

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

051



FROM: Waste Management Department

SUBMITTAL DATE:
August 23, 2012

SUBJECT: Release and Hold Harmless Agreement with WMI, an affiliate of USA Waste Of California, Inc.

RECOMMENDED MOTION: That the Board of Supervisors approve the Release and Hold Harmless Agreement with USA Waste of California, Inc. (USA Waste) and authorize the Chairman to execute it on behalf of the Board

BACKGROUND: USA Waste has the Franchise for the Collection and Transportation of Solid Waste and Other Specified Services for County Areas 1, 3 and 4. The company also has the Exclusive Waste Delivery Agreements for those same franchise areas. The Waste Delivery Agreements designate landfill and transfer station facilities within Riverside County where USA Waste can dispose of the refuse it collects from County franchise areas 1, 3, and 4. One of the designated facilities is the Robert A. Nelson Transfer Station and Material Recovery Facility (RAN TS/MRF) in the Rubidoux area where the County (through its agreement with the facility operator) has the right to direct where the refuse is transported for disposal, either Badlands or El Sobrante Landfills. (continued)

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE: 8/28/12
Departmental Concurrence

Hans W. Kernkamp, General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

SOURCE OF FUNDS:	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
Alex Gann

County Executive Office Signature

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: | **District:** 1/1 & 2/2 | **Agenda Number:** 12.1

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

USA Waste and the County are also parties to the El Sobrante Landfill Second Agreement. The company has the right under Section 11.23 of said agreement to transport County waste outside of the County for processing when it provides notice to the General Manager-Chief Engineer of the Waste Management Department and the Local Enforcement Agency (LEA). All residue remaining after the processing is to be treated as County waste and delivered to the El Sobrante Landfill.

During the period of 2006 to 2012, USA Waste delivered solid waste collected in County Franchise Areas to an out-of-county transfer station, the West Valley Material Recovery Facility (MRF)/Transfer Station (West Valley) in Fontana for processing prior to delivery to the El Sobrante Landfill for disposal. The Exclusive Waste Delivery Agreements do not allow deliveries to West Valley. Department staff has been in discussions with USA Waste to resolve the issue and the attached Release and Hold Harmless Agreement is the result.

The Agreement does three things:

1. USA Waste pays the County \$135,929.60 in full and complete satisfaction of County's claims in the dispute between the parties (See Exhibit A).
2. USA Waste agrees to no longer deliver refuse from County Franchise Areas 1, 3 and 4 to West Valley and deliver it in accordance with the Waste Delivery Agreements to RAN TS/MRF.
3. County agrees to direct up to 25 tons per month of Riverside County Unincorporated Area refuse delivered to the RAN TS/MRF facility from Franchise Areas 1, 3 and 4 to the El Sobrante Landfill. County and USA Waste agree to reconsider the maximum amount of Riverside County Unincorporated Area refuse USA Waste delivers to the RAN TS/MRF from County Franchise Areas 1, 3 and 4 that will then be authorized for delivery to the El Sobrante Landfill when the local economy improves.

County Counsel has reviewed the agreement and concurs with it. Staff recommends that the Board authorize the Chairman to execute the Release and Hold Harmless Agreement.

RELEASE AND HOLD HARMLESS AGREEMENT

THIS RELEASE AND HOLD HARMLESS AGREEMENT is made this ____ day of _____, 2012, by and between USA WASTE OF CALIFORNIA, INC., a Delaware corporation, including its affiliates (collectively, "USA Waste") and COUNTY OF RIVERSIDE, CALIFORNIA ("County").

RECITALS

WHEREAS, USA Waste has provided solid waste collection services in Riverside County Franchise Area 1 in accordance with an agreement entitled Agreement Between the County of Riverside and Waste Management of Inland Valley, a division of Waste Management Collection & Recycling, Inc. for the Collection and Transportation of Solid Waste and Other Specified Services, dated June 9, 1998; and

WHEREAS, Waste Management Collection & Recycling, Inc. is an affiliate of USA Waste; and

WHEREAS, USA Waste has provided solid waste collection services in Riverside County Franchise Area 3 in accordance with an agreement entitled Agreement Between the County of Riverside and USA WASTE OF CALIFORNIA, INC. for the Collection and Transportation of Solid Waste and Other Specified Services, dated May 19, 1998; and

WHEREAS, USA Waste has provided solid waste collection services in Riverside County Franchise Area 4 in accordance with the Agreement Between the County of Riverside and International Rubbish Service, Inc. for the Collection and Transportation of Solid Waste and Other Specified Services, dated June 9, 1998; and

WHEREAS, USA Waste is the successor in interest to International Rubbish Service, Inc.; and

WHEREAS, The County and

Waste Management of Inland Valley, a division of Waste Management Collection & Recycling, Inc., entered into an Exclusive Waste Delivery Agreement dated May 19, 1998, related to Solid Waste collected in Franchise Area 1;

USA Waste entered into an Exclusive Waste Delivery Agreement dated May 19, 1998, related to Solid Waste collected in Franchise Area 3.

Both of which have been consolidated into an Exclusive Waste Delivery Agreement between the County and Waste Management of the Inland Empire, a division of USA Waste of California, Inc., dated December 8, 1998, related to Solid Waste collected in Franchise Areas 1 and 3 ("Areas 1 and 3 Exclusive Waste Delivery Agreement"); and

WHEREAS, The County and International Rubbish Service, Inc. entered into an Exclusive Waste Delivery Agreement dated June 9, 1998, related to solid Waste collected in Franchise Area 4, which was amended on May 13, 2003 ("Area 4 Exclusive Waste Delivery Agreement"); and

WHEREAS, the County and USA Waste entered in the Second El Sobrante Landfill Agreement, a Public-Private Project between County of Riverside and USA Waste of California, dated September 1, 1998, as amended ("El Sobrante Second Agreement"), and

WHEREAS, a dispute has arisen between the County and USA Waste with respect to the Areas 1 and 3 Exclusive Waste Delivery Agreement and the Area 4 Exclusive Waste Delivery Agreement, arising from USA Waste's delivery of solid waste collected in Franchise Areas 1, 3 and 4 to an out-of-County MRF/Transfer Station, the West Valley MRF/Transfer Station in Fontana, California during the period of 2006 to 2012, for processing prior to delivery to the El Sobrante Landfill for disposal (the "Dispute");

WHEREAS, County and USA Waste agree that it is in the best interests of both parties to resolve the Dispute amicably, in accordance with the terms and conditions set forth herein.

THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. County's General Release. County hereby releases, discharges and holds USA Waste harmless from any and all claims, liabilities, demands, obligations and causes of action, known or unknown, likely or unlikely, which it may have or claim to have against USA Waste, without limitation, directly related to the Dispute (collectively, "County's Claims").
2. County's Civil Code Section 1542 Waiver. County expressly waives all rights and benefits afforded by Section 1542 of the Civil code of the State of California, which states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

County acknowledges and agrees that the provisions of Section 2 herein are intended to include and discharge each and all of County's Claims, including those which he does not know of or suspect to exist regarding the dispute at the date of execution of this Agreement.
3. Payment to County. In full and complete satisfaction of County's Claims regarding the dispute, USA Waste shall pay County the amount of \$135,929.60 (see Exhibit A) upon execution of this Agreement.
4. Section 11.23 of the El Sobrante Second Agreement. USA Waste has the right under Section 11.23 of the El Sobrante Second Agreement to transport County Waste outside of the County for processing when it provides notice to the General Manager-Chief Engineer of the Department and the LEA. All residue remaining after this processing is to be treated as County Waste and delivered to the El Sobrante Landfill. USA Waste agrees that it shall no longer deliver refuse from County Franchise Areas 1, 3 and 4 to the West Valley MRF/Transfer Station. USA Waste agrees to now deliver refuse that it would have taken to the West Valley facility to the Robert A. Nelson TS/MRF in Riverside County in accordance with the Exclusive Waste Delivery Agreements for the three County Franchise Areas.
5. USA Waste Delivery of Riverside County Unincorporated Area Refuse to the Robert A. Nelson TS/MRF. -- USA Waste has the right to deliver refuse it collects within County

Franchise Areas 1, 3 and 4 to the Robert A. Nelson TS/MRF (Transfer Station) per the Exclusive Waste Delivery Agreement for said franchise areas. County has the right to direct the solid waste residue from the Transfer Station to an eligible landfill under the Agreement for the Disposal of Solid Waste it has with the Transfer Station operator. Despite this right to direct residue from the Transfer Station, County agrees to direct up to twenty-five (25) tons per month of Riverside County Unincorporated Area refuse delivered to the Transfer Station by USA Waste from Franchise Areas 1, 3 and 4 to the El Sobrante Landfill. Any Riverside County Unincorporated Area refuse delivered to the Transfer Station by USA Waste from County Franchise Areas 1, 3 and 4 in excess of twenty-five (25) tons per month can be directed by County to the eligible landfill of its choice.

County and USA Waste agree to reconsider the maximum amount of Riverside County Unincorporated Area refuse USA Waste delivers to the Transfer Station from County Franchise Areas 1, 3 and 4 that will then be authorized for delivery to the El Sobrante Landfill when the local economy improves.

6. General Provisions.

6.1 Entire Agreement. This Agreement is the entire Agreement between County and USA Waste. Any oral or any other written representations, understandings or agreements covering the same subject matter, which are in conflict with this Agreement, are hereby merged into and superseded by the provisions of this Agreement.

6.2 Amendment. No provision of this Agreement may be amended, modified or waived unless such amendment, modification or waiver shall be agreed to in writing and signed by County and USA Waste.

6.3 Headings. The headings of Sections and subsections hereof are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

6.4 Governing Law. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of California.

6.5 Assignment. This Agreement may not be assigned, partitioned, subdivided, pledged, or hypothecated in whole or in part without the express prior written consent of the County and the USA Waste.

6.6 Non-Waiver. The failure of either party to enforce its rights under any of the provisions of this agreement shall not be deemed or shall constitute, a waiver of any other provision of this agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach.

6.7 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 under Applicable Law or otherwise.

6.8 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, and any such term or provision shall

be modified or deleted in such manner so as to make the agreement as modified legal and enforceable under applicable law.

6.9 Attorney's Fees. In the event an action is commenced by either party regarding performance of this Agreement, and/or any claim or action arising out of this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the court, shall be entitled to recover all statutory costs plus a reasonable amount for attorney's fees as said reasonable amount of attorney's fees may be determined by the Court.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year indicated above.

RIVERSIDE COUNTY
WASTE MANAGEMENT DEPARTMENT
14310 Frederick Street
Moreno Valley, CA 92553

USA WASTE OF CALIFORNIA, INC.
10910 Dawson Canyon Road
P.O. Box 77908
Corona, CA 92877-0130

Date: August 29, 2012

Date: 8/14/12
By: [Signature]
Name: [Signature]
Title: AVP

RECOMMENDED FOR APPROVAL

By: [Signature]
Name: Hans Kernkamp
Title: General Manager-Chief Engineer

Date: _____
By: _____
Name: _____
Title: _____

RIVERSIDE COUNTY

By: _____
Chairman, Board of Supervisors

ATTEST:

By: _____

FORM APPROVED COUNTY COUNSEL
BY: [Signature]
NEAL R. KIPNIS DATE 8/29/12

USA Waste of California, Inc.
Riverside County Tonnage Delivered to West Valley
Exhibit A
2005-2012

	Delivered to West Valley	Riverside County Direct Haul Rate	Riverside County Transfer Rate	Difference	Amount
	Tons	\$	\$	\$	\$
2005	no report				
2006	15.87	\$31.91	\$24.46	\$ 7.45	\$ 118.23
2007	126.02	\$32.96	\$25.27	\$7.69	\$ 969.09
2008	3,783.38	\$34.33	\$26.32	\$ 8.01	\$ 30,304.87
2009	8,182.28	\$34.37	\$26.35	\$ 8.02	\$ 65,621.89
2010	4,641.67	\$34.37	\$26.35	\$ 8.02	\$ 37,226.19
2011	210.64	\$34.37	\$26.35	\$ 8.02	\$ 1,689.33
Jan - April 2012	-	\$34.37	\$26.35	\$ 8.02	\$ -

Totals 16,959.86

\$ 135,929.60