Date: December 21, 2020

TO: Honorable Mayor and Members of the City Council through City Manager

FROM: Patrick Carter, Senior Management Analyst, City Manager’s Office

SUBJECT: Public Hearing to Consider Adoption (Second Reading) of an Ordinance Approving the Second Amendment to the Franchise Agreement between the City and Recology Sonoma Marin and Approval of a Resolution Setting Maximum Refuse and Recycling Rates

**RECOMMENDATION**

It is recommended the Council Hold a Public Hearing to Consider Adoption (Second Reading) of an Ordinance Approving the Second Amendment to the Franchise Agreement between the City and Recology Sonoma Marin and Approval of a Resolution Setting Maximum Refuse and Recycling Rates.

**BACKGROUND**

On January 22, 2018, the City Council adopted Ordinance number 2636 N.C.S., approving the transfer of the Franchise Agreement for Solid Waste, Recyclable Materials and Yard Trimming Services from Petaluma Refuse and Recycling, Inc. (PR&R) to Recology Sonoma Marin (Recology). The Franchise Agreement requires Recology to provide services in a professional manner and comply with the terms of the Franchise Agreement and the City’s operational expectations.

The existing maximum rates for refuse and recycling, including the method of annual adjustments due to inflationary forces, were approved on May 7, 2018 by Resolution 2018-069. Section 9.2.1 of the Franchise Agreement requires the contractor to bill all customers at rates not to exceed City-Approved Maximum Service Rates. Per Section 10 of the Franchise Agreement, every July the City-Approved Maximum Service Rates shall be adjusted by the Refuse Rate Index (RRI). The RRI, which is based on the change in the cost indices from each calendar year, is composed of weighted percentage change for all RRI listed component costs including those for Disposal, Organic Waste Processing, Fuel, Labor, Other Operating Expenses, and the Trash Capture Component. For example, the RRI adjustment for the maximum refuse and recycling rates beginning on July 1, 2020 was based on the percentage change of the RRI components from January 1, 2019 to December 31, 2019.

A Detailed Rate Review (DRR) is a study performed using audited financial statements to document the relationship between franchise revenues and expenditures. Section 10.3.1 of the Franchise Agreement permits either the City or Recology to request a DRR. The DRR provision is consistent with Section 8.16.090 of Chapter 8.16 of the Petaluma Municipal Code, which governs garbage and rubbish disposal in the City, including contracts such as the Franchise Agreement granting exclusive solid waste collection and disposal rights. Section 8.16.090 lists agreement terms that may be included in contracts for solid waste in the City, including paragraph (M), which provides as follows:

M. Provision permitting the contractor to apply to the city council for an adjustment of the terms of the contract, including the increase or adjustment of the maximum rates and charges which the contractor is permitted to collect from the residents of the city and the amount of the payments to the city for the contract. The city council shall have the right to grant such adjustment of the terms of the contract whenever the contractor can establish and the city council finds that there is a good cause of such adjustment by reason of a change of conditions arising through no fault of the contractor and which have resulted in preventing the contractor from making a reasonable profit in the performance of such contract; provided, however, that the city council shall be the sole judge of whether such adjustments, if any, are necessary, and the extent thereof;

The Franchise Agreement is silent on how the results of a DRR should apply to the maximum rates that the Recology may charge Petaluma solid waste customers. Although the Franchise Agreement does not expressly include the terms specified in Section 8.16.090(M), staff believe that paragraph M is instructive regarding how the City Council should respond regarding Recology’s application for adjustment to the Franchise Agreement maximum rates, and the results of the DRR. Under the current franchise agreement with Recology, Recology was prohibited from requesting a DRR until November 1, 2019. Recology cannot unilaterally impose rates above the maximum rates approved by the City Council, so maximum Franchise Agreement rates cannot be raised without an approval action by the City Council. Under the Franchise Agreement, DRRs do not automatically result in adjustments to the maximum Franchise Agreement rates, but provide a mechanism for Recology to justify maximum rate adjustments other than pursuant to the annual RRI process. While staff believe that the City Council has the discretion regarding approval of maximum rate adjustments described in Section 8.15.090(M) of the Municipal Code, it is also important that the Franchise Agreement rate structure be sustainable to provide for high quality, safe, environmentally sound and legally compliant and solid waste collection and disposal services in the City. The DRR process is intended to help ensure that subject to City Council approval, the City’s solid waste franchise maintains a balance between the cost of the providing solid waste services in the City and the maximum charges the City’s franchisee may charge its customers.

Concurrent with consideration of a Franchise Agreement amendment for the Detailed Rate Review, City staff and Recology considered other Franchise Agreement changes required as a result of SB 1383 (2016). SB 1383, the Short-Lived Climate Pollutants legislation, requires a statewide reduction of methane emissions of 50% by 2020 and 75% by 2025, compared to 2014 emission levels. While the reduction targets are statewide, the State has delegated the requirements to reduce emissions to the cities and counties. These delegated requirements include mandatory organics (compost) service for commercial customers, creation or promotion of edible food recovery programs, standardized coloring of waste containers, monitoring for contamination of recycling and organics waste streams, and reporting. Many of these changes require additional capital purchases (containers and vehicles) and additional personnel. While the State does not provide additional revenue with which to perform these tasks, the State advises cities and counties to use existing methods such as delegating tasks to Franchisees or use of Franchise Fees to fund new tasks.

The First Reading of this Ordinance was approved by the City Council at the December 7, 2020 City Council meeting by a 6-1-0 vote.

**DISCUSSION**

The DRR process, performed by R3 Consulting Group, a third-party consultant selected and retained by the City, documented a significant ongoing annual deficit in Recology’s Petaluma operations of approximately $4.35 million per year. Such losses are not sustainable. Without altering terms of the Franchise Agreement between the City of Petaluma and Recology, the DRR indicated that maximum rates for both the Residential and Commercial customers would need to increase by 35.9% for Recology to balance its revenues with expenditures.

As the maximum Franchise Fee and the Pavement Condition Franchise Fee are based on a percentage of Recology’s gross revenues, 35.9% maximum rate increases, if passed by Recology on to Petaluma customers, would cause the City to realize an annual increase in Franchise Fees paid by Recology under the Franchise Agreement of approximately $1.18 million compared to current levels. Instead of realizing those additional revenues, City staff recommends changing the basis of the Franchise Fee calculation from a percentage of Recology revenues to a fixed amount consistent with Fiscal Year 2019 and Fiscal Year 2020 Franchise Fee revenues. This approach would allow the City to buy down the maximum rate increase needed by Recology and decrease the potential impact to Petaluma ratepayers.

Additionally, with State requirements related to SB 1383 becoming clearer, staff has discussed with Recology incorporating SB 1383 requirements into the proposed Franchise Agreement amendment to maximum rates. The SB 1383 requirements include providing compost service to all commercial and industrial customers, providing food waste composting at no cost to commercial customers, ensuring all containers provided to Petaluma customers are consistent with State requirements, keeping and providing all needed records to the City for State reporting, performing contamination minimization tasks, performing education and outreach tasks related to new compost service, and purchasing new equipment and hiring new personnel for these tasks. As these tasks are not directly related to the DRR, but both staff and Recology find these programs necessary and advantageous to include in the amendment to the Franchise Agreement, the proposed SB 1383-related changes are separated in the rate structure discussed below, with an additional maximum rate increases not granted to Recology until July 1, 2022, once staff determines that Recology has implemented all of the SB 1383 requirements listed above and staff issues Recology a Notice.

The table below illustrates the Franchise Fees due to the City in three different scenarios as well as the maximum rate increase needed to balance Franchise Agreement costs and revenues under: 1) the existing Franchise Agreement structure with Franchise Fees based upon a percentage of Recology’s gross revenues, 2) a reduction of Franchise Fees Recology pays to the City to a set amount equivalent to the FY 19 Franchise Fees Recology paid to the City, and 3) the reduced Franchise Fee scenario described in 2) above but with the additional SB 1383-related tasks added.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | FY 19 Baseline | Existing Franchise Agreement Structure | Reduced City Fees  | Reduced City Fees and Enhanced Diversion |
| Franchise Fees to City | $3,033,825 | $4,214,313 | $3,033,825 | $3,033,825 |
| Rate Increase Needed | N/A | 35.9% | 28.9% | 32.7% |

Foregoing additional Franchise Fees otherwise due the City under the current Franchise Agreement would allow the City to buy down the requested maximum rate increase from 35.9% to 27.4%. Although the maximum rate increase would be 27.4% if the maximum rate increase was made with one adjustment; staff negotiated with Recology to spread 28.9% out over the course of 18 months to spread out potential impacts on ratepayers. Including additional, State-required tasks related to compost service and education would result in a proposed maximum rate increase of 32.7%. As a 32.7% rate increase would still be significant, especially at a time when community members are still suffering from the impacts of COVID-19, staff negotiated with Recology to spread the proposed maximum rate increases over a period of two years, as shown in the table below:

|  |  |
| --- | --- |
| **Percentage Rate Increase** | **Effective Date** |
| 3.45% | July 1, 2020 (already in effect) |
| 7.2% | February 1, 2021 |
| 8.8% | July 1, 2021 |
| 6.8% (Reduced City Fees Scenario) | July 1, 2022 |
| or 10% (Reduced City Fees and Enhanced Diversion Scenario) | July 1, 2022 (supersedes the 6.8% increase, if City issues a Notice) |

Most Petaluma residential customers have 32-gallon service and could anticipate seeing maximum monthly rate increases imposed by Recology of about $5.50/month, or $66/year over the course of 18 months. The table below shows the maximum rates as they are phased in from February 1, 2021 to July 1, 2022.



Description

20 Gallon

30-35

Gallon

60-65

Gallon

90-96

Gallon

Current Rates

(Valid through December 31

th

, 2020)

Proposed Rates

(Effective January 1

st

, 2021)

Proposed Rates

(Effective July 1

st

, 2021)

Alternative

Proposed Rates

1

(Effective July 1

st

, 2022)

Alternative

Proposed Rates (including SB1383)

2

(Effective July 1

st

, 2022)

$80.11

**Table 1: Single Family Residential Collection Maximum Rates**

Standard Collection Service includes Recycling and Organic Collection

$11.00

$19.47

$36.92

$60.91

$14.89

$26.35

$49.97

$82.44

$64.56

$13.18

$23.32

$44.22

$72.96

$14.47

$11.66

$20.64

$39.14

$25.61

$48.56

Commercial and Industrial maximum rates would increase by the same proposed percentage as residential rates. A business receiving service on a 2 cubic yard bin, emptied once per week, could anticipate seeing maximum monthly rate increases of approximately $96/month or $1,150/year. It should be noted that the anticipated increase may be offset at least in part, by participating in the free food waste program that will be offered by Recology and which may permit Commercial and Industrial customers to downsize their garbage container size and/or frequency.



The Reduced City Franchise Fees and Enhanced Diversion scenario accomplish the following objectives: 1) satisfying the City’s obligations to perform a Detailed Rate Review, 2) allowing Recology to perform all Franchise Agreement services with authority to collect revenues sufficient to cover costs, 3) reducing the proposed maximum rate increase through the City foregoing Franchise Fees it would otherwise be due, and 4) when fully implemented, increasing participation in compost programs, further reducing costs to commercial customers, decreasing the City’s greenhouse gas emission contribution from the waste sector, and fulfilling State-requirements for reducing short-lived climate pollutants.

Under current law, the Franchise Agreement maximum rates are not subject to Proposition 218 requirements, because the actual service charges imposed on Petaluma solid waste customers are set by Recology, not the City. Nonetheless, the proposed maximum rates have been noticed and staff recommends that the City Council follow the Proposition 218 majority protest process for potential approval of the proposed maximum rates. Public noticing of the proposed maximum rates were mailed by November 6, 2020, 45 days prior to the public hearing scheduled on December 21, 2020. All customers were invited to review the details of the annual rate adjustment online at the City’s and Recology’s websites and to lodge any protests or other comments on or before the date of the public hearing with the City Clerk. Under Proposition 218, the Council has the ability to approve the proposed maximum rates unless it receives protests from 50% plus 1 of all customers subject to the proposed maximum rates. A copy of the notice is included as Attachment 3. The Resolution setting maximum rates for Fiscal Year 2021 through 2026 is included as Attachment 2.

Recommended Action and Alternatives

Staff recommends the Council consider public testimony during a Public Hearing, and if there is not a majority of all Petaluma’s Recology Sonoma Marin customers protesting the proposed rate increases, adopt the ordinance approving Amendment No. 2 to the Franchise Agreement Between the City of Petaluma and Recology Sonoma Marin for Collection, Disposal, and Processing of Mixed Materials, Recyclable Materials and Organic Materials and Related Activities Pursuant To Chapter 8.16 of the Petaluma Municipal Code. Staff also recommends approval of the resolution adopting maximum refuse and recycling rates for fiscal years 2021 through 2026 pursuant to the franchise agreement between the City of Petaluma and Recology Sonoma Marin for Solid Waste, Recyclable Materials, and Yard Trimmings Services.

**PUBLIC OUTREACH**

A Public Notice for the proposed maximum rates and public hearing on December 21, 2020, included as Attachment 2, was sent to all Recology customers within Petaluma city limits on November 6, 2020. The December 21, 2020 Public Hearing was also noticed in the Petaluma Argus Courier.

**ENVIRONMENTAL REVIEW**

Action on the proposed ordinance approving a second amendment to the solid waste Franchise Agreement between the City and Recology Sonoma Marin setting new maximum solid waste service rates is not a project subject to the requirements of the California Environmental Quality Act (“CEQA”) or its Guidelines in accordance with paragraph (2) of subdivision (c) of Section 15060 of the CEQA Guidelines, because approval of new maximum solid waste service rates will not result in a direct or reasonably foreseeable indirect physical change in the environment, and in accordance with paragraph (4) of subdivision (b) of Section 15378 of the CEQA Guidelines, because the ordinance approving the second amendment to the Franchise Agreement involves the creation of government funding mechanisms and other government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

**COUNCIL GOAL ALIGNMENT**

This item applies to all City Council Goals, and is most closely aligned with Council Goals workplan items #42 – related to reducing greenhouse gas emissions, conserve water,

decrease waste, and minimize use of fossil fuels and investigate and pursue options for carbon

sequestration – and #67 – related to working with Recology to increase diversion of waste away from landfill disposal.

**CLIMATE ACTION**

There is a clear nexus between greenhouse gas emissions embedded within products purchased, consumed, and disposed in landfills. There are greenhouse gas emissions resulting from natural resource extraction and energy used to produce and deliver products to Petaluma, as well as methane and carbon dioxide emissions from organic materials when buried in landfills. To the extent Recology is successful in assisting Petaluma community members in the reduction of material disposed in landfills, greenhouse gas emissions related to consumption will be reduced. Further organic waste reduction programs required by SB 1383, which are intended to reduce methane emissions from landfill disposal, further contribute to the City’s progress in achieving emission reduction goals.

**FINANCIAL IMPACTS**

Impacts to Franchise Fees are intended to be more stable and predictable for the remaining term of the Franchise Agreement, given the proposed switch from basing the Franchise Fees paid to the City on a percent of Recology’s gross revenues to a flat amount that only increases by RRI after June 30, 2023. Franchise Fees, excluding Trash Capture Fees which fluctuate on an annual basis, will be approximately $3 million per year, and will increase by RRI starting July 1, 2023.

**ATTACHMENTS**

1. Ordinance Approving Amendment No. 2 to Franchise Agreement Between the City of Petaluma and Recology Sonoma Marin for Collection, Disposal, and Processing of Mixed Materials, Recyclable Materials and Organic Materials and Related Activities Pursuant to Chapter 8.16 of the Petaluma Municipal Code
2. Resolution Setting Maximum Refuse and Recycling Rates
3. Notice of Public Hearing
4. Detailed Rate Review
5. Recology Community Benefit Report – Petaluma, Spring 2020

|  |  |
| --- | --- |
| **EFFECTIVE DATE****OF ORDINANCE** | **ORDINANCE NO. \_\_\_\_\_\_ N.C.S.** |

Introduced by Seconded by

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA APPROVING AMENDMENT NO. 2 TO THE FRANCHISE AGREEMENT BETWEEN THE CITY AND RECOLOGY SONOMA MARIN FOR COLLECTION, DISPOSAL AND PROCESSING OF MIXED MATERIALS, RECYCLABLE MATERIALS AND ORGANIC MATERIAL AND RELATED ACTIVITIES PURSUANT TO CHAPTER 8.16 OF THE PETALUMA MUNICIPAL CODE**

 **WHEREAS**, City and Contractor are parties to that certain Franchise Agreement for Collection, Disposal and Processing of Mixed Materials, Recyclable Materials and Organic Material and Related Activities, dated March 6, 2013, as amended pursuant to that certain Assignment, Assumption and Amendment Agreement last executed February 22, 2018 by and among City, Contractor and Petaluma Refuse & Recycling, Inc. (such agreement as so amended, the “Franchise Agreement”); and

 **WHEREAS**, pursuant to Section 10.4 of the Franchise Agreement, Contractor timely requested a Detailed Rate Review to adjust the Maximum Service Rates chargeable by Contractor under the Franchise Agreement, effective July 1, 2020, and duly submitted a rate application in support of such request; and

 **WHEREAS**, City engaged an independent consultant, R3, to assist City staff in reviewing and evaluating Contractor’s rate application, and after completing such review, City determined (and Contractor agreed) that in accordance with the Franchise Agreement, Maximum Service Rates should be adjusted by 35.9% effective July 1, 2020; and

 **WHEREAS**, given the extraordinary circumstances arising from COVID-19 and the related economic hardship faced by the residents and businesses of Petaluma, the parties have agreed on an alternative approach to implementing the required rate adjustment, which reduces the impact on ratepayers while fulfilling the intent and purposes of the Franchise Agreement; and

 **WHEREAS**, the alternative approach involves implementing the required rate adjustment in stages, deferring the initial adjustment, and limiting growth in certain fees payable by Contractor to City under the Franchise Agreement, all as more fully set forth in this Amendment; and

 **WHEREAS**, as part of the alternative approach, the parties have also agreed in principle to extend the Franchise Agreement term to make up for lost revenue to Contractor due to the delayed implementation of the required rate adjustment, but to postpone such extension to 2021, so that the related contract amendment can include changes to the organic waste collection program mandated by SB 1383; and

 **WHEREAS**, due to the delay in implementing the rate adjustment required by the Detailed Rate Review, Maximum Service Rates were adjusted effective July 1, 2020 by 3.45%, pursuant to the Refuse Rate Index adjustment methodology set forth in Section 10.3 and Exhibit 2 of the Franchise Agreement; and

 **WHEREAS**, action on the proposed ordinance approving a second amendment to the solid waste Franchise Agreement between the City and Recology Sonoma Marin setting new maximum solid waste service rates is not a project subject to the requirements of the California Environmental Quality Act (“CEQA”) or its Guidelines in accordance with paragraph (2) of subdivision (c) of Section 15060 of the CEQA Guidelines, because approval of new maximum solid waste service rates will not result in a direct or reasonably foreseeable indirect physical change in the environment, and in accordance with paragraph (4) of subdivision (b) of Section 15378 of the CEQA Guidelines, because the ordinance approving the second amendment to the Franchise Agreement involves the creation of government funding mechanisms and other government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment;

 **NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Petaluma as follows:

**Section 1. Recitals.** The above recitals are hereby declared to be true and correct and hereby incorporated into this ordinance as findings of the City Council.

**Section 2. CEQA Exemptions**. This ordinance approving a second amendment to the solid waste Franchise Agreement between the City and Recology Sonoma Marin setting new maximum solid waste service rates is not a project subject to the requirements of the California Environmental Quality Act (“CEQA”) or its Guidelines in accordance with paragraph (2) of subdivision (c) of Section 15060 of the CEQA Guidelines, because approval of new maximum solid waste service rates will not result in a direct or reasonably foreseeable indirect physical change in the environment, and in accordance with paragraph (4) of subdivision (b) of Section 15378 of the CEQA Guidelines, because this ordinance approving the second amendment to the Franchise Agreement involves the creation of government funding mechanisms and other government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

**Section 3. Second Amendment to the Franchise Agreement Approved.** The Second Amendment to the Franchise Agreement between the City of Petaluma and Recology Sonoma Marin for Collection, Disposal and Processing of Mixed Materials, Recyclable Materials, and Organic Material and Related Activities, which is attached to and made a part of this ordinance as Exhibit A, is hereby approved, and the City Manager is hereby authorized and directed to sign a second amendment to the Franchise Agreement on behalf of the City that is substantially in accordance with Exhibit A upon this ordinance taking effect.

**Section 4. Effective Date/Referendum Period.** This ordinance shall become effective thirty (30) days after the date of its adoption by the Petaluma City Council.

**Section 5. Posting/Publishing of Notice.** The City Clerk is hereby directed to post and/or publish this ordinance or a synopsis of it for the period and in the manner required by the City Charter.

**INTRODUCED** and ordered published and posted this 7th day of December, 2020.

**ADOPTED** this \_\_ day of \_\_\_\_\_\_, 2020 by the following vote:

Ayes: Noes: None

Abstain: None

Absent: None

 Teresa Barrett, Mayor

ATTEST: APPROVED AS TO FORM:

Kendall Rose, CMC, City Clerk Eric W. Danly, City Attorney

**EXHIBIT A**

**Second Amendment (“Amendment”) to the Franchise Agreement between the City of Petaluma and Recology Sonoma Marin for Collection, Disposal And Processing Of Mixed Materials, Recyclable Materials And Organic Material And Related Activities.**

The Franchise Agreement between the City of Petaluma (“City”) and Recology Sonoma Marin (“Recology or Contractor”) for Collection, Disposal And Processing Of Mixed Materials, Recyclable Materials And Organic Material And Related Activities entered \_\_\_\_\_\_\_\_ and amended December 27, 2017 (“Franchise Agreement”) is hereby Amended as follows:

1. Each Maximum Service Rate set forth in Exhibit 1 of the Franchise Agreement (as adjusted to date) shall be increased as follows:
* By 7.2%, effective January 1, 2021;
* By 8.8%, effective July 1, 2021; and
* By 6.8%, effective July 1, 2022; or
* By 10%, effective July 1, 2022 (Modified Rate Increase), if City, in its sole discretion, issues a Notice, in accordance with Section 5.3.6 to Contractor prior to June 1, 2022. If City issues a Notice in accordance with Section 5.3.6 after June 1, 2022, Contractor shall be entitled to a Maximum Service Rate Increase of 3.2% in addition to the RRI increase to which the Contractor is otherwise entitled, effective July 1 of the following year.

Such Maximum Service Rate adjustments shall take effect, and Exhibit 1 shall be so amended, automatically and without any further action by either party, upon the ordinance approving this Amendment taking effect, and signature of this Amendment by authorized representatives of the City and Recology, with the exception of the Modified Rate Increase described above and in Section 5.6.3. The Maximum Service Rate adjustments adopted pursuant to this Amendment shall be in addition to, and not in lieu of, any other adjustments required under the Franchise Agreement, including, without limitation the Refuse Rate Index adjustments scheduled to take effect on July 1, 2021 and July 1, 2022.

By way of example, if the Maximum Service Rate for a service as of the date hereof is $10.00, and each of the 2021 and 2022 Refuse Rate Index adjustments is 3.00%, then, assuming no other adjustments are required under the Franchise Agreement, that Maximum Service Rate would be adjusted to $10.60 [= $10.00 \* (1 + .06)] effective January 1, 2021, $11.98 [= $10.60 \* (1 + 0.10 + 0.03)] effective July 1, 2021, and $13.38 [= $11.98 \* (1 + 0.0869 + 0.03)] effective July 1, 2022.

1. Sections 11.1 and 11.7 of the Franchise Agreement are hereby amended and replaced to read in their entirety as follows, effective retroactively to July 1, 2020. To the extent Contractor overpaid any of the below-mentioned fees during the period since July 1, 2020, Contractor may adjust subsequent fee payments commensurately:

**11.1 Franchise Fees**

In consideration of the exclusive rights provided Contractor herein, Contractor shall pay the following Franchise Fees to the City, effective July 1, 2020:

11.1.1 Contractor shall pay the City a Franchise Fee each month equal to $102,226. This fee shall be known as the right-of-way franchise fee and is intended to compensate the City for Contractor’s use of the City right of way in performing services under the Franchise Agreement.

11.1.2 In addition, Contractor shall make annual additional Franchise Fee payments to the City of $500,000 on or before September 15th of each Agreement year beginning with September 15, 2020. This Franchise Fee is intended to compensate the City for Contractor’s privilege of performing exclusive solid waste services in the City pursuant to the Franchise Agreement.

11.1.3 In addition, Contractor shall pay a Franchise Fee to the City each month equal to $104,986. This fee shall be known as the pavement condition franchise fee and is intended to compensate the City for the impacts on the City’s roads during the performance of services under the Franchise Agreement.

The Franchise Fees specified in Sections 11.1.1 and 11.1.3 shall be adjusted annually on July 1, 2023, and each July 1st thereafter, by the RRI adjustment percentage, calculated in accordance with Section 10.3 and Exhibit 2. The amount of the fee specified in Section 11.1.2 shall not be annually adjusted.

**11.7 Contract Administration Fee**

Effective July 1, 2020, Contractor shall pay to the City an annual Contract Administration Fee of $49,475 for the purpose of covering costs associated with monitoring this Franchise Agreement. The amount of this fee shall be adjusted annually on July 1, 2023, and each July 1st thereafter, by the RRI adjustment percentage, calculated in accordance with Section 10.3 and Exhibit 2.

1. Because as a result of the Franchise Agreement modifications pursuant to this Amendment, Franchise Fees are no longer calculated with respect to Gross Receipts, the words “for purposes of calculating Franchise Fees” are hereby deleted from Section 12.1.2, and the words “Gross Receipts and corresponding” are hereby deleted from Sections 12.2.2.1 and 12.2.3.1.
2. Section 5 of the Franchise Agreement is hereby amended by adding a new Section 5.3.6 entitled “SB 1383 Short Lived Climate Pollutants Reduction Activities.”

Section 5.3.6.1 Notwithstanding any contrary requirements above, Contractor shall provide Organic Materials Collection service to all Commercial and Industrial customers in the Service Territory, except those qualifying for a waiver granted by the City. Commercial and Industrial food composting service shall be provided by Contractor at no additional charge.

Section 5.3.6.2 Contractor shall provide standardized waste collection containers to all customers. The containers shall be the following colors: Grey for garbage, blue for Recycling, and Green for Organic Materials.

Section 5.3.6.3 Contractor shall provide all necessary records to City to demonstrate compliance with SB 1383 requirements.

Section 5.3.6.4 Contractor shall monitor waste collection containers to minimize prohibited contaminants through annual route reviews. Route reviews must include all hauler routes on which a sufficient random sampling of containers are inspected. If contaminants are found, a mailed notice and educational tag on contaminants must be given to the generator. If contamination is found on three consecutive occasions, the City may impose penalties on the generator in accordance with applicable law.

Contractor shall provide, on a monthly basis, Contractor’s contamination minimization procedures and information to City and City’s designees. Information provided shall include a description of the Contractor’s process for measuring contamination, generator name, a description of the route, address, account number, date of audit, person conducting the audit, findings, and relevant photos and/or other evidence, number of route reviews conducted for contamination, number of notices/educational materials that were issued to generators of contamination, and number of containers disposed of as garbage due to contamination.

Section 5.3.6.5 Contractor shall provide education and outreach information to all customers receiving Organics service. Such information shall include how to properly source-separate waste into appropriate containers, how landfill diversion of organic materials produces climate benefits and the methods of organics recovery, the public health and safety and environmental impacts of organics disposed in landfills, and available programs for edible food donations.

Section 5.3.6.6 Contractor shall purchase all equipment necessary to perform all requirements of Section 5.3.6, including waste containers provided to customers and front-loading and side-loading collection vehicles. Contractor shall report to City all additional personnel added as a result of the requirements of Section 5.3.6.

Section 5.3.6.7 Once all programs described in 5.3.6 are permanently and continuously in operation, Contractor may send a written request to City announcing Contractor’s compliance with Section 5.3.6. If Contractor sends the notice of compliance to City on or before March 31, 2022, City shall review the evidence of compliance, and City, in its sole discretion upon the satisfactory completion of Section 5.3.6 requirements, may issue a Notice to Contractor, which would entitle Contractor to the modified Rate Increase effective July 1, 2022.

1. In the event of any conflict between this Amendment and the Franchise Agreement, this Amendment shall govern.
2. Except as expressly set forth in this Amendment, all terms and conditions of the Franchise Agreement shall remain unmodified and continue in full force and effect. Capitalized terms used but not defined herein shall have the meanings given to them in the Franchise Agreement. This Amendment may be executed in counterparts and by electronic signature by authorized representatives of the City and Recology and such counterparts taken together shall form the complete Amendment between the City and Recology and each electronic facsimile so signed shall be deemed an original.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PETALUMA ADOPTING MAXIMUM REFUSE AND RECYCLING RATES FOR FISCAL YEARS 2021 THROUGH 2026 PURSUANT TO THE FRANCHISE AGREEMENT BETWEEN THE CITY OF PETALUMA AND RECOLOGY SONOMA MARIN FOR SOLID WASTE, RECYCLABLE MATERIALS, AND YARD TRIMMINGS SERVICES**

**WHEREAS**,Section 8.16.040 of Title 8 of the Petaluma Municipal Code (PMC)

provides that the City Council may provide for the collection and disposal of garbage and

rubbish in and from the city by its own officers and employees, or by an official garbage

collector pursuant to a contract therefore, or by or for the person accumulating the garbage or

rubbish in the city, pursuant to a permit granted by the Council; and

**WHEREAS**, the City of Petaluma has, pursuant to Ordinance no. 2636 N.C.S. adopted

January 22, 2018 assigned the City’s Franchise Agreement for Solid Waste, Recyclable

Materials and Yard Trimmings Services (“Franchise Agreement”) to Recology Sonoma Marin

for the collection of solid waste, recycling, and compost materials; and

 **WHEREAS**, in accordance with Section 9.2.1 of the Franchise Agreement, the City shall

establish the maximum rates and fees that the franchisee may charges customers for collection

services pursuant to the franchise; and

**WHEREAS**, in accordance with Section 10.2 of the Franchise Agreement, the franchisee

shall receive annual adjustments to the City—Approved maximum service rates through RRI

adjustments; and

 **WHEREAS**, notice of a public hearing on the proposed revised maximum Refuse and

Recycling Rates was mailed to Recology Sonoma Marin customers that would be impacted by the proposed increases on November 6, 2020, 45 days or more before the requisite public hearing in accordance with Proposition 218 requirements; and

 **WHEREAS**, pursuant to Proposition 218, the City has duly noticed and held a public hearing on the proposed maximum rate increases December 21, 2020 with respect to the maximum rates for ﬁscal years 2021 through 2026; and

**WHEREAS**, at the public hearing on the proposed maximum rate increases on December 21, 2020, the City Council received testimony and considered all evidence (“the Record”) presented regarding the proposed maximum rate increase, including all protests received, and canvassed and tabulated the protests received prior to the close of the public hearing; and

 **WHEREAS**, after due consideration, the City Council ﬁnds based on Exhibits A and B of this Resolution, and the Record that:

1. The proposed maximum rates as set forth in Exhibit A to this resolution which is made a part hereof and the RRI as presented in Exhibit B of this resolution are necessary to achieve full recovery of the costs of providing solid waste services to residents and businesses in Petaluma;
2. The proposed maximum rates and RRI as presented herein will not generate revenue in excess of the cost of providing solid waste services;
3. The proposed maximum rates and RRI as presented herein will not be used for purposes other than providing solid waste services;
4. The proposed maximum rates and RRI, to the extent the City’s solid waste franchisee may impose them on any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel or person;
5. Proper notice of the proposed maximum rates and RRI was given to record owners of properties that could be impacted by the proposed maximum rate increases and to recipients of City solid waste services, as prescribed by law; and

**WHEREAS**, a majority protest was not received before the close of the public hearing,

as conﬁrmed by the City Clerk’s announcement of the canvass of protests received which totaled

three (3) protest votes received for the same number of accounts out of a total of 18,918 accounts

served; and

**WHEREAS**, the proposed maximum rates and RRI are not a “tax” as deﬁned in Section 1, paragraph (e) of Article XIII C of the California Constitution (“Proposition 26”) because such rates are imposed for a speciﬁc beneﬁt conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product; and/or such fees and charges are imposed for a speciﬁc government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product; and/or such fees and charges are imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections and audits, enforcing agricultural marketing orders and the administrative enforcement and adjudication thereof; and/or such fees and charges are imposed as a condition of property development; and

**WHEREAS**, adoption of the maximum rates and RRI pursuant to this resolution involves the establishment, modiﬁcation, restructuring or approval of rates and charges, as identiﬁed Exhibits A and B, and therefore, adoption of this resolution setting maximum refuse and recycling rates and RRI is not a project under the California Environmental Quality Act pursuant to California Public Resources Code Section 21080(b)(8)(D) and 14 Cal. Code Regs. Section 15273;

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Petaluma as

follows:

1. The above recitals are hereby declared to be true and correct and incorporated herein as ﬁndings of the City Council.
2. Having considered the foregoing and good cause appearing therefore, the City Council hereby approves of the maximum rates as set forth in Exhibit A for the collection, processing, and disposal of solid waste, recycling, and composting materials for commercial, multifamily, and single family customers, that Recology Sonoma Marin, the City of Petaluma franchisee may charge for solid waste services for within the City of Petaluma for ﬁscal years 2019 through 2024 and for supplemental services pursuant to the franchise agreement between the City and Recology Sonoma Marin.
3. Having considered the foregoing and good cause appearing therefore, the City Council hereby approves of the RRI as set forth in Exhibit B for adjusting the maximum rates set forth in Exhibit A concerning the maximum rates that Recology Sonoma Marin, the City of Petaluma franchisee may charge for solid waste services within the City of Petaluma for ﬁscal years 2021 through 2026 and for supplemental services pursuant to the franchise agreement between the City and Recology Sonoma Marin.
4. If any section, subsection, sentence, clause, phrase or word of this resolution is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state or federal legislation, such decision or legislation shall not affect the validity of the remaining portions of this resolution. The City Council hereby declares that it would have passed and adopted this resolution and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.