



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** IDC Settlement

**DATE:** June 9, 2009

## **RECOMMENDATION**

Adoption of a resolution authorizing the City Attorney to execute a Settlement Agreement and Release that provides for the payment of \$700,000 to International Disposal Corporation of California, Inc. ("IDC") by the City of San Jose in exchange for IDC's release of all existing and potential claims for costs required by regulations adopted before January 1, 2009; and for amending the Agreement between the City of San Jose and IDC to establish a new basis for future regulatory costs, and to reflect changes to the residential and commercial solid waste management program, as authorized by the City Council in Closed Session on June 2, 2009.

## **OUTCOME**

To settle a dispute between the City of San Jose and IDC which would result in the City compensating IDC for past regulatory costs, establishing a new basis for calculating the City's liability for future regulatory costs, and amending the Agreement between the City and IDC to reflect changes to the residential and commercial solid waste management program.

## **BACKGROUND**

The City entered into a long-term disposal service agreement with International Disposal Corporation of California, Inc. ("IDC") in 1985 for the disposal of municipal solid waste at the Newby Island Sanitary Landfill ("Disposal Agreement"). In 1995, the Disposal Agreement was amended, in part, to resolve claims for reimbursement of regulatory costs through June 30, 1995. IDC is now a subsidiary of Republic Services, Inc., and intermediate corporate parents include Browning-Ferris Industries of California, Inc. and Allied Waste Services.

The Disposal Agreement requires the City to compensate IDC for regulatory costs. Regulatory costs are operational costs and amortized capital costs incurred as a result of changes to regulations or changes in interpretation and enforcement of these regulations. Over the years, these costs have increased due to new regulations that require the construction of complex, multi-layer, liner systems and leachate collection and recovery systems as part of new landfill cells and the installation and maintenance of landfill gas control systems. The City currently compensates IDC \$1,177,090.56 each year for regulatory claims which the parties tentatively agree upon.

Significant remaining regulatory costs claims for the period from 2001 to the present involve different interpretations of the Disposal Agreement. Specifically, the dispute pertains to the

appropriate formula to determine the City's pro-rata share of IDC's total regulatory costs, how environmental control systems should be reimbursed, whether interest for financing environmental control systems is a regulatory cost, if the cost to show financial responsibility for landfill closure and post closure should be reimbursed, and if there should be an offset to the City's share of the regulatory costs for IDC's revenue and savings from the increased ability to accept alternative daily cover and the beneficial use of the landfill gas recovery system.

**ANALYSIS**

Under the terms of the Settlement Agreement and Release, the City would compensate IDC an additional \$700,000 to resolve all outstanding and potential regulatory costs claims through December 31, 2008 and to amend the Disposal Agreement. As consideration, in part, for this compensation, IDC would agree to release the City from any future regulatory costs required by laws or regulations, and material changes in interpretation of laws or regulations adopted before January 1, 2009. Payment to IDC would be conditioned on amending the Disposal Agreement to establish a new basis for calculating the City's pro-rata share of IDC's total regulatory costs, and to reflect changes to the residential and commercial solid waste management program. The proposed amendments are discussed in a memorandum submitted by the Administration under separate cover and will be considered by the City Council on June 23, 2009.

**PUBLIC OUTREACH/INTEREST**

The memorandum and the Settlement Agreement and Release are posted on the City's website for the June 23, 2009 Council Agenda.

**COORDINATION**

This memorandum and Settlement Agreement and Release were coordinated with the Department of Environmental Services, and the City Manager's Budget Office.

**BUDGET REFERENCE**

One-time Payment of \$700,000 from Prior Year Encumbrances:

Fund #	Appn #	AC #	Total Encumbrance	Amount for Contract*
001	2059	03410_41	\$87,500	\$87,500
423	2059	03410_34	\$612,500	\$612,500
Total				\$700,000

\*The allocation of these costs between the General Fund and the Integrated Waste Management Fund (423) represents the proportional share of waste delivered under this agreement from City facility operations and the residential Recycle Plus program, respectively.

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June 10, 2009

**Subject: IDC Settlement**

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**CEQA**

Newby Island Sanitary Landfill, 1997 Revised Solid Waste Facility Permit (43-AN-0003):  
Negative Declaration (H95-03-022)

RICHARD DOYLE

City Attorney

By

A handwritten signature in black ink, appearing to read "Rosa Tsongtaarii", written over a horizontal line.

Rosa Tsongtaarii  
Deputy City Attorney

cc: Debra Figone

For questions please contact Rosa Tsongtaarii, Deputy City Attorney, at (408) 535-1985.