



**AMENDMENT # 1 TO THE
FIRST AMENDED, CONSOLIDATED AND RESTATED EXCLUSIVE FRANCHISE
AGREEMENT BETWEEN THE CITY OF VICTORVILLE, CALIFORNIA AND
VICTORVILLE DISPOSAL, INC.**

This Amendment #1 to the First Amended, Consolidated and Restated Exclusive Franchise Agreement for Solid Waste Refuse and Waste Diversion (Recycling) Services ("Amendment # 1"), dated July 31, 2014 for reference purposes only, is entered into by and between the City of Victorville ("City"), a charter city and municipal corporation organized under the laws of the State of California and VICTORVILLE DISPOSAL, INC., a California corporation ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, in November 2009, City and Contractor entered into, and the City Council adopted, that certain First Amended, Consolidated and Restated Exclusive Franchise Agreement for Solid Waste Refuse and Waste Diversion (Recycling) Services (the "Current Franchise Agreement") for the purposes of providing reliable and cost-effective solid waste handling and recycling services to residents and business in the City; and

WHEREAS, California Public Resources Code section 40059 *et seq.*, authorizes the City to determine and arrange for all aspects of solid waste handling; and

WHEREAS, California Public Resources Code section 47000 *et seq.*, requires cities and counties to prepare a Household Hazardous Waste Element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes which are generated by households, and which must be kept separate from the regular solid waste stream; and

WHEREAS, the City has a Household Hazardous Waste Collection Center ("HHWCC") currently located on Loves Lane (off of Desert Knolls Drive, behind the San Bernardino County Fairgrounds), in the city of Victorville; and

WHEREAS, City and Contractor wish to amend the Current Franchise Agreement to provide the terms and conditions under which the Contractor will provide staffing services for the HHWCC.

NOW, THEREFORE, in consideration of mutual covenants and conditions contained and made in this Amendment #1, the Parties hereto agree as follows:

A. RESPONSIBILITIES AND DUTIES OF THE CONTRACTOR

- 1. Commencing upon the Effective Date (as defined in Section C.1, below), Contractor shall provide qualified personnel to staff, operate and maintain the City of Victorville HHWCC located on Loves Lane, or such other location to be specified and mutually agreed upon by the Parties hereto in writing.

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2. Qualified personnel shall mean such persons who have successfully completed the 32 hour Household Hazardous Waste training course provided by the San Bernardino County Fire Protection District (the "District"), including any required refresher course(s), or such equivalent training as is deemed acceptable by the District. In addition to having the aforementioned qualifications, Contractor and its employees staffing the HHWCC shall comply with the provisions of Section 7.04 of the Current Franchise Agreement.
3. Staffing level shall be maintained at no less than two persons per day, two days per week, for eight hours each day. The specific days of the week and hours of opening and closing of the HHWCC shall be agreed upon by the City Manager (or his/her designee) following consultation with Contractor's government liaison, and shall be subject to modification by the same process.
4. Contractor shall have plans in place to provide for trained substitute employees, in the event its regularly assigned employees are absent.
5. Contractor shall be responsible for hiring, training, disciplining, compensating, , insuring (as applicable) and supervising all of Contractor's employees who will staff the HHWCC, and shall provide the staffing services in accordance with Section 14.01 of the Current Franchise Agreement, which provides, among other things, that Contractor's employees are not and shall not be considered agents or employees of the City.
6. Contractor shall be responsible for providing personal safety equipment and safety supplies for all of its employees staffing the HHWCC (including but not limited to: safety glasses, steel toed boots, nitrile gloves, leather gloves, Tyvek aprons, and Tyvek suits). Contractor shall also supply or require employees to wear uniforms.
7. As required by Section 14.02 of the Current Franchise Agreement, Contractor shall comply with all applicable laws as well as any applicable regulations and policies in carrying out its responsibilities under this Amendment # 1.
8. The Contractor shall operate HHWCC in accordance with the most recent edition of "The Satellite Facilities Operations Manual" ("Operations Manual") prepared by the District's Division of Hazardous Materials.
9. Employees of the Contractor who staff the HHWCC will accept only "Household Hazardous Waste", as defined in Title 22, section 66260.10 of the California Code of Regulations and in California Health and Safety Code section 25218.1(e). The designated employees will categorize, pack and label the wastes in accordance with the Operations Manual. The wastes will be stored in original packaging (except used motor oil and used antifreeze) and placed in the District-provided containers inside the waste storage area (located within the fenced area of the HHWCC).
10. The Contractor shall be responsible for the safety of persons and materials on the property of the HHWCC, and keeping the HHWCC secure by locking the facility gates.

11. The Contractor shall be responsible for keeping the HHWCC in a neat and clean condition; for maintaining and using all equipment in a safe and appropriate manner.
12. The Contractor shall notify and obtain approval from the City Manager prior to making any changes in the maintenance and/or operations of the HHWCC that are not contemplated by this Amendment # 1.

B. RESPONSIBILITIES AND DUTIES OF THE CITY

1. The City shall arrange for disposal of "Household Hazardous Waste" as defined above.
2. The City shall compensate Contractor the services provided under this Amendment # 1 on a monthly basis. The formula and procedures set forth below will be used to calculate and adjust, when appropriate, the amount of Contractor's compensation for operating the HHWCC (the "Services Compensation"). However, in no event shall the City pay Services Compensation to Contractor in excess of \$30,000.00 per year.
 - a. Services Compensation Formula. The following formula shall be used to calculate the amount of Services Compensation to be paid to Contractor: \$ 12.64 per hour per employee, plus 8% to account for payroll taxes and workers' compensation costs, resulting in a total rate of \$13.65 per hour. Contractor will provide staffing services at the levels set forth in Section A.3 of this Amendment #1, as well as two (2) of Contractor's employees for an additional 4 hours per month. Additional staffing services in excess of those specified herein may be provided, upon written authorization from the City Manager, or his/her designee.
 - b. Invoicing and Payment. Contractor shall submit a monthly invoice to City, detailing the hours of staffing services provided, and the total Services Compensation due. City shall pay said invoice within fifteen (15) days of receipt.
 - c. Annual Services Compensation Adjustment. Should Contractor provide an annual cost of living increase or other hourly salary adjustment to all of its employees ("Annual Adjustment"), Contractor may request that City adjust the Services Compensation by providing at least thirty (30) days advance written notice to City specifying the hourly Annual Adjustment. Upon City's written approval of each Annual Adjustment request, the Services Compensation will be adjusted accordingly based on the formula set forth above. No adjustment will be provided prior to July 1, 2015.
 - d. Other Services Compensation Adjustments. Contractor may also request adjustment of its Services Compensation at any time in the event of changes in law impacting its costs to staff and operate the HHWCC. Such other Services Compensation Adjustment requests must be made in writing to City at least thirty (30) days in advance of the requested effective date and all such other Services Compensation Adjustment requests must be approved in writing by the City.

3. The City shall pay directly or reimburse Contractor for cost of providing portable latrine service at the HHWCC following City's receipt of documentation of such cost from Contractor (invoices, etc.).
4. The City shall pay directly or reimburse Contractor for the cost of providing water for employees at the HHWCC following City's receipt of documentation of such cost from Contractor (invoices, etc.).
5. The City shall be responsible for providing or maintaining a generator and forklift at the HHWCC.

C. EFFECTIVE DATE, TERM, AND TERMINATION

1. This Amendment # 1 shall become effective upon the date this Amendment # 1 has been: (a) approved as to form by the City Attorney and the City's Risk Manager; (b), fully executed by the Parties; and (c) approved by the City Council (the "Effective Date"). Unless terminated in accordance with the provisions of Section C.2, below, this Amendment # 1 shall remain in effect until further amended in writing by the Parties.
2. This Amendment may be terminated by either Party, with or without cause, by providing one hundred twenty (120) days advance written notice to the other Party, such notice to be given in accordance with Section 14.06 of the Current Franchise Agreement. In the event this Amendment # 1 is terminated, the Contractor, at its sole discretion, may opt to terminate any employees used to staff the HHWCC.
3. Should this Amendment relating to HHWCC staffing be terminated as set forth above, the Current Franchise Agreement shall remain in full force and effect in accordance with its terms.
4. Except as specifically set forth in this Amendment #1, all terms and provisions of the Current Franchise Agreement, including without limitation, Article 12 relating to indemnity and insurance, shall apply to the HHWCC staffing services provided under this Amendment #1. All other terms and provisions of the Current Franchise Agreement shall continue in full force and effect.
5. This Amendment #1 may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

END OF PAGE – SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, City and Contractor have executed this Amendment as of this 9~~th~~ (day) in the Sept (month) of 2014 (year).

CITY OF VICTORVILLE

VICTORVILLE DISPOSAL, INC.

By: James L. Cox
James Cox
Mayor

By: Cole Burr
Cole Burr
President

ATTEST:

Carolee Bates
Carolee Bates
City Clerk

APPROVED AS TO FORM:

Andre de Bortnowsky
Andre de Bortnowsky, City Attorney

CITY OF VICTORVILLE RISK MANAGEMENT:

Chuck Buquet
Chuck Buquet
Risk Manager



AGENDA ITEM

WRITTEN COMMUNICATIONS

CITY COUNCIL / BOARD OF DIRECTORS

MEETING OF: August 19, 2014

SUBMITTED BY: CHRISTIAN GUNTERT *CS* **DATE:** AUGUST 4, 2014
DIRECTOR OF COMMUNITY SERVICES

ATTACHMENT: AMENDMENT # 1 TO THE FIRST AMENDED, CONSOLIDATED, AND EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF VICTORVILLE, CALIFORNIA AND VICTORVILLE DISPOSAL, INC.

SUBJECT: PROPOSED CONTRACT AMENDMENT WITH VICTORVILLE DISPOSAL INC., TO PROVIDE FOR STAFFING OF CITY OF VICTORVILLE HOUSEHOLD HAZARDOUS WASTE COLLECTION CENTER.

RECOMMENDATION: After review and consideration, approve the attached Amendment # 1, and authorize the Mayor to execute the Amendment.

<u>FISCAL IMPACT:</u>		
PROJECT BUDGET:	\$	30,000.00
PROJECT COST:	- \$	30,000.00
PROJECT BALANCE:	\$	-

BUDGET ACCT NO: 4362016 52300

— Finance Use Only —
Additional Expense:
<input checked="" type="checkbox"/> No
<input type="checkbox"/> Yes / Amount
Additional Revenue:
<input type="checkbox"/> No
<input type="checkbox"/> Yes / Amount
CFO Review <i>Allele Mosher</i>

DISCUSSION:

The attached Amendment # 1 allows for Victorville Disposal, Inc. to start providing staffing for the City's Household Hazardous Waste Collection Center (HHWCC). The cost for this service will be between \$24,000 and \$30,000, depending on the total number of hours the facility is staffed. The San Bernardino County Fire Protection District's proposed cost for

FY 14/15 for staffing the Victorville HHWCC was \$71,691. Therefore, by contracting with Victorville Disposal to provide staffing for HHWCC, the City will realize a savings of more than \$41,000 compared to the costs of staffing the facility with employees from San Bernardino County Fire Protection District.

Expenses for the City of Victorville's HHW program are budgeted in the Solid Waste, Household Hazardous Waste Program (not General Fund). Revenues for the program are generated from the 32 cent per month Household Hazardous Waste Fee on residential sanitation bills, as well as the sale of scrap items, such as CRTs, e-waste, and used motor oil.

BACKGROUND:

The California Public Resources Code (Section 47000 et seq) requires cities and counties to prepare a Household Hazardous Waste Element which identifies a program for the safe collection, recycling, treatment, and disposal of hazardous wastes which are generated by households, and which must be kept separate from the regular solid waste stream.

Since the early 1990s, the City has had a Household Hazardous Waste Collection Center (HHWCC) for residents to drop off hazardous materials. The City of Victorville HHWCC is located on Loves Lane, off of Desert Knolls Drive, behind the County Fairgrounds and is open Wednesdays and Sundays from 9 a.m. to 4 p.m. Last fiscal year, 4,708 individuals used the facility, disposing of over 246,000 pounds of hazardous materials.

Previously, the City of Victorville Fire Department staffed the City's HHWCC with part-time employees. When the City contracted out fire services to the County, the HHWCC center staffing was also moved over to the County. Expenses for staffing have increased since then from \$15,300 in FY 09/10 to a proposed cost of \$71,691 for FY 14/15. For this reason, it is recommended that the City contract with Victorville Disposal (Burrtec) to provide staffing for the facility.

It should be noted that disposal of household hazardous waste materials will still be provided by the San Bernardino County Fire Protection District under a separate contract with the City. The District collects materials from the Victorville HHW Collection Center and transports the waste to its central facility in San Bernardino. The County has contracts with outside vendor(s) to dispose or recycle the HHW materials, as appropriate.