

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

This Second Amendment to the Agreement is entered into and Executed as of this 2nd day of ~~September~~^{November}, 2009 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

1. The City has entered into an Agreement with the Contractor on December 16, 2003 to provide landfill disposal services at the Altamont Landfill, hereinafter "Altamont Landfill" which is owned and operated by the Contractor, to receive Residue from the Fremont Transfer Station; and
2. The Parties originally anticipated that the Delivery Date to the Altamont Landfill would be September 1, 2004 but additional capacity was located at the Tri-Cities Landfill, so the Delivery Date to the Altamont Landfill has been substantially delayed; and
3. Since the original disposal agreement was executed, there have been changes in state and county regulations regarding the use of alternative daily cover so certain requirements need to be updated; and
4. Contractor has requested the City's consent and City has agreed to the reduced Facility Receiving Hours at Contractor's Tri-Cities Landfill by revising the current operating hours requirement with notification for those reduced hours to the Fremont Transfer Station Contractor; and
5. City and Contractor have now agreed to begin partial delivery to the Altamont Landfill with a transition target of approximately 75% of the Residue from the Fremont Transfer Station on July 1, 2010 and to complete the transition of 100% of the Residue to the Altamont Landfill no later than July 1, 2011, unless Contractor has provided certain notice to the City regarding the need for an extension of up to six months as set forth herein; and
6. Waste Management of Alameda County, Inc is an affiliate of USA Waste of California, Inc., and USA Waste of California, Inc. will continue to provide a Financial Guaranty Agreement for this Agreement as amended.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and conditions contained in this Second Amendment and the Agreement including the First Amendment 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 Date of the Residue from the Fremont Transfer Station.

Delivery Date means the date of first Delivery of 100% of the Residue to the Altamont Landfill, which shall be the earlier date of July 1, 2011, or the effective date the Contractor has Notified the City that the Tri-Cities Landfill no longer has sufficient Capacity; with one six month extension beyond the July 1, 2011 date as provided herein.

Fremont Transfer Station means the current Transfer Contractor which is the Fremont Recycling and Transfer Station located at 41149 Boyce Rd, Fremont, Ca 94538.

Holidays are defined as New Year's Day, Thanksgiving Day and Christmas Day.

Residue (or **Residual** or a variation thereof) means material remaining (excluding Recovered Materials) after Recovery performed at the Fremont Recycling and Transfer Station that requires Disposal. This term also includes Municipal Solid Waste delivered to the Recyclable Diversion and Transfer Station not processed for diversion but designated for Disposal.

Transitional Target Date means the July 1, 2010 date when Delivery of the Transitional Target Residue will begin.

Transitional Target Residue means approximately 75% of the total Residue generated by the Fremont Transfer Station after the transitional target date, which is designated to be to be Delivered to the Altamont Landfill for Disposal.

ARTICLE 4. TERM OF AGREEMENT

4.01 *is hereby revised to read as follows:*

4.01 Base Term The Base Term shall commence on the Delivery Date, as revised by this Second Amendment, and continues in effect for twenty (20) years, unless terminated

earlier in accordance with Article 12.

ARTICLE 6. DELIVERY OF RESIDUE

6.01 *is hereby revised to read as follows:*

6.01 Notice to Deliver At any time on or after the Effective Date, the City will give the Contractor Notice of its intention to commence Delivery of Residue on the Delivery Date. This Second Amendment shall constitute the Notice to commence Delivery of Residue to the Altamont Landfill and Contractor shall Accept Delivered Residue for Disposal on the identified Transitional Target Date. This Second Amendment shall also constitute the Notice to commence Delivery to the Altamont Landfill of 100% of Residue no later than July 1, 2011, unless Contractor provides proper Notice to City to commence Delivery earlier than that date. However, in the event Contractor requires additional soil for contouring during the period of up to six months following the July 1, 2011 date, Contractor must provide Notice for one extension period of up to six months to the City no later than April 1, 2011. In no event shall the extension period continue past December 31, 2011.

6.04 *is hereby revised to read as follows:*

6.04 No City Obligation Prior to Transitional Target Date. The City is under no obligation to deliver any Residue prior to the Transitional Target Date.

6.05 *is hereby revised to read as follows:*

6.05 City Obligation on the Delivery Date The City is obligated, beginning on the Delivery Date and through the Base Term and any Extensions, to direct the Fremont Transfer Station Contractor to Deliver 100% (One Hundred Percent) Residue from the Fremont Transfer Station to the Altamont Landfill for purposes of Disposal.

6.05 a. *is hereby added to read as follows:*

6.05 a. City Obligation on the Transitional Target Date

The City is obligated, beginning on the Transition Target Date until the Delivery Date, to direct the Fremont Transfer Contractor to Deliver approximately 75% (Seventy Five Percent) of the Residue from the Fremont Transfer Station to the Altamont Landfill for purposes of Disposal.

7.02 d *is hereby revised to read as follows:*


7.02 d Alternative Daily Cover. City and/or the Fremont Transfer Station Contractor may Deliver materials to the Altamont Landfill that are suitable for use as Alternative Daily Cover and are allowed under state and local regulations. Contractor shall use, track, and report to the City in its monthly reports the material type and Tonnage used for

Alternative Daily Cover.

Except as specifically amended herein by this Second Amendment, all other terms, covenants, conditions and provisions of the Agreement and the First Amendment shall remain in full force and effect. Contractor further agrees that all of Article 2, Representations and Warranties are still true and valid, and that Contractor will ensure that the Financial Guaranty provided by USA Waste of California, Inc. remains in full force in view of this Second Amendment. Contractor will also ensure that the Performance Bond and Insurance Certificates will be updated and appropriately executed or extended in order to avoid any lapse in coverage.


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

City of Fremont

By: 
City
Fred Diaz
City Manager

Date: 11/2/09

APPROVED AS TO FORM:


Harvey Levine, City Attorney

Date: 10/25/09

Waste Management of
Alameda County, Inc.

By: 
Contractor
Barry Skolnick
Area Vice President

Date: 9/9/09

(Notarized) Attach Corporate
Resolutions

ASSISTANT SECRETARY'S CERTIFICATE

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.

The undersigned, being the Assistant Secretary of Waste Management of Alameda County, Inc., a California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that Barry Skolnick (Area Vice President), or any officer of the Company be, and hereby is authorized, following compliance with appropriate corporate policies and procedures, to execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as they may deem appropriate or necessary, pertaining to, or relating to the Second Amendment to Agreement to Provide Long-Term Landfill Disposal Capacity for the City of Fremont, California and that any such action taken to date is hereby ratified and approved.

Dated: September 10, 2009



Robert E. Longo
Assistant Secretary

***2.3 TRI-CITIES LANDFILL AND ALTAMONT LANDFILL CONTRACT AMENDMENTS
Approval of Amendments to the Tri-Cities Recycling and Disposal Facility and the
Altamont Landfill Contracts to Incorporate Requirements Related to the Transition of
Municipal Solid Waste Disposal from the Tri-Cities Recycling and Disposal Facility to the
Altamont Landfill**

Contact Person:

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Executive Summary: Currently, solid waste from the Fremont Transfer Station is disposed of at the Tri-Cities Recycling and Disposal Facility (Tri-Cities Landfill). Once the Tri-Cities Landfill reaches capacity, the City intends to transition landfill disposal to the Altamont Landfill and has an executed contract with the Altamont Landfill in place. This change requires advance planning due to the operational and transportation equipment changes that will be needed. While the Tri-Cities Landfill is close to reaching capacity, the specific closure date is unclear and is subject to variables such as fluctuations of incoming volumes. This uncertainty has made transition planning more difficult. In order to provide more certainty for planning, staff is recommending that the City Council authorize the City Manager to execute amendments with Waste Management of Alameda County to the Tri-Cities Landfill and Altamont Landfill contracts to incorporate specified dates for a phased transition. Staff is recommending that the Fremont Transfer Station begin delivery of approximately 75% of its solid waste to the Altamont Landfill beginning July 1, 2010, and transition the remaining 25% as of July 1, 2011. The contract amendment would also clarify contractor obligations during the transition period, modify the Tri-Cities Landfill hours of operation, and modify the CPI index used for the biennial adjustment to make it consistent with the City's other solid waste contracts.

BACKGROUND: Solid waste disposed of at the Altamont Landfill is subject to Alameda County Measure D Fees. This regulatory fee is approximately \$8 per ton (subject to annual CPI) and is included in the Altamont Landfill Disposal Rate. Half of the Measure D funds collected are used for countywide waste reduction programs administered by Stopwaste.Org while the remainder is remitted back to the jurisdictions. Once the City begins delivery of waste to the Altamont Landfill, it will be eligible to receive Measure D funding. Measure D funds are restricted and can only be used for waste reduction programs. Measure D fees are not charged at the Tri-Cities Landfill. Therefore, the City is not receiving any Measure D revenue at this time. The change to the Altamont disposal site will therefore result in a new revenue source for solid waste programs.

DISCUSSION/ANALYSIS: Some advance planning and coordination is needed to transition from one landfill disposal site to another due to the distance to the Altamont Landfill. The Altamont Landfill is a 72 mile round trip from the Fremont Transfer Station versus a four mile round trip to the Tri-Cities Landfill. The longer transportation time to the Altamont Landfill will require additional drivers. In addition, the Fremont Transfer Station operator will need to acquire new transfer trailers with higher capacity to minimize the number of trips and drivers going to the Altamont Landfill. Given the lead-time

needed for the equipment purchase, the City desired a specific transition planning date. However, Waste Management was apprehensive about committing to a specific transition date that may turn out to be too soon. They were concerned about the Tri-Cities Landfill not taking in enough total waste material to achieve the required final landfill contours as well as potentially forfeiting unused landfill capacity. These concerns would be addressed with the phased transition staff is recommending.

Beginning July 1, 2010, the Amendment calls for approximately 75% of the waste material from the Fremont Transfer Station to be disposed of at the Altamont Landfill, with the remainder still being delivered to the Tri-Cities Landfill. This will continue through June 30, 2011, unless Waste Management requests a six-month extension of waste delivery to provide additional material for final landfill contouring. This is the only extension allowed by the Amendment. Therefore, no later than December 31, 2011, 100% of Fremont Transfer Station waste will be delivered to the Altamont Landfill and Waste Management will begin the closure/post closure process at the Tri-Cities Landfill.

In recognition of the proposed reduction of waste delivery volumes to the Tri-Cities Landfill, staff is recommending reducing the facility's waste receiving hours to five hours per day beginning July 1, 2010. As part of this Amendment process, staff also took the opportunity to request changes to the adjustment formula for the Tri-Cities Landfill contract to make the rate adjustment period consistent with all of the City's other solid waste contracts. The CPI adjustment will be done biennially (versus annually) and the index formula will be changed from CPI-W (Urban Wage Earners and Clerical Wage Earners) to CPI-U (All Urban Consumers), again, to be consistent with all other City solid waste contracts.

FISCAL IMPACT: There is no impact to the General Fund; however, the Integrated Waste Management Fund will receive annual Measure D funds once delivery of waste to the Altamont landfill commences. Staff estimates receiving approximately \$360,000 in FY 2010/11 that can be used to offset costs of the City's waste reduction programs.

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager or designee to execute amendments with Waste Management of Alameda County to the Tri-Cities Recycling and Disposal Facility and the Altamont Landfill Contracts as described in this staff report.