

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Jennifer Mellon, Senior Management Analyst 

DATE: May 30, 2009 (CC meeting of June 17, 2009)

SUBJECT: Consider Amendment to the Local Street Access Agreement between the City of Moorpark and Waste Management

BACKGROUND

In 1999 the City entered into an agreement with Waste Management (WM), doing business as the Simi Valley Landfill, with the understanding that the Simi Valley Landfill will accept all discarded material from the City and in consideration of increased vehicle usage of City streets due to the transport of Moorpark discards to the landfill and WM would, in turn, compensate the City by paying a monthly local street access fee.

In 2003, an amendment to the initial agreement was entered into extending the term of the agreement through June 30, 2009. All other provisions of the original agreement remained in effect.

DISCUSSION

The City Council is being requested to approve an amendment to the agreement with WM regarding Local Street Access Fees levied upon the Landfill, extending the agreement for an additional five years and revising the fee calculation method and amount.

The current agreement states that the minimum fee charged per disposed ton due to increased vehicle usage on City streets is \$2.50. Within the agreement there is an adjustment formula which is updated annually. The formula takes into consideration the hauler discounted rate for disposal and the December CPI index. If the difference between the two factors is less than \$2.50, WM pays the \$2.50 per ton as negotiated within the agreement. If the differential is greater than \$2.50, WM would pay that amount per ton. Since the agreement went into effect in 1999, the minimum fee of \$2.50 has been charged each year, as the difference between the two rates has not exceeded that amount.

The City has proposed a new formula to calculate local access fee rates and WM has

agreed to the terms. Beginning January 1, 2010, the base rate of \$2.50 will be used to calculate the Fiscal Year Local Streets Access Fee for calendar year 2010. To this base rate will be added, the September to September CPI adjustment (All Urban Consumers, Los Angeles County, less shelter) percentage calculated at 86% (this is the same CPI formula used during the annual solid waste rate adjustment) up to a maximum increase of 3% annually. In the event that the September to September calculated CPI decreases, the Local Street Access Fee shall remain at the current calculated rate until such time as the next annual indexing results in a CPI increase. This new calculated 2010 fee would then be used in January 2011 to calculate the calendar year rate for 2011 and so on. In summary, each time the CPI factor increases so does the Local Streets Access Fee and if the CPI decreases the fee remains at highest calculated rate to date until the CPI factor increases again.

The Agreement still has City obligations to require franchise haulers to dispose of all discarded material generated in Moorpark at the Simi Valley Landfill, support Waste Management's efforts to expand the landfill, and support the removal of the 85% maximum permitted tons per day limitations currently in effect.

FISCAL IMPACT

The Local Street Access Fee currently generates approximately \$55,000 in general fund revenue annually. This amendment will provide a fee calculation that has the potential to increase annual Local Street Access Fee revenue. Approving the renewal of the agreement will ensure the continuance and potential increase of this revenue.

STAFF RECOMMENDATION

Approve Amendment No. 2 to the Waste Management Agreement for Local Access Fees subject to final language approval by the City Manager and City Attorney.

Attachment A – Proposed Amendment No. 2

Attachment B – Current Amendment No. 1

Attachment C – Original Agreement

ATTACHMENT "A"

AMENDMENT NO. 2
LOCAL STREET ACCESS AGREEMENT
WASTE MANAGEMENT OF CALIFORNIA

THIS AMENDMENT NO. 2 TO LOCAL STREET ACCESS AGREEMENT, made and entered into this _____ day of _____, 2009, by and between the City of Moorpark, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as "City" and Waste Management of California, DBA the Simi Valley Landfill and Recycling Center hereinafter referred to as "WM", as an amendment to the Local Street Access Agreement between the City and WM dated April 1, 1998.

WITNESSETH

Whereas, on April 1, 1998, the City and WM entered into a one (1) year Agreement for Local Street Access; and

Whereas, on March 3, 1999, the City and WM entered into Agreement No. 1 to the Local Access Agreement for an additional five (5) year period extending the Agreement until June 30, 2009; and

Whereas, the City and WM mutually agree, with Amendment No. 2, to further extend the term of the Local Street Access Agreement to June 30, 2014.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree to amend the aforesaid Agreement as follows:

I. Term

Section 3 of the Agreement, attached hereto as Attachment "A", has been amended to extend the term of the Agreement five (5) years to June 30, 2014.

II. Obligations of Waste Management

Section 4.B of the Original Agreement, attached hereto as Attachment "C", has been amended to change the calculation formula for determining the annual Local Streets Access Fee. Section 4.B shall be replaced in its entirety with the following language.

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:

Beginning January 1, 2010, the base rate of \$2.50 per ton will be used to

calculate the Calendar Year Local Streets Access Fee. To this base rate will be added, the annual CPI adjustment (All Urban Consumers, Los Angeles County, less shelter) percentage increase from September to September calculated at 86%. If the calculated CPI increase is over 3% the new fee calculation shall not exceed 3% annually. In the event that the September to September calculated CPI decreases, the Local Street Access Fee shall remain at the current rate until such time as the next annual indexing results in a CPI increase. This new calculated 2010 rate would then be used in January 2011 to calculate the calendar year rate for 2011 and so on.

Example: Calculation of calendar year 2009 rate using the new factors. Waste Management would use the base rate of \$2.50 per ton and add 3% (annual CPI for 2007 was 195.898 and annual CPI for 2008 was 206.596 which calculates to an adjusted 4.7% increase, but would be capped at 3%) which would have put the fee at \$2.58 per ton. In subsequent years, if the annual CPI were to decrease the previous calculated fee would remain in place until the next annual adjustment period with a CPI increase.

III. Other Provisions

Except as revised by this Amendment No. 2, all other provisions of the Agreement (Attachment "C") shall remain in full force and effect.

In WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be executed by their duly authorized officers the day and year first above written.

CITY OF MOORPARK:

WASTE MANAGEMENT:

Steven Kueny, City Manager

Scott Tignac, District Manager

Date _____

Date _____

ATTEST:

Deborah S. Traffenstedt, City Clerk

ATTACHMENT "B"

AMENDMENT

TO AGREEMENT FOR LOCAL STREET ACCESS

THIS AMENDMENT TO AGREEMENT, made and entered into this 15th day of October, 2003, by and between the City of Moorpark, a municipal corporation located in the County of Ventura, State of California, hereinafter referred to as "City" and Waste Management of California, DBA The Simi Valley Landfill and Recycling Center, hereinafter referred to as "Waste Management".

RECITALS

Whereas, on April 1, 1998, the City and Waste Management entered into a one (1) year Agreement entitled "An Agreement Between the City of Moorpark and Waste Management of California DBA the Simi Valley Landfill and Recycling Center for Local Street Access," and

Whereas, on March 3, 1999, the City and Waste Management entered into another Agreement pertaining to local street access; and for additional five (5) year period; and

Whereas, Waste Management anticipates obtaining an extension of the approvals required to operate the Landfill after June 27, 2004; and

Whereas, the City and Waste Management mutually agree to extend the term of the Local Street Access Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises hereinafter contained, the parties hereto agree as follows:

I. Term

Section 3 of the Agreement has been amended to extend the term of the Agreement five (5) years to June 30, 2009.

II. Miscellaneous

Section 8.H. "Notices," 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:

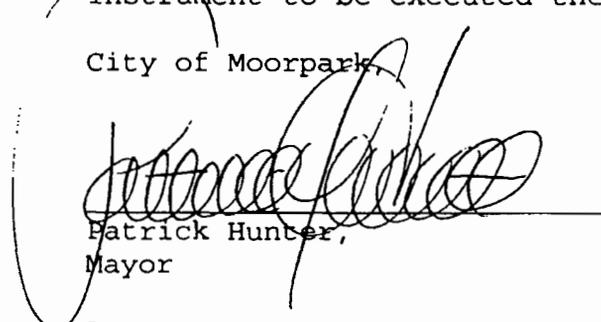
Senior Legal Counsel
Waste Management Western Group
9081 Tujunga Avenue, 2nd Floor
Sun Valley, CA 91352

III. Remaining Provisions

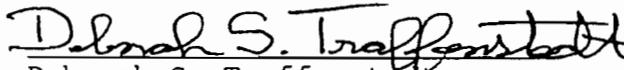
All other provisions of the aforesaid Agreement (Attachment A) shall remain in full force and effect.

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

City of Moorpark,


Patrick Hunter,
Mayor

Attest:


Deborah S. Traffenstedt,
City Clerk



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

Signed:  _____

Name: SCOTT TIBBETS Title: DISTRICT MANAGER

ATTACHMENT "C"

AN AGREEMENT BETWEEN THE CITY OF MOORPARK 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 Moorpark, on this 3rd day of March, 1999, by and between the City of Moorpark, 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 incorporate herein.

2. Definitions

- A. "CITY" means the City of Moorpark, 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 April 1, 1998, agreement between CITY and LANDFILL for Local Street Access be terminated upon the 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 31st 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) x 7,500 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/ton x 8,000 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 Moorpark General Operating Account. Such monthly payments will retroactively begin for the month commencing on March 1, 1999, with the first payment due by April 30, 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 the 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 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 Moorpark
Steve Kueny, City Manager
799 Moorpark Avenue
Moorpark, CA 93021

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:

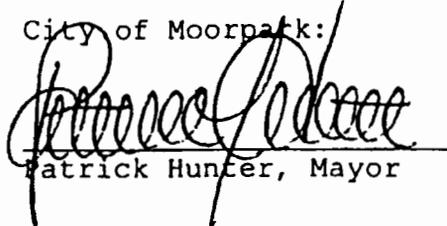
Waste Management
E. William Hutton, Assoc. General
Counsel
9081 Tujunga Avenue, 2nd Floor
Sun Valley, CA 91352

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.

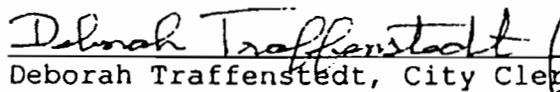
City of Moorpark:


Patrick Hunter, Mayor

Simi Valley Landfill and Recycling Center:


Frank P. Kiesler, District Manager

Attest:


Deborah Traffenstedt, City Clerk

