



City of Sacramento City Council

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915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: 9/13/2011

Report Type: Staff/Discussion

Title: Consent to Assignment of Amended Service Agreement for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Handling and Amended Agreement for Purchase of Recyclables, from BLT Enterprises of Sacramento, LLC to USA Waste of California, Inc.

Report ID: 2011-00802

Location: Citywide

Recommendation: Adopt a Resolution authorizing the City Manager or his designee to Execute the Assignment Agreement for (1) the Amended Service Agreement Between the City of Sacramento and BLT Enterprises of Sacramento, LLC for Municipal Solid Waste Transfer, Transport, Disposal, Processing, and Recovered Materials Diversion ("Amended Service Agreement"), and (2) the Amended Agreement for Purchase of Recyclables Between the City of Sacramento and BLT Enterprises of Sacramento, LLC ("Amended Recyclables Agreement") to USA Waste of California, Inc. ("WMI").

Contact: John Dangberg, Assistant City Manager, (916) 808-1222; Office of the City Manager, Steve Harriman, Integrated Waste General Manager, (916) 808-4949, Department of Utilities

Presenter: Steve Harriman, Integrated Waste General Manager, (916) 808-4949, Department of Utilities

Department: Department Of Utilities

Division: Solid Waste Administrative Svc

Dept ID: 14001711

Attachments:

- 1-Description/Analysis
 - 2 - Background
 - 3 - Resolution
 - 4 - Unexecuted Contract Cover
 - 5 - Exhibit A - Agreement
 - 6 - Attachment 1 - Letter from Alex Oseguera
 - 7 - Attachment 2 -Policy Issues
-

City Attorney Review

Approved as to Form
Janeth D. San Pedro
9/9/2011 2:20:59 PM

Approvals/Acknowledgements

Department Director or Designee: Jamille Moens - 9/9/2011 10:37:08 AM

Assistant City Manager: John Dangberg - 9/9/2011 1:12:33 PM



Description/Analysis

Issue: USA Waste of California, Inc. (“USA Waste”) a subsidiary of Waste Management Inc. (“WMI”) has offered to purchase the Sacramento Recycling and Transfer Station (“SRTS”) from BLT Enterprises, and BLT may assign the Amended Transfer Agreement and Amended Recyclables Agreement with the consent of the City Council.

Policy Considerations: The City Council has two options with regards to the consent to the assignment of the Amended Transfer Agreement and the Amended Recyclables Agreement from BLT to WMI: (1) consent to the assignment; or (2) withhold consent to the assignment. The Amended Service Agreement provides that the City’s consent (or withholding of consent) must be exercised in its “reasonable discretion.”

Staff recommends that the City Council consent to the assignment based upon the following findings:

Operational Experience: According to the WMI annual report, the parent company of USA Waste (through its various corporate entities), services approximately 20 million residential, commercial, and industrial customers in 390 collection operations, 294 transfer stations, 271 landfill facilities, 17 waste-to-energy plants, 98 recycling facilities, and 127 beneficial use gas projects in North America. Given this range of experience, staff believes WMI has the ability to successfully meet the Performance Obligations of the Amended Service Agreement and the Amended Recyclables Agreement.

Financial Resources and Stability: WMI and its subsidiaries generated nearly \$13 billion in revenue in 2010. Given the magnitude of the revenue stream, staff believes USA Waste has sufficient financial resources and stability to meet the Performance Obligations of the Amended Service Agreement and the Amended Recycling Agreement.

Litigation History: USA Waste submitted a history of litigation from 2006 to present for lawsuits filed in California and Nevada. There were no lawsuits presented that warrant denial of consent to the assignment of the Amended Service Agreement or the Amended Recycling Agreement.

In-Region Disposal: One of the fundamental components of the Amended Service Agreement is the disposal of City Waste at the County’s Kiefer Landfill, as opposed to the current disposal site at Lockwood Landfill in Nevada. The in-region disposal plan was included in the amended agreement as a strategy to reduce greenhouse gas emissions, fuel consumption, traffic congestion, and pavement impacts associated with long-haul transfer of waste to Nevada. USA Waste intends to implement the in-region disposal plan as specified in the agreement.

Local Team: Staff met with the USA Waste local team several times and are confident that a constructive working relationship will be developed between the City and USA Waste.

While the staff recommendation is to consent to the assignment, the following are issues identified during the due diligence process.

First, in a letter dated July 27, 2011, staff requested that USA Waste provide financial information or data to demonstrate that it can generate a sufficient return on investment as owner / operator of SRTS. The primary staff concern was that USA Waste may have an incentive to either reduce services or seek future rate increases outside the rate escalation methodology provided in the agreement in order to generate a sufficient return on the purchase price.

In a letter dated August 16, 2011 (Attachment 1), USA Waste indicated it would not provide the requested data or information. At a meeting on August 29, 2011, USA Waste agreed to provide and thereafter provided representations that it had completed due diligence in arriving at the purchase price and stated that it could generate a sufficient return without reducing services or requesting additional rate increases beyond what is provided for in the Amended Service Agreement. However, USA Waste did not provide details of their due diligence for review and consideration by City staff. Despite their refusal to provide such information, staff believes that USA Waste's assurances and the terms of the Amended Service Agreement allow the City to enforce the Performance Guarantees and deny any unanticipated rate increase requests submitted by USA Waste beyond what is provided for in the Amended Service Agreement.

Second, BLT has operated in Sacramento in a singular role as a transfer station owner/operator since 1998. If the proposed consent to the assignment of the agreements is approved, USA Waste will operate in a dual role as a transfer station owner/operator and a waste hauler. While this difference has no bearing on the staff recommendation to consent to the assignment, it may affect the dynamics of an open market competition in the event the City pursues an exclusive commercial franchise system and/or a managed competition process for residential waste and recycling collection. (Attachment 2)

Environmental Considerations: The proposed assignment of the Amended Service Agreement and the Amended Recyclables Agreement will not change the operations or require a permit revision of the SRTS facility. Additionally, there will be no expansion of the SRTS facility. The assignment is not subject to California Environmental Quality Act (CEQA) review pursuant to Section 15378 of the CEQA Guidelines.

Sustainability: The assignment of the Amended Service Agreement and Amended Recyclables Agreement is consistent with the City's plan to use Kiefer Landfill as the primary disposal facility for City Waste in an effort to reduce greenhouse gas emissions,

fuel consumption, traffic congestion, and pavement impacts associated with long-haul transfer of waste to Nevada.

Commission/Committee Action: Not Applicable

Rationale for Recommendation: The City's discretion to act on the assignment cannot be unreasonably withheld. Review of USA Waste's capacity demonstrated their ability to fulfill their obligations under the contract.

Financial Considerations: The assignment of the Amended Service Agreement and Amended Recyclables Agreement from BLT to USA Waste has no impact on the financial obligations of the City.

However, Article 23 of the Amended Service Agreement entitles the City receive a payment of \$10,000 assignment fee plus any additional costs incurred for staff, consultants, and attorneys in considering and evaluating a request for an assignment. Staff will submit an invoice shortly to BLT for costs incurred by the City during the assignment process in accordance with Article 23.

Emerging Small Business Development (ESBD): Not Applicable

BACKGROUND

On September 1, 1998, the City Council adopted Resolution No. 98-462 approving a 15-year agreement with BLT Enterprises for the construction and operation of the Sacramento Recycling and Transfer Station (“SRTS”). Under the agreement, City collection vehicles deliver garbage and recyclables from the City service area to SRTS, and BLT transfers waste to Lockwood landfill near Reno, NV for disposal and processes and ships recyclable materials to local and regional markets.

On June 10, 2008, pursuant to Council Resolution 2008-393, the City Council directed staff “to take the necessary steps to secure the long term disposal of all city-generated solid waste collected by the Department of Utilities, BLT and its customers to an in-region facility within 12 to 24 months.” The primary policy objectives of the City Council were to reduce fuel consumption and carbon emissions resulting from long-haul transfer of waste from SRTS to Lockwood landfill.

On November 16, 2010, the City Council authorized the City Manager to execute two agreements between the City and BLT, including the Amended Service Agreement and the Amended Recyclables Agreement. The Amended Service Agreement changed many terms from the original agreement. Two fundamental changes from the previous agreement were: (1) the designation of Kiefer Landfill as the primary disposal facility for City waste (per Council direction on in-region disposal); and (2) a tiered rate structure that provides lower disposal fees upon additional deliveries of City waste.

On May 3, 2011, the City received notification from BLT that they had received an offer from USA Waste of California (“USA Waste”), a subsidiary of Waste Management Inc. (“WMI”), to purchase SRTS. Article 23 of the Amended Service Agreement provided the City with a first right of refusal to match any offer to purchase the STRS. The City did not exercise its first right of refusal. Article 23 of the Amended Service Agreement also includes provisions for the assignment of the City’s contracts with BLT to the purchaser of the facility. Staff has completed the due diligence regarding the consent to the assignment as outlined in this report.



RESOLUTION NO. 2011-XXXX

Adopted by the Sacramento City Council

September 13, 2011

ASSIGNMENT OF CITY AGREEMENT NO. 2010-0997 AND CITY AGREEMENT NO. 2010-0995 BETWEEN THE CITY AND BLT ENTERPRISES, LLC TO USA WASTE OF CALIFORNIA, INC.

BACKGROUND

- A. City and BLT Enterprises, LLC (“BLT”) have entered into an Amended Service Agreement for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion, dated on or about November 23, 2010 and designated as City Agreement No. 2010-0997 (“Amended Service Agreement”); and an Amended Agreement for Purchase of Recyclables, dated November 22, 2010 and designated as City Agreement No. 2010-0995 (“Amended Recyclables Agreement”).
- B. BLT intends to sell the assets and operations of the Sacramento Regional Transfer Station facility to USA Waste of California, Inc., a subsidiary of Waste Management, Inc., which would include the assignment of the Amended Service Agreement and the Amended Recyclables Agreement.
- C. The Amended Service Agreement and the Amended Recyclables Agreement cannot be assigned without the express written consent of the City. BLT has requested the consent of the City to assign these agreements to USA Waste of California, Inc.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. City consents to the assignment of City Agreement No. 2010-0997 and City Agreement No. 2010-0995 from BLT Enterprises, LLC to USA Waste of California, Inc. subject to the terms and conditions set forth in the Assignment and Assumption Agreement, attached hereto as Exhibit A.
- Section 2. The City Manager or his designee is authorized to execute the attached Assignment and Assumption Agreement.
- Exhibit A: Assignment and Assumption Agreement



Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract/Agreement (~~Public Project~~) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.
- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.



ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (“**Assignment**”) is made as of _____, by and between the City of Sacramento, a municipal corporation (“**City**”), BLT Enterprises of Sacramento, LLC, a California limited liability company (“**Contractor**”), and USA Waste of California, Inc., a Delaware corporation (“**Assignee**”). The City, Contractor, and Assignee hereinafter may be referred to collectively as the “Parties” or in the singular as “Party,” as the context requires.

RECITALS

- A. City and Contractor have entered into an Amended Service Agreement for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion, dated on or about November 23, 2010 and designated as City Agreement No. 2010-0997 (“Amended Service Agreement”); and an Amended Agreement for Purchase of Recyclables, dated November 23, 2010 and designated as City Agreement No. 2010-0995 (“Amended Recyclables Agreement”).
- B. Contractor intends to sell its assets and operations to Assignee pursuant to a Purchase and Sale Agreement between Contractor and Assignee, dated _____, 2011.
- C. Pursuant to Article 23.01(b) of the Amended Service Agreement and Section 20 of the Amended Recyclables Agreement, the agreements cannot be assigned without the express written consent of the City.
- D. Contractor has requested that the City consent to the assignment of the Amended Service Agreement and the Amended Recyclables Agreement from Contractor to Assignee. The City consents to the assignment subject to the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals which are specifically incorporated into this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **City Consent.** The City consents to the assignment of the Amended Service Agreement and the Amended Recyclables Agreement from Contractor to Assignee. The City’s consent shall not be effective unless and until all of the following conditions have been satisfied:

- a. **Guaranty of Assignee's Obligations.** Waste Management, Inc., a Delaware corporation ("Guarantor"), shall execute, to and for the benefit of the City, a guaranty for the performance of Assignee's obligations under the Amended Service Agreement in the form provided as Attachment 1 to this Assignment.
 - b. **Insurance.** Assignee shall secure and provide to the City proof of insurance coverage as required under Article 16.01 of the Amended Service Agreement and under Section 13 of the Amended Recyclables Agreement.
 - c. **Performance Bonds.** Assignee shall secure and provide to the City a performance bond or an irrevocable standby letter of credit as required under Article 16.04 of the Amended Service Agreement.
 - d. **County Consent.** Approval by the County of Sacramento Board of Supervisors of the consent to the assignment of the Agreement for Reduced Tipping Fees at Kiefer Landfill, dated December 10, 2010, from Contractor to Assignee.
2. **Subsequent Assignments.** This Assignment does not constitute a consent to any subsequent assignment and does not relieve Assignee or any person claiming under or through Assignee of the obligation to obtain the consent of the City under Article 23 of the Amended Service Agreement and under Section 20 of the Amended Recyclables Agreement to any future assignment.
 3. **Assumption by Assignee.** Assignee hereby unconditionally and irrevocably assumes all of the duties, obligations, liabilities, and conditions owed by Contractor to the City under the Amended Service Agreement and the Amended Recyclables Agreement, and to be bound by all of the terms and conditions of such agreements, as if Assignee had been an original party to the agreements.
 4. **Further Assurances.** The Parties agree to execute all such additional instruments and documents and to take all such additional actions, as may be reasonable and necessary to carry out the provisions of this Assignment.
 5. **Notices.** All notices required or provided for under this Assignment shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the other Parties, if applicable. Notice shall be effective on the date delivered in person, or the date when received if such notice was mailed to the address of the other Party(ies) as indicated below:

Notice to City:

Notice to Contractor:

Notice to Assignee:

Any Party may change the address to which notices are to be mailed by giving written notice of such changed address to each other Party(ies) in the manner provided herein.

6. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California.
7. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original (including copies sent to a Party by facsimile transmission) as against the Party signing such counterpart, but which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Assignment as of the date and year first above written.

BLT Enterprises, LLC
("Contractor")

USA Waste of California, Inc.
("Assignee")

By: _____
Name & Title: _____
Date: _____

By: _____
Name & Title: _____
Date: _____

CITY OF SACRAMENTO
A Municipal Corporation

By: _____
Name & Title: _____
Date: _____

APPROVED AS TO FORM:

ATTEST:

**ATTACHMENT 1
ASSIGNMENT AND ASSUMPTION AGREEMENT**

GUARANTY AGREEMENT

This Guaranty is made by Waste Management Inc., a Delaware corporation (“**Guarantor**”), to and for the benefit of the City of Sacramento (“**City**”), a municipal corporation.

RECITALS

WHEREAS, the City has entered into an Amended Service Agreement for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion, entered into on or about November 23, 2010 and designated as City Agreement No. 2010-0997 (“**Amended Service Agreement**”) with BLT Enterprises of Sacramento, LLC, a California limited liability company (“**Contractor**”);

WHEREAS, Contractor has requested that the City consent to the assignment of the Amended Service Agreement to USA Waste of California, Inc., a Delaware corporation (“**Assignee**”);

WHEREAS, Assignee is a subsidiary of Guarantor;

WHEREAS, the City is willing to consent to the assignment of the Amended Service Agreement from Contractor to Assignee only upon the condition that the Guarantor execute this Guaranty;

WHEREAS, Guarantor is willing to provide guaranties, to and for the benefit of the City, for the timely and full performance of Assignee’s obligations under the Amended Service Agreement.

NOW THEREFORE, as an inducement to the City to consent to the assignment of the Amended Service Agreement from Contractor to Assignee, the Guarantor agrees as follows:

Capitalized terms used herein and not otherwise defined herein, shall have the meaning assigned to them in the City Contract.

(1) **Guaranty of Assignee’s Obligations to City.** Guarantor hereby directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Assignee’s obligations under the Amended Service Agreement in accordance with the terms and conditions contained therein. Notwithstanding the unconditional nature of the Guarantor’s payment obligations set forth herein, the

Guarantor shall have the right to assert the defenses provided in the paragraph entitled "Defenses" under Section 8 hereof, against claims made hereunder.

(2) **Governing law; consent to jurisdiction; service of process.** This Guaranty shall be governed by the laws of the State. The Guarantor hereby agrees to the service of process in the State for any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor hereby agrees that the courts of the State, and to the extent permitted by law, courts of the County in the State shall have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the City may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach hereof, waives any objections that it might otherwise have to the venue of any such Court for the trial of any such suit, action, or proceeding, and consents to the service of process in any such suit, action, or proceeding by prepaid registered mail, return receipt requested.

(3) **Enforceability; no assignment.** This Guaranty shall be binding upon and enforceable against Guarantor, its successors, assigns, and legal representatives. It is for the benefit of the City, its successors and assigns. The Guarantor may not assign or delegate the performance of this Guaranty without the prior written consent of the City. Any such assignment made without the consent of City shall be void. Guarantor shall submit its request for City consent to the City together with the following documentation and any other documentation the City may request:

- (i) audited financial statement for the immediately preceding three (3) operating years; indicating that in the opinion of the Guarantor the proposed assignee's financial status is equal to or greater than Guarantor's;
- (ii) satisfactory proof that in the last five years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management law and that the assignee has provided City with a complete list of such citations and censures;
- (iii) satisfactory proof that the proposed assignee has at all times conducted any solid waste management operations in an environmentally safe and conscientious fashion;
- (iv) satisfactory proof that the proposed assignee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste as identified in Title 22 of the California Code of Regulations;

(v) of any other information required by City to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

Guarantor shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.

"Assign". For the purpose of this Section, "assign" includes:

(x) to sell, exchange or otherwise transfer to a third party all or substantially all of Guarantor's assets

(y) issuing new stock or selling, exchanging or otherwise transferring thirty percent or more of the then outstanding common stock of Guarantor to a Person other than the shareholders owning said stock as of the date hereof.

(4) **Guaranty absolute and unconditional.** The undertakings of Guarantor set forth herein are absolute and unconditional, and the City shall be entitled to enforce any or all of said undertakings against Guarantor without being first required to enforce any remedies or to seek to compel the Assignee to perform its obligations under the Amended Service Agreement or to seek, or obtain recourse against any other party or parties who are, or may be, liable therefor in whole or in part, irrespective of any cause or state of facts whatsoever. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its obligations hereunder shall not be affected, limited, modified or impaired by any state of facts or the happening from time to time of an event, other than the payment of monetary obligations by the Assignee to City under the Amended Service Agreement in accordance with the terms of the Amended Service Agreement, including, without limitation, any of the following, each of which is hereby expressly waived as a defense to its liability hereunder, except to the extent such defenses would be available to the Assignee and release, discharge or otherwise offset Assignee's obligations under the Amended Service Agreement:

(a) the invalidity, irregularity, illegality or unenforceability, of or any defect in or objections to the Amended Service Agreement;

(b) any modification or amendment or compromise of or waiver of compliance with or consent to variation from any of the provisions of the Amended Service Agreement by the Assignee;

(c) any release of any collateral or lien thereof, including, without limitation, any performance bond;

(d) any defense based upon the election of any remedies against the Guarantor of the Assignee, or both, including without limitation, any consequential loss by the Guarantor of its right to recover any deficiency, by way of subrogation or otherwise, from the Assignee or any other person or entity;

(e) the recovery of any judgment against the Assignee to enforce any such collateral or performance bond;

(f) the City or its assigns taking or omitting to take any of the actions which it or any such assign is required to take under the Amended Service Agreement; any failure, omission or delay on the part of the City or its assigns to enforce, assert or exercise any right, power or remedy conferred on it or its assigns by the Amended Service Agreement, except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense by the Assignee with respect to a specific obligation;

(g) the default or failure of the Guarantor to fully perform any of its obligations set forth in this Guaranty;

(h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Assignee or the City, or any order or decree of a court, trustee or receiver in any such proceeding;

(i) in addition to those circumstances described in item (h), any other circumstance which might otherwise constitute a legal or equitable discharge of a guarantor or limit the recourse of the City to the Guarantor;

(j) the existence or absence of any action to enforce the Amended Service Agreement;

(k) subject to the provisions of the Amended Service Agreement relating to Uncontrollable Circumstances, any present or future law or order of any government or of any agency thereof, purporting to reduce, amend or otherwise affect the Amended Service Agreement or to vary any terms of payment or performance under the Amended Service Agreement;

provided that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary obligation of Assignee to City from which Assignee would be discharged, released or otherwise excused under the provisions of the Amended Service Agreement.

(5) **Waivers.** Guarantor hereby waives:

(a) notice of acceptance of this Guaranty and of the creation, renewal, extension and accrual of the limited financial obligations Guaranteed hereunder;

- (b) notice that any person has relied on this Guaranty;
- (c) diligence, demand of payment and notice of default or nonpayment under this Guaranty or the Amended Service Agreement, and any and all other notices required under the Amended Service Agreement;
- (d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the Assignee;
- (e) any right to require a proceeding first against the Assignee or with respect to any collateral or lien, including, without limitation, any performance bond, or any other requirement that the City exercise any remedy or take any other action against the Assignee or any other person, or in respect of any collateral or lien, before proceeding hereunder;
- (f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any performance bond) for the obligations of the Assignee under the Amended Service Agreement; any pursuit of exhaustion of remedies against the Assignee or any other obligor or guarantor of the obligations; and any requirement of promptness or diligence on the part of any person in connection therewith;
- (g) to the extent that it lawfully may do so, any and all demands or notices of every kind and description with respect to the foregoing or which may be required to be given by any statute or rule of law, and any defense of any kind which it may now or hereafter have with respect to this Guaranty or the obligations of the Assignee under the City Contract, except any Notice to the Assignee required pursuant to the Amended Service Agreement or Applicable Law which Notice preconditions the Assignee's obligation or the defenses listed in Section (8) below.

To the extent that it may lawfully do so, the Guarantor hereby further agrees to waive, and does hereby absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does hereby covenant not to assert, any appraisal, valuation, stay, extension, redemption or similar laws, now or at any time hereafter in force, which might delay, prevent or otherwise impede the due performance or proper enforcement of this Guaranty, the Amended Service Agreement, or the obligations of the Assignee under the Amended Service Agreement, and hereby expressly agrees that the right of the City hereunder may be enforced notwithstanding any partial performance by the Assignee or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond) given by the Assignee for its performance of any of its obligations under the Amended Service Agreement.

(6) **Agreements between City and Assignee; Waivers by City.** The Guarantor agrees that, without the necessity for any additional endorsement or Guaranty by or any reservation of rights against Guarantor and without any further assent by Guarantor, by mutual agreement between the City and Assignee, the City and Assignee may, from time to time

(a) renew, modify or compromise the liability of the Assignee for or upon any of the obligations hereby Guaranteed; or

(b) consent to any amendment or change of any terms of the Amended Service Agreement;

(c) accept, release, or surrender any security (including, without limitation, any performance bond), or

(d) grant any extensions or renewals of the obligations of the Assignee under the Amended Service Agreement, and any other indulgence with respect thereto, and to effect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor hereunder.

The Guarantor further agrees that the City or any of its assigns shall have and may exercise full power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this Guaranty, to waive compliance with and any default of the Assignee under, the Amended Service Agreement.

(7) **Continuing Guaranty.** This Guaranty is a continuing Guaranty and shall continue to be effective or be reinstated, as applicable, if at any time any payment of any of the obligations hereby Guaranteed is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the Assignee or Guarantor or otherwise, all as though such payment had not been made.

(8) **Defenses.** The Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Amended Service Agreement or Applicable Law which the Assignee could assert against any party seeking to enforce the City Contract against the Assignee, except for any defenses Guarantor waives under Section (4) (a)-(k), and nothing in this Guaranty shall constitute a waiver thereof by the Guarantor.

(9) **Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the City in enforcing this Guaranty following the default on the part of the Guarantor hereunder whether the same shall be enforced by suit or otherwise.

(10) **Enforcement.** The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.

(11) **Remedies cumulative.** No remedy herein conferred upon or reserved to the City hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Guaranty and the Amended Service Agreement or hereinafter existing at law or in equity or by statute.

(12) **Severability.** The invalidity or unenforceability of anyone or more phrases, sentences or clauses in this Guaranty contained shall not effect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

(13) **Amendments.** No amendment, change, modification or termination of this Guaranty shall be made except upon the written consent of Guarantor and the City.

(14) **Term.** The obligations of the Guarantor under this Guaranty shall remain in full force and effect until (i) all monetary and performance obligations of the Assignee under the Amended Service Agreement shall have been fully performed or provided for in accordance with the Amended Service Agreement, or (ii) the discharge, release or other excuse of said obligations in accordance with the terms of the Amended Service Agreement.

(15) **No set-offs, etc.**

By Guarantor. The obligation of Guarantor under this Guaranty shall not be affected by any set-off, counterclaim, recoupment, defense or other right that Guarantor may have against the City on account of any claim of the Guarantor against the City; provided that Guarantor reserves the right to bring independent claims not arising from the Amended Service Agreement against the City so long as any such claims shall not be used to set-off or deduct from any claims which the City may have against the Guarantor arising from this Guaranty.

By Assignee. The obligation of Guarantor under this Guaranty shall be subject to any set-off, counterclaim, recoupment, defense or other right that the Assignee may assert pursuant to the Amended Service Agreement, if any, but the obligation of Guarantor under this Guaranty shall not be subject to any set-off, counterclaim, recoupment, defense or other right that the Assignee may assert independently of and outside the Amended Service Agreement.

(16) **Warranties and Representations.** The Guarantor warrants and represents that as of the date of execution of this Guaranty:

(a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its obligations and undertakings hereunder, and the execution, delivery and performance of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder action on the part of the Guarantor, (ii) have the requisite approval of all federal, State and local governing bodies having jurisdiction or authority with respect thereto, if any (iii) do not violate any judgment, order, law or regulation applicable to the Guarantor; (iv) do not conflict with or constitute a default under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its assets may be bound or affected; and (v) do not violate any provision of the Guarantor's articles or certificate of incorporation or by-laws.

(b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms; and

(c) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceedings before any court or administrative agency which would have a material adverse effect on the financial condition of the Guarantor, or the ability of the Guarantor to perform its obligations or undertakings under this Guaranty.

Guarantor acknowledges and agrees that such representations and warranties are material.

(17) **No merger; no conveyance of assets.** Guarantor agrees that during the term hereof in accordance with Section (14) Guarantor shall not consolidate with or merge into any other corporation where the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or convey, transfer or lease all or substantially all of its properties and assets to any person, firm, joint venture, corporation and other entity ("Person"), unless the City consents thereto in accordance with Section (3) above.

(18) **Counterparts.** This Guaranty may be executed in any number of counterparts, some of which may not bear the signatures of all parties hereto. Each such counterpart, when so executed and delivered, shall be deemed to be an original and all of such counterparts, taken together, shall constitute one and the same instrument; provided however, that in pleading or proving this Guaranty, it shall not be necessary to produce more than one copy (or sets of copies) bearing the signature of the Guarantor.

(19) **Notices.** All notices, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing, and shall be given in the manner and to the addresses provided in the Amended Service Agreement.

(20) **Separate suits.** Each and every payment default by Assignee under the Amended Service Agreement shall give rise to a separate cause of action under this Guaranty, and separate suits may be brought hereunder by the City or its assigns as each cause of action arises.

(21) **Headings.** The Section headings appearing herein are for convenience only and shall not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.

(22) **Entire Agreement.** This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(23) **Personal Liability.** It is understood and agreed to by the City that nothing contained herein shall create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this guaranty shall be taken against any such director, officer, employee or stockholder.

IN WITNESS WHEREOF, Guarantor has executed this instrument as of the day and year first written below.

Waste Management, Inc., a Delaware corporation

By: _____

Name & Title: _____

Dated: _____

By: _____

Name & Title: _____

Dated: _____



RECEIVED

AUG 22 2011

SOLID WASTE

WASTE MANAGEMENT

11931 Foundation Place
Suite 200
Gold River, CA 95670
(916) 294-4000
(916) 294-9735 Fax

August 16, 2011

Mr. Steve Harriman, Integrated Waste General Manager
City of Sacramento
2812 Meadowview Road
Sacramento, CA 95832

SUBJECT: Request for Information

Dear Mr. Harriman,

Per our meeting on Friday, August 12, 2011, please find the additional information that was requested as it pertains to section 4(d) of the RFI that was sent by the City to Waste Management dated July 27, 2011.

4. Financial Qualifications, Insurance and Bond Requirements

d. Provide documents that demonstrate WMI will be able to operate profitably under the terms of the Agreement without seeking adjustments to its compensation that are not currently provided in the Agreements to recover the cost of purchasing the SRTS, including but not limited to, financial projections and rate of return analysis. WMI believes it can operate profitably under the terms of the current Agreement or it would not have offered to acquire the SRTS and assume the Agreement. Article 18 of the Agreement specifically sets forth how the Service Fee under the Agreement is calculated and adjusted. Section 18.01(b) specifically provides that the Service Fee is "all inclusive" of direct costs and indirect costs including, but not limited to, capital recovery and further provides that the fee is inclusive of any principal repayment and interest expense (i.e. any debt load). WMI intends to fully comply with Article 18 of the Agreement.

Please feel free to contact me at your convenience at my direct landline (916) 294-4003 or my cellular phone at (209) 327-5017 if you have any questions. I look forward to meeting with you and your staff this Friday.

Sincerely,

Alex Oseguera
Area Vice-President
Sacramento/Nevada Area

Cc: Shawn Gutterson, VP BLT Enterprises of Sacramento
Joe Cassin, VP of Business Development, Waste Management
Marc E. Empey, Legal Counsel, Slovak, Baron & Empey
John Dangberg
Marty Hanneman
Matt Ruyak
Janeth San Pedro
Damien Charlety

Attachment 2

Policy Issues Regarding Assignment of the Amended Transfer Agreement

Managed Competition of Residential Collection Operations

As part of the Department of Utilities Audit presented to the City Council in July 2011, staff are currently preparing an analysis of a managed competition process for residential waste collection and recycling operations. The proposed assignment of the Amended Transfer Agreement may impact the City's ability to administer a competitive bid process for residential collection operations.

To illustrate, BLT has never been and never expressed an interest in becoming a franchised waste hauler in Sacramento. For the past 14 years it has therefore served the Sacramento community in a singular role as the owner and operator of SRTS. Under the current BLT ownership scenario, the City Council may direct staff to issue a bid document for a residential collection contract and all hauling companies participating in the bid process would compete on equal footing given the requirement to deliver collected waste to SRTS at the specified tip-fee in the Amended Transfer Agreement. This scenario would likely result in robust competition from numerous waste haulers.

Conversely, upon completion of the proposed assignment and sale of the facility, WMI would assume a dual role of waste hauler and owner / operator of SRTS. This scenario may provide WMI with a potential competitive advantage in a bid process because all participants in the bid process would be required to deliver City waste to SRTS, thus allowing WMI to reduce its profit margins in either the collections and / or transfer operations. This competitive advantage may discourage other waste haulers from participating in a bid process.

It should be noted that the Amended Transfer Agreement neither specifically prohibits BLT from becoming a franchised waste hauler nor prohibits its assignment to a franchised waste hauler.

Exclusive Franchise Zones for Commercial Waste

The City and County of Sacramento are the member agencies of the Sacramento Regional Solid Waste Authority (SWA). In this system, any waste hauler in good standing may apply for and receive a franchise to collect commercial waste in the SWA region. Today there are 16 SWA franchisees that compete openly for commercial accounts, and they may choose from several regional waste disposal facilities.

The primary advantages of the current SWA franchise system are customer choice of service providers and the ability of customers to negotiate rates. Among the disadvantages of the current SWA franchise system is the impact of numerous waste haulers operating throughout the region, which contributes to increased truck traffic on City streets, greenhouse gas emissions, and pavement impacts.

During the negotiations of the Amended Transfer Agreement, the City Council and staff discussed the option of an “exclusive” commercial franchise system whereby the City would be divided into several zones and a single hauler would be selected through a competitive bid process to provide commercial waste collection services in each zone. The intended results of the plan to implement exclusive franchise zones were reduced truck traffic, greenhouse gas emissions, and pavement impacts.

However, consistent with the residential privatization issue discussed above, there is a fundamental difference between BLT operating in a singular role as a transfer station owner / operator and WMI operating in a dual role as a waste hauler and a transfer station operator. The difference may provide WMI with a competitive advantage, which may discourage other waste haulers from participating in a competitive process.