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OAKLAND

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Public Works Agency
Environmental Services Division
Dept of Facilities and Environment

Memorandum

To: Distribution List (DL)

From: Becky Dowdakin, Solid Waste & Recycling Program Supervisor *Becky Dowdakin*

Date: May 29, 2009

Re: Waste Management Franchise Agreement 7th Amendment

Attached is a fully executed copy of the 7th Amendment to the Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services between the City of Oakland and Waste Management of Alameda County. This Amendment allows WMAC to temporarily close the Davis Street Transfer Station on Sundays during the economic downturn.

Should you have any questions, please contact me at 510-238-6981 or bdowdakin@oaklandnet.com.

DL: City Clerk's Office, City Attorney's Office, Environmental Services Recycling Program

CC: Patrick Tang, Brooke Levin, Susan Kattchee

7th AMENDMENT TO THE FRANCHISE AGREEMENT

This 7th Amendment, by and between the CITY OF OAKLAND ("City") and WASTE MANAGEMENT OF ALAMEDA COUNTY, INC. ("Contractor") (collectively referred to as the "Parties") is made and entered into as of May 15, 2009.

RECITALS

Whereas, the City and Contractor entered into a 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 Supplemental Agreement dated July 1, 1996; and

Whereas, the City and Contractor entered into a Settlement Agreement dated July 26, 1996, and the Second Settlement Agreement dated March 1, 1999, and a Settlement Agreement dated July 1, 2008; and

Whereas, the City and Contractor entered into First Amendment to Franchise Agreement dated October 1, 1997; Second Amendment to Franchise Agreement dated March 1, 1998; Third Amendment to Franchise Agreement dated March 1, 1999; Fourth Amendment to Franchise Agreement effective February 1, 1998; Fifth Amendment to Franchise Agreement effective January 1, 2005; and Sixth Amendment to Franchise Agreement effective July 1, 2006; and

Whereas, the Section 6.2.2 of the Franchise Agreement requires that Contractor operate a Transfer Station seven days per week; and

Whereas, the Contractor operates the Davis Street Transfer Station in San Leandro to fulfill the requirements of Section 6.2.2 of the Franchise Agreement; and

Whereas, the Contractor has requested authorization from the City to temporarily close the Davis Street Transfer Station on Sundays due to a substantial decrease in weekend customers and tonnage resulting from the local impact of the worldwide economic downturn; and

Whereas, the City finds that until such time as the City deems that Oakland's inbound tonnage or gate traffic increases, or other facts support an increase in public demand or the City's need for this service warrants return to the seven days per week schedule established in Section 6.2.2 of the Franchise Agreement, the Contractor's request for temporary closure of the Davis Street Transfer Station is reasonable; and

Whereas, the City finds that the Contractor's request for 30-day notice from the City to reopen the Davis Street Transfer Station on Sundays is reasonable;

Now, therefore, for good and valuable consideration, and in consideration of the mutual covenants set forth in this Agreement and other good and valuable considerations, the Parties agree as follows:

AGREEMENT

1. Incorporation by Reference.

The above recitals are incorporated herein by reference and are made part of this Agreement.

2. Transfer Station Days and Hours of Operation

The requirement in Section 6.2.2 of the Franchise Agreement specifying Transfer Station Days and Hours of Operation is waived to that extent to allow Sunday closure, until such time as the City deems in its discretion that public demand or City need for this service warrants return to the seven days per week schedule established in Section 6.2.2. The City will provide notice of at least 30 days to allow the Contractor time to properly staff the Davis Street Transfer Station on Sundays.

3. Additional Services to be Provided by Contractor

Until such time as the Transfer Station returns to its normal seven days per week schedule, the Contractor shall provide the City with an empty debris box at Joaquin Miller Park every Friday afternoon. In addition, the Contractor shall provide the City with a monthly report of the total number of Oakland transactions at the Transfer Station on or before the 20th day of each subsequent month.

4. Entire Agreement.

The Parties understand, agree, and acknowledge that they know and understand the contents of this Agreement and agree to be bound by its terms. This Agreement constitutes the complete and exclusive statement of the terms and conditions between the Parties, which supersedes and merges all prior proposals, understandings and all other oral or written agreements between the Parties. This Agreement shall be binding on, and shall inure to the benefit of, the Parties and their respective heirs, representatives, successors and assigns.

5. Breach of This Agreement/Attorney's Fees.

The Parties understand, acknowledge, and agree that each party reserves all legal and equitable remedies for any breach of the terms and conditions of this Agreement by any party. The Parties further acknowledge and agree that the prevailing party in any action to enforce this Agreement will recover all costs of enforcement, including reasonable attorney's fees. The Parties hereto agree to bear their own respective attorney's fees and court costs incurred in relation to the Dispute prior to the date of this Agreement.

6. No Oral Modification of This Agreement.

The Parties understand, acknowledge, and agree that this Agreement may not be modified, amended, or altered in any manner except by written agreement duly executed by the Parties.

7. Construction.

The Parties understand, acknowledge, and agree that they have participated in the drafting of this Agreement and have obtained legal counsel of their choosing to review this Agreement. The Parties therefore agree that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. All terms and words used in this Agreement, regardless of the number, format or gender in which they are used, shall be deemed and construed to include any other number, format or gender as the contents or sense of this Agreement may require.

8. Severability.

Should any term or provision of this Agreement be found by a court of competent jurisdiction to be invalid or unenforceable, all other terms of this Agreement shall remain in full force and effect.

9. Counterparts.

This Release may be executed in counterparts, each of which shall be an original and all of which together shall constitute a single instrument.

10. Facsimile Signatures.

A facsimile copy or photocopy of the signature party to the Agreement, or of its authorized representative, shall have the same force and effect as an original signature.

11. Authority to Bind.

Each person signing this Agreement represents and warrants that he or she has the authority to bind to this Agreement the party for whom they sign. Execution of this agreement on behalf of the City of Oakland has been authorized by and is subject to any limitations set forth in Resolution No. 81149 C.M.S.

12. Notices.

Any notice provide pursuant to this Agreement shall be in writing and shall be addressed to the Parties at the addresses specified below or at such other addresses as the Parties may specify in writing to the other in the future. If to the City, address the original letter to the City Administrator with courtesy copies to the City Attorney, and Director of Public Works.

Director of Public Works
Public Works Agency
City of Oakland
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612
Telephone: (510) 238-3961
Facsimile: (510) 238-2233

City Administrator
Office of the City Administrator
City of Oakland
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Telephone: (510) 238-3301
Facsimile: (510) 238-2223

City Attorney
Office of the City Attorney
City of Oakland
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Telephone: (510) 238-3601
Facsimile: (510) 238-6500

If to Contractor, address to:

Vice-President
Waste Management of Alameda County, Inc.
172 98th Avenue
Oakland, CA 94603-1004
Telephone: (510) 613-2814
Facsimile: (510) 613-2839

13. Headings.

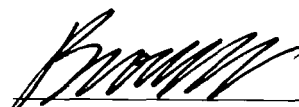
The headings contained in this Agreement are for the purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

14. Governing Law.

This Agreement shall in all respects be interpreted, enforced, and governed by an under the laws of the State of California. Any action or proceedings to enforce the terms of this Agreement shall be brought in the courts of Alameda County, Oakland, California and each party agrees to waive any objection to personal jurisdiction and venue in the courts of Alameda County, Oakland, California.

RECOMMENDED FOR APPROVAL

BY:



Brooke A. Levin
Assistant Director, Public Works Agency

5.18.09

Date

WASTE MANAGEMENT
OF ALAMEDA COUNTY, INC.
A California Corporation

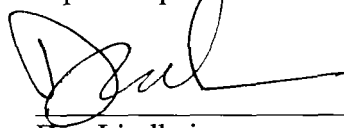
BY:


Area Vice President

5/14/09
Date

CITY OF OAKLAND
A Municipal Corporation

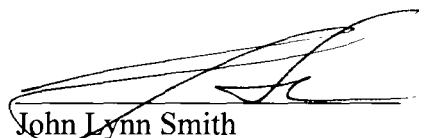
BY:


Dan Lindheim
City Administrator

5/14/09
Date

APPROVED AS TO FORM:

BY:

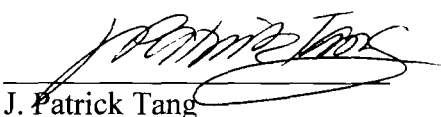

John Lynn Smith
Counsel

5/14/09
Date

Date

APPROVED AS TO FORM & LEGALITY:

BY:


J. Patrick Tang
Sr. Deputy City Attorney

5-18-09
Date

Date