



City of Palo Alto

City Council Staff Report

(ID # 4209)

Report Type: Consent Calendar

Meeting Date: 12/2/2013

Summary Title: Amendment #2 with Waste Management of CA. Inc. regarding the Kirby Canyon Landfill

Title: Approval of Amendment Number 2 to the Agreement with Waste Management of California, Inc. That Will Reduce the City's Annual "Put or Pay" Tonnage Commitments Through 2021 and Modify Other Terms and Conditions of the Disposal Agreement

From: City Manager

Lead Department: Public Works

Recommendation

Staff recommends that Council approve Amendment Number 2 with Waste Management of California, Inc. (Attachment A) which lowers the “put or pay” tonnage commitments and affects other terms and conditions for the remainder of the original term of the disposal agreement for the Kirby Canyon Landfill.

Background

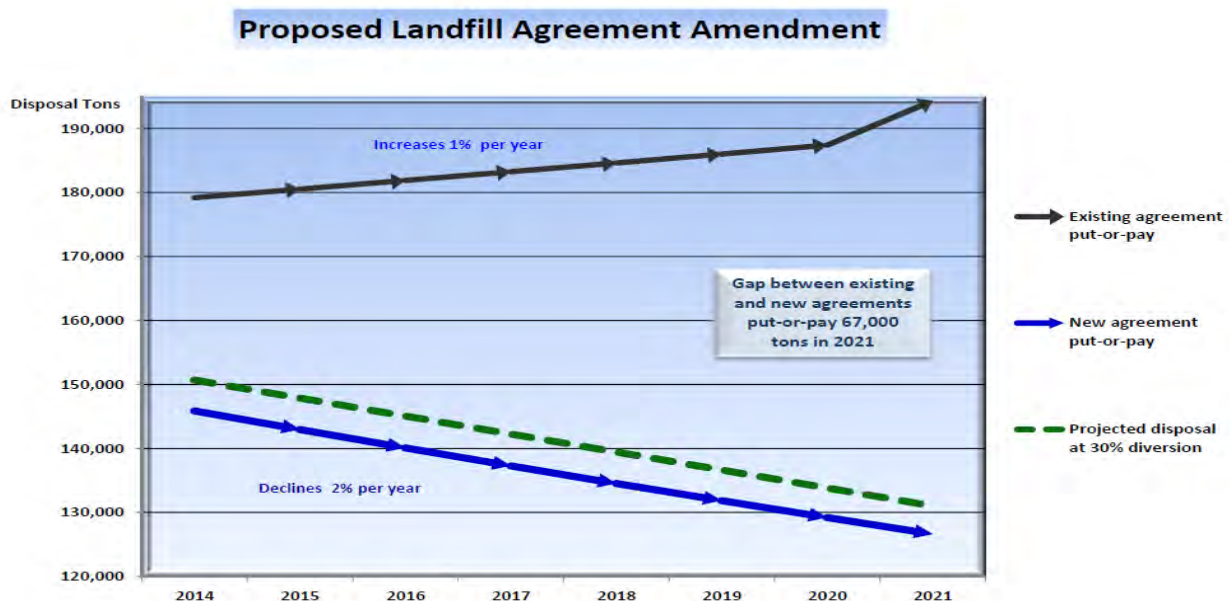
In 1991, the City of Palo Alto (City), along with the cities of Mountain View and Sunnyvale, entered into a 30 year agreement with Waste Management of California, Inc. for the disposal of municipal solid waste at the Kirby Canyon Landfill. The 1991 agreement required the City’s waste to be first delivered to the Sunnyvale Materials Recovery and Transfer (SMaRT) Station, where the City also has a separate 30 year agreement with the cities of Mountain View and Sunnyvale to recycle and transfer the waste. In 1993, Amendment Number 1 to the 1991 disposal agreement was implemented, modifying the final contract schedule and adjusting other minor terms and conditions.

In 2013, the cities of Morgan Hill and Gilroy released a joint request for proposals (RFP) for a disposal agreement with regional landfill operators. In response to the RFP, Waste Management staff approached the SMaRT Cities to renegotiate terms contained in the 1991 disposal agreement that restricts Waste Management from

providing the lowest disposal price to Morgan Hill and Gilroy (or many other cities). Specifically, Waste Management wanted to eliminate the “most favored nations” clause in the agreement, a condition that allows the SMaRT Cities to receive the lowest disposal price that the Kirby Canyon Landfill can charge from other cities (with the exception of larger cities). SMaRT City staff negotiated with Waste Management and in August 2013 executed a Memorandum of Understanding (MOU) that agreed to changes to the 1991 disposal agreements, conditional on Palo Alto City Council approval. These proposed contract modifications are included in Amendment Number 2 (Attachment A).

Discussion

The changes that have been agreed in the 2013 Waste Management MOU are projected to save the City a cumulative total of between \$1.5 million to \$3.3 million in disposal costs through the end of the agreement term which is the end of the calendar year 2021. These cost savings will be realized from the reduction in the City’s waste tonnage commitments to Kirby Canyon thereby lowering the “put or pay” charge. The put or pay requirement is where the City pays disposal charges based on a minimum tonnage commitment whether the waste is delivered to Kirby Canyon or not. This put or pay provision cost the City approximately \$300,000 last fiscal year and is expected to increase to a large amount over the next 8 years of the term of this agreement due to zero waste diversion activities and rising annual minimum commitments.



The reasons that Waste Management agreed to the lowering of the put or pay tonnage commitments are listed in the table below:

Terms Favorable to Waste Management

Sunnyvale agreed to extend the disposal agreement for ten additional years.	Waste Management guarantees disposal tonnage at the Kirby Canyon Landfill through 2031. Mountain View and Palo Alto did not extend the agreement terms.
Elimination of "Most Favored Nations Clause"	Waste Management would like to offer lower disposal pricing for tonnage disposed at the Kirby Canyon Landfill. No expected impact to the City.
Additional surcharge of \$7.00 per ton.	No impact when considering the larger put or pay savings. For details, see cost table under Resource Impact below.
Waste Management will retain the previously paid put or pay fees.	No impact as the agreement contains a provision that Waste Management would retain the put or pay fees at the end of the term (2021) unless the City provides more waste tonnage than committed.

Terms Favorable to the City of Palo Alto

Reduction in put or pay tonnage commitments.	\$1.5 million to \$3.3 million in overall savings (See Resource Impact section below).
Discount for addition of other Cities	Further discounts to the \$7.00 per ton surcharge would be realized if Kirby Canyon is able to draw new municipal customers.

Timeline

Amendment Number 2 will be implemented upon Council approval and signatures and be in effect through the term of this agreement (end of 2021). No extension to the original 30 year term of the agreement is included in Amendment Number 2.

Resource Impact

Further discounts could be realized by the City (totalling an estimated \$3.3 million) if Waste Management receives sufficient tonnages from new customers (other jurisdictions) because of the elimination of the most favored nations

clause. The estimated savings per year for implementing this Amendment No. 2 is included in the table below.

Cost Impacts under the existing agreement and under the terms of Amendment Number 2

Year	Current Agreement Forecast	Amendment No. 2	Projected Savings
2014	\$2.002 M	\$1.933 M	\$ 69,000
2015	\$2.075 M	\$1.964 M	\$111,000
2016	\$2.127 M	\$1.972 M	\$155,000
2017	\$2.180 M	\$1.984 M	\$196,000
2018	\$2.235 M	\$2.022 M	\$213,000
2019	\$2.292 M	\$2.062 M	\$230,000
2020	\$2.342 M	\$2.094 M	\$248,000
2021	<u>\$2.379 M</u>	<u>\$2.059 M</u>	<u>\$320,000</u>
Totals	\$17.632 M	\$16.091 M	\$1.542 M

Policy Implications

No changes to existing City policies would be achieved through the approval of Amendment Number 2.

Environmental Review

Modifying the terms of an agreement is not a project under the California Environmental Quality Act (CEQA).

Attachments:

- A: Palo Alto Amendment Number 2 (DOCX)

**SECOND AMENDMENT TO
AGREEMENT BETWEEN
THE CITY OF PALO ALTO
AND
WASTE MANAGEMENT OF CALIFORNIA, INC.
FOR LONG TERM DISPOSAL OF SOLID WASTE**

This SECOND AMENDMENT TO AGREEMENT (the “**Amendment**”) is by and between the CITY OF PALO ALTO, a municipal corporation (the “**City**”) and WASTE MANAGEMENT OF CALIFORNIA, INC., a California corporation (“**Contractor**”). The City and Contractor are sometimes referred to individually as a “**Party**,” and collectively referred to as the “**Parties**.” Capitalized terms used in this Amendment without definition have the meanings specified in Appendix 1 to the 1991 Agreement (defined below).

RECITALS

WHEREAS, the City and Contractor entered into an agreement dated September 10, 1991 (the “**1991 Agreement**”) under which Contractor has provided disposal of Municipal Solid Waste generated in the City and other Municipal Solid Waste delivered to Sunnyvale Materials Recovery and Transfer Station (the “**Transfer Station**”);

WHEREAS, in 1991, Contractor also entered into long-term disposal agreements with the City of Sunnyvale and the City of Mountain View (together with the City, the “**Participating Agencies**”) that are substantially similar to the 1991 Agreement;

WHEREAS, on or about September 1, 1993, the Participating Agencies each entered into First Amendments with Contractor amending their 1991 disposal agreements; and

WHEREAS, on or about August 2013, the Participating Agencies and Contractor executed a Memorandum of Understanding regarding amendments to the 1991 disposal agreements, including the 1991 Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and mutual promises contained herein, the Parties agree to the below-referenced amendments to said 1991 Agreement, and all amendments thereto, as follows:

1. For purposes of this Second Amendment, the “**Commencement Date**” shall be December __, 2013.

2. Section 3.03 Disposal Capacity shall be amended to read as follows:

“3.03 Disposal Capacity. Contractor shall reserve for and provide to City the amount of disposal capacity at the Disposal Facility necessary to accommodate City's annual Allocation Quantity. City may deliver more than the annual Allocation Quantity shown on Exhibit A in any year, subject only to limitations imposed by permits for Kirby Canyon and payment of the Excess Quantity Disposal Fee, if such fee is applicable under Section 4.02.A.

As of the Commencement Date, the Allocation Quantity will no longer be in use. Instead, each year during the Term, Contractor shall reserve for the Participating Agencies an amount of disposal capacity at the Disposal Facility equal to a “**Reserve Disposal Capacity**.” For calendar year 2014, the Reserve Disposal Capacity will equal:

(Participating Agencies’ actual 2013 Municipal Solid Waste disposal total at the Disposal Facility) x 95% x 98%

For each subsequent year, the Reserve Disposal Capacity will equal 98% of the previous year’s Reserve Disposal Capacity. The City of Sunnyvale shall be responsible for allocating Reserve Disposal Capacity among the Participating Agencies.”

3. Section 3.04 Transferability of Disposal Capacity shall be amended to read as follows:

“3.04 Transferability of Disposal Capacity. City may at any time and from time to time during the Term transfer all or any portion of its Allocation Quantity to any municipal corporation which is also contracting with City for use of the Transfer Station, including, but not limited to, one or more of the Participating Agencies. Such transfers are not subject to the approval of Contractor. City shall, however, give notice to Contractor of all such transfers, indicating the name of the transferee municipality, the amount of the Allocation Quantity transferred to it, and the date on which such transfer becomes effective.

As of the Commencement Date, the provisions immediately above are no longer applicable and City may at any time and from time to time during the Term deliver to and dispose of MSW generated in and collected from any municipal corporation and processed at the Transfer Station, providing Kirby Canyon has sufficient disposal capacity, based on Contractor’s sole determination, which may not be unreasonable, and providing that City provides Contractor at least 24 hours’ notice.”

4. Section 4.02(A) Disposal Fee shall be amended to read as follows:

“4.02(A) Disposal Fee. Commencing upon October 1, 1993, City shall pay to Contractor a Disposal Fee of \$21.99 per Ton, adjusted as provided in Section 4.02.C (plus taxes and fees, as provided in Section 4.02.B), for all Municipal Solid Waste disposed of at the Disposal Facility which was generated within City and transported to the Disposal Facility by the Transfer Station Operator. Notwithstanding the foregoing, in the event City and the Participating Agencies deliver to the Disposal Facility less than seventy-five percent (75%) of their aggregate annual Allocation Quantity (the "Minimum Quantity"), City shall pay the

Disposal Fee (but not the taxes and fees described in Section 4.02.B) calculated as though City and the Participating Agencies had delivered the Minimum Quantity to the Disposal Facility. Also notwithstanding the foregoing, in the event City and the other Participating Agencies deliver to the Disposal Facility more than one hundred ten percent (110%) of their aggregate annual Allocation Quantity and City or the Participating Agencies have transferred more than ten percent (10%) of their aggregate annual Allocation Quantity to any municipal corporation other than one of the Participating Agencies, then the Disposal Fee for that amount of Municipal Solid Waste delivered which is in excess of one hundred and ten percent (110%) of the aggregate annual Allocation Quantity (the "Excess Quantity") shall be \$24.63 per Ton, adjusted as provided in Section 4.02.C (plus taxes and fees, as provided in Section 4.02.B). All references to "Disposal Fee" in this Agreement shall include both the basic Disposal Fee and the Excess Quantity Disposal Fee.

As of the Commencement Date, the provisions immediately above are no longer applicable (except that City shall pay for the Minimum Quantity shortfall for 2013 pursuant to the second sentence above, with the Minimum Quantity being reduced based on excluding the number of days in 2013 on and after the Commencement Date) and City shall pay to Contractor (i) a "**Disposal Fee**" of \$39.50 per Ton, (ii) a "**Disposal Fee Premium**" of \$7.00 per Ton, and (iii) taxes and fees, as provided in Section 4.02(B), for all Municipal Solid Waste transported to the Disposal Facility from the Transfer Station. Each of these amounts is subject to adjustment as provided in this Agreement. The Disposal Fee Premium shall be subject to reduction pursuant to Section 4.02(A)(i) below.

(i) If Contractor and/or City enters into any written disposal agreement (in the case of the City, a transfer and disposal agreement is included), either directly with one or more incorporated city or county (a "**New Municipal Customer**") for disposal of Municipal Solid Waste at the Disposal Facility or with one or more transporter who is collecting and transporting Municipal Solid Waste under contract with a New Municipal Customer for disposal at the Disposal Facility, and said disposal agreement calls for a disposal fee which is less than the City's Disposal Fee, the City's Disposal Fee Premium shall be discounted, as follows, based on Contractor's projections of the annual disposed-of amounts from all New Municipal Customers:

- 25,000 or less annual tons: No reduction in Disposal Fee Premium
- More than 25,000 but less than 50,000 annual tons: 25% Reduction in Disposal Fee Premium
- Between 50,000 and 74,999 annual tons: 50% Reduction in Disposal Fee Premium
- Between 75,000 and 99,999 annual tons: 75% Reduction in Disposal Fee Premium
- 100,000 or more annual tons: 100% Reduction of Disposal Fee Premium

If a New Municipal Customer agreement commences at a time other than January 1, the annual ton threshold amounts immediately above will be adjusted based on the partial calendar year. For example, with regard to the second category, if a New Municipal

Customer agreement commences on April 1, 25,000 will be changed to 18,750 and 50,000 changed to 37,500 for such partial year.

The Disposal Fee Premium discount will be applied when Contractor's services under the New Municipal Customer disposal agreement commence, and continue until the New Municipal Customer agreement terminates. Following each calendar year, there will be a true-up calculation where Contractor will determine the actual annual disposed-of amounts from all New Municipal Customers. If actual annual disposed-of amounts vary from the previous Contractor estimate, and would have resulted in a different Disposal Fee Premium discount if known when the estimate was made, then, within 30 days of the true-up calculation, Contractor will issue a rebate to City (if actual tons are higher) or City will issue payment to Contractor (if actual tons are lower) based on the actual annual disposed-of amounts. For purposes of illustration, if a New Municipal Customer agreement commences on January 1 and the estimated annual tons are 60,000, Contractor will reduce the City's Disposal Fee Premium by 50% when such agreement commences. If the New Municipal Customer's actual annual tons for such year are 40,000 tons, then City will reimburse Contractor as follows:

Tons of Municipal Solid Waste to which the 50% Disposal Fee Premium was applied x \$1.75

Contractor's projections of the annual disposed-of amounts from a New Municipal Customer will be adjusted annually based on the previous year's disposal tons.

This Section 4.02(A)(i) applies only to disposed of Municipal Solid Waste and does not include any materials that are recycled or otherwise brought in for beneficial reuse or cover.

(ii) If during any calendar year of the Term the Disposal Facility receives for disposal an amount of Participating Agencies Municipal Solid Waste from the Transfer Station which is less than that year's Reserve Disposal Capacity, as referenced in Section 3.03 above, City shall pay (through the City of Sunnyvale) the Disposal Fee and Disposal Fee Premium (but not the taxes and fees described in Section 4.02(B)) calculated as though Participating Agencies, through the Transfer Station, had delivered the Reserve Disposal Capacity tonnage to the Disposal Facility. Contractor shall provide the City of Sunnyvale an invoice for any such amounts owed, on or before January 31 of the following year, which shall be paid within 30 days. For purposes of illustration, if the Transfer Station delivers 120,000 Tons of Participating Agencies Municipal Solid Waste to the Disposal Facility in a calendar year, and such calendar year's Reserve Disposal Capacity amount is 140,000, then City shall pay Contractor an amount equal to 20,000 multiplied by the sum of the then-existing Disposal Fee and Disposal Fee Premium. Reserve Disposal Capacity shortages and overages shall not carry over to the next year."

5. Section 4.02(C) Annual Adjustment shall be amended to read as follows:

“4.02(C) Annual Adjustment. The Disposal Fee set forth above shall be adjusted as of July 1, 1992 and annually thereafter to reflect changes in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Urban Consumers; 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics. The Index level as of May, 1991 (136.2) shall be the Base Index. The Disposal Fee shall be adjusted on July 1, 1992, for example, by multiplying \$21.99 by one plus the percentage change from the Base Index to the Index level as of May, 1992.

As of the Commencement Date, the Disposal Fee and Disposal Fee Premium shall be adjusted as of July 1, 2014, and annually thereafter throughout the Term, to reflect changes in the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Urban Consumers; 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics. The July 1, 2013 Disposal Fee adjustment reflected the Index change through April 2013. The adjustments on July 1, 2014 will then reflect the change in Index level between April 2013 (244.675) and December 2013. The Index level as of December 2013 shall then become the Base Index for adjustments on July 1, 2015 and following years. The Disposal Fee and Disposal Fee Premium shall be adjusted on July 1, 2015, for example, by multiplying the then-applicable fees by one plus the percentage change from the Base Index (December 2013) to the Index level as of December 2014.”

6. Section 4.02(D) Comparable Fees shall be amended to read as follows:

“4.02(D) Comparable Fees. If Contractor enters into any agreement or arrangement with any other Person with an Allocation Quantity equal to or less than City’s, under with such Person is allowed to deposit Municipal Solid Waste at the Disposal Facility for a fee or charge which is less than the Disposal Fee then charged to City pursuant to Section 4.02.A (as adjusted pursuant to Sections 4.02.B and 4.02.C), then City shall not be required to pay a Disposal Fee in excess of the amount of such lesser fees or charges, for so long as such lesser fee or charge is in effect. This paragraph is not intended to apply to charges imposed by Contractor on solid waste delivered to the Disposal Facility by Contractor, or by companies wholly owned and controlled by Contractor or Waste Management of North America, Inc., or Waste Management, Inc. so long as the solid waste so delivered is not collected, transported or otherwise handled pursuant to a contractual relationship which, either directly or indirectly, secures disposal capacity at the Disposal Facility and which is between the company delivering the waste to the Disposal Facility and a city, county, district or other political subdivision.

As of the Commencement Date, Section 4.02(D) shall no longer apply.”

7. Section 4.02(E) Credit for Tonnage Paid for Under Minimum Quantity Provisions shall be amended to read as follows:

“4.02(E) Credit for Tonnage Paid for Under Minimum Quantity Provisions. If City pays for any Tons which are not physically delivered to the Disposal Facility, pursuant to the Minimum Quantity provisions of Section 4.02.A, upon subsequent delivery of such paid-for but unused portion of its Allocation Quantity, City shall receive full credit against the then-

current Disposal Fee for the amount previously paid, provided that City may not receive such credit in any year unless and until it has delivered at least 75 percent of the annual Allocation Quantity specified for that year.

As of the Commencement Date, all credits accumulated to date shall be waived by the Participating Agencies and no remuneration for payment of disposal fees prior to the Commencement Date with regard to waste material not delivered to the Disposal Facility shall be received by the Participating Agencies. Beginning on the Commencement Date, the Participating Agencies shall not receive any credit for any Tons which are not physically delivered to the Disposal Facility but which are paid for as specified in Section 4.02(A)(ii)."

8. Section 4.03(D) Proportionate Share shall be amended as follows:

"4.03(D) Proportionate Share. As of the Commencement Date, to the extent the costs of complying with newly enacted governmental regulations (or changes to regulations which can be charged to City) are attributable to Municipal Solid Waste already in place at the Disposal Facility at the time such new regulations are issued, the City's proportionate share of such costs shall be determined by multiplying such costs by a fraction, the numerator of which is the amount of Municipal Solid Waste then deposited in the Disposal Facility which originated in the City and the denominator of which is the total amount of Municipal Solid Waste then deposited in the Disposal Facility from all sources, unless otherwise provided for by the enacted legislation. Contractor shall be reimbursed for such costs (including its actual and reasonable financing costs) through monthly installment payments which will amortize the costs incurred over the remaining Term of the Agreement, as specified in Section 1.02. The parties agree that the prime rate, as published on a monthly basis by the Wall Street Journal, is a reasonable financing cost.

To the extent the costs of complying with such regulations are attributable to Municipal Solid Waste not yet in place at the Disposal Facility at the time such new regulations are issued, then City's proportionate share of such costs shall be determined by multiplying such costs by a fraction, the numerator of which is the Reserve Disposal Capacity sum for the remaining Term and the denominator of which is the total remaining permitted capacity of the Disposal Facility. The cost of compliance shall be calculated on a "per Ton" basis amortized over the remaining life of the Disposal Facility. In all cases in which the costs of compliance with new or changed governmental regulations attributable to Municipal Solid Waste not yet in place are sought to be charged to the City, Contractor shall provide City, on an annual basis, with evidence showing (1) that the work required by the regulations has been performed, and (2) the amount of costs actually incurred. If the actual costs are less than the costs as estimated on which an increase in Disposal Fee was based, the Disposal Fee will be reduced accordingly, so as to offset any overpayments made on the basis of the estimated cost. If the actual costs are more than the costs as estimated, on which an increase in Disposal Fee was based, the Disposal Fee may be increased accordingly, so as to cover any underpayment made on the basis of the estimated cost."

9. Section 4.04(A) Monthly Billing shall be amended to read as follows:

“4.04(A) Monthly Billing. As of the Commencement Date, on or before the fifteenth (15th) day of each month, Contractor shall submit to the Transfer Station Operator an invoice for Disposal Fees and Disposal Fee Premiums (and taxes and governmental fees, if applicable) covering Municipal Solid Waste delivered to the Disposal Facility during the prior month by the Transfer Station Operator on behalf of City and the Participating Agencies. The invoice shall be accompanied by a report showing the following information: date of each delivery; vehicle identification number; quantities in Tons (gross weight, tare weight, and all Tons) or cubic yards; rate per Ton; and cost per load. Contractor shall concurrently send a copy of the invoice and report to the City. Contractor shall not be responsible for the allocation of the Disposal Fees or Disposal Fee Premiums (or taxes and fees) or the determination of proportionate disposal of Municipal Solid Waste by and between City and the Participating Agencies. City shall pay or cause the Transfer Station Operator to pay Contractor within fifteen (15) days after its receipt of the invoice and report. If City disputes a portion of an invoice, it shall pay the undisputed portion within fifteen (15) days and notify Contractor in writing of the reason(s) for nonpayment of the disputed portion. City may request additional information from Contractor regarding an invoice and report within fifteen (15) days from receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. All disputes arising under this Section 4.04 shall be referred to binding arbitration pursuant to this Subsection. The arbitrator shall be selected and the arbitration conducted in accordance with the procedures set forth in Exhibit F. Notwithstanding the foregoing, in the event of a dispute between City and the Transfer Station Operator and/or the Participating Agencies regarding City's proportionate share of the invoice rather than the total amount due according to the invoice, City shall not withhold any portion of its payment, and Contractor shall have no obligation to refund any portion of said payment upon resolution of the dispute between City, the Transfer Station Operator and/or the Participating Agencies.”

10. Section 4.04(B) Annual Reconciliation shall be amended to read as follows:

“4.04(B) Annual Reconciliation. At the end of each calendar year of the Term, Contractor shall submit to the Transfer Station Operator an invoice for Disposal Fees covering (1) the Minimum Quantity Disposal Fees not previously collected by Contractor and/or (2) the Excess Quantity Disposal Fees accrued during the year by the Transfer Station Operator on behalf of City and the Participating Agencies. A copy shall be sent concurrently to City. Contractor shall not be responsible for the allocation of Minimum Quantity Disposal Fees or Excess Quantity Disposal Fees between City and the Participating Agencies. City shall pay its share, if any, of such Fees to Contractor (through Sunnyvale or the Transfer Station Operator) within thirty (30) days after the City's receipt of the copy of the invoice.

As of the Commencement Date, required end of year invoicing will be as per Section 4.02(A)(ii).”

11. Section 5.02 Insurance shall be amended to read as follows:

“5.02 Insurance. As of the Commencement Date:

A. Types and Amounts of Coverage. Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability. Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or occurrence.
2. General Liability. Contractor shall maintain commercial general liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of services under this Agreement. The insurance required by this Subsection shall include:
 - a. Premises Operations;
 - b. Independent Contractor's Protective;
 - c. Products and Completed Operations;
 - d. Personal Injury Liability coverage for insured contracts;
 - e. Broad Form Property Damage, including Completed Operations.

The General Liability insurance required herein shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, if such coverage is obtainable. If it is not obtainable, Contractor shall arrange for "tail coverage" to protect City from claims filed after the expiration or termination of this Agreement relating to incidents which occurred prior to such expiration or termination. The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A or better.

B. Owned, Non-Owned, and Hired Motor Vehicles. Contractor shall maintain insurance with limits of \$10,000,000 per occurrence and \$10,000,000 aggregate for bodily injury, personal injury and property damage for owned, non-owned and hired motor vehicles. ISO Occurrence Form CG 0001 or equivalent is required

C. Pollution Liability. Contractor shall maintain Contractor's pollution liability insurance with limits in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage and remediation as a result of pollution conditions arising out of its operations under this Agreement.

- D. Required Endorsements. The general liability policy shall contain endorsements or provisions in substantially the following form:

"Thirty (30) days prior written notice shall be given to the City of Palo Alto in the event of cancellation of this policy. Such notice shall be sent to: City Manager, City of Palo Alto, P.O. Box 10250, Palo Alto, CA 94303."

"The City of Palo Alto, its officers, employees, and agents are additional insureds on this policy."

"This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Palo Alto, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

"This policy shall contain a separation of insureds provision to provide that the policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

- E. Delivery of Proof of Coverage. On or before the Effective Date, Contractor shall furnish City with certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. Contractor shall periodically furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term.

- F. Other Insurance Requirements.

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Section 5.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 5.02.
2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 5.01. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence

related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City. If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.”

12. Section 10.04 Status of Disposal Facility shall be amended to read as follows:

“10.04 Status of Disposal Facility. As of the Commencement Date, the Disposal Facility has been designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). The Disposal Facility has been issued all permits from federal, state, regional, county and city agencies necessary for it to operate as a Class 3 Sanitary Landfill. The Disposal Facility is authorized, under its permits, as amended, to accept all Municipal Solid Waste at the daily flow rates, and at the times of delivery contemplated in this Agreement delivered to it. The Disposal Facility has sufficient remaining capacity, not committed to others by contract, to accommodate Municipal Solid Waste in the amount equal to the total of the Participating Agencies' Reserve Disposal Capacity. The Disposal Facility is being operated in accordance with all its permits. Contractor has contractual rights with the owner of the property on which the Disposal Facility is located to operate the Disposal Facility for a period of at least forty (40) years from the Effective Date of this Agreement.”

13. Appendix 1, Definition of Contractor shall be amended as of the Commencement Date by changing “Waste Management of North America, Inc., an Illinois Corporation” to “Waste Management Holdings, Inc., a Delaware Corporation”.

14. Exhibit A-1 List of Allocation Quantities, In Tons. As of the Commencement Date, the Allocation Quantities for 2014 and later are hereby deleted.

[Signatures on following page]

CITY OF PALO ALTO

James Keene
City Manager

J. Michael Sartor
Director, Public Works

APPROVED AS TO FORM:

Senior Asst. City Attorney

WASTE MANAGEMENT OF CALIFORNIA, INC.

By: _____

Name: _____

Title: _____

Date: _____