

AGREEMENT

This Agreement ("Agreement") is entered into as of the 24th day of JULY, 2008, by and between the CITY OF SAN CARLOS, a municipal corporation ("City") and the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a joint powers authority established under Government Code Section 6500 *et seq.* ("Authority"), in connection with the Shoreway Recycling and Disposal Center ("SRDC Facility").

RECITALS

A. The members of the Authority are City, the cities of Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, San Mateo and Redwood City, San Mateo County and the West Bay Sanitary District.

B. The SRDC Facility is a transfer station and materials recovery facility owned by the Authority and located within the City, adjacent to U.S. Highway 101.

C. Municipal solid waste and recyclable materials collected within each of the local government agencies that are members of the Authority are delivered to the SRDC Facility for processing. Recyclable materials are recovered for sale or further processing at off-site facilities and residual wastes are delivered in large transfer trucks to the Ox Mountain Landfill.

D. The SRDC Facility was initially constructed in 1982 by Browning Ferris Industries ("BFI") pursuant to a conditional use permit issued by the City to BFI. The Authority purchased the SRDC Facility in 2000. The Authority now desires to reconstruct, expand, and otherwise improve the SRDC Facility, and as further described in Section 6 of this Agreement, has applied to City for a new conditional use permit ("New CUP") for that purpose.

E. The City and BFI entered into a "Franchise Agreement" in June 1982 which provided that BFI would pay the City five percent (5%) of the Gate Fee Revenues received by BFI for delivery of materials to the Shoreway Facility in order to, among

other things, compensate the City for impacts related to the construction and operation of the SRDC Facility within the City. The Franchise Agreement expired in 2004. Notwithstanding, its expiration, the City has continued to receive five percent (5%) of Gate Fee Revenues received at the SRDC Facility. Moreover, the Authority's Joint Exercise of Powers Agreement, as Amended and Restated in December 2005, provides in relevant part; "Monthly, SBWMA shall distribute to the City of San Carlos from funds received from Contractor (i.e., the operator of the SRDC Facility), one twelfth (1/12th) of the annual franchise fee agreed to by SBWMA and the City of San Carlos for the operation of the Facilities."

F. The purpose of this Agreement is to memorialize the agreement between the City and the Authority referred to in the Amended and Restated Joint Exercise of Powers Agreement described in Recital E, with respect to the franchise fee.

THE PARTIES AGREE AS FOLLOWS:

1. FRANCHISE FEE

A. Amount. The Authority shall pay to City an amount equal to five percent (5%) of the Gate Fee Revenue received by the Authority (or by the company which operates the SRDC Facility under contract to the Authority) for the delivery of materials to the SRDC Facility for processing and/or disposal. "Gate Fee Revenue" means funds attributable to the delivery of materials for deposit at the SRDC Facility for transfer and/or processing. Gate Fee Revenue specifically includes all gate fees paid by franchised haulers delivering materials collected within the members of the Authority, as well as gate fees paid by self-haul customers. "Gate Fee Revenue" does not, however, include any sums received by the Authority from the sale of Recyclable Materials or from the operator as liquidated damages or other payments related to inadequate performance by the operator.

B. Timing of Payments. Payments will be made monthly, on or before the fifteenth (15th) of each month. If the due date falls on a weekend or holiday, payment shall be due on the first day thereafter on which the City's business office is open. The

payment will be equal to five percent (5%) of the Gate Fee Revenue received by Authority during the calendar month immediately preceding the date payment is due.

C. Future Changes to Operations/Franchise Fee Calculation. Should the means by which charges for delivery of materials to the SRDC Facility materially change such that the franchise fee contemplated in this Agreement is significantly reduced or increased, the parties agree to meet and negotiate with each other in good faith in an effort to modify the franchise fee set forth herein in a fair and equitable manner such that their intent as set forth in this Agreement is achieved.

2. TONNAGE REPORTS

Authority will provide City quarterly with a report, prepared by the company operating the SRDC Facility, showing the total tons of materials delivered to the SRDC Facility. The report will be delivered to City concurrently with its delivery to Authority.

3. RECORDS

Authority will maintain records of its financial affairs as required by California law and the Joint Exercise of Powers Agreement. City, as a member of Authority, is entitled to inspect such records at any time. These records will include accounts of all Gate Fee Revenue received for delivery of materials to the SRDC Facility.

4. INSPECTION

The City may inspect the SRDC Facility during its normal hours of operation.

5. INDEMNITY/INSURANCE

The Authority will require in its contract with any third party for operation of the SRDC Facility that such party (a) indemnify the City to the same extent that it indemnifies the Authority against liability arising out of the operation of the SRDC Facility, and (b) name the City as an additional insured on the policies of liability insurance which the Authority will require such operator to maintain.

6. LAND USE APPROVAL

As a local governmental entity, the Authority maintains that it is not subject to City zoning or building regulations with respect to the SRDC Facility and that it is not required to obtain a conditional use permit from City for the planned reconstruction and improvement of the SRDC Facility. City disagrees with this position. Rather than dispute the issue, as a matter of comity and in the spirit of mutual respect and cooperation, the Authority has applied for such a permit. This application is not intended as, and shall not be construed to be, a waiver of the Authority's claim of immunity from City land use jurisdiction.

7. SOLE OBLIGATION

The Franchise Fee provided for in this Agreement is the sole financial obligation of Authority to City for the mitigation of impacts resulting from the location and operation of the SRDC Facility in City.

8. ASSIGNMENT

Neither party may assign this Agreement, nor any rights arising under it, without the prior written consent of the other party.

9. BINDING ON SUCCESSORS

This Agreement shall benefit, and be binding on, the successors in interest to either party, including specifically any successor in the Authority's interest in the SRDC Facility. If City wishes to record a memorandum of this Agreement to further ensure that it will be binding on any third party which purchases the SRDC Facility, the Authority will execute such a memorandum.

10. EFFECTIVE DATE

This Agreement shall be effective at such time as it is duly executed by both City and the Authority.


11. TERM

This term of this Agreement shall begin as provided in Section 10, and shall remain in force and effect so long as the New CUP is in effect.

12. NOTICE

All notices under this Agreement shall be in writing and shall be personally delivered or deposited in the United States mail first class postage prepaid, return receipt requested, addressed as follows:


TO CITY: City of San Carlos
 Attention: City Manager
 600 Elm Street
 San Carlos, CA 94070

TO AUTHORITY: South Bayside Waste Management Authority
 Attention: Executive Director
 610 Elm Street, Suite 202
 San Carlos, CA 94707 ~~94070~~ 

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers.

[Signatures on next page]

CITY OF SAN CARLOS

By: 

Brad Lewis, Mayor

Dated: 7-14-08

Attest: 

Christine Boland, City Clerk

Approved as to Form:



A. Patrick Munoz, Special Counsel

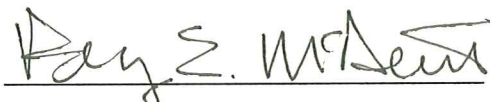
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: 

Larry Patterson, Chairman

Dated: July 24, 2008

Approved as to Form:



Ray E. McDevitt, Special Counsel