

524



**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 Gann  
 County Executive Office Signature

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Jeffries, seconded by Supervisor Benoit and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Washington, Benoit and Ashley  
 Nays: None  
 Absent: Tavaglione  
 Date: April 7, 2015  
 xc: Waste

Kecia Harper-Ihem  
 Clerk of the Board  
 By:   
 Deputy  
 COUNTY

**12-2**

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: 12-2

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

A-30  
 4/5 Vote  
 Positions Added  
 Change Order

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA  
FORM 11 Fourth Amendment to the Second El 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 El 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 El 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 El 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

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

13 RECITALS

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

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

22 C. WHEREAS, COUNTY and USA WASTE desire to amend the Second Agreement  
23 to set forth additional requirements for the receipt of non-hazardous incinerator ash, and modify  
24 closure/post-closure financial assurance requirements.  
25

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

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

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

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

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

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

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

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

(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: *Larry Metter*

Name: Larry Metter

RECOMMENDED FOR APPROVAL

Title: President - Southern California Area

By: *Hans Kernkamp* for

Name: Hans Kernkamp

Title: General Manager-Chief Engineer

RIVERSIDE COUNTY

By: *Marion Ashley*

Chairman, Board of Supervisors  
MARION ASHLEY

FOR APPROVED COUNTY COUNSEL  
BY: *Neal R. Kipnis* 3/24/15  
NEAL R. KIPNIS DATE

ATTEST:

By: *Kecia Harper-Ihem*  
Clerk of the Board

KECIA HARPER-IHEM



**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
Speakers are entitled to three (3) minutes, subject  
to Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** Amie Kinke

**Address:** 11775 Dawson Cyn  
(only if follow-up mail response requested)

**City:** Corona **Zip:** 92883

**Phone #:** \_\_\_\_\_

**Date:** \_\_\_\_\_ **Agenda #** 12-2C

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**       **Oppose**       **Neutral**

**Note:** If you are here for an agenda item that is filed  
for "Appeal", please state separately your position on  
the appeal below:

\_\_\_\_\_ **Support**      \_\_\_\_\_ **Oppose**      \_\_\_\_\_ **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

## **BOARD RULES**

### **Requests to Address Board on "Agenda" Items:**

You may request to be heard on a published agenda item. Requests to be heard must be submitted to the Clerk of the Board before the scheduled meeting time.

### **Requests to Address Board on items that are "NOT" on the Agenda:**

Notwithstanding any other provisions of these rules, member of the public shall have the right to address the Board during the mid-morning "Oral Communications" segment of the published agenda. Said purpose for address must pertain to issues which are under the direct jurisdiction of the Board of Supervisors. YOUR TIME WILL BE LIMITED TO THREE (3) MINUTES.

### **Power Point Presentations/Printed Material:**

Speakers who intend to conduct a formalized Power Point presentation or provide printed material must notify the Clerk of the Board's Office by 12 noon on the Monday preceding the Tuesday Board meeting, insuring that the Clerk's Office has sufficient copies of all printed materials and at least one (1) copy of the Power Point CD. Copies of printed material given to the Clerk (by Monday noon deadline) will be provided to each Supervisor. If you have the need to use the overhead "Elmo" projector at the Board meeting, please insure your material is clear and with proper contrast, notifying the Clerk well ahead of the meeting, of your intent to use the Elmo.

### **Individual Speaker Limits:**

**Individual speakers are limited to a maximum of three (3) minutes.** Please step up to the podium when the Chairman calls your name and begin speaking immediately. Pull the microphone to your mouth so that the Board, audience, and audio recording system hear you clearly. Once you start speaking, the "green" podium light will light. The "yellow" light will come on when you have one (1) minute remaining. When you have 30 seconds remaining, the "yellow" light will begin flash, indicating you must quickly wrap up your comments. Your time is up when the "red" light flashes. The Chairman adheres to a strict three (3) minutes per speaker. **Note: If you intend to give your time to a "Group/Organized Presentation", please state so clearly at the very bottom of the reverse side of this form.**

### **Group/Organized Presentations:**

Group/organized presentations with more than one (1) speaker will be limited to nine (9) minutes at the Chairman's discretion. The organizer of the presentation will automatically receive the first three (3) minutes, with the remaining six (6) minutes relinquished by other speakers, as requested by them on a completed "Request to Speak" form, and clearly indicated at the front bottom of the form.

### **Addressing the Board & Acknowledgement by Chairman:**

The Chairman will determine what order the speakers will address the Board, and will call on all speakers in pairs. The first speaker should immediately step to the podium and begin addressing the Board. The second speaker should take up a position in one of the chamber aisles in order to quickly step up to the podium after the preceding speaker. This is to afford an efficient and timely Board meeting, giving all attendees the opportunity to make their case. Speakers are prohibited from making personal attacks, and/or using coarse, crude, profane or vulgar language while speaking to the Board members, staff, the general public and/or meeting participants. Such behavior, at the discretion of the Board Chairman may result in removal from the Board Chambers by Sheriff Deputies.

**Riverside County Board of Supervisors  
Request to Speak**

Submit request to Clerk of Board (right of podium),  
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to Board Rules listed on the reverse side of this form.

**SPEAKER'S NAME:** JERRY SINCICH

**Address:** \_\_\_\_\_  
(only if follow-up mail response requested)

**City:** TEMESCAL VALLEY **Zip:** \_\_\_\_\_

**Phone #:** \_\_\_\_\_

**Date:** 4/7/2015 **Agenda #** 12-2C

**PLEASE STATE YOUR POSITION BELOW:**

**Position on "Regular" (non-appealed) Agenda Item:**

**Support**       **Oppose**       **Neutral**

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for "Appeal", please state separately your position on  
the appeal below:

**Support**       **Oppose**       **Neutral**

**I give my 3 minutes to:** \_\_\_\_\_

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