bin Customers			Per Cart / Per Pickup / Per Day (Monthly)					\$53.44
Scout / Push Out Service			Per Cart / Per Pickup / Per Day (Monthly)					\$35.62
Locking Bins			Installation					\$59.37
			Per Cart / Per Unlock / Per Week (Monthly)					\$29.69

*Note: Recycling is 50% of above refuse rates*

## Roll Off

WRR Processing/Disposal Charge Applicable to All Roll Off Boxes up to 10 tons	\$75.08/ton+City Fees
WRR Processing/Disposal Charge Applicable to All Roll Off Boxes over 10 tons	\$85.82/ton+City Fees
3rd Party Processing/Disposal Charge Applicable to All Roll Off Boxes	Pass Thru + City Fees
Transportation Fee Only (Tipping Fees Additional Charge)	\$415.61
Relocation	\$207.26
Dead Run	\$207.26
Demurrage Fee - Per Roll Off Box Per Day After 7 Days	\$19.43
Saturday Service - Per Pull (Transport Only)	\$107.95
Barricade Service	\$147.03

*Any recycling containers above 10% contamination will be charged at full trash rates*

## Additional Fees

Late Fee	1.5% Per Month
Restart Fee	\$65.85
NSF Fee Charge - Per Occurrence	\$51.82
Bin Enclosure Cleaning Fee - Per Occurrence	\$59.26
Additional Sharps Kit Each after 1 free per 3 months	\$16.19
96-gallon - Cart Replacement	\$68.01
64-gallon - Cart Replacement	\$56.13
32-gallon - Cart Replacement	\$47.50
Bin Steam Clean (1st free/year)	\$177.39
Roll Off Steam Clean	\$526.29
Certified Document Destruction	Per Haul + Processing + City Fees
On Property Non-Hazardous Illegal Dumping Clean-Up	\$86.36 Per Occurrence
Temporary Bin: Delivery and 1st Dump	\$199.71
Temporary Bin: Additional Dumps	\$134.94

## Recycling

All paper grades, cans, bottles, etc. recycling carts and bins 50% of full trash rates

*Any recycling containers above 10% contamination will be charged at full trash rates*

**Commercial AB1826 Organics Collection**

## 96-gallon Food Waste Carts

1 x per week	\$74.70
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## 48/64-gallon Food Waste Carts

1 x per week	\$49.87
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2 x per week	\$99.75
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3 x per week	\$150.81
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4 x per week	\$199.49
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5 x per week	\$249.36
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## 2cy Food Waste Bin

1 x per week	\$232.00
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2 x per week	\$431.43
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3 x per week	\$630.88
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4 x per week	\$841.19
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5 x per week	\$989.42
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6 x per week	\$1,137.64
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If bin service is required, the fee will be negotiated with the account, not to exceed the maximum rate established in the fee schedule for comparable trash service.

*Contamination Fee of 25% of the Organic Rate, per occurrence, after 1st violation*