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12/1/11

**SERVICES AGREEMENT BETWEEN THE CITY OF FRESNO
AND MID VALLEY DISPOSAL**

LNG FUEL DISPENSING SERVICES

THIS AGREEMENT for LNG Fuel Dispensing Services ("Agreement") is made by and between the City of Fresno, a municipal corporation ("City") and Mid Valley Disposal ("Franchisee") (together sometimes referred to as the "Parties") as of 12/04/11 (the "Effective Date").

RECITALS

- A. City and Franchisee have entered into that certain Franchise Agreement dated November 1, 2011 ("Franchise Agreement") pursuant to which Franchisee will provide solid waste, recyclable materials, and organic materials collection services in a designated service area within the City.
- B. Pursuant to Sections 8.3.1 and 8.4 of the Franchise Agreement, City and Franchisee have entered into that certain Purchase Agreement, whereby Franchisee will purchase from City certain City-owned collection trucks ("Trucks") and containers used to collect solid waste, recyclable materials and organic materials within the City. The Purchase Agreement requires that Franchisee take possession of the Trucks prior to December 4, 2011.
- C. The Trucks use Liquefied Natural Gas (LNG) as fuel.
- D. City operates a LNG fueling facility, and Franchisee desires the right to purchase LNG for the Trucks at City's facility.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1 - SERVICES. Subject to the terms and conditions set forth in this Agreement, and as authorized by controlling law, the City shall provide to Franchisee the services described and incorporated herein, at the time and place and in the manner specified therein.

SECTION 2 - TERM OF SERVICES. The term of this Agreement shall be for a term of one (1) year commencing on the Effective Date, but may be extended by written notice between the parties per Section 9.2 of this agreement.

SECTION 3 - SCOPE OF SERVICES.

- 3.1 **Location.** The City agrees to provide LNG fuel dispensing services at the City-owned and operated fueling facilities located at: 2101 "G" Street, Fresno CA 93706 (the "City's LNG Fueling Facility").
- 3.2 **Hours of Operation.** The City will provide fueling services between the hours of 9:00 AM and 6:00 PM, Monday through Saturday.

- 3.3 Automated Fueling Authorization Hardware.** The City maintains necessary fueling computer(s) and associated hardware (the "Automated Fueling Hardware") in order to allow automated fueling transactions at the City's LNG Fueling Facility. Upon retirement of the vehicle, or termination of this Agreement, the Automated Fueling Hardware shall be removed from the Truck(s) and returned to the City's possession. Failure to do so shall result in Franchisee being obligated to pay to the City the sum of \$400.00 for each vehicle whose Automated Fueling Hardware is not returned to the City.

SECTION 4 - COMPENSATION. Franchisee shall pay City for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Franchisee to City for services rendered pursuant to this Agreement. City shall submit all invoices to the Franchisee in the manner specified herein. Franchisee has no responsibility to pay any sums beyond the compensation set forth in this Agreement.

- 4.1 Invoices.** City shall submit monthly invoices during the term of this Agreement, setting forth the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:
- The beginning and ending dates of the billing period;
 - A detailed statement of all fueling transactions that includes vehicle number;
 - transaction date/time, and number of gallons dispensed;
 - Cost of fuel per gallon for the billing period;
 - A detailed accounting of Federal, State and Local taxes to be collected;
 - The City's Contract Administrator signature.
- 4.2 Payment by Franchisee.** Franchisee shall pay City for the invoiced amount no later than thirty (30) days after the Franchisee receives the invoice.
- 4.3 Payment upon Termination.** In the event that the City or Franchisee terminates this Agreement pursuant to Section 9, the Franchisee shall compensate the City for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. City shall maintain adequate documentation to verify costs incurred to that date.
- 4.4 Fueling Service Fees.** The Franchisee agrees to pay the City for LNG fuel dispensing services provided to the Franchisee's Trucks at the rates set forth in Section 5 of this Agreement. The City will invoice the Franchisee for actual service(s) provided in accordance with the rates set forth herein.

SECTION 5 - PRICING

- 5.1 Purchase Price** – The purchase price paid by Franchisee for LNG purchased from the City's LNG Fueling Facility shall be the sum of the following:
- 5.1.1** The price paid by City for the LNG, together with all per gallon payment obligations to third party fuel providers incurred by City in receiving the

LNG, including but not limited to all delivery charges and costs for liquefaction;

5.1.2 All applicable Federal, State, and local taxes; and

5.1.3 The cost to provide station maintenance, fueling personnel, automated transaction hardware, and support services. The cost for all such maintenance, hardware and other services (apart from the cost of fuel, fuel delivery and liquefaction described in section 5.1.1) for the first year of this Agreement shall be \$0.25 per gallon. This price component will be adjusted based on recalculation of station operating and maintenance cost prior to each annual extension to this Agreement.

5.2 **Federal Incentive for Alternative Fuel** The Safe, Accountable, Flexible, Efficient Transportation Equity Act provides an incentive when LNG is used as "motor vehicle" fuel. The incentive (currently a \$0.50 per gallon rebate) is provided to businesses, individuals, and tax-exempt entities that sell or, in some cases, use the fuel. Upon receipt of rebate by the City, if any, the City shall reimburse to the Franchisee the amount of the tax rebate per gallon multiplied by the number of gallons purchase during the tax reporting period, in the form of a credit against the outstanding balance of the purchase price owed the City by the Franchisee.

SECTION 6 - FUEL QUALITY SPECIFICATIONS

6.1 The LNG fuel supplied shall meet or exceed all current and Cummins natural gas engines.

6.2 The liquid natural gas (LNG) fuel furnished shall meet the following **minimum** specifications:

Methane content: **minimum 97%.**

Ethane content: **maximum .2%.**

Nitrogen content: **maximum 3%.**

SECTION 7 - STATUS OF CITY.

7.1 **Independent Contractor.** At all times during the term of this Agreement, City shall be an independent contractor and shall not be an employee of Franchisee. Franchisee shall not have the right to control the means by which City accomplishes services rendered pursuant to this Agreement.

7.2 **Not an Agent.** Except as Franchisee may specify in writing, City shall have no authority, express or implied, to act on behalf of Franchisee in any capacity whatsoever as an agent. City shall have no authority, express or implied, pursuant to this Agreement to bind Franchisee to any obligation whatsoever.

SECTION 8 - GOVERNING LAW. The laws of the State of California shall govern this Agreement.

SECTION 9 - TERMINATION AND MODIFICATION.

- 9.1 **Termination.** City and Franchisee may terminate this Agreement at any time and without cause upon the delivery of 30 days written notification to the other Party. In the event of termination, City shall be entitled to compensation for the services performed to the effective date of termination, and Franchisee shall return the Automated Fueling Hardware as required by Section 3.3.
- 9.2 **Extensions.** The Parties may extend this Agreement only by a writing signed by the Contract Administrator of each Party as defined in section 11.8 of this agreement, and consistent with the City's constitutional and local law requirements.
- 9.3 **Amendments.** The Parties may amend this Agreement only by a writing signed by the Contract Administrator of each Party as defined in section 11.8 of this agreement, and consistent with the City's constitutional and local law requirements.
- 9.4 **Survival.** All obligations arising prior to the termination of this Agreement and all indemnity provisions shall survive the termination of this Agreement.

SECTION 10 - LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

- 10.1 **Liability.** City shall not be liable to Franchisee for, and Franchisee hereby waives and releases City from, any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Franchisee or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of the performance of this Agreement, including, but not limited to, any sale, dispensing and/or use of LNG fuel, except for those claims arising from the active negligence or active misconduct of the City or its employees and agents. [Dan, I do not see how we can sign an agreement that binds our insurers. They would need to agree to this, which we would have to run by our risk management dept. at corporate.]

In no event shall City be liable for any actual, special, direct, indirect, incidental or consequential damages arising out of or related to this Agreement, including, but not limited to, any sale, dispensing and/or use of LNG fuel, even if City is advised in advance of the possibility or certainty of such damages and even if Franchisee asserts or establishes a failure of essential purpose of any limited remedy provided in this Agreement.

- 10.2 **Warranties.** Franchisee purchases the LNG fuel as-is and City makes no warranty, express, implied or otherwise, including, but not limited to, any warranties of merchantability, or fitness for a particular purpose.

SECTION 11 - MISCELLANEOUS PROVISIONS.

- 11.1 **Dispute Resolution and Opportunity to Cure.** Prior to filing suit for any claim under this Agreement for any alleged breach, the aggrieved party shall first give the other party an opportunity to cure the alleged breach by sending written notice to the breaching party and giving the breaching party a minimum of thirty (30) days from the receipt of notice to cure the alleged violation.
- 11.2 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled.
- 11.3 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that venue for such action shall be exclusively in Fresno County Superior Court or in the United States District Court for the Eastern District of California.
- 11.4 **Severability.** It is not the intent of either party to violate any laws of the State of California or of the United States. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement. The parties agree that in the event any provision of this Agreement is held by a court of competent jurisdiction to be in contravention of any such laws, then the parties will enter into immediate negotiations to rectify the offending clause or clauses. The remainder of this Agreement shall remain in full force and effect.
- 11.5 **Waiver.** The failure of any party to enforce, at any time or for any period of time, the provisions hereof shall not be construed as a waiver of such provisions or of the rights of any party to enforce each and every provision.
- 11.6 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 11.7 **Successors and Assigns.** The provisions of this Agreement shall insure to the benefit of and shall apply to and bind the successors and assigns of the Parties. The requirements and benefits of this Agreement may not be assigned, transferred or delegated without the written consent of all parties hereto. This agreement does not create any third party rights or interests.

11.8 Contract Administration. The City's Fleet Manager and the Franchisee's General Manager shall be designated as each party's "Contract Administrator". This Agreement shall be administered by and correspondence shall be directed to these Contract Administrators or their authorized designees.

11.9 Notices. Any written notice to City shall be sent to:

**City of Fresno Fleet Management Division
2101 "G" Street Building "F"
Fresno, CA 93706**

Any written notice to Franchisee shall be sent to:

**Mid Valley Disposal
15300 West Jensen Avenue
Kerman, CA 93630**

Notices shall be delivered personally, by confirmed Facsimile, or by prepaid U.S. Mail.

11.10 Integration and Precedence of Documents. This Agreement, including the Exhibits attached hereto and incorporated herein, is the entire and integrated agreement between City and Franchisee and supersedes all prior negotiations, representations, or agreements, either written or oral. In event of a conflict, the body of the document shall control the exhibits.

11.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY OF FRESNO

APPROVED AS TO FORM:



City Attorney *Chief Assistant*

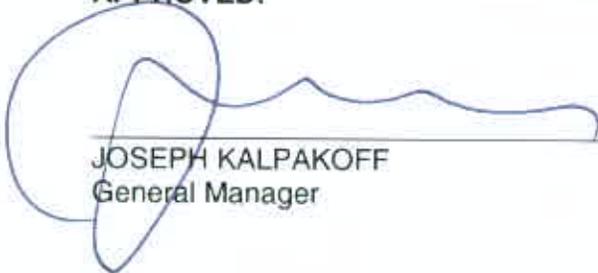
APPROVED:



MARK SCOTT
City Manager

MID VALLEY DISPOSAL

APPROVED:



JOSEPH KALPAKOFF
General Manager

ATTEST:

YVONNE SPENCE, CMC
CITY CLERK

By *Cindy Buer* *1/19/12*
Deputy

AGENDA ITEM NO. 1C
COUNCIL MEETING 12/1/11

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

December 1, 2011

FROM: PATRICK N. WIEMILLER, Director
Department of Public Utilities

BY: JOHN M. WATKINS, Management Analyst III *JW*
Department of Public Utilities

SUBJECT: APPROVE AGREEMENTS WITH ALLIED WASTE (ALLIED) AND MID VALLEY DISPOSAL (MID VALLEY) FOR PROVIDING THEIR TRUCK FLEETS WITH LNG FUEL AT THE CITY'S FUELING FACILITIES

RECOMMENDATION

Staff recommends that Council approve agreements with Allied Waste (Allied) and Mid Valley Disposal (Mid Valley) for providing their truck fleets with LNG fuel at the City's fueling facilities.

EXECUTIVE SUMMARY

As part of the exclusive commercial solid waste (CSW) franchise agreements with Allied and Mid Valley, the City sold its fleet of CSW trucks to those two (2) companies. Since most of these trucks require LNG fuel and the City has an LNG fueling station at its Municipal Service Center (MSC) on "G" Street in Fresno, the City desires to provide LNG fuel to the franchisees at an agreed upon price. By utilizing the City's LNG fueling station rather than going to a private operator, the franchisees are helping the City to recover the costs of the fueling station equipment and staff.

These fueling agreements must be in place by December 5, 2011, which is the contractual date of CSW service change from the City to the franchisees.

BACKGROUND

On September 29, 2011, Council approved exclusive franchises for providing commercial solid waste (CSW) collection services within the City of Fresno to Allied and Mid Valley. As part of the franchise agreements with both companies, the City sold its fleet of CSW trucks to them. Since most of these trucks require LNG fuel and the City has an LNG fueling station at its Municipal Service Center (MSC) on "G" Street in Fresno, the City desires to provide LNG fuel to the franchisees at an agreed upon price. By utilizing the City's LNG fueling station rather than going to a private operator, the franchisees are helping the City to recover the costs of the fueling station equipment and staff.

It is recommended that Council approve agreements with Allied and Mid Valley for providing their truck fleets with LNG fuel at the City's fueling facilities so that the transition from City CSW collection service to franchise CSW collection service can occur as scheduled on December 5, 2011.

Presented to City Council

Date 12/1/11

Disposition approved

REPORT TO THE CITY COUNCIL

Approve Agreements With Allied And Mid Valley For Providing Their Truck Fleets With LNG Fuel

December 1, 2011

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FISCAL IMPACT

By utilizing the City's LNG fueling station rather than going to a private operator, the franchisees are helping the City to recover the costs of the fueling station equipment and staff. The franchisees will pay a fuel price that is sufficient to pay for all City costs related to the fueling station operations.

Also, these fueling agreements are needed in order to fulfill the City's franchise agreements with Allied and Mid Valley, which are expected to provide approximately \$2.5 million in revenue annually to the City General Fund.

Attachment:

Service Agreement for LNG Fuel