

## CITY OF OAKLAND

MemorandumFILED  
OFFICE OF THE CITY CLERK  
M.H.  
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TO: City Clerk's Office  
ATTN: Ceda Floyd  
FROM: PWA, Environmental Services Division  
DATE: May 27, 1998

**RE: Second Amendment To Franchise Agreement**

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Attached please find one of four **original Second Amendment to Franchise Agreement** documents which should be filed with the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services between the City of Oakland and Waste Management of Alameda County, Inc.

The other three original documents are distributed as follows;

- (1) - Waste Management of Alameda County
- (1) - Public Works Agency, Contract administration
- (1) - Public Works Agency, Environmental Services Division

Should you have any questions, please call me at 238-6981.



Susan Kattchee

Recycling & Solid Waste Programs Supervisor

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
98 MAY 29 PM 12:09  
Q.W.

## SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT is entered into this 22nd day of October, 1996, by and between the CITY OF OAKLAND, a municipal corporation, hereinafter referred to as "City," and WASTE MANAGEMENT OF ALAMEDA COUNTY INCORPORATED, a California Corporation, hereinafter referred to as "Contractor."

### RECITALS

WHEREAS, the City and Contractor entered into an agreement dated November 2, 1992 and subsequently amended on July 31, 1995, hereinafter referred to as the "Agreement," to provide services for the City's Residential Recycling Program; and

WHEREAS, the City and Contractor desire to amend the Agreement; and

NOW THEREFORE THE CITY AND CONTRACTOR DO HEREBY AGREE AS FOLLOWS:

1. Article 3.50 - Used Oil Filter Collection Pilot Program shall be added to the Agreement and shall read as follows:

Contractor agrees to participate and assist the City with a Used Oil Filter Collection Pilot Program (Pilot). Pilot will test the feasibility of collecting used oil filters from residents.

City has made a good faith effort to define and accept all costs associated with the Pilot. However, Contractor acknowledges that unanticipated circumstances and expenses may occur which Contractor may be responsible for without reimbursement from the City. Should unanticipated problems and expenses arise, Contractor and City agree to immediately meet and resolve said problem(s) to attempt to mitigate any burden to Contractor. City and Contractor have mutually defined the service boundaries for the Pilot and it includes approximately 2,260 single family dwellings. The term of the Pilot will be approximately 12 months, starting on or about September 2, 1996.

- a. City shall:
  - ▶ Pay Contractor \$0.10 per month per single family dwelling located in the Pilot area, mutually agreed to be about 2,260 dwellings.
  - ▶ Pay Contractor for truck retrofit expenses of up to \$700.00 for one vehicle as may be required.
  - ▶ Purchase and distribute appropriate recycling containers for use by residents.
  - ▶ Develop, produce, and distribute all public education materials related to the Pilot.
  - ▶ Pay for services rendered by Environmental Filter Removal (EFR), or other vendor, for the collection of consolidated filters from the Contractor.

*2nd Amendment to the Agreement between the City of Oakland and Waste Management of Alameda County*

- b. Contractor shall:
- ▶ Collect all properly set-out used oil filters in the Pilot area during the Pilot term.
  - ▶ Keep accurate records on the number of used oil filters collected for each route and/or collection day during the Pilot and provide said information to the City in Contractor's regular monthly report pursuant to §11.01 of the Agreement.
  - ▶ "Tag" improper oil filter set-outs so that the customer is appropriately notified.
  - ▶ Communicate to City any Pilot problems encountered, recommendations for Pilot modification, and any noteworthy experiences.
  - ▶ Arrange for the collection of filters, as necessary, collected during the pilot with EFR.

2. Except as amended hereinabove, all other terms and conditions of the Agreement shall remain in full force and effect.

CITY OF OAKLAND  
A Municipal Corporation


BY: 

For the City Manager

WASTE MANAGEMENT OF ALAMEDA COUNTY  
A California Corporation

BY: 

APPROVED AS TO FORM  
AND LEGALITY:

  
City Attorney

Accounting NO. 30001123

*Mark P. Wald*  
\_\_\_\_\_  
CITY ATTORNEY

## ORDINANCE No. 11820 C. M. S.

ORDINANCE AUTHORIZING A FRANCHISE AGREEMENT  
FOR SOLID WASTE AND YARD WASTE COLLECTION AND  
DISPOSAL SERVICES WITH WASTE MANAGEMENT OF  
ALAMEDA COUNTY, INC.; AND ESTABLISHING RATES  
AND PROCEDURES TO ADJUST THE RATES

WHEREAS, on November 21, 1978 the City of Oakland, a municipal corporation, hereinafter referred to as ("City") and Oakland Scavenger Company entered into a twenty-five (25) year exclusive franchise agreement for the collection, removal and disposal of refuse in the City of Oakland; and

WHEREAS, on February 22, 1983 the City and Oakland Scavenger Company entered into a supplemental agreement for the emptying of street litter containers; and

WHEREAS, on February 1, 1993 the City and Oakland Scavenger Company entered into a five (5) year agreement for the collection, processing and marketing of residential recyclable materials; and

WHEREAS, on October 21, 1993 Oakland Scavenger Company changed its name to Waste Management of Alameda County, Inc., a California corporation, hereinafter referred to as ("Contractor") and continues to provide refuse and residential recycling service in the City of Oakland; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("AB 939") Division 30 of the California Public Resources Code, commencing with Section 40000, declares that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, AB 939 requires California cities to reduce waste disposal by 25% by 1995 and 50% by 2000; and

WHEREAS, the City intends to comply with the requirements of AB 939 for the diversion of waste from landfill disposal, and to effectuate the City's own waste reduction strategy; and

WHEREAS, the City wishes to maximize cost effective waste reduction, recycling and composting both in order to comply with AB 939 and to promote resource conservation; and

WHEREAS, Yard Waste represents a large potential contribution to waste diversion in the City if it is separated from Solid Waste and diverted from disposal; and

WHEREAS, the City wishes to provide for sanitary, efficient and cost-effective Solid Waste and Yard Waste collection and disposal services within its jurisdiction; and

WHEREAS, the public health, safety and welfare in the City require that the collection, transportation over City streets, and ultimate disposition of Solid Waste, Yard Waste and components thereof, be closely regulated and monitored by the City; and

WHEREAS, the most efficient and effective means of providing Yard Waste collection services in the City is through an exclusive franchise with the provider of Solid Waste collection services for the City; and

WHEREAS, the City Council of the City of Oakland has determined that it is necessary to enter into an exclusive franchise in order to provide Solid Waste and Yard Waste collection and disposal services while maintaining the necessary controls over such factors as charges and fees, frequency and means of collection, use of City streets for transport and performance of recycling and composting services; and

WHEREAS, the City has the right under its police power to make provisions for Solid Waste handling, collection and disposal in a manner that the governing body deems appropriate, including the award, without competitive bidding, of partially or wholly exclusive franchises; and

WHEREAS, the City has the authority, pursuant to City Charter Section 1000, to grant or issue franchises for the transaction of business, providing of services or for the use of public streets or other public places, and to assess fees or other compensation to be paid therefor and the penalties for violations thereof; and

WHEREAS, Public Resources Code sections 40059 and 49300 currently state that the local governing body has the authority to make provisions for solid waste handling, collection and disposal in a manner that the governing body deems appropriate, including the award, without competitive bidding, of partially or wholly exclusive franchises by resolution or ordinance; and

WHEREAS, Contractor has represented and warranted to the City that it has the experience, responsibility, and qualifications to conduct Yard Waste programs and to arrange with residents and other entities in the City for the collection, safe transport and sale of Yard Waste, and the collection, safe transport and safe disposal of Solid Waste, (some of which may inadvertently contain hazardous materials), the City Council determines and finds that the public interest, health, safety and welfare would be best served if Contractor were to make arrangements with residents and other entities to perform these services; and

WHEREAS, the City and Contractor agree to terminate the Franchise Agreement dated November 21, 1978 and the Street Litter Container Supplemental Agreement dated February 22, 1983 and enter into this new Agreement in order to meet the AB 939 goals and provide expanded and more cost effective Solid Waste handling services: and

WHEREAS, the City and Contractor agree to automatically terminate the Residential Recycling Services Agreement, as amended, upon its integration with this Agreement and the parties agree to make a reasonable good faith effort to integrate the agreements by June 30, 1996; and

WHEREAS, the new integrated agreement will thereafter be known as the Franchise Agreement for Integrated Solid Waste Management Services; and

WHEREAS, the City Council finds and determines that the requirements of the California Environmental Quality Act ("CEQA") of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied, and this action on the part of the City Council is exempt from CEQA pursuant to Public Resources Code section 21080(b)(8), CEQA Guidelines section 15273, CEQA Guidelines section 15308, CEQA Guidelines section 15061(b)(3), or CEQA Guidelines section 15301; and

WHEREAS, each of the foregoing provides a separate and independent basis for an exemption and when viewed collectively provides an overall basis for an exemption, as further described and explained in the accompanying July 18, 1995 City Manager report to the City Council, incorporated herein by reference as if fully set forth herein.

NOW THEREFORE THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The Council does hereby find and declare that the above recitals are true and correct and that the award of a Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services is for a proper public purpose, is in the public interest, convenience, and welfare, and is for the common benefits of the inhabitants of the City.

Section 2. The City Manager is authorized to negotiate and execute the Franchise Agreement on behalf of the City, subject to the review and approval of the City Attorney.

Section 3. The City Manager is authorized to conduct all negotiations and execute all documents including but not limited to Franchise Agreement amendments, modifications, notices, and related actions which may be necessary and consistent with the basic intent and purpose of the Franchise Agreement, except rate adjustments which shall be in accordance with the Oakland Municipal Code.

Section 4. In consideration of the special franchise right granted by the City to Contractor to transact business, provide services, use the public street and/or other public places, and to operate a public utility for Solid Waste and Yard Waste collection services, Contractor shall remit a monthly franchise fee payment to the City. From the effective date of the Franchise Agreement through December 31, 1995, Contractor shall pay the City a franchise fee of six and one-half percent (6.5%) of gross revenues less City fees. For the period of January 1, 1996 through June 30, 1999, Contractor shall pay to the City a monthly franchise fee of \$305,000 (\$3,660,000 per annum). Commencing July 1, 1999, and thereafter throughout the remainder of the term of the Franchise Agreement, the monthly franchise fee of \$305,000 required to be remitted by Contractor shall be adjusted by the annual Consumer Price Index adjustment granted Contractor pursuant to the Franchise Agreement.

Section 5. From the effective date of the Franchise Agreement through December 31, 1995, Contractor shall pay City fees based upon the methodology for submitting City fees currently in existence between the City and Contractor. For the period of January 1, 1996 through June 30, 1999, Contractor shall remit to the City a monthly payment of \$1,041,000 (\$12,492,000 per annum) and the City shall use said funds for certain programs (We Mean Clean and Clean Oakland - \$9,222,000; Household Hazardous Waste - \$120,000; Recycling - \$3,150,000). Historically the fees collected for the identified programs have not, and do not, completely cover the entire cost of providing the programs. Future fees collected will not completely cover the cost of existing and/or future programs. Commencing July 1, 1999, and thereafter throughout the remainder of the term of the Franchise Agreement, the monthly City fees of \$1,041,000 required to be remitted by Contractor shall be adjusted by the annual Consumer Price Index adjustment granted Contractor pursuant to the Franchise Agreement.

Section 6. The City Manager is authorized to make a reasonable good faith effort to integrate the Residential Recycling Services Agreement, as amended, into the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Service by June 30, 1996. The City Manager is authorized to execute the integrated agreement, subject to the review and approval of the City Attorney and said agreement shall thereafter be known as the Franchise Agreement for Integrated Solid Waste Management Services and shall thereafter be filed in the Office of the City Clerk. Notwithstanding the City's and Contractor's good faith efforts, if an integrated Agreement cannot be executed, this Agreement and the amended Residential Recycling Services Agreement shall remain in full force and effect.

Section 7. The City Council has independently reviewed and considered this environmental determination and finds and determines that the action complies with CEQA and directs the City's Environmental Review Officer to file a Notice of Exemption.

Introduced: 7/18/95  
IN COUNCIL, OAKLAND, CALIFORNIA, JUL 25 1995, 19 \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

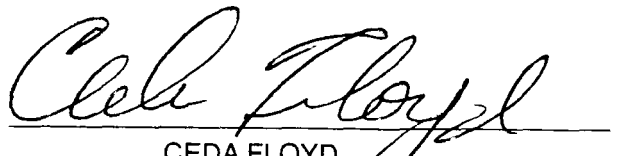
AYES- ~~BAYTON~~, CHANG, DE LA FUENTE, JORDAN, MILEY, RUSSO, SPEES, ~~WOODS-JONES~~, and PRESIDENT  
HARRIS - 7

NOES- Bayton - 1

ABSENT- Woods Jones - 1

ABSTENTION- NONE

ATTEST:

  
CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California



## EXHIBIT 1

## WASTE MANAGEMENT OF ALAMEDA COUNTY

## EXHIBIT 1

Department	Facility	Address	Service Level	# of Equiv. Units	Monthly Rate
OPD	Animal Shelter	Ford & Lancaster	One bin	1	\$3.73
Head Start	Lockhaven	1327 65th Ave.	One bin (Seasonal)	1	\$3.73
Head Start	San Antonio CDC	2228 E. 15th St.	One bin (Seasonal)	1	\$3.73
Head Start	Brann #1, 2	6038 Brann St.	One bin (Seasonal)	1	\$3.73
Head Start	Eastmont Mall #1, 2, 3	6900 Bancroft Ave.	One bin (Seasonal)	1	\$3.73
Head Start	St. James	1540 12th Ave.	One bin (Seasonal)	1	\$3.73
Head Start	Brookfield	501 Jones St.	One bin (Seasonal)	1	\$3.73
Head Start	55th Ave	1800 55th Ave.	One bin (Seasonal)	1	\$3.73
Head Start	Arrovo Viejo	7701 Krause Ave.	One bin (Seasonal)	1	\$3.73
Head Start	E.Y.O.D.C.	8200 E. 14th Ave.	One bin (Seasonal)	1	\$3.73
Head Start	Manzanita	2701 22nd Ave.	One bin (Seasonal)	1	\$3.73
Head Start	San Antonio Park	1701 E. 19th St.	One bin (Seasonal)	1	\$3.73
Head Start	Tassafaronga	1975 85th Ave.	One bin (Seasonal)	1	\$3.73
Head Start	92nd Avenue	19202 E. 14th St.	One bin (Seasonal)	1	\$3.73
Head Start	Virginia Avenue	4335 Virginia Ave.	One bin (Seasonal)	1	\$3.73
Library	Melrose	4805 Foothill Blvd.	One bin	1	\$3.73
Library	Brookfield	19600 Edes Ave.	One bin	1	\$3.73
Library	Lawn American	1900 Fruitvale Ave.	One bin	1	\$3.73
Library	Elmhurst	1427 38th Ave.	One bin	1	\$3.73
Library	Eastmont	1175 Eastmont Mall	One bin	1	\$3.73
Library	Martin Luther King	16833 E. 14th St.	One bin	1	\$3.73
OFD	Firehouse #23	17100 Foothill Blvd.	Two bins	2	\$7.46
OFD	Firehouse #4	1235 E. 14th St.	Four toters	4	\$14.92
OFD	Firehouse #26	12660 98th Ave.	Two bins	2	\$7.46
OFD	Firehouse #13	1225 Derby Ave.	Two bins	2	\$7.46
OFD	Firehouse #16	13600 13th Ave.	Two bins	2	\$7.46
OFD	Firehouse #17	13344 High St.	Two bins	2	\$7.46
OFD	Firehouse #18	11700 50th Ave.	Four toters	4	\$14.92
OFD	Firehouse #27	13501 Pardee Drive	Two bins	2	\$7.46
OFD	Firehouse #25	12795 Butters Drive	Two bins	2	\$7.46
OFD	Firehouse #14	13459 Champion St.	One bin	1	\$3.73
OFD	Firehouse #20	1270 93rd Ave.	Four toters	4	\$14.92
OFD	Firehouse #21	13150 Skyline Blvd.	One bin	1	\$3.73
OFD	Firehouse #29	11016 66th Ave.	Two bins	2	\$7.46
OFD	Drill Tower #2	2228 E. 15th St.	One bin	1	\$3.73
OPR	Rainbow Rec. Ctr	E. 14th/56th Ave.	One bin	1	\$3.73
OPR	Live Oak Swimming Pool	1055 MacArthur Blvd.	One bin	1	\$3.73
OPR	Manzanita Rec. Ctr	2701 22nd Ave.	One bin	1	\$3.73
OPR	Franklin Rec. Ctr	1010 E. 15th St.	One bin	1	\$3.73
OPR	Sherfield Rec. Ctr	243 Martow Drive	One bin	1	\$3.73
OPR	Concordia Rec. Ctr	163rd/Brand St.	One bin	1	\$3.73
OPR	San Antonio Rec. Ctr	1701 E. 19th Ave.	One bin	1	\$3.73
OPR	Brookfield Rec Ctr	525 Jones Ave.	One bin	1	\$3.73
OPR	Fremont Swimming Pool	4550 Foothill Blvd.	One bin	1	\$3.73
OPR	Brookdale Rec Ctr	2555 High St.	One bin	1	\$3.73
OPR	Sanborn Rec. Ctr	1637 Fruitvale Ave.	One bin	1	\$3.73
OPR	Tassafaronga Rec. Ctr	1975 85th Ave.	One bin	1	\$3.73
OPR	Redwood Rec. Ctr	13731 Redwood Road	One bin	1	\$3.73
OPR	Arrovo Viejo Rec Ctr	7701 Krause St.	One bin	1	\$3.73
OPR	Allendale Rec Ctr	13711 Suter St.	One bin	1	\$3.73
OPR	Chabot Golf Course	Golf Links Road	One bin	1	\$3.73
OPD	Eastmont Substation	12701 73rd Ave.	One bin	1	\$3.73
Council	Council District Office	1449 Miller Ave.	One bin	1	\$3.73
Council	Council District Office	#10 Eastmont Mall	One bin	1	\$3.73
TOTAL				71	\$264.83

Total Service Level: 59 bins, 12 toters  
 Deliver: 59 bins, 12 toters  
 Equivalent Unit Count: 71 units

# OAKLAND CITY COUNCIL

73197

RESOLUTION No. \_\_\_\_\_ C. M. S.

*MDW*

RESOLUTION AUTHORIZING AN AMENDMENT TO THE  
RESIDENTIAL RECYCLING AGREEMENT WITH  
KARL'S RECYCLING SERVICE/PACIFIC RIM RECYCLING, A JOINT VENTURE

WHEREAS, the City of Oakland (City) entered into an agreement dated November 25, 1992 and subsequently amended on March 16 and August 1, 1995 and October 22, 1996 with Karl's Recycling Service/Pacific Rim Recycling, a joint venture, (K/PRR) to provide residential recycling services to the City; and

WHEREAS, the City K/PRR participate in a 'Risk/Profit' sharing arrangement which reduces the financial risk to K/PRR when recycled commodity markets are poor and allows the City to share in the profits when markets are strong; and

WHEREAS, because of changes in the way that K/PRR processes and markets the paper which it collects, resulting in the City being unable to implement all aspects of the Risk/Profit sharing arrangement; and

WHEREAS, the City and K/PRR have agreed to revise the Risk/Profit sharing arrangement by amending their Agreement. Said amendment assigns a market value of \$25.00 per ton for the difference in baled and unbaled paper commodities and reduces the City's 'risk' exposure to 50% from 75% on paper marketed in 1996 and 1997 by K/PRR; now therefore, be it

RESOLVED: That the City Manager is hereby authorized to enter into the Fourth Amendment to the Agreement with K/PRR making the aforementioned changes in the Risk/Profit sharing arrangement; and, be it

FURTHER RESOLVED: That said amendment is subject to the review and approval by the Office of the City Attorney and the amended Agreement shall be filed with the Office of the City Clerk..

*I certify that the foregoing is a full, true and correct copy of a Resolution passed by the City Council of the City of Oakland, California on*

JAN 14 1997

**CEDA FLOYD**

*City Clerk and Clerk of the Council*

Per

*Marnie S...*

## SECOND AMENDMENT TO AGREEMENT

THIS SECOND AMENDMENT TO AGREEMENT is entered into this 22nd day of October, 1996, by and between the CITY OF OAKLAND, a municipal corporation, hereinafter referred to as "City," and WASTE MANAGEMENT OF ALAMEDA COUNTY INCORPORATED, a California Corporation, hereinafter referred to as "Contractor."

### RECITALS

WHEREAS, the City and Contractor entered into an agreement dated November 2, 1992 and subsequently amended on July 31, 1995, hereinafter referred to as the "Agreement," to provide services for the City's Residential Recycling Program; and

WHEREAS, the City and Contractor desire to amend the Agreement; and

NOW THEREFORE THE CITY AND CONTRACTOR DO HEREBY AGREE AS FOLLOWS:

1. Article 3.50 - Used Oil Filter Collection Pilot Program shall be added to the Agreement and shall read as follows:

Contractor agrees to participate and assist the City with a Used Oil Filter Collection Pilot Program (Pilot). Pilot will test the feasibility of collecting used oil filters from residents.

City has made a good faith effort to define and accept all costs associated with the Pilot. However, Contractor acknowledges that unanticipated circumstances and expenses may occur which Contractor may be responsible for without reimbursement from the City. Should unanticipated problems and expenses arise, Contractor and City agree to immediately meet and resolve said problem(s) to attempt to mitigate any burden to Contractor. City and Contractor have mutually defined the service boundaries for the Pilot and it includes approximately 2,260 single family dwellings. The term of the Pilot will be approximately 12 months, starting on or about September 2, 1996.

- a. City shall:
  - ▶ Pay Contractor \$0.10 per month per single family dwelling located in the Pilot area, mutually agreed to be about 2,260 dwellings.
  - ▶ Pay Contractor for truck retrofit expenses of up to \$700.00 for one vehicle as may be required.
  - ▶ Purchase and distribute appropriate recycling containers for use by residents.
  - ▶ Develop, produce, and distribute all public education materials related to the Pilot.
  - ▶ Pay for services rendered by Environmental Filter Removal (EFR), or other vendor, for the collection of consolidated filters from the Contractor.

*2nd Amendment to the Agreement between the City of Oakland and Waste Management of Alameda County*

- b. Contractor shall:
- ▶ Collect all properly set-out used oil filters in the Pilot area during the Pilot term.
  - ▶ Keep accurate records on the number of used oil filters collected for each route and/or collection day during the Pilot and provide said information to the City in Contractor's regular monthly report pursuant to §11.01 of the Agreement.
  - ▶ "Tag" improper oil filter set-outs so that the customer is appropriately notified.
  - ▶ Communicate to City any Pilot problems encountered, recommendations for Pilot modification, and any noteworthy experiences.
  - ▶ Arrange for the collection of filters, as necessary, collected during the pilot with EFR.

2. Except as amended hereinabove, all other terms and conditions of the Agreement shall remain in full force and effect.

CITY OF OAKLAND  
A Municipal Corporation

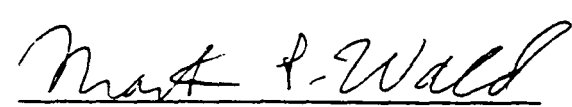
BY: 

For the City Manager

WASTE MANAGEMENT OF ALAMEDA COUNTY  
A California Corporation

BY: 

APPROVED AS TO FORM  
AND LEGALITY:

  
City Attorney

Accounting NO. 30001123

SECOND AMENDMENT TO FRANCHISE AGREEMENT

This Second Amendment by and between the City of Oakland ("City") and Waste Management of Alameda County, Inc. ("Contractor") is effective as of March 1, 1998.

RECITALS

WHEREAS, the City and Contractor entered into the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services (Franchise Agreement) dated December 1, 1995; and

WHEREAS, the City and Contractor entered into a Supplemental Agreement dated December 2, 1995, and the First Amendment to the Supplemental Agreement dated July 1, 1996; and the First Amendment dated October 1, 1997; and

WHEREAS, the U.S. Department of Labor no longer publishes a Consumer Price Index for the San Francisco-Oakland-San Jose Region ("C.P.I.", as defined in Section 1.13 of the Franchise Agreement) in odd-numbered months, including January; and

WHEREAS, certain rate adjustment provisions in the Franchise Agreement are based on changes in the C.P.I. as measured in January; and

WHEREAS, the City and the Contractor wish to establish a new basis for establishing rate adjustments, and

WHEREAS, the City and Contractor desire to amend the Franchise Agreement;

NOW, THEREFORE THE CITY AND CONTRACTOR DO HEREBY AGREE TO AMEND THE FRANCHISE AGREEMENT AS FOLLOWS:

1. Section 15.3 Annual Rate Adjustment is amended to read: "The Rates set forth in Exhibit B-1 shall be adjusted annually, as set forth below, commencing July 1, 1996, to reflect changes in the Contractor's costs of providing service. The changes will become effective as of July 1, 1996 and on July 1 of each succeeding year.

Year Two The Rates set forth on Exhibit B-1 will be changed effective July 1, 1996 to those shown on Exhibit B-2.

Year Three through Year Six The Rates in effect as of June 30, 1997 and as of June 30<sup>th</sup> of each succeeding year through June 2000 will be adjusted, effective as of the immediately following July 1 of each year, by multiplying each such rate by one hundred percent plus the sum of (a) one and one-half percent (1-1/2%) and (b) eighty percent (80%) of the percentage change in the Consumer Price Index between such Index as of December January in the year immediately preceding the year in which rates are being changed and December January twelve (12) months earlier. Any decreases in the Index shall be reflected as a negative adjustment. In the case of Year Three, for example, the rates in effect in June 1997 will be

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OFFICE OF THE CITY CLERK  
CITY OF OAKLAND  
MAY 29 PM 2:09  
1998

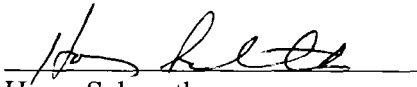
increased to reflect 80% of the percentage change in the Index between December January 1996 1995 and December January 1997 1996, plus one and one-half percent (1-1/2%).

Year Seven through Year Fifteen The Rates in effect as of June 30, 2001 and in each succeeding year of the Term will be adjusted, effective as of the immediately following July 1 of each year, by multiplying each such rate by one hundred percent plus eighty percent (80%) of the percentage change in the Consumer Price Index as of December January in the year immediately preceding the year in which the rates are being changed and December January twelve (12) months earlier.”

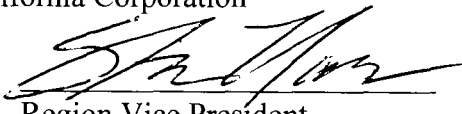
2. Section 15.4 Maximum CPI-Based Annual Increase or Decrease shall be amended to read: “Notwithstanding the foregoing, the maximum increase or decrease in Rates in any year after July 1996 under Section 15.3 will be five percent (5%), regardless of the amount by which the Consumer Price Index has increased or decreased during the twelve (12) month period ending the preceding December January. If the five percent (5%) ceiling is applied to limit increases or decreases in Rates in any year, the difference between five percent (5%) and the percentage by which Rates would have been increased or decreased in the absence of the ceiling will not be considered in any future year.”
3. Except as expressly set forth herein, all provisions of the Franchise Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and Contractor have duly authorized execution of this Second Amendment to Franchise Agreement, and have executed this Second Amendment to Franchise Agreement effective the date first written above.

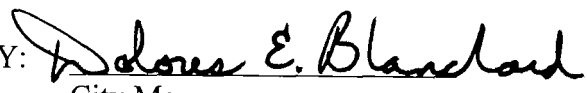
RECOMMENDED FOR APPROVAL

BY:   
Harry Schrauth  
Assistant Director, Public Works Agency  
5-13-98  
Date

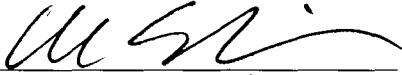
WASTE MANAGEMENT  
OF ALAMEDA COUNTY, INC.  
A California Corporation

BY:   
Region Vice President  
4-29-98  
Date

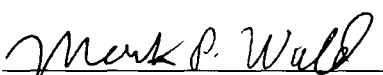
CITY OF OAKLAND  
A Municipal Corporation

BY:   
City Manager  
5-19-98  
Date

APPROVED TO FORM:

BY:   
Howard S. Yamaguchi  
Associate Group Counsel  
  
\_\_\_\_\_  
Date

APPROVED AS TO FORM & LEGALITY:

BY:   
Mark P. Wald  
Deputy City Attorney  
5/18/78  
\_\_\_\_\_  
Date

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 1<sup>st</sup> 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.
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- 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.
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- (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.

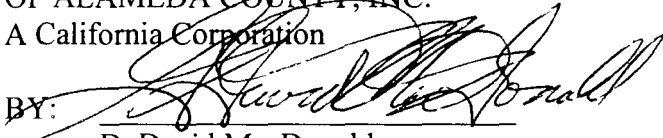
March 1, 1999

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.

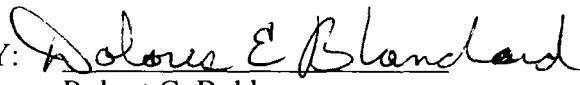
RECOMMENDED FOR APPROVAL

BY:   
Harry Schrauth  
Assistant Director,  
Public Works Agency  
4-29-99  
Date

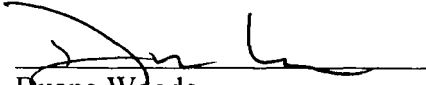
WASTE MANAGEMENT  
OF ALAMEDA COUNTY, INC.  
A California Corporation

BY:   
D. David MacDonald  
Executive Vice President  
4-26-99  
Date

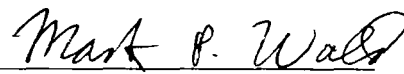
CITY OF OAKLAND  
A Municipal Corporation

BY:   
Robert C. Bobb  
City Manager  
5-5-99  
Date

APPROVED TO FORM:

BY:   
Duane Woods  
Vice President and  
Area General Counsel  
4-19-99  
Date

APPROVED AS TO FORM & LEGALITY:

BY:   
Mark P. Wald  
Deputy City Attorney  
4/28/99  
Date

Department	Facility	Address	Service Level	# of Equiv. Units	Monthly Rate
OPD	Animal Shelter	Ford & Lancaster	One bin	11	\$3.73
Head Start	Lockhaven	1327 65th Ave.	One bin (Seasonal)	11	\$3.73
Head Start	San Antonio CDC	2223 E. 15th St.	One bin (Seasonal)	11	\$3.73
Head Start	Brann #1, 2	16038 Brann St.	One bin (Seasonal)	11	\$3.73
Head Start	Eastmont Mall #1, 2, 3	16900 Bancroft Ave.	One bin (Seasonal)	11	\$3.73
Head Start	St. James	11540 12th Ave.	One bin (Seasonal)	11	\$3.73
Head Start	Brookfield	1501 Jones St.	One bin (Seasonal)	11	\$3.73
Head Start	55th Ave	1800 55th Ave.	One bin (Seasonal)	11	\$3.73
Head Start	Arroyo Viejo	17701 Krause Ave.	One bin (Seasonal)	11	\$3.73
Head Start	E.Y.O.D.C.	18200 E. 14th Ave.	One bin (Seasonal)	11	\$3.73
Head Start	Manzanita	12701 22nd Ave.	One bin (Seasonal)	11	\$3.73
Head Start	San Antonio Park	11701 E. 19th St.	One bin (Seasonal)	11	\$3.73
Head Start	Tassaraonga	1975 85th Ave.	One bin (Seasonal)	11	\$3.73
Head Start	92nd Avenue	19202 E. 14th St.	One bin (Seasonal)	11	\$3.73
Head Start	Virginia Avenue	14335 Virginia Ave.	One bin (Seasonal)	11	\$3.73
Library	Melrose	14805 Foothill Blvd.	One bin	11	\$3.73
Library	Brookfield	19600 Edes Ave.	One bin	11	\$3.73
Library	Linn American	11900 Fruitvale Ave.	One bin	11	\$3.73
Library	Elmhurst	11427 38th Ave.	One bin	11	\$3.73
Library	Eastmont	1175 Eastmont Mail	One bin	11	\$3.73
Library	Martin Luther King	16833 E. 14th St.	One bin	11	\$3.73
OFD	Firehouse #23	17100 Foothill Blvd.	Two bins	21	\$7.46
OFD	Firehouse #4	11235 E. 14th St.	Four toters	41	\$14.92
OFD	Firehouse #26	12660 98th Ave.	Two bins	21	\$7.46
OFD	Firehouse #13	11225 Derby Ave.	Two bins	21	\$7.46
OFD	Firehouse #16	13600 13th Ave.	Two bins	21	\$7.46
OFD	Firehouse #17	13344 High St.	Two bins	21	\$7.46
OFD	Firehouse #18	11700 50th Ave.	Four toters	41	\$14.92
OFD	Firehouse #27	13501 Pardee Drive	Two bins	21	\$7.46
OFD	Firehouse #25	12795 Butters Drive	Two bins	21	\$7.46
OFD	Firehouse #14	13459 Champion St.	One bin	11	\$3.73
OFD	Firehouse #20	11270 93rd Ave.	Four toters	41	\$14.92
OFD	Firehouse #21	113150 Skyline Blvd.	One bin	11	\$3.73
OFD	Firehouse #29	11016 66th Ave.	Two bins	21	\$7.46
OFD	Drill Tower #2	12223 E. 15th St.	One bin	11	\$3.73
OPR	Rainbow Rec. Ctr	1E. 14th/56th Ave.	One bin	11	\$3.73
OPR	Live Oak Swimming Pool	11055 MacArthur Blvd.	One bin	11	\$3.73
OPR	Manzanita Rec. Ctr	12701 22nd Ave.	One bin	11	\$3.73
OPR	Franklin Rec. Ctr	11010 E. 15th St.	One bin	11	\$3.73
OPR	Sherfield Rec. Ctr	1243 Marlow Drive	One bin	11	\$3.73
OPR	Concordia Rec. Ctr	163rd/Brand St.	One bin	11	\$3.73
OPR	San Antonio Rec. Ctr	11701 E. 19th Ave.	One bin	11	\$3.73
OPR	Brookfield Rec Ctr	1525 Jones Ave.	One bin	11	\$3.73
OPR	Fremont Swimming Pool	14550 Foothill Blvd.	One bin	11	\$3.73
OPR	Brookdale Rec Ctr	12535 High St.	One bin	11	\$3.73
OPR	Sanborn Rec. Ctr	11637 Fruitvale Ave.	One bin	11	\$3.73
OPR	Tassaraonga Rec. Ctr	1975 85th Ave.	One bin	11	\$3.73
OPR	Redwood Rec. Ctr	13731 Redwood Road	One bin	11	\$3.73
OPR	Arroyo Viejo Rec Ctr	17701 Krause St.	One bin	11	\$3.73
OPR	Allendale Rec Ctr	13711 Suter St.	One bin	11	\$3.73
OPR	Chabot Golf Course	1Golf Links Road	One bin	11	\$3.73
OPD	Eastmont Substation	12701 73rd Ave.	One bin	11	\$3.73
Council	Council District Office	11449 Miller Ave.	One bin	11	\$3.73
Council	Council District Office	1#10 Eastmont Mall	One bin	11	\$3.73
TOTAL				71	\$264.83

Total Service Level: 59 bins, 12 toters  
 Deliver 59 bins, 12 toters  
 Equivalent Unit Count: 71 units

SECOND SETTLEMENT AGREEMENT

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RECITALS

011820


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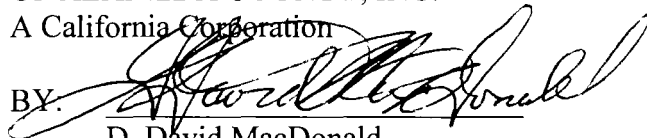
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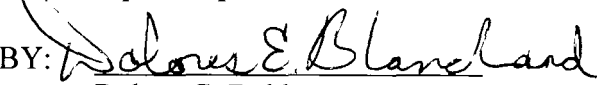
RECOMMENDED FOR APPROVAL

BY:   
 Harry Schrauth  
 Assistant Director,  
 Public Works Agency  
4-29-99  
 Date

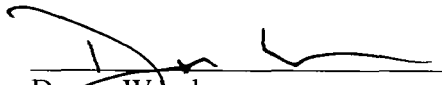
WASTE MANAGEMENT  
 OF ALAMEDA COUNTY, INC.  
 A California Corporation

BY:   
 D. David MacDonald  
 Executive Vice President  
4-26-99  
 Date

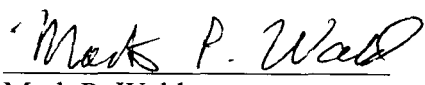
CITY OF OAKLAND  
 A Municipal Corporation

BY:   
 Robert C. Bobb  
 City Manager  
5-5-99  
 Date

APPROVED TO FORM:

BY:   
 Duane Woods  
 Vice President and  
 Area General Counsel  
4-19-99  
 Date

APPROVED AS TO FORM & LEGALITY:

BY:   
 Mark P. Wald  
 Deputy City Attorney  
4/29/99  
 Date



**CITY OF OAKLAND**  
**Public Works Agency**  
**Environmental Services**

## Memorandum

**To:** Bob Hreha, Contract Administration

**From:** Susan Kattchee, Recycling & Solid Waste Programs

**Date:** May 14, 1999

**Re:** Fully Executed Third Amendment to the Franchise Agreement  
and Second Settlement Agreement

---

Attached, please find:

- 2 fully executed originals of the **Third Amendment** to the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County
- 2 fully executed originals of the **Second Settlement Agreement** with Waste Management of Alameda County

Please retain **one copy for your official records** and forward the **other copy to the City Clerks Office** for filing. A third original is located in Environmental Services files.