

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

113



FROM: Waste Management Department

SUBMITTAL DATE:
June 3, 2009

SUBJECT: Anza Collection Center Lease Agreement and Waste Delivery Agreement for Franchise Area 8

RECOMMENDED MOTION: That the Board:

1. Approve the attached Master Lease of the Anza Collection Center as shown on Exhibit A-1 with USA Waste of California, Inc., and authorize the Chairman to execute the Lease on behalf of the Board; and
2. Approve the purchase of the Anza Collection Center at a total cost of \$1 per Section 7(e) of the Master Lease; and
3. Approve the attached Waste Delivery Agreement with USA Waste of California, Inc., for the disposal of waste from Franchise Area 8 and authorize the Chairman to execute the Agreement on behalf of the Board. (continued)

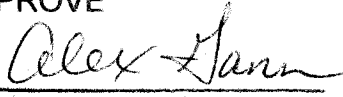

Hans W. Kernkamp, General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 1	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	No

SOURCE OF FUNDS: Waste Management Department Enterprise Fund	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: 
Alex Gann

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY:  NEAL R. KIPNIS DATE
Departmental Concurrence

Dep't Recomm.: Consent Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: 10.5 (12/1/98) | **District:** 3 | **Agenda Number:**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

12.2

BACKGROUND: The Master Lease with Waste Management of the Inland Empire (WMI) for 4.3 acres of land on the property of the closed Anza landfill ended its ten (10) year term on December 1, 2008. As part of this lease, WMI has built and operated a collection center for the residents of the area. Staff has been in discussions with WMI on a new Master Lease and is bringing it forward for the Board's consideration at this time. Exhibit A-2 lists the major new features of the Master Lease and Waste Delivery Agreement. The original Master Lease provided for the new improvements placed on the premises by WMI (i.e., office trailer, buildings, infrastructure, and other improvements fastened to the ground not including Lessee owned equipment such as compactors, bins, etc.) to become County's property at the end of the term, with the payment of \$1, free and clear of all claims and encumbrances to or against them. The Board's approval of the sale will authorize the Department's General Manager-Chief Engineer to forward the \$1 to WMI and purchase the Collection Center. The new lease memorializes this transfer of ownership.

The amended Waste Delivery Agreement includes language to make the County whole when WMI's trucks are not able to get into the Lamb Canyon Landfill before it closes for the day or because of mechanical failure.

Waste Management of the Inland Empire is a name under which USA Waste of California, Inc., conducts business in Riverside County. The Master Lease and Waste Delivery Agreement will now be with USA Waste of California, Inc.

Main New Features of the Proposed Master Lease with Waste Management of the Inland Empire (WMI) for the Anza Collection Center

1. The term of the Master Lease shall be for **seven (7) years** instead of ten (10) years so as to coincide with WMI's term for Franchise Area 8. While the Franchise Agreement is a seven year evergreen contract (gaining another year at the completion of each work year), the Master Lease is a fixed seven year term. **Section 4.**
2. The County had the right to purchase the completed Anza Collection Center from WMI in the expired Master Lease. The new lease memorializes this transfer of ownership. **Section 7(e).**
3. The value of the maintenance assurance, clean up/restoration bond has been increased to \$34,000 from \$28,335. **Section 7(f).**
4. The Insurance and Indemnity section (**Section 17**) has been brought into compliance with the current County insurance standards.
5. A new Lessee/Guarantor/Parent Company Guarantee has been executed. **(Exhibit E).**

Main New Feature of the Proposed Waste Delivery Agreement with Waste Management of the Inland Empire (WMI) for Franchise Area 8

1. A procedure has been established to take care of times when WMI's trash trucks cannot make it to the Lamb Canyon Landfill before it closes for the day or because of mechanical failure. WMI agrees to make the County whole by bringing a corresponding amount of refuse in a transfer vehicle to the Lamb Canyon Facility or the Badlands Facility within 30 days of the original diversion.

EXCLUSIVE WASTE DELIVERY AGREEMENT

THIS AGREEMENT, made and entered into as of the ____ day of _____, 2009, by and between COUNTY OF RIVERSIDE, a subdivision of the State of California("County"), and USA Waste of California, Inc., a Delaware Corporation ("Collector").

County maintains a system of landfills ("System Facilities") and desires to contract for exclusive long-term Solid Waste delivery services to the System Facilities.

Collector is currently authorized to collect Solid Waste, Recyclable Materials, and/or Green Waste in specified portions of the unincorporated area of Riverside County. Collector desires to provide Solid Waste to the System Facility(s) on the terms hereof.

In consideration of the mutual covenants and agreements as hereinafter set forth, County and Collector enter in this Agreement, including all appendices attached hereto.

SECTION 1. GEOGRAPHIC AREA

This Agreement pertains to the Collector's service area within Franchise Area 8, as defined in Collector's franchise with "County".

SECTION 2. DEFINITIONS

A. System Facility

"System facility" means a Solid Waste management facility that is owned and/or operated by the County, or with which the County has entered into an agreement, to be used by the Collector for the processing, recovery, transfer and/or disposal of Solid Waste.

SECTION 3. COLLECTOR OBLIGATIONS

A. Collector shall Deliver all Solid Waste, collected

pursuant to the Franchise Area 8 Agreement(s) with the County to the Lamb Canyon Facility ("Designated System Facility"), utilizing a WMS pod system or other commercial waste hauling vehicles (compacted/noncompacted), or if required by the County, deliver all Solid Waste, to an alternative System Facility designated by the County.

If Collector cannot deliver Solid Waste from Franchise Area 8 to the Lamb Canyon Facility on the day it is picked up because it would have arrived after the landfill had closed or because of mechanical failure, it may take the waste material to the Moreno Valley Transfer Station. For Area 8 waste which is taken to the Moreno Valley Transfer Station, Collector agrees to make County whole by bringing a corresponding amount in a transfer vehicle to the Lamb Canyon Facility or the Badlands Facility within thirty (30) days of the original diversion. The rate for this tonnage from the Moreno Valley Transfer Station will be equal to the then current rate for Area 8 tonnage as it is adjusted according to Section 5 herein. County and Collector shall reconcile tonnage numbers quarterly.

- B. Collector shall cause Source Separated Pine Needles, brush, slash and green waste collected at the Idyllwild Brush Collection Center and the Anza Collection Center to be removed by vendors or sent to vendors who provide alternatives for use other than disposal, and shall not be accepted at the Designated System Facility.
- C. Collector shall not dispose of waste collected within Franchise Area 8, as defined in Collector's franchise with County, to any facility other than a System Facility.
- D. Collector shall not dispose of collected marketable recyclable products at the Designated System Facility without prior written approval from the County, or violate any state statute or local ordinance regarding the handling and storage of the recyclable materials.
- E. Collector shall institute a load checking and inspection program using a reasonable level of effort for the

purpose of detecting unacceptable Solid Waste, such as, but not limited to, hazardous and biomedical waste. Collector shall exercise due care and make reasonable business efforts and be responsible for ensuring the Solid Waste delivered by it to the Designated System Facility does not contain unacceptable waste.

- F. Collector shall notify County which vehicles it intends to use to transport waste to System Facilities under this Agreement. Collector shall notify County of any vehicles that replace others formerly used under this Agreement. County shall have the right to reasonably refuse the use of Collector vehicles under this Agreement after analyzing notification of their intended use. Collector vehicles that have not been identified to County as being used under this Agreement shall be ineligible for the disposal rate of this Agreement.
- G. Collector shall pay all System Facility fees in accordance with the terms of the Deferred Payment Agreement executed with the County. Said agreement extends the privilege to Collector of deferring payment of disposal fees and defines the terms of payment by Collector to the County.

In recognition of the delayed payments to Franchisee by County (as detailed in the Fifth Amendment to the Area 8 Franchise Collection Agreement), the standard Deferred Payment Agreement is hereby modified to allow payment of disposal fees within forty-five (45) days from the date of the billing statement for waste delivered from this Franchise area. All other terms of the standard County Deferred Payment Agreement remain in effect.

SECTION 4. COUNTY OBLIGATIONS

- A. County shall designate the Facility to which Collector shall deliver Solid Waste collected pursuant to the applicable franchise agreement(s) with the County and designate the Green Waste diversion facility to which Collector shall deliver Green Waste, if Collector is operating a source separated Green Waste collection program and the facility which the County designates is

lower cost (including transportation and tip fee) than Collector's current Green Waste facility.

- B. County shall notify Collector at least thirty (30) calendar days in advance (except during emergency situations) of necessary changes of the Designated System Facility. Location, duration, hours of operation and other specifications for use of the alternative Designated System Facility will be addressed in this notification.
- C. County shall accept Solid Waste, delivered by Collector to the Designated System Facility, or to an alternative Designated System Facility, for disposal.
- D. County shall notify Collector forty-five (45) calendar days in advance of any proposed increases in the rates charged at the Designated System Facility.

SECTION 5. PREFERENTIAL RATE

County will accept Solid Waste from Collector at the rate approved by the County Board of Supervisors which shall be \$26.91 per ton on the effective date for waste delivered to the Designated System Facility in a vehicle similar to a Waste Management System (WMS) transfer rig (3 pods per vehicle) (i.e. typical minimum 16+ tons per pay load) or other commercial waste hauling vehicles (compacted/non-compacted) unless the delivered load requires payment of a special handling charge. County agrees not to impose any differential surcharges on Collector during the term of this agreement for Solid Waste, collected from the unincorporated portion of the County or Franchise Area 8, such as may be imposed on a Collector or permittee not entering into a waste delivery agreement with the County, but this rate may be revised by County in the event of a change in law or regulations after the effective date of this Agreement affecting County's landfill costs.

The disposal fee will be subject to adjustment annually every July 1st following public hearings. The first adjustment may be made effective on July 1, 2009. The maximum increase allowable any one year will be equal to the percent change in the Consumer Price Index (CPI). Computation of the change in the CPI will be made according to the following methodology.

- A. Said computation shall be equal to the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area, (1982-84 = 100), as published by the United States

Department of Labor, Bureau of Labor Statistics. Said change shall be measured for the twelve (12) month period January through December. The first increase may be effective July 1, 2009, based upon changes in the CPI formula for the period January, 2008 through December, 2008.

SECTION 6. ASSIGNMENT

No assignment of this Agreement, or delegation of duties hereunder, whether voluntary or involuntary shall be made in whole or in part without the prior written approval of the County.

SECTION 7. NOTICES

All notices, demands, requests, or other communications between the parties shall be in writing and addressed as follows:

If to County: Riverside County Waste
Management Department
14310 Frederick Street
Moreno Valley, CA 92553

If to Collector: USA Waste Of California, Inc.
c/o Waste Management of the Inland Empire
800 S. Temescal Street
Corona, CA 92879

SECTION 8. ENTIRETY

County and Collector agree that this Agreement and the separately executed agreement between the County and Collector for the collection and transportation of Solid Waste and other specified services, represent the full and entire agreement between the parties hereto with respect to matters covered herein. This Agreement supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter.

SECTION 9. TERM

This Agreement shall become effective upon the date stated in the first paragraph of the Agreement and shall continue in full force and effect for the term of Collector's applicable franchise agreement, including extensions, with County.

SECTION 10. WAIVER OF PERFORMANCE.

No waiver by County at any time of any of the terms and conditions

of this Agreement shall be deemed or construed as a waiver at any time thereafter of the same or of any other terms or conditions contained herein or of the strict and timely performance of such terms and conditions.

SECTION 11. EFFECTIVE DATE

Regardless of the date(s) of signature for this agreement, the agreement is effective only when the following occurs:

The Collector and County have executed a franchise agreement for the area designated in Section 1.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date hereof.

COUNTY:

Riverside County

COLLECTOR:

USA Waste of California, Inc.

BY: _____

TITLE: _____

DATE: _____

BY: [Signature]

TITLE: AREA VICE PRESIDENT

DATE: 5/26/09

APPROVED AS TO FORM:
County Counsel

DATE:

FORM APPROVED COUNTY COUNSEL

BY: [Signature] DATE

NEAL R. KIPNIS

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On _____, before me, the undersigned, A Notary Public in and for the State of California, personally appeared

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the Person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the Person(s), or the entity upon behalf of which the Person(s) acted, executed the instrument.

Signature: _____

See attached California All-Purpose Certificate of Acknowledgment
[Signature]
Notary Public

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Los Angeles

On May 26, 2009 before me, A. Ann Jones, Notary Public
(Here insert name and title of the officer)

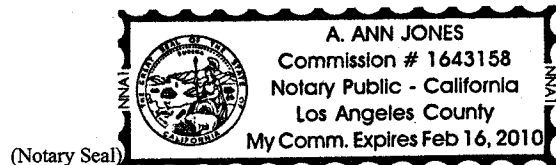
personally appeared Larry Metter

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(~~ies~~), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

A. Ann Jones
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Exclusive Waste Delivery Agreement

(Title or description of attached document)

w/ County of Riverside

(Title or description of attached document continued)

Number of Pages 7 Document Date 5/26/09

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

Individual (s)

Corporate Officer

Sr. VP, WM

(Title)

Partner(s)

Attorney-in-Fact

Trustee(s)

Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

ASSISTANT SECRETARY'S CERTIFICATE

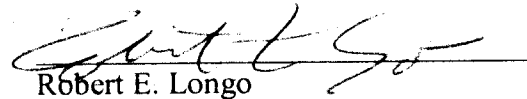
USA WASTE OF CALIFORNIA, INC.

The undersigned, being the Assistant Secretary of USA Waste of California, Inc., a Delaware corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that Larry Metter (Area Vice President) or any officer of the Company be and hereby are authorized, following compliance with appropriate corporate policies and procedures, to execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as they may deem appropriate or necessary, pertaining to, or relating to certain agreements between the Company and the County of Riverside, California, including the April 23, 2009 Letter Agreement for Make-Up Tonnage from Franchise Area 8, Exclusive Waste Delivery Agreement, and Master Lease for 4.3 acres of property located in unincorporated Riverside County and commonly known as the "Anza Site", and that any such action taken to date is hereby ratified and approved.

Dated: ~~April~~ 1, 2009

May



Robert E. Longo
Assistant Secretary