

**SOLID WASTE TRANSFER, HANDLING,
TRANSPORTATION AND DISPOSAL AGREEMENT**

THIS AGREEMENT is made and dated this 6th day of May, 2019 by and between the City of Reedley ("Reedley") and USA Waste of California, Inc., a Delaware corporation dba Waste Management of Fresno ("USA Waste"). Reedley and USA Waste may be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, Reedley currently engages in the collection of Acceptable Waste generated within the boundaries of the City of Reedley, California.

WHEREAS, USA Waste owns and operates a solid waste Transfer Station located in Fresno, California.

WHEREAS, Chemical Waste Management, Inc., ("CWM"), an affiliate of USA Waste, owns and operates a Class III landfill located in Kettleman City, California.

WHEREAS, Reedley is willing to deliver Acceptable Waste to the Fresno Transfer Station, and USA Waste is willing to accept the Acceptable Waste for transfer, handling, transportation to and disposal at the Kettleman Hills Landfill or other legally permitted Class III landfill, in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, USA Waste and Reedley agree as follows:

1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below.
 - 1.1. "Acceptable Waste" means garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection and which are normally disposed of, or collected from residential (single family or multi-family), commercial, industrial, governmental and institutional establishments, and which are acceptable for transfer and handling at the Fresno Transfer Station and for disposal at the Kettleman Hills Landfill or other legally permitted Class III landfill under Applicable Law.
 - 1.2. "Agreement" means this Solid Waste Transfer, Handling, Transportation and Disposal Agreement between Reedley and USA Waste, as it may be amended or modified from time to time.
 - 1.3. "Applicable Law" means the, Fresno County Code, the Kings County Code, the California Public Resources Code, the Federal Resource Conservation and Recovery Act, CEQA, any legal entitlement and any

other rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation or maintenance of facilities used for the transfer, handling, transportation and disposal of Acceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages).

- 1.4. "Fresno Transfer Station" means that certain permitted transfer station/materials recovery facility owned and operated by USA Waste and located at 4333 E. Jefferson Avenue, Fresno, CA 93725.
- 1.5. "Kettleman Hills Landfill" means that portion of the disposal site owned and operated by CWM, located at 35251 Old Skyline Road, Kettleman City, California, permitted to accept Class III non-hazardous solid waste.
- 1.6. "Special Waste" shall mean Solid Waste that is bulky or may require special handling at the Fresno Transfer Station including, without limitation, designated waste (as defined by Applicable Law), liquid waste, sewage sludge, treated medical waste, tires, white goods, and appliances.
- 1.7. "Unacceptable Waste" means waste that: (i) is prohibited from receipt at the Fresno Transfer Station or Kettleman Hills Landfill by Applicable Law; (ii) is or contains Hazardous Waste or Medical Waste as defined under Applicable Law; (iii) USA Waste reasonably believes would, as a result of or upon receipt at the Fresno Transfer Station, be a violation of Applicable Law; (iv) in USA Waste's reasonable judgment would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose them to potential liability, or (v) Special Waste.

2. TERM OF AGREEMENT

- 2.1. The term of this Agreement shall become effective and the Parties shall commence performance on May 6th, 2019 (the "Effective Date"), and shall terminate at the close of business on May 5th, 2022. Thereafter, this Agreement may be extended for up to three (3) additional terms of one (1) year each upon terms and conditions mutually agreeable to the Parties. The Parties agree to provide written notice to the other not less than sixty (60) days prior to the end of the initial term, or any extension term, of their non-binding intent to extend or not extend the Agreement. Any extension of this Agreement agreed to by the Parties, and the terms and conditions for such extension, shall be in writing.

- 2.2. Either Party shall have the right to terminate this Agreement upon giving the other Party written notice if the other Party (i) fails to make any payment required hereunder within ten (10) days after receiving notice of nonpayment from the non-defaulting Party, or (ii) fails to comply with Applicable Law, or (iii) defaults in the performance of any other obligation under this Agreement and fails to cure such default within thirty (30) days after receiving written notice thereof from the non-defaulting Party, provided, that, with regard to defaults identified in (ii) and (iii) above, in the event the defaulting Party shows cause why it should be entitled to reasonable additional time to cure the default, the non-defaulting Party shall allow such additional time.
- 2.3. Notwithstanding the above, either Party may terminate this Agreement upon ten (10) days written notice, without opportunity to cure, in the event that the other Party becomes insolvent, unable or unwilling to pay its debts, files a voluntary bankruptcy petition, has a receiver appointed to manage its assets, or takes steps to liquidate its assets.
- 2.4. The provisions of Sections 7, 9 and 10 herein will survive the termination or expiration of this Agreement, however brought about.

3. DELIVERY OF ACCEPTABLE WASTE

- 3.1. Reedley agrees to deliver, on an exclusive basis, and USA Waste agrees to accept at the Fresno Transfer Station, all Acceptable Waste collected within the City of Reedley by Reedley, using its equipment and employees. Reedley estimates that deliveries will be approximately 980 tons of Acceptable Waste per month. Both Parties acknowledge that disposal volumes may change during the term of this Agreement due to, among other things, changes in state and local regulations and recycling goals.
- 3.2. USA Waste hereby grants Reedley a non-exclusive license to enter the Fresno Transfer Station for the sole purpose of delivering Acceptable Waste, at an area designated, and in the manner directed, by USA Waste. Reedley agrees to comply with all rules and regulations of the Fresno Transfer Station, including those relating to the use and operation of the Fresno Transfer Station and the conduct of persons on the premises of the Fresno Transfer Station, as the same may be amended by USA Waste from time to time, which are provided in writing to Reedley. USA Waste may reject Reedley's entry into the Fresno Transfer Station in the event of Reedley's failure to follow rules and regulations, which are provided to it in writing. Likewise, USA Waste agrees to promptly address safety issues brought forward by Reedley.

- 3.3. Reedley may deliver Acceptable Waste to the Fresno Transfer Station during normal business hours of operation established from time to time by USA Waste. Current hours are 6:00 am to 6:00 pm, Monday through Friday and from 8:00 am to 2:00 pm on Saturday.
- 3.4. Reedley agrees to furnish USA Waste with jurisdictional information regarding the origin of the Acceptable Waste delivered to the Fresno Transfer Station, as required for purposes of compliance with Applicable Law.

4. TRANSFER, HANDLING, TRANSPORTATION AND DISPOSAL OF ACCEPTABLE WASTE

- 4.1. USA Waste agrees to transfer and handle the Acceptable Waste delivered by Reedley to the Fresno Transfer Station and transport it to the Kettleman Hills Landfill (as the primary facility) or another fully permitted Class III landfill (as backup facilities) for disposal. The foregoing work will be provided by USA Waste using its own personnel and equipment.
- 4.2. USA Waste will weigh each collection vehicle as it enters the Fresno Transfer Station. The Reedley driver will be given one (1) copy of the signed weight ticket. USA Waste shall maintain the scale in accordance with the requirements of Applicable Law.
- 4.3. USA Waste may commingle Acceptable Waste delivered by Reedley with other Acceptable Waste delivered to the Fresno Transfer Station, provided that USA Waste assures that all Acceptable Waste delivered by Reedley to the Fresno Transfer Station is disposed of at:
 - 4.3.1. the Kettleman Hills Landfill; or
 - 4.3.2. a fully permitted Class III non-hazardous waste disposal facility.
- 4.4. USA Waste agrees to furnish Fresno County with jurisdictional information regarding the origin of the Acceptable Waste delivered to the Fresno Transfer Station.

5. RATE FOR SERVICES.

- 5.1. USA Waste shall charge Reedley and Reedley agrees to pay for transfer, handling, transportation and disposal services at the initial rate of \$37.31 per ton (the "Rate") for Acceptable Waste delivered to the Fresno Transfer Station. The foregoing Rate includes the Fresno County SER Fee (currently \$3.50 per ton) the Fresno County Out of County Fee (currently

\$3.41 per ton), and the State Integrated Waste Management Fee (currently \$1.40 per ton).

5.2. Extraordinary Adjustments. USA Waste shall be entitled to the pass through of any new governmental fees which impact the per tonnage fee. USA Waste shall notify Reedley at least sixty (60) days prior to the effectiveness of any new governmental fee, including its calculations for the required adjustment to the per tonnage fee. Reedley shall review and approve any such required changes prior to the change being applied to the tonnage fee or any invoices to the City. If USA Waste fails to provide sufficient notice, as required by this section, of an increase in governmental fees, USA Waste shall be liable for any fees incurred during the sixty (60) day notice period.

5.3. Annual Adjustments.

5.3.1. The Rate shall be adjusted on May 6th, 2020, and each May 6th thereafter during the term (including any extensions) by a percentage equal to the annual percentage increase in the Consumer Price Index, CUSR0000SEHG02 CPI-U Garbage and Trash Collection, US City Average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics, or the most similar successor index if this index is no longer published ("CPI"), by calculating the average of the changes in the CPI between each month during the 12 month April to March period immediately preceding the date of the rate adjustment and the same 12 months in the preceding year.

5.3.2. Notwithstanding the above, no annual adjustment occurring during each year pursuant to this Section 5.3 shall exceed three percent (3%). In the event the CPI formula set forth above would have allowed for a greater than three percent (3%) increase, the unused percentage increase shall be carried over until such time as it may be applied without violating the provisions of this subsection. If the deferred percentage cannot be fully carried over as part of the next adjustment due to the three percent (3%) maximum increase, any unused increment would carry over to the subsequent annual adjustment until fully utilized. However, any deferred percentage increase remaining unused upon the expiration of this Agreement shall not be charged to Reedley.

6. PAYMENT FOR SERVICES.

6.1. USA Waste shall invoice Reedley monthly, by the 15th day of the following month, with respect to Acceptable Waste delivered to the Fresno

Transfer Station during the prior calendar month. Payment will be due and payable within thirty (30) days of receipt of the invoice. Late payments shall be subject to a late fee of one and one-half percent (1½%) per month, or the highest rate of interest allowed under Applicable Law, whichever is less.

6.2. In the event Reedley disputes any portion of an invoice, it shall pay the undisputed portion in accordance with Section 6.1, and shall pay any remaining portion within fifteen (15) days of the resolution of the dispute.

6.3. A weight ticket generated at the Fresno Transfer Station shall determine weight for purposes of invoicing.

7. UNACCEPTABLE WASTE. In the event that Reedley delivers Unacceptable Waste to the Fresno Transfer Station, Reedley, upon written or verbal notification thereof by USA Waste (which must be given not later than the end of the third business day following the date on which the delivery of Unacceptable Waste is made), shall take immediate measures to remove the Unacceptable Waste for proper handling and disposal at its own expense. If the Unacceptable Waste is not removed within one (1) business day from receipt of notice, USA Waste shall have the right and authority to remove, handle and dispose of the Unacceptable Waste, and Reedley agrees to reimburse USA Waste for its reasonable costs related to the delivery of Unacceptable Waste. Reedley shall indemnify and hold USA Waste harmless from and against any and all loss, cost, damage, suit, liability, claim, settlement cost and expense (including, but not limited to, reasonable investigation and legal expenses) as incurred arising, caused by, or resulting from Reedley's delivery of or failure to remove Unacceptable Waste as provided above.

8. REGULATORY COMPLIANCE. Both Parties shall comply with Applicable Law and maintain all required permits at all times throughout the term of this Agreement; and shall obtain and maintain any permits, licenses, or approvals which are required for the performance of their respective obligations under this Agreement.

9. INDEMNITY

9.1. Reedley hereby agrees to indemnify and hold USA Waste harmless from and against any and all loss, cost, damage, suit, liability, claim, settlement cost and expense (including, but not limited to, reasonable investigation and legal expenses) as incurred arising, caused by, or resulting from any negligent or willful act or omission, violation of Applicable Law, or breach of this Agreement, by Reedley, or its agents, employees or subcontractors, in the course of performing its obligations pursuant to this Agreement, and shall, at the option of USA Waste, defend USA Waste at Reedley's sole expense.

9.2. USA Waste hereby agrees to indemnify and hold Reedley harmless from and against any and all loss, cost, damage, suit, liability, claim, settlement cost and expense (including, but not limited to, reasonable investigation and legal expenses) as incurred arising, caused by, or resulting from any negligent or willful act or omission, violation of Applicable Law, or breach of this Agreement, by USA Waste, or its agents, employees or subcontractors, in the course of performing its obligations pursuant to this Agreement, or arising, caused by or resulting from the disposal of Acceptable Waste by USA Waste, and shall, at the option of Reedley, defend Reedley at USA Waste's sole expense. Notwithstanding the above, the foregoing indemnification related to disposal does not apply with respect to the delivery or disposal of Unacceptable Waste.

10. INSURANCE.

10.1. Both Parties agree to furnish to the other, upon request, certificates attesting to the existence of the following insurance:

<u>Coverages</u>	<u>Limits of Liability</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000,000 Each Occurrence
General Liability, Including Bodily Injury, Property Damage and Contractual Liability	\$3,000,000 Combined Single Limit, Each Occurrence
Automobile Liability, Including Bodily Injury and Property Damage	\$3,000,000 Combined Single Limit, Each Occurrence

10.2. Each such certificate shall contain a statement of the insurer's obligation to notify the Party to whom the certificate is addressed at least thirty (30) days (ten (10) days in the event of cancellation for non-payment) prior to cancellation of any policy covered thereunder.

10.3. Reedley's and USA Waste's General Liability and Automobile Liability policies shall name the other Party as an additional insured.

11. GENERAL CONDITIONS

- 11.1. Force Majeure. If either Party is prevented from or delayed in performing its obligations under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, acts of terrorism, acts of God, landslides, lightning, fires, storms, floods, severe weather, freezing, earthquakes, other natural disasters, pandemics, quarantines (or the threat of natural disaster, pandemics or quarantines), civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances, acts of government or governmental restraint, embargoes, transportation delays, or other causes, whether of the kind enumerated or otherwise, then the affected Party shall be excused from performance hereunder during the period of such disability. The Party claiming excuse from performance shall take all commercially reasonable efforts required to recommence performance.
- 11.2. Independent Contractor. The work and labor herein provided for shall be performed and furnished by the Parties as independent contractors and under the sole supervision, management, direction and control of each Party in accordance with the terms and conditions of this Agreement. This Agreement shall not be construed to create a partnership or joint venture relationship between the Parties.
- 11.3. Assignment of Agreement. This Agreement may not be assigned by either Party without the written consent of the other, which shall not be withheld unreasonably, except that USA Waste may refuse an assignment from Reedley to a business competitor in its sole and absolute discretion. Notwithstanding the above, approval is not required with respect to an assignment or change of control by USA Waste to an affiliate.
- 11.4. Headings. The headings in this Agreement are intended for convenience and identification only, are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof and shall be disregarded in the construction and enforcement of this Agreement.
- 11.5. Construction. Each Party hereto agrees and acknowledges that each Party has reviewed and has had the opportunity to revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed to the interpretation of this Agreement or any amendment or exhibit hereto.
- 11.6. Severability. Every provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder hereof.

- 11.7. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto with respect to the services herein described and correctly sets forth the obligations of each Party. Any representations or agreements not specifically contained herein, written or oral, are null and void.
- 11.8. Amendment. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both Parties.
- 11.9. Nonwaiver. Failure to insist upon strict compliance with any provision hereof shall not be deemed a waiver of such provision or any other provision hereof.
- 11.10. Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either Party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to other rights the Parties may have by law, statute, ordinance or otherwise.
- 11.11. Law to Govern. This Agreement shall be construed according to, and the obligations of the Parties hereunder governed by, the laws of the State of California.
- 11.12. Notices. Any notice required or permitted by this Agreement shall be in writing and sufficiently given if delivered in person, sent by email, or sent by certified or registered mail, postage prepaid, to the notice address of the respective Parties set forth in this Agreement. Changes in the respective addressees to which such notices may be directed may be made from time to time by either Party by notice to the other Party. The present addresses of the Parties are:

Reedley: City of Reedley
Attn: Director of Public Works
1733 Ninth St.
Reedley, Ca. 93654
Telephone: (559) 637-4200 x 213
Email: Russ.Robertson@reedley.ca.gov

USA Waste: USA Waste of California
Attn: District Manager
4333 E. Jefferson Street
Fresno, CA 93725
Telephone: (559) 834-4070
Email: ahodoian@wm.com

With a Copy To:

USA Waste – Southern California Market
Area

9081 Tujunga Avenue

Sun Valley CA 91352

Attention: Legal Counsel

Telephone: (818) 252-3115

Email: akhajeto@wm.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

CITY OF REEDLEY

By: 

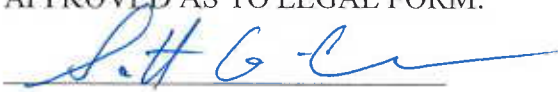
Nicole Zieba, City Manager

ATTEST:



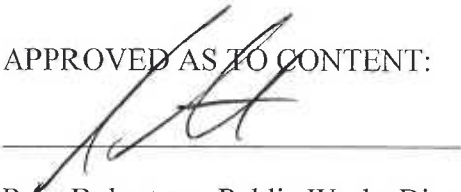
Ruthie Greenwood, Deputy City Clerk

APPROVED AS TO LEGAL FORM:



Scott Cross, City Attorney

APPROVED AS TO CONTENT:



Russ Robertson, Public Works Director

USA WASTE OF CALIFORNIA, INC.

By: 

Title: District Manager



REEDLEY CITY COUNCIL

- Consent Calendar
- Regular Item
- Workshop
- Closed Session
- Public Hearing

ITEM NO: 2

DATE: April 23, 2019

TITLE: APPROVE AND AUTHORIZE THE CITY MANAGER TO EXECUTE A SOLID WASTE TRANSFER STATION SERVICES AGREEMENT WITH USA WASTE OF CALIFORNIA.

SUBMITTED: Russ Robertson, Public Works Director *RR*

APPROVED: Nicole R. Zieba, City Manager *NZ*

RECOMMENDATION

That the City Council authorize the City Manager to execute an agreement with USA Waste of California, (USA Waste) dba Waste Management of Fresno, for the transfer and disposal of the City's solid waste.

EXECUTIVE SUMMARY

On March 16, 2016, staff issued a Request for Proposals (RFP) to provide transfer and/or disposal services for solid waste materials to service providers within a 20 mile radius. Three proposals were received, with the lowest proposal submitted by Tulare County for a base price of \$26.00 per ton. The City entered into a 3 year agreement with Tulare County to take the City's solid waste directly to the Tulare county landfill. The agreement is set to expire on May 4, 2019. Tulare County desires to continue an agreement with the City, however they are necessitating an increase of \$2.00 per ton. This would bring the new agreement price to \$28.00 per ton. The City pays associated tonnage fees on top of the \$28.00 per ton, such as Out of County fees, Southeast Regional fees, and State Integrated Waste Management fees that total \$8.31 per ton, so under the new agreement the City would pay \$36.31 total per ton. Tulare County is also including an annual inflationary increase to the rate in the new proposed agreement.

The City has not been satisfied with the Tulare County agreement, specifically the conditions at the landfill during the winter months. City trucks have been stuck many times during wet weather and have had to wait to get "pushed out" by Tulare County equipment. Some of these instances have resulted in damage to the trucks. The City also experienced an increase in flat tires due to driving within the landfill area. The cost of garbage truck repairs have increased nearly \$40,000 this year alone.

The City recently requested proposals from solid waste transfer stations in the closest proximity to the City. Pena's Disposal declined to provide a proposal because they are also currently negotiating with Tulare County and are unsure of their future plans. USA Waste, also known as Waste Management, has a solid waste transfer station that is located between Fowler and Fresno and is 16.1 miles away from Reedley. In comparison, the Tulare County landfill is 18.2 miles from Reedley. USA Waste provided a proposal for a total price of \$37.31 per ton, including all fees.

The proposed price is one dollar more per ton than delivering the solid waste directly to the Tulare County landfill. This would equate to an annual increase of approximately \$10,000 per year, however staff feels that the cost of truck and tire repairs, delays in dumping during wet weather, closer distance to Reedley, and improved efficiency would equate to an overall savings to the solid waste division of potentially 2 to 3 times that amount.

If approved, the agreement with USA Waste would begin on May 6, 2019 for a three year term. At the end of the three year term, the City may extend the agreement on a year to year basis if it so chooses. The agreement will include the provision for an annual inflationary increase, not to exceed 3.0% in any one year.

The scope of services outlined in the agreement include receiving and weighing loads delivered by the City's solid waste trucks at the approved transfer facility; provide for the prompt unloading of solid waste from the trucks; and transporting materials from the approved transfer facility to an approved disposal facility.

FISCAL IMPACT

The agreement would increase solid waste disposal costs by approximately \$10,000 per year but would potentially reduce current overall expenditures within the Solid Waste Enterprise fund by as much as \$20,000 to \$30,000 per year.

ATTACHMENTS

Solid Waste Transfer, Handling, Transportation, and Disposal Agreement