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

FROM: Waste Management Department

SUBMITTAL DATE:
March 10, 2015

SUBJECT: Fourth Amendment to the Second El Sobrante Landfill Agreement (Project), District 1 [\$0 - Waste Management Department Enterprise Funds], Nothing Further Required under CEQA.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that nothing further is required pursuant to the California Environmental Quality Act (CEQA) as all potentially significant effects of the Project has been adequately analyzed in the prior El Sobrante Landfill Expansion Environmental Impact Report (EIR) and Supplemental EIR (SCH No. 2007081054); and
2. Approve and authorize the Chairman to sign the Fourth Amendment to the Second El Sobrante Landfill Agreement.

BACKGROUND:

Summary

The El Sobrante Landfill is an existing Class III, non-hazardous municipal solid waste (MSW) landfill located at 10910 Dawson Canyon Road, easterly of Interstate 15 and Temescal Canyon Road, in the Temescal Canyon area of unincorporated Riverside County. (Continued)


 Hans Kernkamp
 General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Waste Management Department Enterprise Funds
Budget Adjustment: No
For Fiscal Year: 14/15

C.E.O. RECOMMENDATION: APPROVE
 BY: 
 Alex Garnn
 County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS
 DATE: 2/26/15
 Departmental Concurrence

- Positions Added
- Change Order
- A-30
- 4/5 Vote

Prev. Agn. Ref.: 10.1 (9/1/98); 12.2 (7/1/03); 12.1 (3/13/07); 12.2 (10/30/07); 12.2 (12/18/12)

District: 1/1

Agenda Number:

COUNTY
12-2

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11 Fourth Amendment to the Second EI Sobrante Landfill Agreement (Project), District 1 [\$0 –
Waste Management Department Enterprise Funds], Nothing Further Required under CEQA.**

DATE: March 10, 2015

PAGE: 2 of 2

BACKGROUND: (cont.)

The landfill has been in operation since 1986 and represents a public/private partnership between the Riverside County Waste Management Department (Department) and USA Waste of California, Inc. (USA Waste), a subsidiary of Waste Management, Inc. (WMI). USA Waste is the owner/operator of the landfill, while the Department operates the scale house and implements a load check program. The contractual relationship between USA Waste and the County is outlined in the Second EI Sobrante Landfill Agreement (Second Agreement).

The landfill is open continuously from 4:00 a.m. on Monday to 6:00 p.m. on Saturday, with disposal operations permitted to occur 24 hours per day, 7 days per week. In October of 2013, WMI began accepting non-hazardous incinerator ash, which under Section 1.1.18 (Definitions) of the Second Agreement is specifically excluded from the list of acceptable waste (even though the material is non-hazardous). WMI was subsequently informed that due to the exclusion, continued acceptance of incinerator ash could only occur if the County and WMI could reach terms through an appropriate amendment to the Second Agreement. Those terms have been reached and formalized in the attached amendment, which are summarized as follows:

- Removes from the Second Agreement the exclusion of incinerator ash from the definition of "Non-hazardous Solid Waste";
- Requires that a sampling and analysis plan shall be approved by the Regional Water Quality Control Board;
- Requires that the incinerator ash be stabilized;
- Requires an additional two dollar per ton (\$2/ton) Import Charge payment for incinerator ash, retroactive to January 1, 2015; and
- Requires a one-time transaction fee payment of \$700,000 for the use of an alternative State-approved financial assurances mechanism for Closure/Post-Closure trust funds.

California Environmental Quality Act (CEQA) Findings

The Project will not result in any new significant environmental effects, substantially increase the severity of the prior environmental effects, alter or include additional mitigation measures, or result in any other changes that may impact the prior significance determinations identified in the previously certified EI Sobrante Landfill Expansion EIR and Supplemental EIR (SCH No. 2007081054). The Fourth Amendment revises a definition to remove conflicting language which will allow for the continued acceptance of a non-hazardous material at the EI Sobrante Landfill, a Class III, non-hazardous disposal facility. Furthermore, the amendment substitutes a State-approved financial assurance mechanism for Closure/Post-Closure Maintenance under Title 27. None of these amendments alter the prior analysis or impact determinations from the previously certified EIR and do not require a subsequent or supplement EIR or an addendum to the prior EIR.

A Notice of Determination (NOD) to this effect will be filed with the County Clerk upon Project approval.

Impact on Citizens and Businesses

None

SUPPLEMENTAL:

Additional Fiscal Information

N/A

Contract History and Price Reasonableness

N/A

1 FOURTH AMENDMENT TO
2 SECOND EL SOBRANTE LANDFILL AGREEMENT
3 A PUBLIC-PRIVATE PROJECT

4 between
5 COUNTY OF RIVERSIDE
6 and
7 USA WASTE OF CALIFORNIA, INC.

8 This Fourth Amendment to the Second El Sobrante Landfill Agreement (hereinafter "Fourth
9 Amendment") is entered into by and between the COUNTY OF RIVERSIDE, CALIFORNIA
10 (hereinafter called "COUNTY") and USA WASTE OF CALIFORNIA, INC., a Delaware
11 corporation (hereinafter called "USA WASTE").

12 RECITALS

13 A. WHEREAS, the Second El Sobrante Landfill Agreement (hereinafter called
14 "Second Agreement") was adopted by the parties on September 1, 1998 and amended in
15 accordance with the First Amendment to the Second El Sobrante Landfill Agreement dated
16 June 20, 2003, the Second Amendment to the Second El Sobrante Landfill Agreement dated
17 March 13, 2007, and the Third Amendment to the Second El Sobrante Landfill Agreement dated
18 December 18, 2012; and

19 B. WHEREAS, the development of the expanded Landfill has materially proceeded
20 in accordance with the Project Plan, and is currently operational; and

21 C. WHEREAS, COUNTY and USA WASTE desire to amend the Second Agreement
22 to set forth additional requirements for the receipt of non-hazardous incinerator ash, and modify
23 closure/post-closure financial assurance requirements.

24 NOW, THEREFORE, in consideration of the matters recited above and of the mutual
25 covenants hereinafter contained and for other good and valuable consideration, the receipt and
sufficiency of which is hereby acknowledged, the parties agree as follows:

1 1. Definition of Non-hazardous Solid Waste. Section 1.1.18 of the Second Agreement is
2 deleted in its entirety and replaced with the following:

3 "1.1.18 Non-hazardous Solid Waste means solid waste as defined in
4 Public Resources Code Section 40191 as it now exists or may be amended, other than wastes
5 which are considered "Unacceptable Waste" in accordance with Section 11.8, or sludge and
6 automobile shredder residue."

7 2. Requirements for Receipt of Non-hazardous Incinerator Ash. New Section 3.4.2(f) of the
8 Second Agreement is added as follows:

9
10 "(f)(1) USA WASTE shall include a provision in each new and existing
11 contract with a supplier of non-hazardous incinerator ash that includes all of the following:

12 (i) requires that the incinerator ash must be generated exclusively
13 from the incineration of "Non-hazardous Solid Waste" (acknowledging that Non-hazardous Solid
14 Waste may contain de minimis amounts of hazardous substances, which does not change its
15 character as a Non-hazardous Solid Waste).

16 (ii) requires that the supplier undertake an ongoing sampling and
17 analysis plan designed to certify that the incinerator ash is non-hazardous and non-designated
18 to a 90 percent UCL, in accordance with applicable provisions of Title 22 of the California Code
19 of Regulations and the sampling and analysis plan prepared by USA WASTE in accordance
20 with subparagraph (2) below following approval of such plan by the Regional Water Quality
21 Control Board.

22
23 (iii) requires that the incinerator ash be treated or stabilized to the
24 extent required to be classified as a "Non-hazardous Solid Waste".

25 (2) Within thirty days of execution of this agreement USA WASTE agrees

1 to submit to the Regional Water Quality Control Board (RWQCB) and request approval of a
2 sampling and analysis plan in order to allow for full characterization by the RWQCB of
3 incinerator ash deliveries at the Landfill. USA WASTE agrees to work in good faith with the
4 Regional Water Quality Control Board regarding any issues or concerns it may have with the
5 plan.”

6 3. Calculation of Billing Credit for County Waste. The second paragraph of Section
7 4.2.1(b)(2) of the Second Agreement (as revised by the Second Amendment to the Second El
8 Sobrante Landfill Agreement) is deleted in its entirety and replaced with the following:

9
10 “The rate set forth in any such contract for purposes of
11 determining the amount of the billing credit shall be exclusive of the Import Charge paid by USA
12 WASTE to COUNTY pursuant to Section 5.3, but is assumed to include LEA fees, gate
13 operation cost, load check fees and State fees, and the additional Import Charge paid with
14 respect to non-hazardous incinerator ash in accordance with the final paragraph of Section
15 5.3.2.”

16 4. Import Charge for Non-hazardous Incinerator Ash. A new final paragraph to Section
17 5.3.2 of the Second Agreement is added as follows:

18 “Retroactive to January 1, 2015, the per ton Import Charge for Non-County non-
19 hazardous incinerator ash shall be the amount otherwise provided for in this Section,
20 established on the basis of the Base Disposal Fee, plus two dollars (\$2.00). In addition, the fee
21 paid by the supplier of Non-County non-hazardous incinerator ash shall be considered as a fee
22 for disposal for purposes of calculating the Import Charge, regardless of whether the incinerator
23 ash is utilized by the landfill in a manner that is not considered disposal, or is considered as
24 diversion, under applicable law or regulations.”

25 5. Termination of State Closure/Post-Closure Maintenance Fund. Beginning on the

1 effective date of this Fourth Amendment, USA WASTE is authorized to terminate the State
2 Closure/Post Closure Maintenance Fund, as provided in Section 8.1.1 of the Second
3 Agreement, and substitute a Surety Bond meeting the requirements of Title 27, California Code
4 of Regulations, Section 22244 to meet USA WASTE's obligation to provide and maintain
5 financial assurance for Closure/Post-Closure Maintenance. The bond shall be executed as
6 surety by a corporation which is 1) not affiliated with USA WASTE and 2) authorized to issue
7 surety bonds in the State of California. In the event that a change in law or regulations no
8 longer includes a Surety Bond as an allowable financial assurance mechanism, USA WASTE
9 may substitute another financial assurance mechanism allowable under Title 27, California
10 Code of Regulations, Chapter 6, Subchapter 3, Article 2. USA WASTE shall provide to
11 COUNTY a copy of any revised or updated closure/post-closure cost estimates submitted to the
12 California Department of Resources Recycling and Recovery (CalRecycle). In the event that
13 surety bond proceeds are accessed and placed into a depository trust account in accordance
14 with 27 CCR Sections 22244(e), 22237 and 22240, USA WASTE agrees to use good faith effort
15 to obtain CalRecycle approval to name COUNTY a beneficiary of the depository trust account
16 with the ability to draw funds for closure/post-closure purposes. Upon termination of the State
17 Closure/Post Closure Maintenance Fund and its substitution with a Surety Bond, Section 8.1.1
18 of the Second Agreement shall be deleted in its entirety and shall be deemed null and void and
19 of no further effect without any additional action by the Parties. Upon its termination, all funds in
20 the State Closure/Post Closure Maintenance Fund are for the account of USA WASTE and
21 COUNTY shall assert no claim over such funds provided and to the extent that within ten (10)
22 business days from USA WASTE's receipt of the funds in the terminated State Closure/Post
23 Closure Maintenance Fund, USA WASTE shall pay COUNTY a one-time transaction fee of
24 seven hundred thousand dollars (\$700,000.00).

25 6. Financial Assurance. Section 8.1.2 of the Second Agreement is hereby deleted in its

1 entirety and replaced with the following:

2 "8.1.2. State and Federal Financial Assurances/Insurance Programs.

3 USA WASTE shall maintain all required financial assurances and/or insurance programs and
4 pay all fees now required or which in the future may be required by State or federal law or
5 regulatory programs for operation of a landfill including, but not limited to, those established
6 under the provisions Title 27, California Code of Regulations (closure and post-closure
7 maintenance, reasonably foreseeable releases, and operating liability insurance)."

8 7. Any action at law or in equity brought by a party hereto for the purpose of enforcing,
9 construing, or determining the validity of any provision of this Fourth Amendment shall be filed in
10 the Courts of Riverside County, State of California.

11 8. The recitals set forth above are incorporated by reference as if fully set forth in this
12 Fourth Amendment.

13 9. The persons executing this Fourth Amendment hereby warrant and represent that they
14 have the authority to execute this Fourth Amendment and have the authority to bind the
15 respective Parties to this Fourth Amendment.

16 10. Except to the extent modified by this Fourth Amendment, all other terms and conditions
17 of the Second Agreement, First Amendment, Second Amendment and Third Amendment
18 remains in full force and effect as originally written.

19 11. The effective date of this Fourth Amendment is the date the parties sign the Fourth
20 Amendment. If the Parties sign the Fourth Amendment on more than one date, then the last
21 date the Fourth Amendment is signed by a party shall be the effective date.

22 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year
23 set forth below.

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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: 3/24/15

Date: 3/23/15

By: *[Signature]*

Name: Larry Metter

RECOMMENDED FOR APPROVAL

Title: President - Southern California Area

By: *[Signature]*

Name: Hans Kernkamp

Title: General Manager-Chief Engineer

RIVERSIDE COUNTY

By: _____

Chairman, Board of Supervisors

ATTEST:

By: _____
Clerk of the Board

FORM APPROVED COUNTY COUNSEL
BY: *[Signature]* 3/24/15
NEAL R. KIPNIS DATE