

INTRODUCED: February 27, 2023

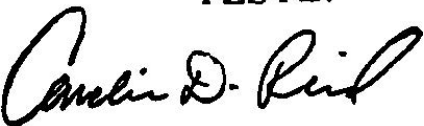
AN ORDINANCE No. 2023-069

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment to Franchise Agreement by and between the City of Richmond and Waste Management of Virginia, Inc., for the purpose of linking fee adjustments to certain changes in the United States Bureau of Labor Statistics' Consumer Price Index.

\_\_\_\_\_  
Patron – Mayor Stoney

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

**A TRUE COPY:  
TESTE:**

  
**City Clerk**

PUBLIC HEARING: MAR 27 2023 AT 6 P.M.

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a First Amendment to Franchise Agreement by and between the City of Richmond and Waste Management of Virginia, Inc., for the purpose of linking fee adjustments to certain changes in the United States Bureau of Labor Statistics' Consumer Price Index. The First Amendment to Franchise Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES: 9 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: MAR 27 2023 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

2023-003



# City of Richmond

## Intracity Correspondence

### O&R REQUEST

**DATE:** October 28, 2022**EDITION:** 1**TO:** The Honorable Members of City Council**THROUGH:** The Honorable Levar M. Stoney, Mayor**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer**THROUGH:** Sabrina Joy-Hogg, Deputy City Administrator, Finance**THROUGH:** Shelia White, Director, Finance**THROUGH:** Jason May, Director, Budget and Strategic Planning**THROUGH:** Robert C. Steidel, Deputy City Administrator, Operations**THROUGH:** Bobby Vincent Jr., Director, Department of Public Works**FROM:** Torrence S. Robinson, Deputy Director Sr., Department of Public Works**RE:** To amend Ord. No. 2019-291 adding language to allow the Franchisee (Waste Management) the ability to request annually a rate adjustment based on the Consumer Price Index for Water, Sewer and Trash**ORD. OR RES. No.** \_\_\_\_\_

**PURPOSE:** To amend Ord. No. 2019-291 (the "Ordinance") adding language to enable the Franchisee (Waste Management) the ability to request an annual rate increase commensurate with the Consumer Price Index (CPI) for water, sewer, and trash.

**REASON:** On February 24, 2021 the current Franchisee (Waste Management) wrote to the City's Chief Administrative Officer requesting a rate increase to the charges and host fees commensurate with the Consumer Price Index (CPI) for water, sewer and trash. In accordance with Va. Code § 15.2-2105 an increase in rates requires City Council action in-order to amend the current Franchise Agreement. The Franchise Agreement's text does not currently allow for a CPI increase therefore, Council action is required to modify the agreement.

**RECOMMENDATION:** Approval is recommended by the City Administration. Staff recommends adding the following language:

*6.4 Fee Adjustments: Adjustments to the charges and host fees shall be made, if at all, annually on July 1, of each year beginning July 1, 2023, based upon the increase in the U.S. Consumer Price Index for Water, Sewer, and Trash for the previous twelve months ending November 30, immediately preceding the contracts anniversary date. Annual increases shall not exceed five (5) percent of the previous year's fees and assessments. The Franchisee is required to submit their request in writing by December 31<sup>st</sup>.*

**BACKGROUND:** On November 25, 2019 City Council adopted ordinance No. 2019-291 authorizing the Chief Administrative Officer to enter into a Franchise Agreement for the management of the City's Hopkins Road Transfer Station and its East Richmond Road Convenience Center. The Franchise Agreement allowed the Franchisee to accept waste from 3<sup>rd</sup> party vendors which in turn can serve as a potential revenue source for the city. However, at the time of the agreement there was not an allowance for annual rate increases. Market conditions have been volatile over the past three years prompting the Franchisee to request a modification to the current agreement. Staff considered the request and determined that similar "service agreements" typically allow for this type of increase. Therefore, staff agreed with the recommendation as it will allow for a continued partnership with the same vendor which in turn aides in a more efficient and consistent service delivery to our citizens.

**FISCAL IMPACT / COST:** None

**FISCAL IMPLICATIONS:** The adoption of this paper allows the Franchisee (Waste Management) to request annual rate adjustments based upon the CPI for Water, Sewer, and Trash. Therefore, the Department of Public Works budget line item 0100-2903-72175-SV1404 may increase by up to five (5) percent annually.

**BUDGET AMENDMENT NECESSARY:** No

**REVENUE TO CITY:** None – As revenue from third party vendors increases, this can be used to offset increased cost of Operations. is used to offset the Franchisee's invoiced amount monthly and therefore, it is not returned directly to the city.

**DESIRED EFFECTIVE DATE:** Upon Adoption

**REQUESTED INTRODUCTION DATE:** December 12, 2022

**CITY COUNCIL PUBLIC HEARING DATE:** January 9, 2023

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Governmental Operations December 28, 2022

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** City Attorney's Office

**AFFECTED AGENCIES:** Department of Public Works

**RELATIONSHIP TO EXISTING ORD. OR RES.:** Ordinance No. 2019-291

**REQUIRED CHANGES TO WORK PROGRAM(S):** None

**ATTACHMENTS:** Ordinance No. 2019-291 / Franchise Agreement

**STAFF:** Department of Public Works Torrence S. Robinson (804-646-6333)

## **FIRST AMENDMENT TO FRANCHISE AGREEMENT**

THIS FIRST AMENDMENT TO THE FRANCHISE AGREEMENT (the “First Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia (the “City”), and Waste Management of Virginia, Inc., a Virginia corporation (“Franchisee”).

### **RECITALS**

A. The City Council for the City of Richmond City of Richmond, through Ord. No. 2019-291, approved the award of franchise for the management of City-owned convenience center located at 3800 East Richmond Road (Tax Map Parcel No. E0003305030) and transfer facility located at 3506 Hopkins Road (Tax Map Parcel No. S0071217003), in accordance with a certain franchise agreement.

B. The City and Franchisee entered into that certain franchise agreement dated as of November 25, 2019 (the “Franchise Agreement”).

C. The City and Franchisee now desire to amend the terms of the Franchise Agreement to allow for certain increases to the fees as shown on Exhibit A – Fee Schedule of the Franchise Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises set forth in the Franchise Agreement and in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. All capitalized terms used here and not otherwise defined shall the meanings set forth in the Franchise Agreement.

2. The following amendments to the Franchise Agreement shall be effective as of July 1, 2023:

a. Exhibit A to the Franchise Agreement, the document entitled “Fee Schedule”, shall be removed from the Franchise Agreement and replaced in its entirety with the new “Fee Schedule” labeled as Exhibit A and attached to this First Amendment and made a part hereof.

b. The following new Section 6.4 shall be added and made a part of the Franchise Agreement:

**6.4 Fee Adjustments.** The Chief Administration Officer (“CAO”) may permit annual adjustments to the fees shown on the Fee Schedule attached hereto as Exhibit A in accordance with this Section. Any such adjustments,

if approved, shall be made effective on July 1 of a contract year, beginning on July 1, 2024. No price decrease or increase shall exceed the percentage increase in the Consumer Price Index for Water, Sewer, and Trash published by the United States Department of Labor's Bureau of Labor Statistics for the 12 months for which statistics are available immediately preceding November 30 of the contract year for which the adjustment is requested, and in no event shall any annual adjustment exceed five (5) percent of the previous year's fees. The Franchisee shall submit any request for adjustment of fees, and Franchisee's justification therefore, to the City no later than December 31 of the contract year for which the adjustment is requested. The CAO shall not unreasonably deny a request for the adjustment of fees provided such request is submitted in accordance with the terms of this paragraph. The CAO shall notify the Franchisee in writing of the CAO's approval or denial of any request for the adjustment of fees, and such approval shall be subject to all necessary City approval procedures, including approval by the City Council for the City of Richmond, if required by law.

3. Except as amended by this First Amendment, the terms and conditions of the Franchise Agreement shall remain in full force and effect.

The duly authorized representatives of the parties have executed this Amendment to be effective on the date indicated below.

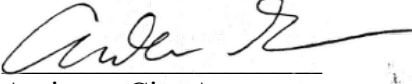
[SIGNATURES ON FOLLOWING PAGE]

WITNESS THE FOLLOWING SIGNATURES:

CITY OF RICHMOND, VIRGINIA

By: \_\_\_\_\_  
Name: J.E. Lincoln Saunders  
Title: Chief Administrative Officer

APPROVED AS TO FORM:

By:  \_\_\_\_\_  
Assistant City Attorney

WASTE MANAGEMENT OF VIRGINIA, INC., a  
Virginia corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A – Fee Schedule

Item no.	Section from agreement	Service Description	Unit of Measure	Fee	Estimated Quantity	Estimated cost to City
1	2.4	Convenience center services*	Monthly operating Cost	\$ 4,147.45	12.00	\$ 49,769.40
2	2.5.2	TS Waste from residents	Per ton	\$ 45.24	19,060.00	\$ 862,179.10
3	2.5.3	TS Waste from collection program	Per ton	\$ 45.24	76,542.00	\$ 3,462,377.37
4	2.5.6	Yard waste	Per ton	\$ 45.24	100.00	\$ 4,523.50
5	2.5.7	Small appliances	Per ton	\$ 45.24	50.00	\$ 2,261.75
6	2.5.8	Tires	Per ton	\$ 54.50	300.00	\$ 16,350.00
7	2.5.14	Grits screenings	Per ton	\$ 49.87	1,600.00	\$ 79,788.00
8	2.9	Recycling operations	Monthly operating Cost	\$ 5,313.75	12.00	\$ 63,765.00
9	2.5	Other TS services	Monthly operating Cost	\$ 65,400.00	12.00	\$ 784,800.00
10	3	Host community fee	Per ton	\$ (2.18)	25,000.00	\$ (54,500.00)
					Total:	\$5,271,314.12

\* Convenience center services consist of servicing two 8 cubic yard containers once per week, and two 30 cubic yard containers twice per week. No other convenience center services included.