



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

www.CityofSacramento.org

Meeting Date: 11/29/2011

Report Type: Staff/Discussion

Title: 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: 2011-01008

Location: Citywide

Recommendation: Adopt a Resolution authorizing the City Manager or his designee to execute the Assignment and Assumption Agreement between the City, BLT Enterprises of Sacramento, LLC and USA Waste of California, Inc. related to 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, and the Amended Agreement for Purchase of Recyclables Between the City of Sacramento and BLT Enterprises of Sacramento, LLC.

Contact: 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-Resolution

3-Exhibit A- Assignment and Assumption Agreement

City Attorney Review

Approved as to Form Via Email

Janeth San Pedro 11/23/11 2:24 p.m.

Approvals/Acknowledgements

Department Director or Designee: Dave Brent Via Email 11/23/11 2:34 p.m.



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 of Sacramento, LLC (“BLT”). BLT may assign the Amended Service Agreement and the Amended Recyclables Agreement with the consent of the City Council.

Policy Considerations: At the September 20, 2011 City Council meeting, Council continued the item and directed staff to request additional information and assurances from BLT and WMI on the following issues:

Financial Information: The Council requested USA Waste to provide financial information or analysis, including but not limited to pro forma, to demonstrate that it can earn a sufficient profit while meeting the Performance Obligations without seeking additional rate adjustments beyond those provided for in the amended agreements. On October 27, 2011, City staff reviewed confidential financial information presented on a video screen and in handouts that were collected at the end of the meeting. Based upon the information presented to City staff, it appears USA Waste can generate a sufficient financial return while meeting the Performance Obligations of the amended agreements.

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. The Council expressed concern that one of the fundamental differences between BLT and USA Waste is landfill ownership. This difference may create an economic incentive for USA Waste to terminate its disposal agreement with the County of Sacramento, which it has the right to do under the Kiefer Landfill agreement with the County, and take steps to deliver waste to a WMI company-owned landfill. In the September 30th letter, USA Waste indicated its willingness to provide the City the right to consent to any proposed termination of the Kiefer Landfill agreement. The Assignment and Assumption Agreement (“Assignment”) assures that the City will not lose the benefits of in-region waste disposal.

In addition, the Assignment includes the following provisions:

Customer Rate Stabilization: After lengthy discussions, BLT has agreed to pay the City a lump sum of \$2.1 million. These funds will reimburse the City for costs incurred in considering the assignment request (\$100,000) and will be deposited in the Solid Waste Enterprise Reserves Fund for the sole purpose of stabilizing and mitigating future rate increases for residential solid waste customers associated with in-region waste disposal. This is projected to alleviate the need for rate increase associated with waste disposal at the Kiefer Landfill for an estimated two years.

Greenhouse Gas Reductions: The primary objective of the execution of the Amended Service Agreement in November 2010 was to reduce greenhouse gas emissions related to the transport of waste to Lockwood landfill in Nevada. This objective is met with the Assignment confirming the commitment of USA Waste to comply with AB 32.

Early Termination of the Lockwood Disposal Agreement: The Lockwood disposal agreement requires a two-year notice to terminate. BLT issued the notice of termination in December 2010. USA Waste has agreed that with 60 days notice, the City may request termination of the disposal contract for the Lockwood facility prior to the end of the two-year termination notice.

Environmental Considerations: The Assignment will not change the operations nor 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 performance obligations under the agreements.

In addition, the proposed Assignment provides additional guarantees regarding greenhouse gas reductions and compliance with AB 32, City's prior consent to termination of the Kiefer landfill agreement, and funds to stabilize monthly rates for residential solid waste customers.

Financial Considerations: Not applicable.

Emerging Small Business Development (ESBD): Not Applicable



RESOLUTION NO. 2011-XXXX

Adopted by the Sacramento City Council

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

BACKGROUND

- A. City and BLT Enterprises of Sacramento, 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 its assets, including the Amended Service Agreement and the Amended Recyclables Agreement, and operations to USA Waste of California, Inc. (“USA Waste”), a subsidiary of Waste Management, Inc .
- 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.

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

Section 1. The City Manager or his designee is authorized to execute the Assignment and Assumption Agreement between the City, BLT Enterprises of Sacramento, LLC and USA Waste of California, Inc. related to 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 and the Amended Agreement for Purchase of Recyclables Between the City of Sacramento and BLT Enterprises of Sacramento, LLC, attached hereto as Exhibit A.

Exhibit A: Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (“Assignment”) is made as of this ___ day of December, 2011, by and between the City of Sacramento, a municipal corporation (“City”), BLT Enterprises of Sacramento, LLC, a California limited liability company (“Assignor”), and USA Waste of California, Inc., a Delaware corporation (“Assignee”). The City, Assignor, 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 Assignor 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. Assignor intends to sell its assets, including the Amended Service Agreement and Amended Recyclables Agreement, and operations to Assignee pursuant to a Purchase and Sale Agreement between Assignor and Assignee, dated May 5, 2011 (the “Acquisition”).
- 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. By letter dated November 14, 2011, Assignor’s counsel alleged certain claims by Assignor against the City arising out of Assignor’s request for consent to the assignment of the Amended Service Agreement and Amended Recyclables Agreement from Assignor to Assignee, and the City’s conduct to date in response to said request (collectively, the “BLT Claim”). City denies the BLT Claim. Separately, Assignee has alleged that the City has potential liability to it arising out of Assignor’s request for consent to the assignment of the Amended Service Agreement and Amended Recyclables Agreement from Assignor to Assignee (the “USA Claim”). The BLT Claim and the USA Claim are hereinafter collectively referred to as the “BLT-USA Claim”.
- E. Assignor has requested that the City consent to the assignment of the Amended Service Agreement and the Amended Recyclables Agreement from Assignor 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 Assignor 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.** The County of Sacramento Board of Supervisors approval of the consent to the assignment of the Agreement for Reduced Tipping Fees at Kiefer Landfill, dated December 10, 2010, from Assignor to Assignee (the "Kiefer Landfill Agreement").
 - e. **Direct Costs.** Assignor shall have paid the City One Hundred Thousand Dollars (\$100,000) for the Direct Costs (as defined in the Amended Services Agreement) incurred in connection with considering the request for assignments. Payment of the Direct Costs is not subject to or conditioned upon the Closing (as defined in Section 2 below) occurring.
 - f. **Assignment Consideration.** Assignor shall have paid the City the "Assignment Consideration" set forth in Section 7 below.
2. **Early Termination of Disposal Agreements.** Assignor and Refuse, Inc. have entered into that certain Solid Waste Disposal Agreement effective as of March 22, 1999 (the "Disposal Agreement") and that certain Disposal Facility Subcontract dated as of March 29, 1999 (the "Disposal Subcontract"). Upon consummation of the Acquisition (the "Closing"), Assignee (as successor in interest to Assignor and as an affiliate of Refuse, Inc.) agrees to cause the early termination of the Disposal Agreement and the Disposal Subcontract not later than sixty (60) days after receiving written notice from the City requesting such termination and upon such terminations shall recognize Kiefer Landfill as the designated Primary Disposal Facility under the Amended Service Agreement.
3. **City Consent to Termination of Kiefer Landfill Agreement.** Pursuant to Section 17 A and B of the Kiefer Landfill Agreement, Assignor is provided certain early termination rights (the "Early Termination Rights") upon notice and/or payment to the County.

Assignee (as successor in interest to Assignor) agrees that it will not exercise its Early Termination Rights without the prior written consent of the City.

4. **AB 32 Compliance.** In connection with the Amended Service Agreement and the Amended Recyclables Agreement, Assignee agrees to comply with the requirements of the Global Warming Solutions Act of 2006, California Health and Safety Code Sections 38500 *et seq.*, commonly referred to as AB 32.
5. **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.
6. **Assumption by Assignee.** Subject to the Closing having occurred, Assignee hereby unconditionally and irrevocably assumes all of the duties, obligations, liabilities, and conditions owed by Assignor 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, from and after the Closing. Assignor confirms that pursuant to Section 18.02 b of the Amended Service Agreement, it shall not seek any adjustment to the Contractor's Service Fee Component for any financing costs associated with the Acquisition, if any, including capital recovery, principal repayment or interest expense.
7. **Assignment Consideration.** At the request of Assignor and Assignee and in consideration for facilitating the expeditious approval of the City's consent to the assignment of the Amended Service Agreement and the Amended Recyclables Agreement in light of the impending date for the close of escrow for the Acquisition, Assignor shall pay the City the total sum of Two Million Dollars (\$2,000,000) (the "Assignment Consideration") at the Closing. The Assignment Consideration will be deposited in the Solid Waste Reserves Fund for the sole purpose of stabilizing and mitigating future rate increases for residential solid waste customers associated with in-region waste disposal, subject to applicable law. If the Closing does not occur for any reason, then the Assignment Consideration shall not be due or payable.
8. **Releases.** In consideration for the Parties entering into this Assignment, the Parties agree to the following:
 - a. Subject to the Closing having occurred and except as provided in Section 8(b) below, City hereby releases and discharges (a) Assignor from any and all obligations under the Amended Service Agreement and the Amended Recyclables Agreement accruing from and after the Closing, and (b) BLT Enterprises, a California corporation ("BLT") from any and all obligations under the Guaranty Agreement (referenced in Exhibit 16.05 of the Amended Service Agreement) executed by BLT in favor of the City.

- b. The City hereby completely releases, absolves and forever discharges Assignor and BLT, each of their respective affiliated and related entities and each of their respective agents, representatives, partners, members, managers, shareholders, officers, directors, servants, employees, attorneys, predecessors, successors in interest, affiliates, trustees, heirs, spouses, parents, assignors, assignees, and any person claiming by or through them, jointly and severally, from all actions, causes of actions, suits, claims, demands, liens, interests, debts, contracts, obligations, liabilities, damages, losses, costs and expenses, including, attorneys' fees and costs of any nature whatsoever, at law or in equity, whether or not such claims are presently known or unknown (the "Claims"), from the beginning of time through the date of the Closing, except for (i) payment of any amounts payable by Assignor under the Amended Service Agreement and/or Amended Recyclables Agreement for the period prior to the Closing, (ii) the defense and indemnification obligations under Section 16.02a of the Amended Service Agreement and Sections 12A and B of the Amended Recyclables Agreements solely with respect to third party claims accruing prior to the Closing, and (iii) the obligations under Sections 16.02b and 16.02c of the Amended Service Agreement with respect to matters occurring prior to the Closing.
- c. The City and Assignee hereby completely release, absolve and forever discharge each other, each other's affiliated and related entities, and each of their respective agents, representatives, partners, members, managers, shareholders, officers, directors, servants, employees, attorneys, predecessors, successors in interest, affiliates, trustees, heirs, spouses, parents, assignors, assignees, and any person claiming by or through them, jointly and severally, from all Claims from the beginning of time through the date of the Closing, except for the obligations under that certain Confidentiality Agreement between City and Assignee dated October __, 2011.
- d. Assignor hereby completely releases, absolves and forever discharges the City and its City Council members, officers, officials, employees, contractors, subcontractors, consultants, agents, assigns and volunteers, and any person claiming by or through them, jointly and severally, from all Claims from the beginning of time through the date of the Closing, except for (i) payment of any amounts payable by City to Assignor under Article 18 of the Amended Service Agreement and Section K of Exhibit A and Exhibit A-1 of the Amended Recyclables Agreement for the period prior to the Closing, and (ii) the indemnification obligation under Section 16.03a of the Amended Service Agreement solely with respect to third party claims accruing prior to the Closing.
- e. The matters released in subsection a, b, c and d of this Section 8 are collectively referred to herein as the "Released Matters," except Released Matters does not include the Parties' rights and obligations under this Assignment.
- f. It is the intention of the Parties hereto that the foregoing releases shall be effective as a bar to all Claims as to Released Matters, and shall constitute a full and final accord and satisfaction and mutual release of the Released Matters, of whatever character,

nature and kind, known or unknown, suspected or unsuspected, hereinabove specified to be so barred; in furtherance of this intention, the Parties hereto expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California Civil Code, or any similar law or any other jurisdiction, which are as follows:

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

- g. The Parties hereto hereby acknowledge that the foregoing waiver of the provisions of Section 1542 of the California Civil Code was separately bargained for. The Parties hereto expressly consent that these releases shall be given full force and effect in accordance with each and all of its express terms and provisions, including those terms and provisions relating to unknown and unsuspected Claims regarding the Released Matters, if any, to the same effect as those terms and provisions relating to the Claims of Released Matters hereinabove specified.
- h. The Parties hereto, for themselves and all others on whose behalf they release the Claims of Released Matters, hereby acknowledge that they, or any of them, may hereafter discover facts different or in addition to those they, or any of them, now know or believe to be true with respect to the releases and waivers granted by this Assignment, and agree that the release and waivers granted by this Assignment shall be and remain effective in all respects notwithstanding such different or additional facts. It is the express intention of the Parties hereby to fully, finally and forever settle all of the Claims relating to the Released Matters. In furtherance of such intention, the releases hereby given shall be and remain in effect as full and complete releases of the Claims of Released Matters notwithstanding the discovery or existence of additional claims or facts relative thereto.
- i. The Parties represent and warrant that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand or cause of action relating to the Released Matters and that no promise, inducement or agreement not herein expressed has been made..
- j. The terms and provisions of this Section 8 are subject to and conditioned upon the Closing occurring and the satisfaction of the conditions in Section 1(a)-1(f).
- k. If City executes this Assignment and returns an executed copy of the Assignment to Assignor and Assignee prior to the end of business day December 2, 2011, and if the Closing does not occur for any reason that is beyond the City's control or not the City's fault, then Assignor and Assignee shall completely release, absolve, and forever discharge the City from all Claims from the beginning of time, related to or

arising out of the BLT-USA Claim. This section shall survive the termination of this Assignment.

1. The Parties agree and acknowledge that this Assignment shall not be deemed or treated as an admission of liability by City, Assignor or Assignee.
9. **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. Each party executing the Assignment represents and warrants that it has full power and authority to execute and deliver this Agreement and to perform their obligations hereunder and that as of the date of this Assignment, this Assignment, the Amended Service Agreement, and the Amended Recyclables Agreement each constitutes the valid and legally binding obligation of the Parties, enforceable in accordance with their terms and conditions.
10. **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:

City Manager
915 I Street, Fifth Floor
Sacramento, California 95814

Notice to Assignor:

BLT Enterprises of Sacramento, LLC
501 Spectrum Circle
Oxnard, California 93030
Attn: General Counsel

Notice to Assignee:

7025 North Scottsdale Road, Suite 200
Scottsdale, Arizona 85253
Attn: General Counsel

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.

11. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of California.

12. **Amendments.** No alteration, modification, or variation of the terms of this Assignment shall be valid unless made in writing and executed by all Parties.
13. **Attorneys' Fees.** If any action or legal proceeding is instituted by any Party hereto to enforce the terms of this Assignment, the prevailing party therein shall recover his or her reasonable attorneys' fees in connection with such action or proceeding.
14. **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.
15. **Termination.** If the Closing does not occur on or before February 28, 2012, the City Manager in his sole discretion may terminate this Assignment upon thirty (30) days written notice to Assignor and Assignee; provided, however, that such termination is not effective if the Closing occurs within 30 days after the date of such notice of termination.
16. **Entire Agreement.** This Assignment contains the entire agreement by and between the Parties with respect to the transactions contemplated hereby, and supersedes and replaces whatever oral or written understanding they may have had prior to the execution of this Assignment.

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

BLT Enterprises of Sacramento, LLC
("Assignor")

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
TO
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 appraisalment, 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 any one or more phrases, sentences or clauses in this Guaranty contained shall not affect 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 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: _____