

TO: James L. App, City Manager

FROM: Mike Compton, Director of Administrative Services

SUBJECT: Pacific Waste Services - Agreement Amendment and Reimbursement for Regulatory and Holiday Costs

DATE: April 4, 2006

Needs:

For the City Council to approve an amendment to the agreement with Pacific Waste Services and a budget appropriation for reimbursement of regulatory and holiday expenses.

Facts:

1. The current agreement between the City and Pacific Waste Services requires the City to reimburse Pacific Waste Services for “...*increased costs directly resulting from unforeseen changes in operation or increases in costs that are beyond the control of Contractor, including, but not limited to, changes in the scope or type of services or manner of providing services hereunder as a result of City or other government mandates and changes in federal, state, or local laws or regulations.*”.
2. Pacific Waste Services has provided documentation identifying \$227,300 in regulatory reimbursable costs since the onset the current agreement. These costs have been reviewed and deemed reasonable by Public Works staff.
3. The agreement also identifies the specific holidays that the landfill is closed. Due to the operational requirements of Paso Robles Waste Disposal, Pacific Waste Services has had to operate the landfill on days when contractually scheduled to be closed. Pacific Waste Services is seeking reimbursement of \$28,500 under the terms of the agreement.
4. In addition to reimbursement of past regulatory and holiday operating costs, the City is responsible for future regulatory and holiday costs. It is proposed that the base revenue sharing amount identified in the agreement be adjusted by \$31,200 to satisfy the City’s responsibility for these current mandates going forward.
5. Pacific Waste Services has agreed that the reimbursement amounts identified herein will forevermore satisfy past costs incurred and that the base revenue sharing amount adjustment will satisfy future costs for current regulatory requirements (copy attached).
6. This matter was presented to the Council’s ad hoc landfill committee, Councilmen Jim Heggarty and Gary Nemeth. They have recommended payment to Pacific Waste Services for past regulatory and holiday costs incurred totaling \$255,800 and a base revenue sharing amount adjustment of \$31,200 as reimbursement going forward for same continuing costs.

Analysis
and
Conclusion:

Federal and state mandates regarding landfill operations caused Pacific Waste Services to incur costs that were not originally known or anticipated. The current agreement provides that Pacific Waste Services shall be reimbursed for operating cost increases for which they have no control. This provision specifically cites federal and state regulations and similar requirements as examples. The following federal and state regulations contributed to the amount due Pacific Waste Services:

Title V – Engineering & Monitoring
Title V SLO APCD Permit Fees
WDR 01-112 – Engineering/Monitoring/Operations
WDR 01-112 – Future Liner CQA & Drain Rock
WDR 01-112 – Revised Monitoring & Reporting
SLO IWMA – C&D Recycling Facility Permit Fee

In addition to federal and state mandates, Pacific Waste Services operated the landfill on days specifically identified by contract as days they could be closed. Pacific Waste Services did so to accommodate the operating schedule of Paso Robles Waste Disposal. Paso Robles Waste Disposal operates on all holidays but two during the year. Without access to the landfill, Paso Robles Waste Disposal would either need to take the solid waste to another landfill or modify their collection schedule by providing less service. Neither option was deemed desirable.

Because many of the federal and state regulations as well as holiday operations have ongoing cost impacts, tentative agreement has been reached to adjust the base revenue sharing amount to cover these future costs.

In return for the lump sum payment for costs already incurred and base revenue sharing amount adjustment for future costs, Pacific Waste Services has agreed to forevermore hold the City harmless for these specific mandated costs. Additionally, they have agreed to submit all future mandated costs incurred to the City within 120 days of the end of their fiscal year (December 1st).

To implement the base revenue sharing amount adjustment and secure the timeliness of future submissions for cost reimbursement, an agreement amendment is proposed.

The Council's ad hoc committee has recommended approval of the payment and agreement amendment.

Fiscal Impact:

It is recommended that payment of \$255,800 for past mandated costs incurred be made from the City's Solid Waste Contingency Fund. The Fund currently contains \$789,700 in cash resources. Thus, there will be no impact upon the General Fund.

Options:

For the City Council to:

- a. Adopt the attached resolution 06-XXX amending the current agreement with Pacific Waste Services for the remaining term of the agreement and a budget appropriation for \$255,800; or
- b. Amend, modify, or reject the above option.

**SECOND AMENDMENT TO AGREEMENT
FOR OPERATION OF SOLID WASTE LANDFILL
PASO ROBLES MUNICIPAL LANDFILL**

THIS FIRST AMENDMENT (the "Amendment") is made and entered into this ____ day of _____, 2006, by and between the CITY OF EL PASO DE ROBLES, a municipal corporation, ("City") and PACIFC WASTE SERVICES, INC., a California corporation ("Contractor").

Recitals

- A. The City and PWS have entered into an Agreement for Operation of Solid Waste Landfill, Paso Robles Municipal Landfill, dated August 23, 2000, providing for the terms and conditions for the operation of the City's landfill (the "Landfill") by Contractor.
- B. The City and PWS have entered into a First Amendment to Agreement dated April 5, 2005 implementing an approved Workplan to address a liner tear and set forth certain understandings regarding the implementation of same.
- C. In addition, the parties wish to clarify the provisions of the Agreement regarding the future submission of costs associated to costs arising out of mandated Federal, State and Local regulations and to amend the base revenue sharing amount retroactively back to August 1, 2005.

Agreements

Section 1. Paragraph (a) of Section (5) of the Agreement is hereby revised to add the following language to end of said Paragraph (a):

"CONTRACTOR shall submit documentation acceptable to the CITY in support of any claim for reimbursement of costs previously identified in this section within one hundred and twenty days (120 days) of the end of CONTRACTOR's fiscal year."

Section 2. New paragraph (d) is hereby added to Section (5) of the Agreement as follows:

"(d) CONTRACTOR hereby agrees that the lump sum payment in the amount of Two hundred fifty-five thousand eight hundred dollars (\$255,800) shall forevermore satisfy all claims for reimbursement under the terms of this section for mandated costs incurred prior to the execution of this amendment."

Section 3. The "Revenue Sharing Points" identified in the table in paragraph (c) of Section (6) of the Agreement shall be amended beginning with Annual Period #5 (July 1, 2005) as follows:

Annual Period #	5	\$ 1,963,300
Annual Period #	6	\$ 2,041,800
Annual Period #	7	\$ 2,123,500
Annual Period #	8	\$ 2,208,400
Annual Period #	9	\$ 2,296,700
Annual Period #	10	\$ 2,388,600
Annual Period #	11	\$ 2,484,100
Annual Period #	12	\$ 2,583,500
Annual Period #	13	\$ 2,686,800
Annual Period #	14	\$ 2,794,300
Annual Period #	15	\$ 2,906,100
Annual Period #	16	\$ 3,022,300
Annual Period #	17	\$ 3,143,200
Annual Period #	18	\$ 3,268,900
Annual Period #	19	\$ 3,399,700
Annual Period #	20	\$ 3,535,700

Section 6. Except as modified by this Amendment, all other terms and provisions of the Agreement and First Amendment to the Agreement shall remain in full force and effect.

This Amendment shall be effective as of the date hereinabove written.

CITY OF EL PASO DE ROBLES,
A municipal corporation

By: _____
James L. App, City Manager

Attest:

Cathy M. David, Deputy City Clerk

Approved as to Form:

By: _____
Iris P. Yang, City Attorney

“CITY”

PACIFIC WASTE SERVICES, INC.
A California corporation

By: _____
James A. Wyse, President

“CONTRACTOR”

RESOLUTION NO. 06-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
APPROVING AN AMENDMENT TO THE AGREEMENT WITH PACIFIC WASTE SERVICES
FOR OPERATING THE MUNICIPAL LANDFILL

WHEREAS, the City and Pacific Waste Services entered into a landfill operations agreement beginning August 1, 2000; and

WHEREAS, the agreement provides that Pacific Waste Services shall be reimbursed for mandated costs incurred due to Federal, State and local regulations; and

WHEREAS, Pacific Waste Services has incurred costs arising from mandated Federal, State and local regulations that are subject to reimbursement; and

WHEREAS, Pacific Waste Services has operated the landfill on holidays for which they are scheduled to be closed in order to accommodate the operations of the City's franchise waste collection franchisee, Paso Robles Waste Disposal; and

WHEREAS, Pacific Waste Services has incurred \$255,800 in costs due to mandates and holiday operations and will continue to expend \$31,200 annually going forward; and

WHEREAS, the City and Pacific Waste Services wish to amend the agreement to provide reasonable means of reimbursing future costs going forward; and

WHEREAS, a budget appropriation is desired for the lump sum payment for past incurred mandated costs.

THEREFORE BE IT RESOLVED, by the City Council of the City of El Paso de Robles approves the "Second Amendment to Agreement" attached herewith; and

BE IT FURTHER RESOLVED by the City Council of the City of El Paso de Robles approves a one-time budget appropriation from the Solid Waste Contingency Fund in the amount of \$255,800 to budget account # 612-310-5235-167.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 4th day of April 2006 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Cathy M. David, Deputy City Clerk