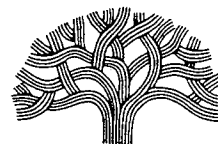




FILE COPY

CITY OF OAKLAND



DALZIEL BUILDING • 250 FRANK H. OGAWA PLAZA, SUITE 5301 • OAKLAND, CALIFORNIA 94612

Public Works Agency
Environmental Services

(510) 238-6688
FAX (510) 238-7286
TDD (510) 238-7644

April 7, 1999

Dave McDonald
Executive Vice President
Waste Management of Alameda County
172 - 98th Avenue
Oakland, CA 94603

RE: Annual Rate Adjustment/ Revised Second Settlement Agreement

Dear Mr. McDonald:

Attached are the Second Settlement Agreement and the Third Amendment to the Franchise Agreement. The Second Settlement Agreement has been changed based on your attorney's comments and the signature block has been corrected. The Third Amendment to the Franchise Agreement signature block has been corrected.

Please sign all four copies of each document and return them to me. I will return to you a fully executed Settlement Agreement and Third Amendment to the Franchise Agreement. Should you have any questions or comments regarding this matter, please contact me at (510) at (510) 238-6981.

Sincerely,

A handwritten signature in cursive script, which appears to read "Susan Kattchee".

Susan Kattchee

Recycling & Solid Waste Programs Supervisor

cc: Brooke Levin
Harry Schrauth
Mark Wald

SECOND SETTLEMENT AGREEMENT

This Second Settlement Agreement ("Agreement") by and between the City of Oakland ("City") and Waste Management of Alameda County ("Contractor") (collectively referred to as the "Parties") is made and entered into as of the 1st day of March, 1999.

RECITALS

WHEREAS, the City and Contractor entered into a Franchise Agreement for Solid Waste and Yard Waste Collection Disposal Services dated December 1, 1995, which has been amended ("Franchise Agreement"), and a Residential Recycling Services Agreement dated September 28, 1992, which has been amended ("Recycling Agreement"); and

WHEREAS, disputes have arisen between the Parties concerning a July 1998 rate increase under the Franchise Agreement; alleged amounts due Contractor from City relating to City-hauled disposal in excess of amounts allowed under the Franchise Agreement; and recycling services performed under the Recycling Agreement; and

WHEREAS, the Parties have met on numerous occasions in an attempt to amicably resolve these issues without the need for litigation and the Parties desire to formalize agreements reached during these meetings relating to the aforementioned outstanding disputed issues;

NOW, THEREFORE, for reasons stated above and in consideration of the mutual promises, conditions and covenants made by the Parties, the City and Contractor agree as follows:

1. JULY 1, 1999 GARBAGE RATE ADJUSTMENT

The Fiscal Year 1999/2000 garbage rate adjustment effective July 1, 1999, as described in Section 15.3 and Section 15.4 of the Franchise Agreement, shall be permanently adjusted downward by 0.47% from 3.74%, so that the actual rate increase shall be 3.27%. Contractor shall use 3.27% as the City approved rate increase pursuant to Section 15.13 of the Franchise Agreement effective July 1, 1999. Contractor and City also agree to amend the Franchise Agreement as soon as practicable to provide for annual average Consumer Price Index adjustments.

2. RESIDENTIAL RECYCLING SERVICES

The Recycling Agreement, as amended through negotiated agreements in 1995 and honored in good faith by the Parties, will be incorporated into the Franchise Agreement, as soon as practicable, in the form of an amendment to the Franchise Agreement that is effective as of February 1, 1998 and shall include at a minimum the following provisions:

- Used oil filter collection service by the Contractor for Single Family Dwellings, signed-up Multi Family Dwellings, and designated City Facilities at \$1.50 per filter.
- City facilities recycling collection services by the Contractor, at no charge to the City, from City Facilities attached as Exhibit 1 to this Settlement Agreement beginning January 1, 1999.
- Fee-for-service small business recycling collection by the Contractor, at a price proposed by Contractor, by April 15, 1999 and approved by City.

- Public education expenditures by the Contractor of Thirty Thousand Dollars (\$30,000) per year, commencing in 1999 and escalated annually per Section 15.3 of the Franchise Agreement.

3. CITY-HAULED GARBAGE DISPOSAL

- (a) The City shall pay the Contractor a total of sixty-five thousand fifteen dollars and five cents (\$65,015.05) for all excess tonnage disposal in 1995, which shall be complete and full payment.
- (b) The City shall pay the Contractor a total of twenty-seven thousand five hundred forty-seven dollars and seventy-five cents (\$27,547.75) for all excess tonnage disposal in 1996, which shall be complete and full payment.
- (c) The City shall pay the Contractor a total of one hundred forty-nine thousand seven hundred seventy-six dollars and seventy-seven cents (\$149,776.77) for all excess tonnage disposal in 1997, which shall be complete and full payment.
- (d) The City shall pay the Contractor a total of one hundred thousand nine hundred sixty-seven dollars and seventy-one cents (\$100,967.71) for all excess tonnage disposal in 1998, which shall be complete and full payment.

4. MUTUAL RELEASE OF CLAIMS

Except as expressly stated below, the Contractor and its representatives, agents, attorneys, heirs, administrators, transferees, assigns, executors, and successors (collectively called "Claimants"), hereby unconditionally agree to release, acquit, remise, and forever discharge the City, its elected officials, officers, agents, employees, and members of the commissions (collectively called "City"), from any and all claims, actions, cause of action, damage, injuries, attorneys' fees and costs, and liability (collectively called "claims"), either at law or in equity or of any kind, nature or description, whether presently known or unknown, or whether presently existent or nonexistent, which Claimants has had or now has or may have in the future against the City arising out of or relating to the execution, performance, and termination of the disputed issues as stated in this Agreement.

Except as expressly stated below, the City hereby unconditionally agrees to release, acquit, remise and forever discharge Claimants from any and all claims, either at law or equity or of any kind, nature or description, whether presently known or unknown, or whether presently existent or nonexistent, which City has now, in the past, or in the future against Claimants arising out of the disputed issues described in this agreement. (The terms "Claimants", "City", and "claims" shall have the same meaning as in the paragraph above).

The Claimants expressly waive the provisions of Section 1542 of the Civil Code of California, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor."

The Claimants, upon advice of counsel, waive and relinquish, now and forever, any and all rights it has or may have under Section 1542 to the fullest extent allowed by law.

The Claimants agree and represent that it fully understands the statutory language of Civil Code Section 1542 and with this understanding, nevertheless, elects to and does assume all risks for rights, claims, demands, obligations, causes of actions or liabilities, known or unknown, heretofore and hereafter arising with the subject matter of this Agreement.

This Mutual Release of Claims does not apply to the Parties' compliance with the terms of this Second Settlement Agreement.

5. COMPLETE AGREEMENT; COUNTERPARTS

This Agreement, which consists of four (4) pages, constitutes the entire understanding and agreement of the City and the Contractor as to the disputed issues set forth herein and may be executed in counterparts, and photocopies or facsimile copies of this Agreement may be used as originals. Each such counterpart, photocopy or facsimile copy of this Agreement shall be deemed an original, but all of which together shall constitute one and the same instrument.

No prior written or oral statement or proposal shall alter any term or provision of this Agreement. The Parties agree that no promise, inducement or agreement not expressed herein has been made to it in connection with this Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the disputed issues.

6. NO ADMISSION OF LIABILITY

This Agreement is not intended to be an admission of liability or wrongdoing by either the City or the Contractor, and is a compromise that is in the best interest of the Parties and the public.

7. WAIVER

Waiver of any term or condition in this Agreement by any party to the Agreement shall be in writing and shall not be construed as a waiver of any other term or condition contained in the Agreement.

8. AMENDMENTS

No modification, amendment or supplement to this Agreement will be binding on the parties unless it is made in writing, duly authorized by the City and the Contractor, and signed by both Parties.

9. NO CHALLENGE TO AGREEMENT

Each party agrees that it will not initiate, commence or otherwise participate in or assist, directly or indirectly, any challenge, whether administrative or judicial, seeking to invalidate any provision of this Agreement.

March 1, 1999

IN WITNESS WHEREOF, the City and the Contractor have duly authorized execution of this Second Settlement Agreement, and have executed one or more copies of this Second Settlement Agreement effective the date first written above.

RECOMMENDED FOR APPROVAL

BY:

Harry Schrauth
Assistant Director,
Public Works Agency

Date

WASTE MANAGEMENT
OF ALAMEDA COUNTY, INC.
A California Corporation

BY:

D. David MacDonald
Executive Vice President

Date

CITY OF OAKLAND
A Municipal Corporation

BY:

Robert C. Bobb
City Manager

Date

APPROVED TO FORM:

BY:

Duane Woods
Vice President and
Area General Counsel

Date

APPROVED AS TO FORM & LEGALITY:

BY:

Mark P. Wald
Deputy City Attorney

Date