

UPPER VALLEY WASTE MANAGEMENT AGENCY
FIRST AMENDMENT TO AGENCY AGREEMENT #95-06

CLOVER FLAT LANDFILL
SOLID WASTE HANDLING FRANCHISE AGREEMENT

~~THIS FIRST AMENDMENT TO AGENCY AGREEMENT~~ #95-06 is made and entered into this 12th day of December, 2005, by and between the UPPER VALLEY WASTE MANAGEMENT AGENCY, a joint powers authority organized under the laws of the STATE OF CALIFORNIA, hereinafter referred to as "AGENCY" and CLOVER FLAT LANDFILL, a California corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, AGENCY and CONTRACTOR originally entered into Agreement #95-06 on September 25, 1995 for disposal at the Clover Flat Landfill of all garbage and rubbish collected within the AGENCY Service Area; and

WHEREAS, the AGENCY acts as a consolidated franchisor for solid waste handling services, including landfill disposal, throughout the AGENCY Service Area and sets rates for those solid waste handling services; and

WHEREAS, AGENCY now desires to amend AGENCY Agreement #95-06 with CONTRACTOR concerning the acceptance of solid waste generated outside the service area and with respect to rates and rate setting methodology; and

WHEREAS, this instrument is negotiated and executed by the parties hereto pursuant to the authority conferred on local agencies by Public Resources Code Sections 40059, et seq., to provide for solid waste handling services on an exclusive or non-exclusive basis and with or without competitive bidding, which has been delegated to AGENCY by the JOINT POWERS AGREEMENT pursuant to Government Code section 6500 et seq.

TERMS

NOW, THEREFORE, AGENCY AND CONTRACTOR AGREE as follows:

1. The foregoing recitals are true and correct.
2. Exhibit "A" section 8.2 is hereby amended as follows:
 - 8.2 SOLID WASTE generated outside of the SERVICE AREA. CONTRACTOR reserves the right to accept SOLID WASTE from areas other than the SERVICE AREA. However, CONTRACTOR shall at all times maintain permitted LANDFILL capacity for the approved AGENCY's estimated WASTE disposal

needs at LANDFILL over the term of this AGREEMENT. If CONTRACTOR desires to accept SOLID WASTE from areas other than the SERVICE AREA, prior approval must be obtained from the AGENCY. AGENCY will not withhold its consent if there is a benefit to the AGENCY's ratepayers. Any such violation shall constitute a major breach.

3. For the rates set in Exhibit "C-December 2005", the following definition revisions in the rate methodology in Exhibit "B", Section III, Definitions, are to be used in setting the rates and will continue to be used:

Allowable Expenses, section e., ii

- ii. Intercompany Leases - Intercompany leases for real and personal property entered into prior to the adoption of the original methodology are Allowable, but escalation will be limited to current market value at the time of a Rate application. Proposed increases in the amount for current intercompany leases to adjust for changes in fair market value will be reviewed at the time of any Rate application for an Operating Period and will be subject to substantiation. (See Recoverable Expenses for leases entered into after the adoption of this methodology)

Allowable Expenses, section f.

- f. Consultant Expenses: expenses for consultant services including legal, accounting and other professional services up to seventy five thousand dollars (\$75,000.00) as adjusted by the Index (and not to exceed \$15,000 for legal expenses, \$50,000 for engineering services or \$35,000 for accounting services as adjusted by the Index).

Rate Year: a one year period beginning January 1 and ending the subsequent December 31.

Recoverable Expenses, section a.

- a. Consultant Services: consultant services in excess of seventy five thousand dollars (\$75,000.00) per annum, as adjusted by the Index. Legal, engineering or accounting expenses in excess of the amount treated as Allowable Expenses up to the amounts that are considered Allowable will be Recoverable Expenses and expenses above this amount are Non-Recoverable.

Recoverable Expenses, section d.

- d. Real and Personal Property Intercompany Leases: entered into after the adoption of this methodology will be Recoverable Expenses subject to demonstration of fair market value rent. Lease payments will be considered reasonable only if the monthly lease payment is less than the sum of the straight line depreciation plus the interest payment that would have been made had the asset been purchased rather than leased. The interest payment will be determined by amortizing the fair market value of the asset on the date of the purchase over the asset's potential depreciable life using an interest rate that does not exceed the current prime rate plus one percent (1%).
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Recoverable Expenses, section h.

- i. Closure/Post Closure Trust Fund Payments – The annual amount paid into the Closure/Post Closure Trust will be recognized in the rates on a cash basis. Amounts booked for Depreciation and Accretion based on Financial Accounting Standard 143 and any standards that supersede are Non-Recoverable.

Total Rate Revenues: all revenues recognized from the Rate charged for all incoming waste during one Rate Year including waste from outside the Agency Service Area.

Third Party Trust Funds: those funds established and held by the AGENCY to be used for such expenses as the development of LANDFILL capacity, and for the payment of closure and post-closure care expenses. Interest earned on these funds when released to CONTRACTOR on an annual basis will be counted in Total Revenue for the purposes of calculating Rates in subsequent years. These funds will not be included in the calculations of the Revenue Deficiency or Revenue Surplus accounts.

4. Except as provided above, the provisions of AGENCY Agreement #95-06 remain in effect as originally approved.

IN WITNESS WHEREOF, this first amendment to AGENCY Agreement #95-06 is executed by the parties hereto as of the date first above written.

UPPER VALLEY WASTE
MANAGEMENT AGENCY

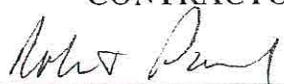
BY: 
MARK LUCE, Chair of the Board of Directors
of the Upper Valley Waste Management Agency

"AGENCY"
BY: 
ATTEST:
JILL PAHL, Manager of the Board of Directors

CLOVER FLAT LANDFILL, INC.

BY: 
Title: Vice President

BY: 
Title: President

"CONTRACTOR"
BY: 
APPROVED AS TO FORM:
ROBERT PAUL, Agency Legal Counsel

