

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Settlement Agreement”) is executed by representatives and counsel for the City of Oakland (the “City”) and California Waste Solutions, Inc. (“CWS”). It is understood and agreed that this Settlement Agreement is not binding on the City or CWS until the Settlement Agreement (and exhibits thereto) is formally approved in open session by the Oakland City Council pursuant to Oakland’s applicable rules and procedures, at which time the Settlement Agreement will be effective and binding (the “Effective Date”). The City and CWS each shall be referred to as a “Party” and collectively referred to as “the Parties”).

RECITALS

- A.** On or about May 22, 2015, pursuant to City Ordinance No. 13274 C.M.S., the City and CWS entered into a contract titled “Residential Recycling Collection Services Contract” under which CWS commenced performance of services on July 1, 2015. (the “Recycling Contract”).
- B.** Disputes have arisen between the Parties concerning the Recycling Contract, including disputes regarding the rate to be charged for the service of bringing plastic recycling carts to the curbside for collection for multi-family dwellings and regarding whether CWS was entitled to a unit count adjustment.
- C.** The City filed suit on March 20, 2017 against CWS in the action captioned *City of Oakland v. California Waste Solutions, Inc.*, Case No. RG 17 853559, Alameda County Superior Court, and filed a First Amended Complaint on September 11, 2017 (the “City Lawsuit”).
- D.** The operative City pleading in the City Lawsuit is the First Amended Complaint which sets forth six causes of action for (1) declaratory relief, (2) reformation of contract, (3) breach of contract (as reformed), (4) breach of the implied covenant of good faith and fair dealing, (5) breach of contract (unreformed), and (6) promissory estoppel.
- E.** The City brought the City Lawsuit on behalf of both the City and the Oakland multi-family dwelling (“MFD”) property owners (referred to herein as “MFD Ratepayers” or “MFD Customers”) who the City alleges have been overcharged by CWS for the service of moving their plastic recycling carts to the curbside for collection (referred to herein as “Premium Backyard Services” and in the First Amendment to the Recycling Services Contract as “Premium Backyard MFD Recycling Services”).
- F.** CWS filed a counterclaim against the City on February 28, 2019 setting forth four causes of action for (1) breach of the Recycling Contract, (2) interference with contract, (3) breach of the implied covenant of good faith and fair dealing, and (4) breach of contract “for failure to make required unit count adjustment under the 2005-2012 agreement” (the “CWS Counterclaim”).
- G.** On February 6, 2019, CWS dismissed with prejudice the fourth cause of action in its counterclaim.

H. The City Lawsuit and the CWS Counterclaim, including all claims that were or could have been brought therein, are referred to collectively as the "Action." The pleadings in the Action are settled, and the case is set for a jury trial on September 13, 2021.

I. The Parties entered into a Tolling Agreement on August 8, 2019 preserving the right of MFD Ratepayers to file suit individually or collectively in their own name(s) against CWS, independent of this Action, for any and all claims, allegations, rights, or remedies that are or may be the subject matter of or asserted in the City Lawsuit by the City on behalf of the MFD Ratepayers.

J. The Parties are entering into this Settlement Agreement for the purpose of ending the Action per the terms herein.

K. In exchange for the agreements set forth below and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Recitals. The above recitals are true and correct, and are incorporated herein by reference and made a part of this Settlement Agreement.

2. Premium Backyard Services Rate. It is agreed that the correct rate for Premium Backyard Services for multi-family dwellings was \$27.85 per month as of the commencement of the Recycling Contract on July 1, 2015, and that such rate is subject to the annual adjustments as set forth in sections 7.07 and 7.08 of the Recycling Contract (the "Correct Cart Rate"). It is also agreed that as adjusted, the correct rate as of July 1, 2021 is \$34.22. It is further agreed that on the Effective Date, the Recycling Contract and Exhibit 1B (Maximum Service Rates) thereto shall be deemed amended to reflect the service description and Correct Cart Rate for Premium Backyard MFD Recycling Services. This clarification regarding Premium Backyard Services and the Correct Cart Rate for such services shall be reflected in the First Amendment to the Recycling Contract and amended Exhibit 1B, attached thereto and incorporated by reference therein.

3. Refund of Customer Overpayments. To the extent that any MFD Customer during the term of this Recycling Contract has paid fees for Premium Backyard Services that exceed the fees that would have been paid under the Correct Cart Rate, those excess fees are understood and deemed to be an overpayment (an "MFD Overpayment") that will be promptly refunded in full by CWS to every such affected MFD Customer pursuant to the procedures described below. It is estimated that as of June 2021, the total amount of MFD Overpayments was approximately \$6 million.

4. MFD Overpayment Calculation. The City, based on customer payment data provided by Waste Management of Alameda County, Inc. ("WMAC") and CWS, will calculate the total amount of all MFD Overpayments ("Total MFD Overpayment") as of the Effective Date, and

will provide that figure to CWS, together with the calculations and data supporting that figure within ten (10) days of the Effective Date. Because there is a delay between billing and the receipt of customer payments, the customer payment data available on the Effective Date will not fully reflect the final Total MFD Overpayment owing by CWS. It is understood and agreed that the Total MFD Overpayment figure provided within ten days of the Effective Date will include a good faith estimate of over-payments anticipated to be received over the next 120 days. At the conclusion of that 120 day period, CWS will be entitled to a refund to the extent the amount CWS paid into the segregated escrow account (see paragraph 6 below) pursuant to the good faith estimate exceeds the MFD Overpayments actually received by CWS by the end of that four month period. The City and its consultants, based on available data provided by WMAC and CWS, will prepare prior to the commencement of the Claims Period a chart of overpayments estimated to be due to each MFD Ratepayer.

5. Resolution of Disagreements Regarding MFD Overpayment Calculation. If CWS in good faith disagrees with the City's calculation of the Total MFD Overpayment, CWS will notify the City of such disagreement and the data and calculations supporting such disagreement within seven (7) days of receipt of the City's figures and will deposit the undisputed amount of the Total MFD Overpayment into the Escrow Account according to the schedule set forth in Paragraph 6 below. CWS and the City will meet face-to-face within seven (7) days after CWS transmits its calculation of the Total MFD Overpayment to attempt to resolve such disagreement. If the Parties are not able to reach agreement on the Total MFD Overpayment amount, the disagreement over the calculation of the Total MFD Overpayment amount will be submitted to binding arbitration under the American Arbitration Association's ("AAA") Commercial Arbitration Rules, Expedited Procedures. Because of the need to promptly make refunds, the parties will jointly request the AAA to appoint a single arbitrator competent in accounting or computational matters who will have availability to complete the arbitration within thirty (30) days of the filing of the arbitration demand. The seat of the arbitration shall be San Francisco, California. Any disagreement or arbitration procedure shall not stay the claims process or the payment of claims.

6. Escrow Account. CWS will deposit into a segregated escrow account to be established under the supervision of the City Finance Director or their designee, the full amount of the Total MFD Overpayment according to the following schedule: 25 percent of the Total MFD Overpayment within thirty (30) days of the Effective date, a further 25 percent of the Total MFD Overpayment within 60 days of the Effective Date, a further 25 percent of the Total MFD Overpayment within 90 days of the Effective Date, and the balance of the Total MFD Overpayment within 120 days of the Effective Date. This Escrow Account shall be named the "Multi-Family Dwelling Reimbursement Fund." Failure of CWS to make any of these deposits as set forth herein shall constitute a material breach of this agreement.

7. Claims Administrator. A reputable claims administration consulting firm with substantial experience in administering class action or victim payment funds (the "Claims Administrator") will be engaged by the City (with input from CWS regarding the selection of the Claims Administrator considered in good faith by the City) to administer the Multi-Family Dwelling

Reimbursement Fund. The Claims Administrator shall provide notice to the MFD Ratepayers regarding the establishment of the Multi-Family Dwelling Reimbursement Fund, the criteria to be eligible to receive a refund, the claim procedures, and applicable deadlines, to ensure that all MFD Ratepayers who made an MFD Overpayment are aware of their right to reimbursement of any overpayments. The Claims Administrator will use its reasonable best efforts to ensure that to the maximum extent practicable, all MFD Ratepayers are so notified and receive refunds of their Overpayments. CWS is solely responsible for payment of the Claims Administrator's fees.

8. Claims Process. Working with the Claims Administrator, the City and CWS will establish a comprehensive claims process designed to: (a) identify all MFD Ratepayers who have made an MFD Overpayment, (b) effectively notify all MFD Ratepayers of their eligibility for a refund and the process for making a claim, (c) approve claims by the MFD Ratepayers, (d) prevent inaccurate or fraudulent claims, (e) and make appropriate payments from the Multi-Family Dwelling Reimbursement Fund. The Claims Administrator and the parties will jointly develop the language of all necessary notices and claim forms, as well as the messaging on the Claim Fund website. The parties will apprise the Superior Court of the agreed-upon claims process prior to implementation and will make such modifications to the claims process as the Court may order. This claims process will be memorialized in an Addendum to the Settlement Agreement (the "Claims Process Addendum") which will be made a part of the Settlement Agreement. In the event the parties are unable to agree upon the language of the Claims Process Addendum, the parties will request that the Honorable Stephen Pulido, or the settlement judge who presided over the Mandatory Settlement Conference, or any other judicial officer designated by Judge Pulido, resolve the parties' disagreement. The parties contemplate completion of the Claims Process Addendum within 30 days after the retention of the Claims Administrator, and commencement of the Claims Period within 14 days of adoption of the Claims Process Addendum.

9. Claims Period. The claims period will continue until the Claims Administrator has approved claims from MFD Ratepayers equaling at least ninety-five percent (95%) of the Total Overpayment Amount or the date the Claims Administrator advises the City and CWS in writing with supporting documentation that it is unlikely there will be additional claims from MFD Ratepayers. The parties contemplate that the claims period, which will be set and adjusted in consultation with the Claims Administrator, will be no less than four (4) months and no longer than twelve (12) months barring unforeseen circumstances (the "Claims Period").

10. Opt Outs. Any MFD Ratepayer, who has received effective notice of their eligibility to make a claim from the Multi-Family Dwelling Reimbursement Fund and wishes to opt out of the claims process, must do so within the Claims Period. For any MFD Ratepayer who communicates their intention to bring suit against CWS, the overpayment attributable to that ratepayer will be refunded to CWS from the Multi-Family Dwelling Reimbursement Fund (the "Reimbursement Fund") unless that ratepayer has already received funds from the Reimbursement Fund. The overpayment refund will equal the amount estimated to be due to

the MFD Ratepayer in the chart of agreed upon MFD Ratepayer overpayments that the parties will establish prior to the commencement of the Claims Period.

11. Payment of Claims. At the conclusion of the Claims Period, the Claims Administrator shall pay out the Multi-Family Dwelling Reimbursement Fund to eligible MFD Ratepayers. Each MFD Ratepayer shall be reimbursed in full for the Ratepayer's MFD Overpayments made. If, however, the MFD Ratepayer claims exceed the Multi-Family Dwelling Reimbursement Fund, each MFD Ratepayer shall be reimbursed in a pro rata amount. Acceptance of a complete or partial refund from the Multi-Family Dwelling Reimbursement Fund shall resolve and extinguish any refund claim that a MFD Ratepayer may have in connection with its, his, or her MFD Overpayments, and the MFD Ratepayer must sign a release in order to receive such refund payment. The payment of claims will be subject to the supervision of the Superior Court.

12. Unclaimed Funds. Any unclaimed funds from the Multi-Family Dwelling Reimbursement Fund existing at the expiration of the Claims Period will be applied to Oakland community projects and/or in the Oakland public interest, subject to Court supervision. Except as provided in Paragraph 10, CWS shall have no right or reversionary interest in the Total MFD Overpayment or the Multi-Family Dwelling Reimbursement Fund.

13. Payment to CWS. The City will pay \$1.7 million to CWS, over four (4) years, in equal monthly installments. These payments will bear no interest.

14. Cost Reductions in Contract Obligations. The Recycling Contract will be amended to reflect \$1.5 million in cost reductions, by reducing CWS's outreach budget from \$250,000 per year to \$190,000 per year, and by reducing CWS's obligations to conduct annual Waste Characterization and Processing Diversion studies. These reductions shall be reflected in the First Amendment to the Recycling Contract.

15. Amendment of Recycling Contract. The City and CWS will enter into a First Amendment to the Recycling Contract, all terms and language of which must be finalized and mutually agreed to before this Settlement Agreement can become effective. The First Amendment, including Amended Exhibit 1B to the Recycling Contract attached thereto, are attached hereto as Exhibit A.

16. City Council Approval. This Settlement Agreement and the First Amendment to the Recycling Contract must be approved by the Oakland City Council by Ordinance in order to become effective and binding upon the City. CWS expressly understands and agrees that the Oakland City Council has no obligation to enter this settlement or adopt the First Amendment and retains complete discretion to adopt or reject the terms of this Settlement Agreement.

17. Release by the City. The City fully and forever releases CWS (and each of its past, present, and/or future parents, subsidiaries, officers, directors, employees, representatives and agents) of and from any and all claims, demands, causes of action, liability, costs or expenses, of any nature whatsoever, known or unknown, suspected or unsuspected, accrued or unaccrued,

existing as of the Effective Date, arising out of or related to the claims and counterclaims raised in the Action. However, CWS's obligations under paragraph 2 ("Premium Backyard Services Rate"), paragraph 3 ("Refund of Customer Overpayments") and paragraph 6 ("Escrow Account") of this Settlement Agreement survive and are not extinguished by the City's release.

18. Release by CWS. CWS fully and forever releases the City (and each of its past, present, and/or future departments, officers, officials, City Council members, employees, representatives, and agents) of and from any and all claims, demands, causes of action, liability, costs or expenses, of any nature whatsoever, known or unknown, suspected or unsuspected, accrued or unaccrued, existing as of the Effective Date, arising out of or related to the claims and counterclaims raised in the Action. WMAC is not covered by this provision.

19. Civil Code Section 1542 Waiver. With respect to the releases contained in Paragraphs 17 and 18 above, the Parties expressly waive any rights or benefits available under Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

The Parties acknowledge that each of them has been advised by their respective attorneys with respect to this release and are familiar with the provisions of California Civil Code Section 1542. The Parties understand and acknowledge the significance and consequence of the specific waiver of Section 1542 described above and hereby assume full responsibility for any injury, loss, damage or liability that may hereafter be incurred by reason of or related to the matters alleged and raised in the Action. Being aware of said code section, the Parties hereby expressly waive any rights each of them may have thereunder, as well as under any other statutes or common law principles of similar effect.

20. Disposition of Litigation. The Parties will jointly inform the Superior Court that the Action has been provisionally resolved subject to the Parties' performance of their obligations hereunder, and that the Parties request that the Court retain jurisdiction to supervise the above-described claims process and the disposition of any unclaimed funds, and to enforce the terms of this Settlement Agreement. At the conclusion of the claims process and after the final disposition of any unclaimed funds, the Parties will jointly seek dismissal with prejudice of the Action.

21. No Admission of Liability. This Settlement Agreement is a compromise of disputed claims. Nothing contained in this Settlement Agreement shall be interpreted or construed to be an admission on the part of any Party hereto.

22. Integration. This Settlement Agreement contains the entire agreement between the Parties hereto concerning the claims and counterclaims raised in the Action and supersedes

any and all prior communications, negotiations, understandings, and agreements, whether oral or written, with respect to the matters contemplated herein.

23. Tolling Agreement. For the avoidance of doubt, this Settlement Agreement does not supersede the Tolling Agreement dated August 8, 2019 between the Parties, which remains in full force and effect. It is acknowledged that the City does not have the legal right to release claims that MFD Customers may have against CWS for MFD overpayments for Premium Backyard Services or for any other claims arising from or related to services provided under the Recycling Contract.

24. Representation by Counsel. Each Party represents and acknowledges that it has been represented by counsel with respect to this Settlement Agreement and any and all matters covered by or related to such Settlement Agreement. Each Party has been fully advised with respect to all rights which are affected by this Settlement Agreement.

25. Authority to Bind. In affixing their signatures hereto, the signatories represent and warrant that they have authority to act on behalf of, and to bind, the entity listed under their signatures to the terms of this Settlement Agreement.

26. Interpretation of the Settlement Agreement. This Settlement Agreement shall be interpreted in accordance with its fair meaning, and not strictly for or against either party hereto. Each party has contributed to the language of this Settlement Agreement and its exhibits, and the rule of construction regarding ambiguities being interpreted against the drafting party shall not apply. The headings used herein are for reference only and shall not affect the interpretation of this Settlement Agreement.

27. No Oral Modification. This Settlement Agreement may not be amended orally, and any amendment or modification of this Settlement Agreement must be in writing and duly executed by all Parties and their respective legal counsel.

28. Applicable Law. This Settlement Agreement shall be governed by the laws of the state of California without regard to the conflicts of law principles of such state.

29. Severability. In the event any provision of this Settlement Agreement is found to be illegal or unenforceable, the remaining provisions of this Settlement Agreement shall not be affected thereby and shall remain valid and fully enforceable.

30. Enforcement. In the event of any action by one Party to this Settlement Agreement against the other Party arising from or relating to the interpretation or enforcement of this Settlement Agreement, the prevailing Party shall, in addition to any other relief, be entitled to recover its costs and reasonable attorney's fees. The exclusive venue for resolution of all disputes arising from this Settlement Agreement is the Superior Court of Alameda County or the United States District Court for the Northern District of California.

31. Counterparts. This Settlement Agreement may be executed in counterparts and by email facsimile, and each counterpart and facsimile shall have the same force and effect as an original, and all so executed shall constitute an effective, binding agreement upon the Parties hereto.

AGREED AND ACCEPTED:

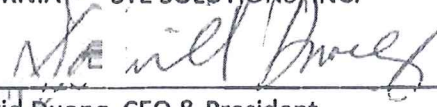
Dated: January 20, 2022

CITY OF OAKLAND

By: 
Edward D. Reiskin, City Administrator


Dated: January 24/2022

CALIFORNIA WASTE SOLUTIONS, INC.


By: 
David Duong, CEO & President

APPROVED AS TO FORM:


Dated: 1/19/22

 for
Barbara J. Parker
Oakland City Attorney

Dated: 1/28/22


Cedric Chao
Chao ADR, PC
Attorneys for City of Oakland

Dated: 1/25/2022


Douglas Straus
Buchalter
Attorneys for California Waste Solutions, Inc.