

AN AGREEMENT BETWEEN THE CITY OF SIMI VALLEY  
AND WASTE MANAGEMENT OF CALIFORNIA DBA THE  
SIMI VALLEY LANDFILL AND RECYCLING CENTER FOR  
LOCAL STREET ACCESS

THIS AGREEMENT is made and entered into in the City of Simi Valley on this 25th day of January 1999, by and between the City of Simi Valley, a municipal corporation, hereinafter referred to as CITY, and Waste Management of California, hereinafter referred to as WASTE MANAGEMENT, doing business as the Simi Valley Landfill and Recycling Center, hereinafter referred to as LANDFILL.

**RECITALS:**

WHEREAS, WASTE MANAGEMENT owns and operates a sanitary LANDFILL and desires to provide disposal and other solid waste related services to the CITY, and

WHEREAS, CITY has the authority and intent to direct franchisees that collect or haul discards within the CITY to dispose of all discards collected in the CITY at the LANDFILL, and

WHEREAS, in addition to CITY franchisees, other waste haulers serving Ventura County and Los Angeles County dispose of discards in the LANDFILL, and

WHEREAS, the foregoing-described patronage of the LANDFILL will cause increased usage of certain streets within the CITY, and

WHEREAS, WASTE MANAGEMENT wishes to fairly compensate the CITY for the increased usage of certain streets within the CITY during the term of this AGREEMENT.

NOW, THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the parties hereto agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein.

2. **Definitions**

A. "CITY" means the City of Simi Valley, California, its duly elected Council, City Manager, and/or its appointed officers and employees.

B. "Acceptable Discards" mean any and all discarded waste, as defined in the CITY's Municipal Code, that is solid waste, as the latter term is defined in California statutes and regulations except "Unacceptable Discards" as defined below.

C. "Unacceptable Discards" mean any and all discarded waste that is either:

(1) Waste which is prohibited from disposal at a sanitary landfill by state, federal or local law, regulation, rule, code, ordinance, permit or permit condition;

(2) Hazardous waste, as defined in Public Resources Code Section 40141 and Health and Safety Code Section 25117; or

(3) Special Waste without an approved Special Waste Agreement.

D. "Discarded Material" means all "Acceptable Discards" which, in compliance with governmental licenses and permits in effect, may be disposed of at the LANDFILL.

3. **Term.** The term of this AGREEMENT commences on the date first written above and terminates on June 27, 2004. The parties mutually agree that the March 2, 1998, agreement between CITY and LANDFILL for Local Street Access be terminated upon the this execution of this AGREEMENT.

4. **Obligations of WASTE MANAGEMENT**

A. **Operation.** WASTE MANAGEMENT will accept at the LANDFILL all Discarded Material from the CITY that is delivered to the LANDFILL pursuant to this AGREEMENT.

B. **Monthly Compensation.** In consideration of the increased use sustained by local streets in the CITY by vehicles accessing the LANDFILL pursuant to this AGREEMENT, WASTE MANAGEMENT hereby agrees to compensate the CITY a Local Streets Access Fee to be calculated as follows:

Hauler discounted rate for the month (which will vary depending on actual tons delivered during the month) minus \$29.00 (as adjusted annually), times the total tons of discarded material from the CITY disposed in the LANDFILL during the month, with a guaranteed minimum value of \$2.50 per ton. Annual Consumer Price Index (CPI) adjustments will be applied to the \$29.00 rate. The CPI adjustments shall be equal to the amount derived by multiplying the previous rate times the percentage increase or decrease in the CPI for all urban consumers for all items less shelter for the Los Angeles-Riverside-Orange County, CA area during the previous calendar year. The comparison shall be made as of December 31 of each year and shall be effective each January 1st thereafter. The first CPI adjustment shall be as of December 31, 1999, effective January 1, 2000.

EXAMPLE: Hauler qualifies for a discount rate of \$32.25 per ton and the hauler disposes 8,000 tons from the CITY to the LANDFILL.

$$(\$32.25 - \$29.00) \times 8,000 \text{ tons} = \$26,000.00$$

EXAMPLE: Hauler qualifies for a discount rate of \$34.75 per ton and the hauler disposes 7,500 tons from the CITY to the LANDFILL

$$(\$34.75 - \$29.00) \times 7,500 \text{ tons} = \$43,125.00$$

EXAMPLE: Hauler qualifies for a discount of \$31.00 per ton and hauler disposes of 8,000 tons from the CITY to the LANDFILL. The monthly compensation value (the difference between the \$29.00 rate and the hauler discounted rate) is \$2.00 per ton (\$31.00 - \$29.00). As a result of the minimum monthly compensation of \$2.50 per ton, the CITY will be compensated as follows:

$$\$2.50/\text{ton} \times 8,000 \text{ tons} = \$20,000.00$$

C. Monthly Payment Terms. WASTE MANAGEMENT shall make the payment provided in Paragraph 4.B., above, monthly, not later than the last day of each and every month, for the previous month, in the form of a check or wire transfer payable to the City of Simi Valley General Operating Account. Such monthly payments will retroactively begin for the month commencing on January 1, 1999, with the first payment due by February 28, 1999, and shall continue through the term of this AGREEMENT. Such obligation shall not arise until CITY has fulfilled its obligation pursuant to Paragraph 5.A., below, to require all current discard franchisees to dispose of all Discarded Material at the LANDFILL.

## 5. Obligations of CITY

A. Exclusive Right. CITY shall require all franchisees that collect or haul Discarded Material within the CITY to dispose of all such Discarded Material at the LANDFILL. CITY shall not enter into any franchise, license, or other agreement for the collection or hauling of Discarded Material with any party unless there is a provision in such franchise, license, contract, or other agreement requiring that all Discarded Material collected or hauled thereunder will be taken to the LANDFILL in accordance with this AGREEMENT.

B. Permit Extensions and LANDFILL Expansions. CITY will actively and fully support WASTE MANAGEMENT's efforts to obtain any and all approvals needed for (1) permit time extensions for the operation of the LANDFILL, and (2) expansions of the LANDFILL; and will encourage its discard franchisees to provide such support.

C. Modifications to Existing County Operating Agreement. CITY will agree to and support the removal of the "85% of the maximum permitted tons per operating day" limitation contained in the second amendment to the current Ventura County Operating Agreement.

## 6. Representations and Warranties

A. WASTE MANAGEMENT. WASTE MANAGEMENT represents and warrants that it has the requisite authority to execute agreements of like kind and description and

that it has all permits, licenses and approvals to operate the LANDFILL in such a manner to comply with the terms of the AGREEMENT.

B. CITY. CITY represents and warrants that it has the requisite authority to execute agreements of like kind and description and that it has the authority to direct all franchisees that collect or haul Discarded Material in the CITY to dispose of such Discarded Material at the LANDFILL.

7. Termination. Notwithstanding the provisions of Paragraph 3, either party may terminate this AGREEMENT by giving one-hundred eighty (180) days written notice to the other party.

8. Miscellaneous

A. Performance Under Disaster Conditions. WASTE MANAGEMENT shall not be liable for failure to wholly perform its duties if such failure is caused by catastrophe, act of war, civil disturbance, or act of God.

B. Waiver. No waiver by either party of any breach of any of the provisions hereof will be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any other provision.

C. Modification. This AGREEMENT constitutes the entire agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by both parties hereto.

D. Illegal Provisions. If any provision of the AGREEMENT shall be declared illegal, void, or unenforceable by a court of competent jurisdiction, the remaining provisions of the AGREEMENT shall remain in full force and effect.

E. Headings. The headings used herein are for convenience only and are not to be construed as part of this AGREEMENT.

F. Assigning or Subletting the Contract

(1) WASTE MANAGEMENT shall not assign or sublet this AGREEMENT, or any portion of this AGREEMENT, without the written approval of the CITY; which approval shall not be unreasonably withheld, except that WASTE MANAGEMENT may assign this AGREEMENT to an affiliate and the approval of the CITY is not required. Any such assignment to an affiliate shall be recognized and honored by the CITY.

(2) CITY has the right of assignment to its interest in this AGREEMENT to another public agency, at its discretion and the approval of WASTE MANAGEMENT is not required. Any such assignment shall be recognized and honored by WASTE MANAGEMENT.

G. Successor and Assigns. Subject to the foregoing restrictions on transfer and assignment contained in Paragraph 8.F.(1) and 8.F.(2), above, this AGREEMENT will inure to the benefit of and will be binding on the parties hereto and their respective successor and assigns.

H. Notices. All notices or other communications to be given hereunder shall be in writing and shall be deemed given when mailed by registered or certified United States mail:

To CITY:

City of Simi Valley  
Mike Sedell, City Manager  
2929 Tapo Canyon Road  
Simi Valley, CA 93063

To WASTE MANAGEMENT:

Frank P. Kiesler, District Manager  
Simi Valley Landfill and Recycling Center  
2801 N. Madera Road  
Simi Valley, CA 93065

with a copy to:

Waste Management  
E. William Hutton, Associate General Counsel  
9081 Tujunga Avenue, 2nd Floor  
Sun Valley, CA 91352


Any changes of address by either party shall be by notice given to the other in the same manner as specified above.

I. Entire Agreement. This AGREEMENT constitutes the entire agreement and understanding between the parties hereto, and it will not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the parties hereto.


IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

Attest:

City of Simi Valley, A Municipal Corporation


  
\_\_\_\_\_  
Alice K. Redondo  
Assistant City Clerk

By:

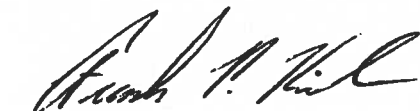
  
\_\_\_\_\_  
Bill Davis, Mayor of the City of  
Simi Valley, California

Approved as to Form:

Simi Valley Landfill And Recycling Center

  
\_\_\_\_\_  
David H. Hirsch, City Attorney

By:

  
\_\_\_\_\_  
Frank P. Kiesler  
District Manager

Approved as to Content:

  
\_\_\_\_\_  
Mike Sedell, City Manager

FIRST AMENDMENT TO AGREEMENT BETWEEN THE  
CITY OF SIMI VALLEY AND WASTE MANAGEMENT OF  
CALIFORNIA DBA THE SIMI VALLEY LANDFILL AND  
RECYCLING CENTER FOR LOCAL STREET ACCESS

THIS FIRST AMENDMENT TO AGREEMENT is made and entered in the City of Simi Valley on this 26th day of August, 2002, by and between the City of Simi Valley, a Municipal Corporation, hereinafter referred to as CITY, and Waste Management of California, Inc., a California Corporation, hereinafter referred to as WASTE MANAGEMENT, doing business as the Simi Valley Landfill and Recycling Center, hereinafter referred to as LANDFILL.

R E C I T A L S :

WHEREAS, CITY and WASTE MANAGEMENT entered into an agreement entitled "An Agreement Between the City of Simi Valley and Waste Management of California dba the Simi Valley Landfill and Recycling Center for Local Street Access," dated January 25, 1999 (the "Local Street Access Agreement"); and

WHEREAS, The Local Street Access Agreement expires on June 27, 2004; and

WHEREAS, WASTE MANAGEMENT anticipates obtaining an extension of the approvals required to operate the LANDFILL after June 27, 2004; and

WHEREAS, CITY and WASTE MANAGEMENT desire to extend the term of the Local Street Access Agreement to a term equal to the anticipated operating life of the LANDFILL following receipt of the extension approvals.

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. Section 3 of the Local Street Access Agreement is replaced in its entirety with the following:

**Term.** The term of this AGREEMENT commences on January 25, 1999 and expires on June 27, 2034, or upon expiration of any approvals necessary to operate the LANDFILL, whichever occurs first.

2. Section 8.H. of the Local Street Access Agreement is amended to substitute the following persons as notice recipients on behalf of WASTE MANAGEMENT:

To WASTE MANAGEMENT:

District Manager  
Simi Valley Landfill and Recycling Center  
2801 N. Madera Road  
Simi Valley, CA 93065


With a copy to:

Senior Legal Counsel  
Waste Management Western Group  
9081 Tujunga Avenue, 2<sup>nd</sup> Floor  
Sun Valley, CA 91352

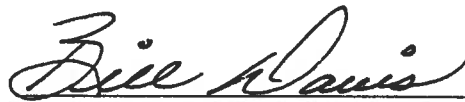
3. All other terms and conditions of the Local Street Access Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

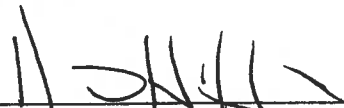
Attest:

  
\_\_\_\_\_  
Alice K Redondo  
Assistant City Clerk


City of Simi Valley, A Municipal Corporation

By:   
\_\_\_\_\_  
Bill Davis, Mayor of the City of  
Simi Valley, California

Approved as to Form:

  
\_\_\_\_\_  
David H. Hirsch, City Attorney

Simi Valley Landfill And Recycling Center

By:   
\_\_\_\_\_  
Scott Tigrac  
Waste Management

Approved as to Content:

  
\_\_\_\_\_  
Mike Sedell, City Manager



SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF SIMI VALLEY AND WASTE MANAGEMENT OF CALIFORNIA DBA THE SIMI VALLEY LANDFILL AND RECYCLING CENTER FOR LOCAL STREET ACCESS

THIS SECOND AMENDMENT TO AGREEMENT is made and entered in the City of Simi Valley on this \_\_\_\_\_ day of February, 2003, by and between the City of Simi Valley, a Municipal Corporation, hereinafter referred to as CITY, and Waste Management of California, Inc., a California Corporation, hereinafter referred to as WASTE MANAGEMENT, doing business as the Simi Valley Landfill and Recycling Center, hereinafter referred to as LANDFILL.

RECITALS:

WHEREAS, CITY and WASTE MANAGEMENT entered into an agreement entitled "An Agreement Between the City of Simi Valley and Waste Management of California dba the Simi Valley Landfill and Recycling Center for Local Street Access," dated January 25, 1999 (the "Local Street Access Agreement"), and

WHEREAS, the Local Street Access Agreement was extended by the parties in accordance with the First Amendment to an Agreement Between the City of Simi Valley and Waste Management of California dba the Simi Valley Landfill and Recycling Center for Local Street Access, dated August 26, 2002, and

WHEREAS, CITY and WASTE MANAGEMENT desire to further amend the Local Street Access Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. A new Section 9 of the Local Street Access Agreement is to be added, as follows:

"9. CERCLA Indemnification.

WASTE MANAGEMENT shall defend, indemnify and hold harmless CITY, and its officers, employees and agents, from and against all Loss-and-Expense, including natural resources damages, injuries, costs, response, assessment, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, judgments, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to reasonable attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, CITY to the extent arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan or replacement or restoration of natural resources at the LANDFILL, or WASTE MANAGEMENT'S activities which result in a release or threatened release of Hazardous Materials into the environment. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably acceptable to and approved by

CITY), and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, or other sums due against CITY. CITY, in its sole discretion, may use additional attorneys and/or other personnel to aid in its investigation and/or defense, provided that CITY'S defense is in good faith and paid for by CITY. CITY'S participation does not relieve WASTE MANAGEMENT of its obligations under this Agreement unless CITY releases WASTE MANAGEMENT in writing from all or part of its obligations. CITY shall promptly notify WASTE MANAGEMENT of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give WASTE MANAGEMENT the opportunity to defend such a claim and shall not settle the claim without the approval of WASTE MANAGEMENT. These indemnification provisions are for the protection of the CITY only and shall not establish, of themselves, any liability to third parties. The provisions of this Section shall survive termination or expiration of this Agreement. Notwithstanding any provisions of this Agreement to the contrary, the indemnification obligations of WASTE MANAGEMENT set forth above shall not apply to the extent that any losses, costs, damages or liability arises from the negligence or willful misconduct of CITY, or from the delivery, directly or indirectly, of Hazardous Materials to the LANDFILL generated at facilities owned or operated by CITY, or from the delivery of Hazardous Materials, directly or indirectly, to the LANDFILL pursuant to any agreement entered into by CITY with any party for the collection of solid waste. The foregoing indemnity is intended to operate as an agreement pursuant to CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to defend, protect, hold harmless CITY from liability.

- 2. All other terms and conditions of the Local Street Access Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

Attest:

City of Simi Valley, a Municipal Corporation

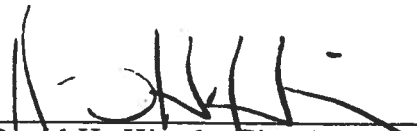
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Alice K. Redondo  
City Clerk

By:

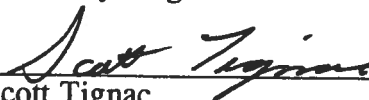
\_\_\_\_\_  
Bill Davis, Mayor of the City of  
Simi Valley, California

Approved as to Form:


Waste Management of California, Inc., a  
California Corporation dba Simi Valley Landfill  
and Recycling Center

  
\_\_\_\_\_  
David H. Hirsch, City Attorney

By:

  
\_\_\_\_\_  
Scott Tignac  
District Manager

Approved as to Content:

  
\_\_\_\_\_  
Mike Sedell, City Manager