

Kadny

**COPY** 05-0544

**AMENDMENT TO AGREEMENT TO PROVIDE LONG-TERM LANDFILL DISPOSAL CAPACITY**

This Amended Agreement is entered into and ~~Executed~~<sup>Approved</sup> as of this \_\_\_\_\_ day of November 29, 2005, by and between the City of Fremont (**City**), a political subdivision of the State of California, and Waste Management of Alameda County, Inc., (**Contractor**), a California Corporation.

**RECITALS**

WHEREAS, the City has entered into a long-term agreement with BLT Enterprises for the development and operation of a Recyclables Diversion and Transfer Station to manage Municipal Solid Waste; and

WHEREAS, the City needs a long-term landfill facility to serve as the place of safe, legal and permitted Disposal of Residue resulting from operation of the Transfer Station; and

WHEREAS, the City has entered into an Agreement with the Contractor to provide landfill Disposal services at the Altamont Landfill and Resource Recovery Facility, which is owned and operated by the Contractor, to receive Residue from the Transfer Station; and

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and conditions contained in this Agreement and this Amendment to the Agreement and for other good and valuable consideration, the City and the Contractor agree as follows:

## ARTICLE 1. DEFINITIONS

Article 1 is hereby amended to read as follows:

**Base Term** means the twenty (20) year period commencing with the Delivery of one hundred percent (100%) of the Residue from the Recyclables Diversion and Transfer Station.

**Delivery Date** means the date of first Delivery of Residue to the Facility, which may be any date on or after the Effective Date, occurring at such a time as the Tri-Cities Recycling and Disposal Facility is no longer able to accept 100% of the City's Direct Haul Waste or 100% of the Residue from the Recyclables Diversion and Transfer Station.

**Direct Haul Waste** is material that has been delivered to the Tri-Cities Recycling and Disposal Facility for Disposal via franchise collection vehicles.

## ARTICLE 4.

Section 4.01 is hereby amended to read as follows:

**4.01 Base Term.** The Base Term shall commence on the Delivery Date and continue in effect for twenty (20) years, unless terminated earlier in accordance with Article 12.

## ARTICLE 6.

Sections 6.04 and 6.05 are hereby amended to read as follows:

**6.04 No City Obligation Prior to Delivery Date.** The City is under no obligation to deliver any Residue prior to the Delivery Date until the Tri-Cities Recycling and Disposal Facility has reached capacity and is no longer accepting Direct Haul Waste or Residue with the exception of Direct Haul Waste or Residue required to achieve final contours at the Tri-Cities Recycling and Disposal Facility as determined by mutual agreement of the Parties.

**6.05 City Obligation on the Delivery Date.** The City is obligated, beginning on or after the Delivery Date and through the Base Term and any Extensions, to direct the Transfer Contractor(s) to Deliver all Residue from the Recyclables Diversion and Transfer Station to the Disposal Facility for purposes of Disposal, with the exception of Direct Haul Waste or Residue required to achieve final contours at the Tri-Cities Recycling and Disposal Facility as determined by mutual agreement of the Parties.

## ARTICLE 8

Section 8.05 is hereby amended to read as follows:

**8.05 d. Open Space Fees.** Beginning on the execution date of the disposal agreement between Contractor and the City for the Altamont Landfill, Contractor agrees at its sole expense to accrue one dollar per ton of Fremont franchised waste disposed of at the TCRDF until such time as the City begins disposal at the Altamont under the new long-term contract, provided the material is paid for by the City at the Direct Haul Waste rate. The entire accrued amount of money for open space fees at Altamont would then be remitted to the City within 30 days after the City commences Delivery of Residue.

Except as so amended herein, all other terms, covenants, conditions and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, City and Contractor have duly authorized execution of this Amendment and have executed this Amendment as of the dates set forth below.

City of Fremont

*Christine Daniel*  
Deputy City Manager, Fred Diaz *Christine Daniel*

Date 2-23-06

*James E. Devlin*  
Contractor (signature)

James E. Devlin  
Contractor (printed name)

Date 2/6/06

ATTEST:

*Renee Elliott*  
Deputy City Clerk

APPROVED AS TO FORM:

*Harvey Levine*  
Harvey Levine, City Attorney  
By Sandra J. Fox, Special Counsel