



CITY OF FAIR OAKS RANCH CITY COUNCIL REGULAR MEETING

Thursday, December 01, 2022 at 6:30 PM

Public Safety Training Room, Police Station, 7286 Dietz Elkhorn, Fair Oaks Ranch

Live Stream: <https://www.youtube.com/channel/UCDqRvLvReqxrh1lbajwshKA/live>

AGENDA

OPEN MEETING

1. Roll Call - Declaration of a Quorum
2. Pledge of Allegiance

CITIZENS and GUEST FORUM

To address the Council, please sign the Attendance Roster located on the table at the entrance in the foyer of the Public Safety Training Room. In accordance with the Open Meetings Act, Council may not discuss or take action on any item which has not been posted on the agenda. Speakers shall limit their comments to five (5) minutes each.

3. Citizens to be heard.

PRESENTATIONS

4. Recognition of the Employee of the Quarter Recipient (Q4 - July 2022 thru September 2022): Eloy A. Contreras III.

Joanna Merrill, IPMA-SCP, Director of Human Resources and Communications

CONSENT AGENDA

All of the following items are considered to be routine by the City Council, there will be no separate discussion on these items and will be enacted with one motion. Items may be removed by any Council Member by making such request prior to a motion and vote.

5. Approval of the November 17, 2022 Regular City Council meeting minutes.

Christina Picioccio, TRMC, City Secretary

6. Approval of the second reading of an Ordinance approving the first amendment to the City's exclusive franchise agreement with Republic Services for the collection, hauling, and disposal of residential garbage and refuse waste in the City of Fair Oaks Ranch.

Carole Vanzant, CPM, TRMC, Assistant City Manager, Community Services

CONSIDERATION/DISCUSSION ITEMS

7. Consideration and possible action on approving the first reading of an Ordinance regarding extending the retention period of audiovisual recordings of open meetings from 90 days to six (6) years.

Christina Picioccio, TRMC, City Secretary
Brian LeJeune, IT Manager

REPORTS FROM STAFF AND COMMITTEES

8. County at a Crossroads: 2022 - A Citizens Plan for Transportation in Kendall County.

Committee Co-Chairs Don Durden and Bob Manning

9. Q1 Town Hall Meeting Update.

Tobin E. Maples, AICP, City Manager

10. Civic Center Update.

Tobin E. Maples, AICP, City Manager

REQUESTS AND ANNOUNCEMENTS

11. Announcements and reports by Mayor and Council Members.
12. Announcements by the City Manager.
13. Requests by Mayor and Council Members that items be placed on a future City Council agenda.

CONVENE INTO EXECUTIVE SESSION

Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body hereby convenes into closed session:

Sec. 551.071 (Consultation with Attorney) the City Council will meet in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

14. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
15. Case No. 22-090-451; Vincent A. Caldarola, MD vs. City of Fair Oaks Ranch, Texas.

Sec. 551.072 (Deliberation regarding real property)

16. The City Council will meet in closed session to deliberate the purchase, exchange, lease, or value of real property that may be considered for future location of water and wastewater system improvements.
17. The City Council will meet in closed session to deliberate the purchase, exchange, lease, or value of real property that may be considered for future TxDOT improvements to FM 3351.

RECONVENE INTO OPEN SESSION

Discussion and possible action on items discussed in Executive Session.

ADJOURNMENT

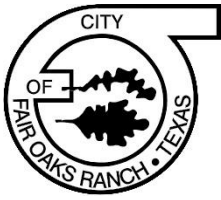
Signature of Agenda Approval: s/Gregory C. Maxton

Gregory C. Maxton, Mayor

I, Christina Picioccio, TRMC, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the City's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times.

As per Texas Government Code 551.045, said Notice was posted by 6:30 PM, November 28 , 2022 and remained so posted continuously for at least 72 hours before said meeting was convened.

The Fair Oaks Ranch Police Station is wheelchair accessible at the front main entrance of the building from the parking lot. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary's office at (210) 698-0900. Braille is not available. The City Council reserves the right to convene into Executive Session at any time regarding an issue on the agenda for which it is legally permissible; pursuant to Texas Government Code Chapter 551. Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).



CITY OF FAIR OAKS RANCH
CITY COUNCIL REGULAR MEETING

Thursday, November 17, 2022 at 6:30 PM

Public Safety Training Room, Police Station, 7286 Dietz Elkhorn, Fair Oaks Ranch

Live Stream: <https://www.youtube.com/channel/UCDqRvLvReqxrh1lbajwshKA/live>

MINUTES

OPEN MEETING

1. Roll Call - Declaration of a Quorum

Council Present: Mayor Maxton and Council Members Stroup, Elizondo, Bliss, Koerner, Parker and Muenchow.

With a quorum present, the meeting was called to order at 6:30 PM.

2. Pledge of Allegiance – The Pledge of Allegiance was recited in unison.

CITIZENS and GUEST FORUM

3. Citizens to be heard. - None

PRESENTATIONS

4. Joanna Merrill, IPMA-SCP, Director of Human Resources and Communications, provided a presentation of San Antonio Express-News Top Workplaces Award 2022 to the City of Fair Oaks Ranch.

A gentleman who intended on speaking during Citizens to be Heard but arrived after the meeting started and did not sign up was given the opportunity to do so after the Presentations portion of the agenda.

CITIZENS and GUEST FORUM

3. Citizens to be heard.

Ron Madura, resident, spoke about tree preservation and requested that Council consider an Ordinance that would help limit the removal of trees.

CONSENT AGENDA

5. **Approval of the October 13, 2022 City Council and Planning and Zoning Commission Joint Public Hearing Minutes.**
6. **Approval of the November 3, 2022 Regular City Council meeting minutes.**
7. **Approval of a Resolution approving the 2022 Property Tax Levy Roll.**

MOTION: Made by Council Member Bliss, seconded by Council Member Koerner, to approve the Consent Agenda.

VOTE: 7-0; Motion Passed.

CONSIDERATION/DISCUSSION ITEMS

8. **Consideration and possible action approving the first reading of an Ordinance approving the first amendment to the City's exclusive franchise agreement with Republic Services for the collection, hauling, and disposal of residential garbage and refuse waste in the City of Fair Oaks Ranch.**

MOTION: Made by Council Member Muenchow, seconded by Council Member Elizondo, to approve the first reading of an Ordinance approving the first amendment to the City's exclusive franchise agreement with Republic Services for the collection, hauling, and disposal of residential garbage and refuse waste.

VOTE: 7-0; Motion Passed.

9. **Consideration and possible action to approve a Resolution authorizing participation in Texas CLASS investment pool.**

MOTION: Made by Council Member Elizondo, seconded by Council Member Parker, to approve the Resolution authorizing the City to participate in Texas CLASS Investment Pool.

VOTE: 7-0; Motion Passed.

10. **Consideration and possible action to approve a Resolution authorizing participation in TexPool Prime investment pool.**

MOTION: Made by Council Member Muenchow, seconded by Council Member Koerner, to approve the Resolution authorizing participation in the TexPool Prime investment pool and designating authorized representatives.

VOTE: 7-0; Motion Passed.

11. **Consideration and possible action approving a Law Enforcement and Patrol Agreement between the City of Fair Oaks Ranch and Setterfeld Estates Homeowners Association.**

MOTION: Made by Council Member Bliss, seconded by Council Member Stroup, to approve the agreement between the City of Fair Oaks Ranch and Setterfeld Estates Homeowners Association for police services within the gated community of Setterfeld Estates.

VOTE: 7-0; Motion Passed.

12. **Consideration and possible action authorizing the City Manager to sign a Construction Agreement with G5 Utilities, LLC for the Balcones Creek Waterline Replacement Project.**

MOTION: Made by Council Member Koerner, seconded by Council Member Stroup, to authorize the City Manager to sign a Construction Agreement with G5 Utilities, LLC for \$123,652.60 with a 10% contingency in the amount of \$12,365.26, for a total value not to exceed \$136,017.86.

VOTE: 7-0; Motion Passed.

13. Consideration and possible action approving a Wastewater Treatment Plant Site Feasibility Study capacity expansion option.

MOTION: Made by Council Member Elizondo, seconded by Council Member Koerner, to approve Option 1: Current Wastewater Treatment Plant Expansion for further evaluation as part of the Wastewater Treatment Plant Site Feasibility Study.

VOTE: 7-0; Motion Passed.

14. Presentation and possible discussion of the Fiscal Year 2021-22 Preliminary Year-End Results.

Rosie G. Vela, Director of Finance provided to Council a presentation of the Fiscal Year 2021-22 Preliminary Year-End Results and led a discussion regarding the information presented.

REPORTS FROM STAFF AND COMMITTEES

15. Rosie G. Vela, Director of Finance, provided to Council a presentation of the Quarterly Investment Report for Quarter Ended September 30, 2022.

REQUESTS AND ANNOUNCEMENTS**16. Announcements and reports by Mayor and Council Members.**

Mayor Maxton wished everyone a Happy Thanksgiving on behalf of the entire Council.

17. Announcements by the City Manager.

City Manager, Tobin Maples, AICP, reminded everyone that City Offices will be closed on Thursday, November 24, 2022 and Friday, November 25, 2022, in observance of the Thanksgiving holiday.

18. Requests by Mayor and Council Members that items be placed on a future City Council agenda.

Council Member Stroup proposed a discussion of a tree preservation ordinance as suggested earlier in the meeting by citizen Ron Madura.

CONVENE INTO EXECUTIVE SESSION

Pursuant to Section 551.101 of the Open Meetings Act, Texas Gov't Code, a quorum of the governing body convened into Executive Session at 7:54 PM regarding:

Sec. 551.071 (Consultation with Attorney) The City Council met in private consultation with legal counsel to seek the advice of its attorneys about pending or contemplated litigation, a settlement offer, and/or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflicts with Chapter 551 of the Government Code; to wit:

21. Cause No. 2021CI05780: Richard J. Davila Jr. vs. City of Fair Oaks Ranch.

Sec. 551.072 (Deliberation regarding real property)

22. The City Council met in closed session to deliberate the purchase, exchange, lease, or value of real property that may be considered for future location of water and wastewater system improvements.

City Council did not convene into Executive Session regarding:

Sec. 551.071 (Consultation with Attorney)

19. To receive legal advice from Special Counsel and the City Attorney regarding the City's ground water rights.
20. Case No. 22-090-451; Vincent A. Caldarola, MD vs. City of Fair Oaks Ranch, Texas.

RECONVENE INTO OPEN SESSION

City Council reconvened into Open Session at 8:26 PM.

MOTION: Made by Council Member Koerner, seconded by Council Member Muenchow, to authorize the City Manager to engage litigation services from Denton, Navarro, Rocha, Bernal, & Zech, LLC.

VOTE: 7-0; Motion Passed.

ADJOURNMENT

Mayor Maxton adjourned the meeting at 8:27 PM.

ATTEST:

Gregory C. Maxton, Mayor

Christina Picioccio, TRMC, City Secretary



CITY COUNCIL CONSENT AGENDA

CITY OF FAIR OAKS RANCH, TEXAS

December 1, 2022

AGENDA TOPIC: Approval of the second reading of an Ordinance approving the first amendment to the City's exclusive franchise agreement with Republic Services for the collection, hauling, and disposal of residential garbage and refuse waste in the City of Fair Oaks Ranch

DATE: December 1, 2022

DEPARTMENT: Administration

PRESENTED BY: Consent Agenda - Carole Vanzant, CPM, TRMC, Assistant City Manager, Community Services

INTRODUCTION/BACKGROUND:

The City's exclusive franchise agreement (**Exhibit A attached**) with Republic Services for the collection, hauling, and disposal of residential garbage and refuse waste expired on September 30, 2022. At the June 2, 2022 Regular City Council meeting, the City Council instructed staff to move forward with exercising the City's option to renew the agreement with Republic Services, inclusive of negotiating enhancements where possible.

At the request of Republic Services, the City Council at the September 1, 2022 Regular Business meeting approved an extension of the 2017 Agreement for an additional two months expiring November 30, 2022 under the conditions of the current Agreement. The extension was requested by Republic to provide additional time for their corporate office to review proposed modifications.

The purpose of this agenda item is to consider approval of the first amendment to said exclusive franchise agreement. Because a franchise is adopted by ordinance it may only be amended or extended by ordinance. Because the existing agreement is being modified as opposed to simply renewed, an amendment is required. **Exhibit A1** of the attached ordinance details the amendments to the existing Agreement (strikethrough/underlined and italics).

Primary elements of the first amendment are as follows:

- Provides for a 2-year renewal expiring on September 30, 2024, and seamless continued service.
- Continued utilization of the trailing twelve (12) month average Consumer Price Index (CPI) to establishing annual base service rates. The following table provides a historical perspective of base rate adjustments over the previous 5-year contract period.

Fiscal Year	Eligible Monthly Service Rate	Adopted Monthly Service Rate
October 2017		\$20.05
October 2018	\$20.69	\$20.05
October 2019	\$21.45	\$20.65
October 2020	\$22.08	\$21.25
October 2021	\$22.72	\$21.87
October 2022	\$23.86	\$22.96 *

*New base rate starting October 1, 2022

- Clarifies that all bulk and brush items shall be placed into one collection pile.
- Clarifies the type and size of containers utilized at City facilities.
- Clarifies that the City will be responsible for advance notices (mailers) regarding customer procedures for the annual brush and bulk events. The contractor will reimburse the city for all cost.
- Confirms the contractor's annual contribution toward the Household Hazardous Waste collection event is \$20k.
- Increases the franchise fee from 3% to 5%.

On November 17th, the City Council approved the first reading of the Ordinance approving the first amendment to the City's exclusive franchise agreement with Republic Services for the collection, hauling, and disposal of residential garbage and refuse waste in the City of Fair Oaks Ranch. The motion also included the following amendment to Exhibit A1 relative to the sixth Whereas:

Whereas, on September 1, 2022, Republic Services requested an extension of the 2017 agreement for an additional two-months expiring November 30, 2022 under the conditions of the current agreement.

LONGTERM FINANCIAL & BUDGETARY IMPACT:

N/A as service cost is paid by customers.

LEGAL ANALYSIS:

Approved as to form

RECOMMENDATION/PROPOSED MOTION:

Consent Agenda - I move to approve the second reading of an Ordinance approving the first amendment to the city's exclusive franchise agreement with Republic Services for the collection, hauling, and disposal of residential garbage and refuse waste.

Exhibit A

**EXCLUSIVE FRANCHISE AGREEMENT
FOR THE COLLECTION, HAULING AND DISPOSAL OF
RESIDENTIAL GARBAGE AND REFUSE WASTE
IN THE CITY OF FAIR OAKS RANCH, TEXAS**

STATE OF TEXAS

COUNTY OF KENDALL

THIS EXCLUSIVE FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of August 17, 2017, by and between BFI Waste Services of Texas, LP, d/b/a Allied Waste Services of San Antonio//Republic Services of San Antonio (the "Contractor"), and the City of Fair Oaks Ranch, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Contractor the exclusive franchise, license and privilege to collect, haul and dispose of Residential Garbage and Refuse, Brush and Bulky items, Wastewater Sludge and Screenings (as such terms are defined herein individually and collectively referred to a "Municipal Solid Waste") within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Contractor and the City hereby agree as follows:

SECTION 1. EXCLUSIVE FRANCHISE GRANT.

The City hereby grants to the Contractor, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste the exclusive franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste over, upon, along and across the City's present and future streets, alleys, bridges and public properties.

SECTION 2. TERM OF AGREEMENT.

The term of this Agreement shall be for a period of five (5) years, commencing on October 1, 2017 and concluding on September 30, 2022.

The City, at its sole discretion, shall have the option to renew this Agreement for up to two (2) additional two (2) year terms. There is no guarantee to the Contractor that the City will exercise this option to continue this Agreement beyond the initial five year period. Both parties, in writing, shall agree to each extension.

SECTION 3. DEFINED TERMS.

The following terms, as used herein, will be defined as follows:

Brush And Bulky Items - Brush includes personally-trimmed and severed parts of all domestically cultivated trees and shrubbery. Above average disposal of brush should be taken into consideration as historically, up to 600 tons, per event has been picked up. Bulky items consist of household items such

as large appliances with Freon removed, household fixtures, furniture, yard equipment with gas removed, mattresses, etc. Items have no size or weight limitations but are limited to residential and domestic items. Does not include commercial construction waste, remodeling materials or demolition debris.

Brush And Bulky Items Curbside Pick Up - The collection and disposal of curbside Brush and Bulky items.

Business Day - Any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City.

City - The City of Fair Oaks Ranch, Texas.

City Facilities - All municipal-owned buildings located at 7286 Dietz Elkhorn (City Hall Complex), 30955 Meadow Creek Trail (Fire Station), 7895 Fair Oaks Parkway (Fire Station), and the Wastewater Treatment Plant off of No Le Haze Road.

City Manager - The Fair Oaks Ranch City Manager or his/her authorized designee.

Commercial Container - Metal receptacle designed to be lifted and emptied mechanically for use at City Facilities.

Contractor - The person, corporation, partnership, or legal entity performing the services provided for under this Agreement.

Contractor's Public Education Program - A Program, maintained by the Contractor, that provides information of materials to be collected, a list of materials that cannot be collected or items which will require a special fee based pick-up, and how to prepare materials for the Residential and Garbage and Refuse services as well as annual brush/bulky item pick up and household hazardous waste events.

Dead Animal Collection - The collection of dead animals stored in the City's storage cooler.

Disposal Site - A legally permitted municipal solid waste depository including, but not limited to, sanitary landfills permitted or approved by all appropriate governmental agencies having jurisdiction and requiring such licenses, franchises, permits or approvals to receive for processing or final disposal municipal solid waste and dead animals.

Franchise Agreement - An agreement granting the right and responsibility to provide the Scope of Services provided for within the RFP.

Hazardous Waste - Means waste defined as, or of a character or in sufficient quantity to be defined as, a Hazardous Waste by the Resource Conservation and Recovery Act, as amended, or by Texas law with respect thereto, or a "toxic substance" as defined in the Toxic Substance Control Act, as amended, or any regulations with respect thereto, or any reportable quantity of a "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any regulations with respect thereto. The term "Hazardous Waste" also includes any waste whose storage, treatment, incineration or disposal requires a special license or permit from a Federal or Texas entity, body or agency.

Holidays - The following days shall be considered Holidays - New Year's Day, Thanksgiving Day, and Christmas Day.

Household Hazardous Waste - Household Hazardous Waste shall mean any liquid or solid waste identified or listed as a hazardous waste by the United States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and as may be identified by any state or federal agency as hazardous or toxic and requiring special handling or special disposal treatment. EPA considers some leftover household products that can catch fire, react, or explode under certain circumstances, or that are corrosive or toxic as household hazardous waste. Products, such as paints, cleaners, oils, batteries, and pesticides can contain hazardous ingredients and require special care when disposed of.

Landfill - Any facility or area of land receiving Municipal Solid Waste and operating under the regulation and authority of the Texas Commission on Environmental Quality ("TCEQ") within the State of Texas.

Monthly Residential Rate - Monthly fee charged by the Contractor to all single-family residential receiving solid waste collection, disposal and recycling services authorized by City Council.

Recycling and Recycling Facility- Recycling shall mean a process by which recyclable materials are collected, sorted, processed, or prepared into marketable commodities for manufacturing into new products. Recycling Facility shall mean a facility where recyclable materials are sorted and processed.

Recycling Collection - Weekly residential curbside and City facilities collection of recyclable materials.

Recycling Materials - Recycling Materials includes, but not limited to the following:

Paper Products - Newspaper, magazines, ad circulars, catalogs, envelopes, file folders, flattened cardboard, paper bags, phone books.

Glass - Bottles and jars with labels and lids.

Cans - Empty aluminum and steel/tin cans used for beverages and food.

Rigid Plastic Containers - Household plastic containers labeled #1-7 with recycling symbol on the bottom of container. Labels and lids may be present.

Other: As detailed, in the proposal, by the Contractor such as foil, styrofoam, etc,

Recycling Materials not allowed includes mirrors, window, ceramic or other glass or glazed materials, and scrap metal.

Residential Containers - A 96-gallon wheeled container made of rigid plastic and provided by the Contractor.

Residential Garbage And Refuse - All dry trash, rags, kitchen and household wastes, food containers, lawn trimmings, leaves and other materials typically generated by a residential dwelling unit, which waste is treated by regulation as domestic municipal solid waste. Residential garbage and refuse does not include Unacceptable Waste.

Residential Unit - Garbage collection and recyclable material collection services to single-family, residential units will be billed directly by the Contractor. These types of residences include, but may not

be limited to, single family residences on one electric meter or duplex dwelling units on one or more meters.

Roll-Off Container - An open top dumpster characterized by a rectangular footprint, utilizing wheels to facilitate rolling the dumpster in place. Container is designed to be transported by special roll-off trucks.

Screenings - That floating and suspended matter, both organic and inorganic, that is removed from the wastewater entering the treatment plant by the mechanically cleaned coarse screens.

Special Waste - Special Waste is any nonhazardous solid waste at City locations which, because of its physical characteristics, chemical make-up, or biological nature requires either special handling, disposal procedures including liquids for solidification at the landfill, documentation, and/or regulatory authorization, or poses an unusual threat to human health, equipment, property, or the environment. Special Waste includes, but is not limited, to sludge from the City's wastewater treatment plants. Special Waste must conform in all respects with a Contractor-approved Special Waste Profile.

Special Waste Profile - Contractor's form of documentation, as provided in Attachment A, that the City must complete, and Contractor must approve, with respect to any Special Waste prior to Contractor's acceptance of such Special Waste.

Storm Damage - Storm damage refers to damage and debris produced by strong winds, rain, hail, lighting, flooding, storm, tornadoes or turbulent weather that ultimately will be identified at the City Manager's discretion.

Unacceptable Waste - Means highly flammable substances, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the disposal facility is not authorized to receive and/or dispose of, and other materials deemed by Texas or federal law, to be dangerous or threatening to health or the environment, or which cannot be legally accepted at the applicable disposal facility. Household Hazardous Waste collected during the designated and approved, once-per-year event by Contractor does not constitute Unacceptable Waste.

Waste - Means non-hazardous residential garbage and refuse, recyclable materials, and non-hazardous special waste. Waste does not include unacceptable waste.

Wastewater Sludge - The accumulated solids separated from the wastewater during processing. That portion of settled solids from the final clarifiers removed from the wastewater treatment processes to the solids drying beds or other solids handling facilities.

SECTION 4. OPERATIONS.

Scope of Service and Operations. It is expressly understood and agreed that the Contractor will provide the following services (the "Services");

1. Weekly Collection. Unless defined a Holiday under this Franchise Agreement Contractor shall provide the following Weekly collection:

a. Residential Units - Contractor shall provide one curbside Residential Garbage and Refuse collection and one curbside Recycling Material collection per week, for each of

the residential units located within the City of Fair Oaks Ranch. The Recyclable Material curbside collection will occur on the same day as normal curbside Residential Garbage and Refuse collection. Such collection services must be provided between the hours of 7:00 A.M. and 7:00 P.M.

b. City Facilities – Contractor shall provide collection during the hours of 8:00 A.M. and 4:30 P.M. for each of the following locations as follows:

- 1) City Hall Complex – collected in 96-gallon and five-yard commercial containers at a frequency of once (1) per week and collected by the Contractor on a day as the weekly collection of residential units.
- 2) Fire Stations – collected in 96-gallon containers at a frequency of once (1) per week and collected by the Contractor on a day as the weekly collection of residential units
- 3) Wastewater Treatment Plant – collected in 96-gallon containers and 20 and 30-yard Roll-Off Containers at a frequency of twice (2) per week and collected by the Contractor on days as the weekly collection of residential units.

2. Containers.

a. Residential Containers - Contractor shall provide one Residential Container each for:

- 1) Residential Garbage and Refuse; and
- 2) Recycling Materials to each residential unit. Preferred colors for containers are green and brown.

b. Commercial Containers – At a minimum, Contractor shall provide the following commercial containers to the following City Facilities:

- 1) City Hall Complex – one (1) 5-yard metal receptacle designed to be lifted and emptied mechanically and ten (10) 96-gallon wheeled containers made of rigid plastic
- 2) Fire Stations – one (1) 96-gallon wheeled container made of rigid plastic at each location.
- 3) Wastewater Treatment Plant – one (1) 20- and one (1) 30-yard Roll-Off Container, and four (4) 96-gallon wheeled containers made of rigid plastic.

3. Recycling Education Program. Participation in curbside Recycling Collection shall be voluntary on the part of the resident. To promote maximum participation, Contractor shall, at the contract proposal price, implement, maintain and manage a public education program. Contractor shall provide educational material on acceptable recycling materials. The educational material, at the minimum, shall be sent once a calendar year in customer billing statements.

Contractor shall produce resident education tags, the form of which to be approved by the City Manager, to be left by Contractor if non-recyclable material is rejected.

Publishing and distribution of public education information shall be in hard copy and electronic version for use on City's website. The information shall contain a list of materials to be collected, a list of materials that cannot be collected or items which will require a special fee based pick up, and how to prepare materials for the weekly residential solid waste and recycling service. Said information shall be provided to every new customer, after the initial distribution, and shall be sent to all customers after any changes in collection procedures.

4. Curbside Brush and Bulky Item collections twice per calendar year, preferably February and August, to be coordinated and scheduled through the City Manager. During the collection period, all items of non-hazardous waste placed out along the City's right of way shall be picked up. Contractor is responsible for an advance notice on customer procedures of collection that shall be mailed to each residential unit. Announcements of the pick-up service shall be mailed in appropriate time to allow customers one week to place items out prior to start of pickup service in their zone. At least four zones should be utilized.

5. Dead Animal Collection at city-owned storage cooler located at 7286 Dietz Elkhorn on each day the Contractor provides residential solid waste pick up in the City.

6. Christmas Tree collection on a date to be determined annually by Contractor and City Manager but no later than mid-January of each calendar year.

7. Storm Damage clean up and disposal on City property within 48 hours of written request made by the City Manager.

8. Wastewater Sludge and Screenings removal and disposal:

a. Wastewater Sludge -- Collected in a 30-yard Roll-Off Container at a frequency of twice (2) per week.

b. Screenings - Collected in four (4) 96-gallon wheeled, drainable, plastic waste wheelers at a frequency of twice (2) per week.

9. One scheduled Household Hazardous Waste collection event per calendar year.

10. Recycling Materials shall be disposed of at *400 Probandt, San Antonio, TX*. Contractor may change the location of the Recycling Facility, however, must receive written approval from the City, such approval not to be unreasonably withheld.

11. Residential Garbage and Refuse shall be disposed of at a Landfill.

12. Special Waste Profile If services include Special Waste, the City shall utilize Contractor's approved Special Waste Profile, signed by the City Engineer or an authorized City official who is responsible for environmental compliance, containing a complete and accurate description of the waste stream, including the generating process and chemical and physical characteristics.

a. Upon successful conclusion of the waste characterization approval process, the City shall thereafter update the Special Waste Profile (1) upon request of Contractor or (2) immediately upon any change in the composition, generating process or characteristics of the waste. The City agrees, upon written request of Contractor, to provide a Special Waste Profile or, in Contractor's discretion, a representative sample and full analytical characterization of any Waste Material to Contractor or others in connection with the proper management of the Special Waste.

b. The City warrants that it has sufficient knowledge and information to ensure that the Special Waste Profile provided is true and correct at the time of tender of every load of Special Waste and that each load of Special Waste tendered for management by contractor (1) shall be fully and precisely described in a Special Waste Profile; (2) shall conform to the information provided in the Special Waste Profile; and (3) shall not contain any hazardous waste or Unacceptable Waste.

c. The City will use best efforts and will provide information to the best of its knowledge but does not assume liability in case of error.

13. Right of Refusal. Contractor may, in its sole discretion, reject any Unacceptable Waste. If Unacceptable Waste is discovered before it is collected by Contractor, Contractor may refuse to collect the entire container of waste.

14. Contractor shall be required to follow all applicable local, state and federal laws and regulation pertaining to the provision of the services detailed herein, including but not limited to those related to safety. Contractor shall acquire title to Waste when the Waste is loaded into Contractor's vehicle; except when Contractor is providing disposal services only and not collection services, Contractor shall acquire title when the Waste is delivered to Contractor's premises. Title to and liability for any Unacceptable Waste shall at no time pass to Contractor.

SECTION 5. RATES AND FEES.

The rates and fees to be charged and received by the Contractor are as follows:

1. Total Monthly Residential Rate including annual Household Hazardous Waste event inclusive of disposal costs for solid waste services to include collection and disposal of Residential Garbage and Refuse, Brush and Bulky items, and Wastewater Sludge and Screenings, Recycling Materials, and Household Hazardous Waste. **\$20.05/home/month**

2. Total Monthly Rate for Additional Containers. **\$12.00/container/month**

3. Contractor may increase the rates effective on each anniversary of the effective date of the contract in an amount equal to the percentage increases in the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services) U.S. City Average, as published by the United States Department of Labor, Bureau of Statistics (the "CPI"). Rates will be increased using the most recently available trailing 12 months average CPI compared to the 12 months preceding. The Annual Rate Adjustment will be the lesser of the CPI Water, Sewer & Trash index or 3%. For example, if the CPI price increase is scheduled for April 1, 2017, and the latest CPI index available is the month of February, 2017, the CPI price increase percentage would be computed as the % change from:

The average CPI for the 12 months - March 2016 through February, 2017
Against the average CPI for the 12 months - March 2015 through February, 2016

SECTION 6. FRANCHISE FEE.

In consideration of the grant of the franchise herein the Contractor shall agree to:

1. Pay the City an amount equal to three (3%) percent of the gross receipts of the Contractor for Residential Unit services provided in the City. Said amount shall be paid each annual quarter, within thirty days after the quarter.
2. Pay to the City an amount equal to 50% of the net proceeds from the sale of all Recyclable Material collected from participants in the recycling program. Said amount shall be paid to the City each annual quarter, within thirty days after the quarter.
3. Notwithstanding the terms of this Agreement or any other understanding between the parties, Contractor's Franchise Fee obligations shall extend only to those revenues received and retained by Contractor as its rates or fees for servicing customers, as such rates or fees may be increased from time to time. To the extent Contractor imposes any surcharges on customers, including but not limited to surcharges made for the purpose of satisfying (i) Contractor's own Franchise Fee obligations to the City or (ii) Contractor's sales tax obligations or (iii) the Fuel Recovery Fee, Environmental Recovery Fee, Administrative Fee, or any other separately stated fee, to the extent applicable, the monies received by Contractor as a result of such surcharge(s) shall not be subject to the Franchise Fee and the City shall not be entitled to receive as part of its Franchise Fee any portion or percentage of such monies.
4. Contractor shall make available to City any and all documents and books necessary and related to the services provided under the Agreement upon reasonable notice, at any time during business hours for purpose of audit and verification of the fees to be paid hereunder.

SECTION 7. BILLING.

Contractor shall bill and collect, in accordance with the monthly fee schedule established herein, from all residential units within the contracted service area. City will not be responsible for, and will not provide assistance with collection of delinquent accounts.

SECTION 8. HOURS OF SERVICE.

For all the Services provided hereunder, the Contractor's hours of service shall be as provided for in this Agreement. The Contractor will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement; provided, however, that the Contractor shall provide such services on the immediately following business day.

SECTION 9. CUSTOMER SERVICE.

A customer service office for billing, arrangement of services, and receipt of complaints shall be available during normal business hours to respond to customer and city inquiries within two (2) hours of the initial call. Contractor shall, on billing statements, provide the Contractor's customer service phone number. A 24 hour emergency telephone number with a representative available to respond to emergency calls from the City shall be made available.

SECTION 10. VEHICLES AND EQUIPMENT.

Contractor furnished-equipment, such as trash or recycling containers; dumpsters; or open to roll offs, shall remain as Contractor's property. The City and residents shall be liable for loss or damage to such equipment (except for normal wear and tear and for loss or damage resulting from Contractor's handling of the equipment). The City and residents shall use the equipment only for its proper and intended purpose and shall not overload (by weight or volume), move or alter the equipment. The City and residents shall provide safe, unobstructed access to the equipment on the scheduled collection day. Contractor may charge an additional fee for any additional collection service required by the failure to provide access.

Contractor shall provide and maintain a fleet of solid waste collection vehicles sufficient in number and capacity to perform the work and render the service required under this Agreement. All equipment, including collection vehicles shall be kept clean and in good condition and repair at all times. The trucks used in the collection of garbage shall be all metal, with completely enclosed "packer" type bodies that are designed and manufactured for the collection of garbage and rubbish. Said collection vehicles shall have Contractor's name and telephone numbers painted on each side of the vehicle.

Collection vehicles shall carry at all times a shovel and a broom or rake, to be used for collection of spilled refuse. Vehicles shall be equipped with two-way communications for constant contact, during operations, with the local office of the company.

Vehicles used by the Contractor for the collection, hauling and disposal of Residential Garbage and Refuse and Construction and Demolition Waste shall be protected at all times while in transit to prevent the blowing or scattering of Residential Garbage and Refuse and Recycling Materials onto the City's public streets, or properties adjacent thereto. All collection vehicles used by the Contractor shall be washed and deodorized once per week.

SECTION 11. INSURANCE COVERAGE.

Workers Compensation Insurance/Other State-approved Program: Contractor shall carry and maintain during the term of this Agreement, workers compensation or other state-approved program and employers liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$2,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$2,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$2,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$4,000,000 per occurrence for bodily injury and property damage or split limits of at least \$2,000,000 for bodily injury per person per occurrence and \$2,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

Subcontractor: In the case of any work sublet, the Contractor shall require subcontractor and independent contractors working under the direction of either the Contractor or a subcontractor to carry and maintain the same workers compensation and liability insurance required of the Contractor.

Qualifying Insurance: The insurance required by this Agreement shall be written by a non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form.

Contractor shall secure the following for the benefit of the City with respect to the above required insurance, so that the City shall:

- Be identified as an additional insured on all policies except Worker Compensation Policy;
- Be provided with thirty-(30) days advance notice in writing of cancellation in any policy;
- Be provided with Certificates of Insurance evidencing the above required insurance pursuant to this Agreement, and thereafter with certificates evidencing renewals or replacement of said policies of insurance; and
- Be provided with waiver of Subrogation on Workers Compensation in favor of the City.

SECTION 12. PERFORMANCE SECURITY.

During the term of this Agreement and any extension thereof, the Contractor agrees to procure and maintain a performance bond (i) payable to the City, (ii) issued by a surety acceptable to the City, and (iii) conditioned upon the Contractor truly and timely performing all of its obligations under this Agreement. Such performance bond shall be in the amount of \$_____ (a minimum of 100% of the first year value of the Agreement) and shall be in effect for the duration of this Agreement and any extensions thereof.

SECTION 13. EXCLUSIONS.

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any materials not covered under this Agreement; provided, however, that the Contractor and the owner or occupant of a Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of any such materials.

SECTION 14. ASSIGNMENT.

This Agreement shall not be assignable or otherwise transferable by the Contractor without the prior written consent of the City; provided, however, that the Contractor may assign this Agreement to any direct or indirect affiliate or subsidiary of the Contractor or to any person or entity succeeding to all or substantially all of the Contractor's assets (whether by operation of law, merger, consolidation or otherwise) without the City's consent.

SECTION 15. ENFORCEMENT.

The City shall take any action reasonably necessary to prevent any other solid waste collection company from conducting business in violation of the exclusive franchise granted herein.

SECTION 16. COMPLIANCE WITH APPLICABLE LAWS.

The Contractor shall comply with all applicable federal and state laws regarding the collection, hauling and disposal of Residential Garbage and Refuse, including existing and future laws that may be enacted, as well as any regulations reasonably passed by the City that are not in derogation of this Agreement. Nothing in this Agreement shall be construed in any manner to abridge the City's right to pass or enforce necessary police and health regulations for the reasonable protection of its inhabitants. The City shall have the right to make reasonable inspections of the Contractor in order to insure compliance with this Section.

SECTION 17. DUE CARE.

The Contractor shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved.

SECTION 18. PERSONNEL AND PERFORMANCE STANDARDS.

The Contractor shall not deny employment to any person on the basis of race, creed or religion, and will insure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Contractor, its agents, servants and employees shall perform the Services in a courteous and competent manner. During the term of this Agreement and any extension thereof, the Contractor shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

SECTION 19. TERMINATION.

Any failure by the Contractor or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the City (and signed by the Mayor), constitute grounds for forfeiture and immediate termination of all the Contractor's rights under this Agreement, and all such rights shall become null and void.

City may terminate the Agreement at any time, without cause, upon providing Contractor 180 day's written notice of its intent to terminate.

SECTION 20. INDEMNITY.

THE CONTRACTOR ASSUMES RISKS OF LOSS OR INJURY TO PROPERTY OR PERSONS TO THE EXTENT CAUSED BY ITS PERFORMANCE OF THE SERVICES. THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS AGENTS, DIRECTORS, EMPLOYEES, OFFICERS AND SERVANTS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LEGAL PROCEEDINGS, CLAIMS, DEMANDS, DAMAGES, COSTS, LIABILITIES, LOSSES OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) TO THE EXTENT CAUSED BY AN INTENTIONAL, WILLFUL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ITS OFFICERS AND EMPLOYEES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT OR OTHERWISE, CONTRACTOR SHALL HAVE NO OBLIGATION TO INDEMNIFY, DEFEND OR HOLD HARMLESS CITY, OR ANY OTHER PARTIES INDEMNIFIED UNDER THIS AGREEMENT, FOR ANY SUCH

LIABILITY OR CLAIM TO THE EXTENT RESULTING FROM THE NEGLIGENCE OR, WILLFUL MISCONDUCT BY CITY, ANY THIRD PARTY OR ANY OTHER PARTIES INDEMNIFIED UNDER THIS AGREEMENT.

SECTION 21. INDEPENDENT CONTRACTOR.

Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Professional.

SECTION 22. FORCE MAJEURE.

The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of war, accident, explosion, fire, flood, riot, sabotage, acts of terrorists, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

SECTION 23. GOVERNING LAW.

This Agreement shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the State of Texas, without giving effect to the conflict of laws rules thereof. The parties hereby irrevocably submit to the jurisdiction of the courts of the State of Texas, County of Kendall and the Federal courts of the United States located in the State of Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may be enforced in or by said courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Texas State or Federal court.

SECTION 24. CUMULATIVE REMEDIES.

Pursuit of the remedies described in herein shall not preclude pursuit of any other remedies provided in this Agreement or any other remedies provided by law, nor shall pursuit of any remedy provided in this Agreement constitute a waiver of any amount or performance due from the Contractor under this Agreement or of any damages accruing by reason of the violation of its term, provisions and covenants. No waiver of any violations shall be deemed or construed to constitute a waiver of any other violation or other breach of any the terms, provisions and covenants contained in this Agreement, and forbearance to enforce one or more of the remedies as provided on an event of default shall not be deemed or construed to constitute a waiver of such default or of any other remedy provided for in this Agreement.

SECTION 25. SAVINGS PROVISION.

In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible,

remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

SECTION 26. ACCEPTANCE.

PASSED AND APPROVED BY THE CITY OF FAIR OAKS RANCH CITY COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 17th DAY OF AUGUST, 2017.

BFI WASTE SERVICES OF TEXAS, LP
d/b/a ALLIED WASTE SERVICES OF S.A.
//REPUBLIC SERVICES OF SAN ANTONIO
4542 SE LOOP 410
SAN ANTONIO, TEXAS 78222

By: _____

CITY OF FAIR OAKS RANCH, TEXAS
7286 DIETZ ELKHORN
FAIR OAKS RANCH, TX 78015

By: _____

Name: Tobin Maples
Title: City Manager

ATTEST:

By: _____

Name: TOM ARMSTRONG
Title: MUNICIPAL SALES MGR

ATTEST:

By: _____

Name:
Title:

AN ORDINANCE

AN ORDINANCE OF THE CITY OF FAIR OAKS RANCH CITY COUNCIL APPROVING THE FIRST AMENDMENT TO AN EXCLUSIVE FRANCHISE AGREEMENT WITH REPUBLIC SERVICES FOR THE COLLECTION, HAULING, AND DISPOSAL OF RESIDENTIAL GARBAGE AND REFUSE WASTE IN THE CITY OF FAIR OAKS RANCH, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT, PROVIDING A SEVERABILITY AND A REPEALER CLAUSE, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Fair Oaks Ranch has determined that it would be in the best interest of the citizens of the City and, would promote the health, safety and general welfare of the inhabitants of said City to contract with Republic Services to provide for the collection, removal and disposal of garbage and refuse waste in the City of Fair Oaks Ranch; and,

WHEREAS, the City Council of the City of Fair Oaks Ranch has determined that such an Agreement is necessary to preserve or protect the public health of the citizens of Fair Oaks Ranch, Texas.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS THAT:

SECTION I. AGREEMENT APPROVED.

The "*First Amendment*" to the Exclusive Franchise Agreement for the Collection, Hauling and Disposal of Residential Garbage and Refuse Waste in the City of Fair Oaks Ranch, Texas (hereinafter the "Agreement"), attached hereto, upon execution, as **Exhibit A1** and incorporated herein for all purposes, is hereby approved.

SECTION II. CITY MANAGER AUTHORIZED.

The City Manager is hereby authorized, on behalf of the City, to execute the Agreement in substantial form as **Exhibit A**, and such other ancillary instruments and documents as may be reasonably necessary to effectuate the intent of this Ordinance.

SECTION III. SEVERABILITY.

If for any reason any section, paragraph, subsection, clause, phrase, word, or provision of this Ordinance shall be held invalid or unconstitutional by final judgment of a Court of competent jurisdiction it shall not affect any other section, paragraph, subsection, clause, phrase, work or provision of this Ordinance, for it is the definite intent of this City Council that every section, paragraph, subsection, clause, phrase, work, or provision hereof be given full force and effect for its purpose.

SECTION IV. REPEAL.

All ordinances or parts of ordinances in conflict with the terms of this ordinance are hereby repealed.

SECTION V. EFFECTIVE DATE.

This ordinance shall be effective upon approval and adoption.

PASSED on first reading this 17th day of November, 2022.

PASSED, APPROVED and ADOPTED on second reading this the 1st day of December, 2022.

ATTEST:

Gregory C. Maxton, Mayor

APPROVED AS TO FORM:

Christina Picioccio, TRMC, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

Exhibit A1

FIRST AMENDMENT TO EXCLUSIVE FRANCHISE AGREEMENT WITH BFI WASTE SERVICES OF TEXAS, LP, d/b/a ALLIED WASTE SERVICES OF SAN ANTONIO/REPUBLIC SERVICES OF SAN ANTONIO FOR THE COLLECTION, HAULING, AND DISPOSAL SERVICES OF RESIDENTIAL GARBAGE AND REFUSE WASTE IN THE CITY OF FAIR OAKS RANCH, TEXAS

This First Amendment ("First Amendment") to the Agreement between the City of Fair Oaks Ranch and BFI Waste Systems of Texas, LP, dba Allied Waste Services of San Antonio//Contractor Services of San Antonio dated August 17, 2017 ("2017 Agreement") is made and entered as of this 17th day of November, 2022 by and between the City of Fair Oaks Ranch, Texas ("City") and BFI Waste Systems of Texas, LP, dba Republic Services of San Antonio ("Contractor").

RECITALS

WHEREAS, on August 17, 2017, the City and Contractor entered into the 2017 Agreement for the collection, hauling, and disposal service of residential garbage and refuse waste in the City of Fair Oaks Ranch; and,

WHEREAS, the 2017 Agreement between the City and Contractor expired on September 30, 2022; and,

WHEREAS, the 2017 Agreement has a two (2) year renewal option upon mutual agreement of both parties; and,

WHEREAS, the City has determined a two-year extension of the 2017 Agreement is in the best interest of the residents of Fair Oaks Ranch; and,

WHEREAS, Contractor has determined that it is in their interest to continue providing services for an additional two years.

WHEREAS, on September 1, 2022 Republic Services requested an extension of the 2017 Agreement for an additional two-months expiring November 30, 2022 under the conditions of the current Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises and covenants hereinafter contained, the City and contractor agree to exercise the first of two (2) two (2) year renewal options (Part 1) and in this First Amendment to the 2017 Agreement, agree to amend the 2017 Agreement as follows in Parts 2, 3, 4, and 5 below. All other terms and conditions of the 2017 Agreement not expressly amended by this First Amendment shall continue in full force and effect.

Part 1: Section 2 – Term of Agreement

The City and Contractor agree to exercise the first of two (2) two (2) year renewal options with said first renewal expiring on September 30, 2024.

Part 2: Section 3 – Defined Terms

Brush and Bulky Items - Brush includes personally trimmed and severed parts of all domestically cultivated trees and shrubbery. Above average disposal of brush should be taken into consideration as historically, up to 600 tons, per event has been picked up. Bulky items consist of household items such as large appliances with Freon removed, household fixtures, furniture, yard equipment with gas removed, mattresses, etc. Items have no size or weight limitations but are limited to residential and domestic items and all bulk and brush disposed of shall be placed into one collection pile. Does not include commercial construction waste, remodeling materials or demolition debris.

Part 3: Section 4 Operations**1.b. - Weekly Collection City Facilities**

- 1) City Hall Complex – collected in 96-gallon and ~~five-yard~~ four-yard commercial containers at a frequency of once (1) per week and collected by the Contractor on a day as the weekly collection of residential units.
- 2) Fire Stations – collected in 96-gallon containers at a frequency of once (1) per week and collected by the Contractor on a day as the weekly collection of residential units.
- 3) Wastewater Treatment Plant – collected in 96-gallon containers and 20- and 30-yard Roll-Off containers at a frequency of twice (2) per week and collected by the Contractor on days as the weekly collection of residential units.

2.b. – Containers Commercial

- 1) City Hall Complex- one (1) ~~5-yard~~ 4-yard metal receptacle designed to be lifted and emptied mechanically and ~~ten (10)~~ fifteen (15) 96-gallon wheeled containers made of rigid plastic.
- 2) Fire Stations – ~~one (1)~~ four (4) 96-gallon wheeled container made of rigid plastic at each location.
- 3) Wastewater Treatment Plant – one (1) 20- and one (1) 30-yard Roll-Off container, and ~~four (4)~~ ten (10) 96-gallon wheeled containers made of rigid plastic.

4. Curbside Brush and Bulky Item collections twice per calendar year, preferably ~~February~~ January and August, to be coordinated and scheduled through the City Manager. During the collection period, all items of non-hazardous waste placed out along the City's right of way shall be picked up. ~~Contractor is responsible for an advance notice on customer procedures of collection that shall be mailed to each residential unit.~~ City is responsible for an advance notice on customer procedures of collection that shall be mailed to each residential unit. Contractor shall reimburse the city all costs for producing and mailing the customer notice including 10% administrative fee of invoice total. Announcements of the pick-up service shall be mailed in appropriate time to allow customers one week to place items out prior to start of pickup service in their zone. At least four zones should be utilized.

9. One scheduled Household Hazardous Waste collection event per calendar year. Contractor will contribute \$20,000 toward the annual Event. City will be responsible for any remainder of the total event cost. City is responsible for an advance notice on customer procedures of collection that shall be mailed to each residential unit. Contractor shall reimburse the city all costs for producing and mailing the customer notice including 10% administrative fee of invoice total.

Part 4: Section 5 Rates and Fees

Effective October 1, 2022, the rates and fees to be charged and received by the Contractor are as follows:

1. Total Monthly Residential Rate including annual Household Hazardous Waste event inclusive of disposal costs for solid waste services to include collection and disposal of Residential Garbage and Refuse, Brush and Bulky items, and Wastewater Sludge and Screenings, Recycling Materials, and Household Hazardous Waste.

\$22.96/home/month
2. Total Monthly Rate for Additional Containers

\$13.74/container/month

Part 5: Section 6 Franchise Fee

Pay the City an amount equal to ~~three (3%)~~ five (5%) percent of the gross receipts of the Contractor for Residential Unit services provided in the City. Said amount shall be paid each annual quarter, within thirty days after the quarter.

City of Fair Oaks Ranch, Texas

BFI Waste Services of Texas, LP d/b/a Allied Waste Services of S.A./Republic Services of San Antonio

By: _____
 Tobin E. Maples, City Manager

By: _____
 Name: _____
 Title: _____

Attest: _____
 Christina Picioccio, City Secretary

Attest: _____
 Name: _____
 Title: _____

Address: 7286 Dietz Elkhorn
 Fair Oaks Ranch, TX 78015

Address: 4542 SE Loop 410
 San Antonio, TX 78222

Date: _____

Date: _____



CITY COUNCIL CONSIDERATION ITEM
CITY OF FAIR OAKS RANCH, TEXAS
December 1, 2022

AGENDA TOPIC: Consideration and possible action on approving the first reading of an Ordinance regarding extending the retention period of audiovisual recordings of open meetings from 90 days to six (6) years

DATE: December 1, 2022

DEPARTMENT: City Secretary, Information Technology

PRESENTED BY: Christina Picioccio, TRMC, City Secretary
 Brian LeJeune, IT Manager

INTRODUCTION/BACKGROUND:

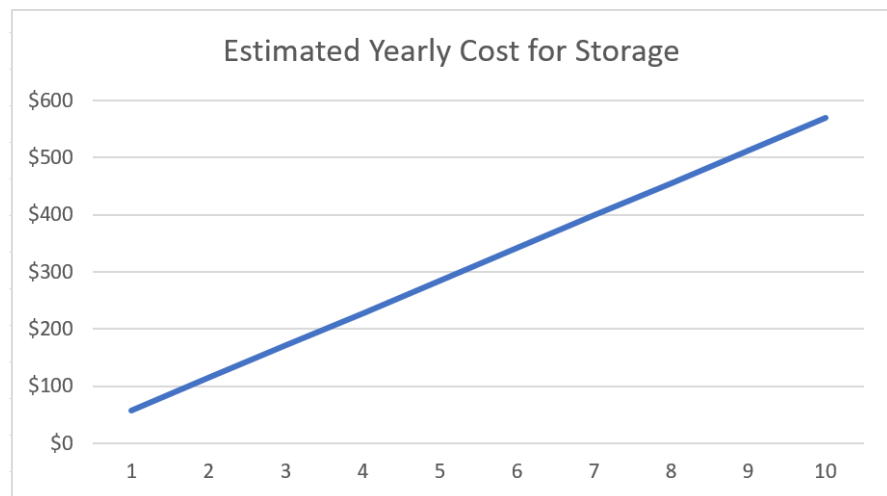
On October 21, 2021, City Council approved Records Management Ordinance 2021-06. This Ordinance memorialized the Council's decision to adopt the Texas State Library and Archives Commission (TSLAC) retention schedules for local governments. At that time Council elected to extend the retention schedule of a select list of agenda/minutes related records (see table below). Due to the uncertainty of file size and server space utilization Council opted to maintain the audiovisual recordings of open meetings as per the minimum standard retention schedule (90 days). Council directed staff to monitor recording sizes and to evaluate server storage capacity.

<u>Record Number</u>	<u>Record Title</u>	<u>TSLAC Record Description</u>	<u>CoFOR New Retention Period</u>
GR 1000-01a	Agendas	Open Meetings 1. If the minutes describe each matter considered by the governing body and reference to an agenda is not required. (2 Years)	10 Years
GR 1000-03g	Minutes (Agenda Packets)	Supporting documentation – One copy of each document of any type submitted to a meeting of a governing body for consideration, approval, or other action; if such action is reflected in the minutes of the meeting. (2 Years)	10 Years
GR 1000-03e	Minutes (Recordings)	Audio-only recordings of open meetings for which written minutes are prepared. (90 Days After Approval of Minutes)	6 Years
GR 1000-03e	Minutes (Recordings)	Audiovisual recordings of open meetings for which written minutes are prepared. (90 Days After Approval of Minutes)	90 Days

The IT Department has analyzed our existing data usage since deploying our new video recording equipment and has determined that Council has utilized approximately 63 GB of storage since we started streaming council meetings. The following Boards and Committees open meetings: MDD, P&Z, and ZBOA, also recorded to facilitate the creation of meeting minutes but not streamed on YouTube, have utilized a combined total of 21 GB.

The IT Department will be moving the City's storage to a secure cloud provider where we will be charged an annual rate commensurate with total cumulative data usage with that provider. To that end the question changes from what the City's storage capacity is to how much are will willing to spend on storage annually. The table below illustrates cost calculations based on the six (6) months of measured data (Council & Boards) extrapolated for the next ten years.

Year	Cost Per Year
1	\$57
2	\$114
3	\$171
4	\$228
5	\$285
6	\$342
7	\$399
8	\$455
9	\$512
10	\$569



The purpose of this agenda item is to determine if Council would like to extend the retention period for audiovisual recordings beyond our current 90-day retention. Changes to the audiovisual recording schedule will require an amendment of the Ordinance (Exhibit A). As Council previously determined a six (6)-year retention period for audio-only recordings, staff proposes that the audiovisual recordings remain consistent with a six (6)-year retention period.

POLICY ANALYSIS/BENEFIT(S) TO CITIZENS:

Access to the City's audiovisual records affords those citizens who are unable to attend council meetings the opportunity to view the meetings at their leisure. Should City Council desire to prolong the retention period of audiovisual recordings this would allow citizens extended time to review these records.

Promotes consistency with previously determined audio-only recording retention period.

These recommendations are consistent with Strategic Action Plan 5.2.5 Develop and Implement Live Stream and Video Capabilities for Council Meetings and 5.3.2 Develop and Implement a Records Management Plan.

LONG-TERM FINANCIAL & BUDGETARY IMPACT:

Long-term financial and budgetary impacts are dependent upon retention schedule adopted by City Council. Storage costs are based on six (6) months of actual data usage. The number of meeting estimates are based on the past three (3)-year averages. Longer retention periods will incur more costs as the storage costs are cumulative – see table above. The proposed six (6)-year recommendation will ultimately cost approximately \$342.00 annually once we meet the sixth year of maintaining records.

LEGAL ANALYSIS:

Ordinance approved as to form.

RECOMMENDATION/PROPOSED MOTION:

I move to approve the first reading of an Ordinance to extend the retention period of audiovisual recordings of open meetings from 90 days to six (6) years.

AN ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH AMENDING THE AUDIOVISUAL RETENTION PERIOD IDENTIFIED IN SECTION 8 (3) THE CITY'S CODE OF ORDINANCES CHAPTER 1, GENERAL PROVISIONS, ARTICLE 1.05 RECORDS MANAGEMENT; PROVIDING FOR SEVERABILITY AND REPEAL CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Title 6, Subtitle C, Local Government Code (Local Government Records Act) provides that a municipality must establish by ordinance an active and continuing records management program to be administered by a Records Management Officer; and

WHEREAS, the City of Fair Oaks Ranch recognizes that review and amendment of current practices is warranted; and

WHEREAS, the City of Fair Oaks Ranch amended the Records Management Ordinance on October 21, 2022; and

WHEREAS, the City of Fair Oaks Ranch placed a temporary retention period for audiovisual materials of 90 days pending additional data storage information; and

WHEREAS, the City of Fair Oaks Ranch desires to amend its ordinance for that purpose and to prescribe policies consistent with the Local Government Records Act and in the interests of cost-effective and efficient recordkeeping.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

PART 1. Chapter 1 "General Provisions" Article 1.05 "Records Management" is hereby amended as set forth in the attached **"Exhibit A"**.

PART 2. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

PART 3. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance and the remainder of this Ordinance shall be enforced as written.

PART 4. That it is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PART 5. This Ordinance shall take effect on December 15, 2022, after its second reading and after passage.

PART 6. The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this Ordinance.

PART 7. The provisions of this Ordinance shall be cumulative of all ordinances not repealed by this Ordinance and ordinances governing or regulating the same subject matter as that covered herein.

PASSED and APPROVED on first reading this the 1st day of December, 2022.

PASSED, APPROVED and ADOPTED on second reading this the 15th day of December, 2022.

ATTEST:

Gregory C. Maxton, Mayor

APPROVED AS TO FORM:

Christina Picioccio, TRMC, City Secretary

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

Exhibit A

Chapter 1 "General Provisions" Article 1.05 "Records Management" is hereby amended as follows:

SECTION 1. DEFINITION OF MUNICIPAL RECORDS.

All documents, papers, letters, books, maps, photographs, sound or video recordings, electronic media, or other information recording media, regardless of physical form or characteristic and regardless of whether public access to them is open or restricted under the laws of the state, created or received by the City of Fair Oaks Ranch or any of its officers or employees pursuant to law or in the transaction of public business are hereby declared to be the records of the City of Fair Oaks Ranch and shall be created, maintained, and disposed of in accordance with the provisions of this ordinance or procedures authorized by it and in no other manner.

SECTION 2. ADDITIONAL DEFINITIONS.

- (1) "Department Head" means the officer who by ordinance or administrative policy is in charge of an office of the City of Fair Oaks Ranch that creates or receives records.
- (2) "Essential Record" means any record of the City of Fair Oaks Ranch necessary to the resumption or continuation of its operations in an emergency or disaster, to the re-creation of the legal and financial status of the City of Fair Oaks Ranch, or to the protection and fulfillment of obligations to the people of the state.
- (3) "Permanent Record" means any record of the City of Fair Oaks Ranch for which the retention period on a records control schedule is given as permanent.
- (4) "Records Control Schedule" means a document prepared by or under the authority of the Records Management Officer listing the records maintained by the City of Fair Oaks Ranch, their retention periods, and other records disposition information that the records management program may require.
- (5) "Records Management" means the application of management techniques to the creation, use, maintenance, retention, preservation, and disposal of records for the purposes of reducing the costs and improving the efficiency of recordkeeping. The term includes the development of records control schedules, the management of filing and information retrieval systems, the protection of essential and permanent records, the economical and space-effective storage of inactive records, control over the creation and distribution of forms, reports, and correspondence, and the management of micrographics and electronic and other records storage systems.
- (6) "Records Management Officer" means the person designated in Section 5 of this Ordinance.
- (7) "Records Management Plan" means the plan developed under Section 6 of this ordinance.
- (8) "Retention Period" means the minimum time that must pass after the creation, recording, or receipt of a record, or the fulfillment of certain actions associated with a record before it is eligible for destruction.

SECTION 3. MUNICIPAL RECORDS DECLARED PUBLIC PROPERTY.

All municipal records as defined in Section 1 of this ordinance are hereby declared to be the property of the City of Fair Oaks Ranch. No municipal official or employee has, by virtue of his or her position, any personal or property right to such records even though he or she may have developed or compiled them. The unauthorized destruction, removal from files, or use of such records is prohibited.

SECTION 4. POLICY.

It is hereby declared to be the policy of the City of Fair Oaks Ranch to provide for efficient, economical, and effective controls over the creation, distribution, organization, maintenance, use, and disposition of all municipal records through a comprehensive system of integrated procedures for the management of records from their creation to ultimate disposition, consistent with the requirements of the Texas Local Government Records Act and accepted records management practice.

SECTION 5. DESIGNATION OF RECORDS MANAGEMENT OFFICER.

The City Secretary, and the successive holders of said office, shall serve as Records Management Officer for the City of Fair Oaks Ranch. As provided by state law, each successive holder of the office shall file his or her name with the director and librarian of the Texas State Library within thirty days of the initial designation or of taking up the office, as applicable.

SECTION 6. RECORDS MANAGEMENT PLAN TO BE DEVELOPED; AUTHORITY OF PLAN.

- (1) The Records Management Officer shall develop a records management plan for the City of Fair Oaks Ranch. The plan must contain policies and procedures designed to reduce the costs and improve the efficiency of record keeping, to adequately protect the essential records of the municipality, and to properly preserve those records of the municipality that are of historical value. The plan must be designed to enable the Records Management Officer to carry out his or her duties prescribed by state law and this ordinance effectively.
- (2) The records management plan shall be binding on all offices, departments, divisions, programs, commissions, bureaus, boards, committees, or similar entities of the City of Fair Oaks Ranch and records shall be created, maintained, stored, or disposed of in accordance with the plan.
- (3) The Records Management Officer shall develop plans that encompass the duties and responsibilities of department heads and delegated employees to work in conjunction with the Records Management Officer in the performance of records control.
- (4) State law relating to the duties, other responsibilities, or record keeping requirements of a department head do not exempt the department head or the records in the department head's care from the application of this ordinance and the records management plan adopted under it and may not be used by the department head as a basis for refusal to participate in the records management program of the City of Fair Oaks Ranch.

SECTION 7. ADOPTION OF STATE RECORDS CONTROL SCHEDULES; APPROVAL; FILING WITH STATE.

- (1) In lieu of filing records control schedules, the City of Fair Oaks Ranch has adopted record control schedules issued by the Texas State Library and Archives Commission. A declaration of compliance with the records scheduling requirement of the Local Government Records Act shall be filed with the Texas State Library and Archives Commission by the records management officer (Form SLR 508).

SECTION 8. IMPLEMENTATION OF RECORDS CONTROL SCHEDULES; DESTRUCTION OF RECORDS UNDER SCHEDULE.

- (1) A records control schedule for a department that has been approved and adopted under Section 7 shall be implemented by department heads according to the policies and procedures of the records management plan.
- (2) A record whose retention period has expired on a records control schedule shall be destroyed unless an open records request is pending on the record, the subject matter of the record is pertinent to a pending lawsuit, or the department head requests in writing to the Records Management Officer that the record be retained for an additional period.
- (3) The City Council identifies that the following records be kept beyond the state retention period:

<u>Record Number</u>	<u>Record Title</u>	<u>Record Description</u>	<u>New Retention Period</u>
GR 1000-01a	Agendas	Open Meetings 1. If the minutes describe each matter considered by the governing body and reference to an agenda is not required.	10 Years
GR 1000-03g	Minutes (Agenda Packets)	Supporting documentation – One copy of each document of any type submitted to a meeting of a governing body for consideration, approval, or other action; if such action is reflected in the minutes of the meeting.	10 Years
GR 1000-03e	Minutes (Recordings)	Audio-only recordings of open meetings for which written minutes are prepared.	6 Years
GR 1000-03e	Minutes (Recordings)	Audiovisual recordings of open meetings for which written minutes are prepared.	90 Days 6 Years

SECTION 9. DESTRUCTION OF UNSCHEDULED RECORDS.

In order to destroy records that do not appear on schedules issued by the Texas State Library and Archives Commission and that have not been added by a filed supplemental records control schedule, a request for authorization to destroy unscheduled records (SLR 501) must be filed with the Texas State Library and Archives Commission.

SECTION 10. RECORDS CENTER.

A records center, developed pursuant to the plan required by Section 6, shall be under the direct control and supervision of the Records Management Officer. Policies and procedures regulating the operation and use of the records center shall be contained in the records management plan developed under Section 6.