

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM
Approval Date: November 8, 2019

Request to Approve Initial Resolution Reflecting Official Intent to Issue Revenue Notes

Prepared by: *Kris Luoma*

Applicant: California Waste Solutions, Inc. and/or its affiliates	Amount Requested: \$61,000,000
Project Location: Oakland (Alameda County) San Jose (Santa Clara County)	Application No.: 929 (SB) Initial Resolution No.: 19-03

Summary. California Waste Solutions, Inc. and/or its affiliates (the “Company” or “Cal Waste”) requests approval of an Initial Resolution for an amount not to exceed \$61,000,000 to finance the purchase of additional equipment, which includes carts, bins, rolling stock and containers. Note proceeds will also be used to upgrade the existing materials recovery facility (MRF), sort line, solid waste collection vehicles, trucks and tractors, and to purchase the property, which the Company is currently leasing, located at 1120 and 1158 Berryessa Road in San Jose.

Borrower. The Company collects and processes residential recyclables in the cities of Oakland and San Jose. Cal Waste was incorporated in 1992 and has approximately 309 employees throughout its operating locations in Alameda and Santa Clara Counties.

The principal stockholders of the Company are as follows:

David Duong	42.00%
Linda Duong	32.50%
Victor Duong	<u>25.50%</u>
Total:	<u>100.00%</u>

Legal Questionnaire. The Staff has reviewed the Company’s responses to the questions contained in the Legal Status portion of the Application. The Company responded affirmatively to Question two on the Legal Status Questionnaire (LSQ) portion of the Application relating to Fraud, Corruption or Serious Harm (Health & Safety).

Resolved Legal or Regulatory Actions:

1. The Alameda County Department of Environmental Health (ACDEH), acting as the Local Enforcement Agency (LEA), filed administrative actions against Cal Waste and a cease and desist order related to the Company’s facilities located at 1820 10th Street, Oakland and 3300 Wood Street, Oakland alleging code violations and health & safety violations at both facilities. A Stipulation and Order was issued by the LEA for both facilities as were the Settlement and Administrative Settlement Enforcement Penalty.

2. Waste Management, a Texas based company, had been in contract with the City of Oakland for the collection of the City's garbage. The City of Oakland discontinued doing business with Waste Management and awarded the City's garbage and recycling contract to Cal Waste. Waste Management sued the City of Oakland and California Waste Solutions, Inc., as it was party to the receiving of Waste Management's garbage contract. A meeting was held with the Special Counsel for the City of Oakland and an agreement was reached. Waste Management was re-awarded the City's garbage collection contract and Cal Waste was awarded the City's recycling contract. Immediately following the meeting with Special Counsel for the City of Oakland, Waste Management dropped its lawsuits against the City of Oakland and California Waste Solutions, Inc.

Pending Legal or Regulatory Actions:

1. CalRecycle has a pending assessment proceeding against California Waste Solutions, Inc. for violations in processing California Redemption Value (CRV) beverage containers at its 1005 Timothy Dr. San Jose and 3300 Wood Street, Oakland facilities, alleging that the two locations were not properly licensed. California Waste Solutions, Inc. claims it has been processing beverage containers at the two facilities for years. This case is to be heard before the Office of Administrative Hearings – Oakland. Cal Waste states that it is currently in negotiations with CalRecycle and is trying to reach a settlement.
2. The City of Oakland filed a lawsuit against California Waste Solutions, Inc. for rates charged for recyclables picked up from multi-unit dwellings. The claims stem from the fees the Company was charging to bring the dwelling(s) recyclable carts to the curbside for collection (Push Rates). The City of Oakland is claiming that the Company was taking advantage of a mistake in the multi-family dwelling rate table published in the recycling contract. California Waste Solutions, Inc. denies these allegations and claims that it is charging the proper rates as authorized by the contract. Cal Waste is currently in negotiation with the City of Oakland and is trying to reach a settlement.

The information disclosed in the LSQ portion of the application does not appear to threaten the ongoing financial viability of the applicant. Upon submission of Cal Waste's California Debt Limit Allocation Committee (CDLAC) application for Final Resolution (FR) and allocation, CPCFA expects the FR application to include appropriate updates and disclosures regarding the Company's pending legal or regulatory actions with CalRecycle and the City of Oakland.

Project Description. The San Jose City Council has approved the extension of Cal Waste's Franchise Agreement for an additional 15 years provided that the Company purchases additional equipment, rolling stock and containers, and expands and upgrades its sort line and truck fleets. Cal Waste also expects to exercise its purchase option for the property it currently leases at 1120 and 1158 Berryessa Road in San Jose.

Cal Waste will also purchase forklifts and upgrade its MRF located in the City of Oakland.

Project locations include : 1120 and 1158 Berryessa Road, San Jose, California 95132; 1005 Timothy Drive, San Jose, California 95113 ; 1819 and 1820 Tenth Street, Oakland, California 94607 ; 1211 Embarcadero, Oakland, California 94606 ; and 3300 Wood Street, Oakland, California 94608 and/or customers located throughout Alameda and Santa Clara Counties.

Volume Cap Allocation. The Company anticipates applying to the Authority or CDLAC for volume cap allocation during the second quarter of 2020.

Financing Details. The Company anticipates the issuance of a direct bank purchase tax-exempt notes. The target date for financing is the second quarter of 2020.

Financing Team.

Municipal Advisor to the Borrower: Westhoff, Cone & Holmstedt

Bond Counsel: Leslie M. Lava, Esq., Law Offices of Leslie M. Lava

Issuer's Counsel: Office of the Attorney General

Staff Recommendation. Staff recommends approval of Initial Resolution No. 19-03 for California Waste Solutions, Inc. and/or its affiliates for an amount not to exceed \$61,000,000.

Note: An Initial Resolution approval is not a commitment that the Board will approve a Final Resolution and bond financing of the proposed Project.

**RESOLUTION OF OFFICIAL INTENT TO ISSUE NOTES TO
FINANCE SOLID WASTE DISPOSAL FACILITIES AND EQUIPMENT
FOR CALIFORNIA WASTE SOLUTIONS, INC. AND/OR ITS AFFILIATES**

November 8, 2019

WHEREAS, the California Pollution Control Financing Authority (“Authority”), a public instrumentality, is authorized and empowered by the provisions of the California Pollution Control Financing Authority Act (“Act”) to issue bonds or notes for the purpose of financing the cost of certain solid waste disposal facilities and equipment located in Alameda and/or Santa Clara Counties, as described further in Exhibit “A” attached hereto (together, “Facilities”); and

WHEREAS, California Waste Solutions, Inc., a California corporation (“Applicant”), has requested that the Authority assist in financing or refinancing the Facilities for the benefit of the Applicant and/or its affiliates (“Company”), and has presented an estimate of the maximum cost of the Facilities, as shown in Exhibit “A” attached hereto; and

WHEREAS, the Authority desires to encourage the Company to provide solid waste disposal recycling facilities and equipment which will serve the public of the State of California; and

WHEREAS, the Authority deems it necessary and advisable to further the purposes of the Act that the Facilities be acquired at the earliest practicable date, but the Company requires satisfactory assurances from the Authority that the proceeds of the sale of notes of the Authority will be made available to finance or refinance the Facilities; and

WHEREAS, the Company expects to incur or pay from its own funds certain expenditures in connection with the Facilities prior to the issuance of indebtedness for the purpose of financing costs associated with the Facilities on a long-term basis; and

WHEREAS, subject to meeting all the conditions set forth in this resolution the Authority reasonably expects that debt obligations in an amount not expected to exceed \$61,000,000 will be issued and that certain of the proceeds of such debt obligations will be used to reimburse the Company for its prior expenditures for the Facilities; and

WHEREAS, Section 1.103-8(a)(5) and Section 1.150-2 of the Treasury Regulations require the Authority to declare its reasonable official intent to reimburse prior expenditures for the Facilities with proceeds of a subsequent borrowing;

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The Authority finds and determines that the foregoing recitals are true and correct. For purposes of this Resolution, an “Affiliate” of the Applicant means any person or entity which meets the definition of “participating party” in the Act and controls, is controlled by, or is under common control with, the Applicant, as shown by the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through majority equity ownership, contract or otherwise.

Section 2. The Authority declares its official intent to issue, at one time or from time to time, an aggregate of up to \$61,000,000 principal amount of notes of the Authority for the Facilities; including for the purpose of reimbursing to the Company costs incurred for the Facilities prior to the issuance of the notes.

Section 3. The notes will be payable solely from the revenues to be received by the Authority pursuant to a loan agreement or other agreements to be entered into between the Authority and the Company in connection with the Facilities. Each note shall contain a statement to the following effect:

“Neither the faith and credit nor the taxing power of the State of California or any political subdivision thereof or any local agency is pledged to the payment of the principal of, premium, if any, or any interest on this note.”

Section 4. The notes shall be issued subject to the conditions that (i) the Authority and the Company shall have first agreed to mutually acceptable terms for the notes and of the sale and delivery thereof, and mutually acceptable terms and conditions of the loan of the proceeds thereof to the Company; (ii) all requisite governmental approvals shall have first been obtained; (iii) a Final Resolution shall have been received from the Authority; and (iv) an allocation shall have been received from the California Debt Limit Allocation Committee.

Section 5. The Executive Director of the Authority has authority under Authority Resolution 19-01-001 to indicate the willingness of the Authority to proceed with and effect such financing in order to assist the Company by defraying the cost of the Facilities, subject to due compliance with all requirements of the law and the obtaining of all necessary consents and approvals and meeting all other requirements of the Authority.

Section 6. It is intended that this Resolution shall constitute “some other similar official action” towards the issuance of notes within the meaning of Section 1.103-8(a)(5) of the Treasury Regulations and “official intent” within the meaning of Section 1.150-2 of the Treasury Regulations, each as applicable under Section 103 of the Internal Revenue Code of 1986, as amended. It is also intended that this statement of “official action” or “official intent” by the Authority shall continue in full force and effect even if this Resolution ceases to be effective for other purposes.

Section 7. This Resolution shall take effect immediately upon its approval and remain in full force and effect thereafter; provided that, subject to Section 6, this Resolution shall cease to be effective on the date three years after the approval date unless prior thereto the Authority or Executive Director specifically adopts a further resolution extending the effective date of this Initial Resolution, which it will do only after receiving a specific request for such action from the Company, accompanied by an explanation of the status of the project and any additional information requested by the Authority to supplement the Company's application.

EXHIBIT A

NUMBER: 19-03

PROJECT LOCATION(S): 1120 and 1158 Berryessa Road, San Jose, CA 95132
1005 Timothy Drive, San Jose, CA 95113
1819 and 1820 Tenth Street, Oakland, CA 94607
1211 Embarcadero, Oakland, CA 94606
3300 Wood Street, Oakland, CA 94608
Property located at APN Numbers 18-507-4-4 and 18-507-8,
Oakland, CA 94607
Customers located throughout Alameda and Santa Clara Counties

PROJECT DESCRIPTION: Finance or refinance the (i) acquisition of land and/or buildings to house solid waste disposal and recycling operations, including the construction and installation of improvements thereto, (ii) construction of improvements to solid waste disposal facilities, including materials recovery facilities, and (iii) acquisition and installation, if any, of equipment for the collection, processing, transfer and recycling of solid waste, including without limitation, solid waste collection vehicles, rolling stock and other vehicles, a sort line, tractors, forklifts, carts, bins, containers and other equipment functionally related thereto

TYPE: Solid Waste Disposal

AMOUNT: \$61,000,000