

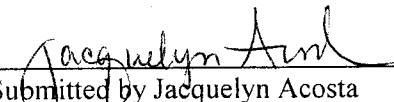


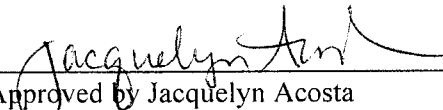
# City of Carson

## Report to Mayor and City Council

December 17, 2013  
Unfinished Business

**SUBJECT: CONSIDERATION OF APPROVAL OF AN EXTENSION TO THE SOLID WASTE AND GREEN WASTE PROCESSING, RECYCLING, AND TRANSPORTATION AGREEMENT FOR THE CARSON TRANSFER STATION**

  
Submitted by Jacquelyn Acosta  
Director of Administrative Services

  
Approved by Jacquelyn Acosta  
Acting City Manager

### **I. SUMMARY**

On December 27, 2013, the 10-year agreement between the City of Carson (City) and Waste Management, Inc. (Waste Management) for solid waste and green waste processing, recycling, and transportation, at the Carson Transfer Station will expire. Staff has held meetings with Waste Management to come up with mutually acceptable terms to govern a new Agreement and to incorporate necessary facility improvements to enhance compatibility.

### **II. RECOMMENDATION**

TAKE the following actions:

1. APPROVE the Third Amendment (Exhibit No. 1) to extend the Solid Waste and Green Waste Processing, Recycling, and Transportation Agreement to June 30, 2014.
2. AUTHORIZE the Mayor to execute a Third Extension of the Agreement, following approval, as to form, by the City Attorney.
3. APPROVE an increase in the host fee to \$.52 cents per ton, adjusted annually, and based on the Consumers Price Index-U-All Urban Consumers, 12-month percent change for the Los Angeles-Riverside-Orange area (CPI).

### **III. ALTERNATIVES**

TAKE one of the following actions:

1. APPROVE an extension of the Agreement for a longer or shorter term.
2. TAKE another action the City Council deems appropriate.

### **IV. BACKGROUND**

On July 15, 2003, the City Council approved a 10-year agreement (Exhibit No. 2) with Waste Management, Inc., dba USA Waste of California, Inc., to allow processing, recycling and transportation of solid waste and green waste at the Carson Transfer Station located at 321 W. Francisco Street (Exhibit No. 3).

On August 5, 2003, the City Council adopted Ordinance No. 03-1292 (Exhibit No. 5), amending CMC Section 63153, that suspended the payment of an annual permit fee equal to two (2) percent of the gross receipts arising from the operation

18

of the transfer station. The host fee replaced the gross receipt formula which became the basis for remitting revenues to the City from thereon.

The transfer station, owned and operated by Waste Management, provides revenue to the City through a host fee imposed on solid waste tonnage processed at the transfer station. The host fee is a charge to the facility owner for the right to operate the facility, and helps to mitigate impacts on city streets and roads associated with additional truck traffic generated from the transfer facility.

The host fee is \$.40 per ton for the first 839,000 tons, and \$.10 per ton thereafter. At the time the host fee was negotiated in 2003, no CPI adjustment or escalator clause was included in the Agreement. During the last three (3) years, Waste Management has processed an average tonnage of 396,257 per year, which generated average annual revenues of \$158,502.80 for the City.

On June 18, 2013, the City Council approved the First Amendment to the Agreement (Exhibit No. 6), granting a 60-day extension, to allow staff additional time to consider alternatives, including but not limited to, consideration of relocation options.

On September 17, 2013, the City Council approved the Second Amendment to the Agreement (Exhibit No. 7), providing for a 90-day extension, to allow staff time to obtain information, analyze alternatives, negotiate with Waste Management, and to complete a survey of nearby transfer facility host fees. The 90-day period ends on December 27, 2013.

Attached is the Transfer Station Survey which provides a comparison of host fees from nearby transfer stations (Exhibit No. 8). The survey demonstrates that there are a wide range of factors used in determining a host fee. Staff believes there are additional factors that should still be evaluated in the next review of the Waste Management agreement. However, at this point, staff has already determined that a CPI adjustment to the current \$.40 per ton is warranted. Per staff calculation, Waste Management should be paying the CPI adjusted rate of \$.52 per ton. Waste Management agrees to this adjustment and will commence implementation of this new rate beginning December 28, 2013.

Staff has discussed the current operations of the transfer facility to determine appropriate facility improvements to improve overall appearance, to reduce odors and to enhance compatibility with the surrounding area. As of the writing of this report, Waste Management is finalizing the scope of work for these facility improvements. Staff will provide the final scope of work to the City Council for consideration as an exhibit to the Third Amendment of the Agreement. The improvements will include upgrades to landscaping, painting of the building, utilization of more effective odor neutralizers and changes to operation standards.

Staff recommends the extension of the contract through June 30, 2014. The most recent meetings with Waste Management have suggested the need for a more

comprehensive review to determine how best to effectuate and balance current agreements and the interest to seek a relocation site for the transfer facility. Negotiations with Waste Management will continue over the next several months to determine other potential modifications to the host fee agreement. Staff is also continuing discussions with Waste Management to determine the feasibility to relocate the transfer facility and potential timeline to identify a suitable property and obtain necessary entitlements.

**V. FISCAL IMPACT**

An increase in the host fee to \$.52 per ton would generate approximately \$206,574.00 in annual revenues to the City which translates to a 30% increase compared to the current rate of \$.40 per ton.

**VI. EXHIBITS**

1. Third Amendment to Agreement. (pgs. 4 - 6).
2. Original Solid Waste and Green Waste Processing Recycling and, Transportation Agreement. (pgs. 7 - 17).
3. Carson Transfer Station Location Map. (pg. 18).
4. Minutes, July 15, 2003, Item No. 10. (pg. 19).
5. Minutes, August 5, 2003, Item No. 24. (pg. 20).
6. Minutes, June 18, 2013, Item No. 16. (pg. 21).
7. Minutes, September 17, 2013, Item No. 17. (pg. 22 - 23).
8. Transfer Station Survey. (pg. 24).

Prepared by: Boris Sztorch, Revenue Manager

TC:Rev06-19-2013

Reviewed by:

|                         |                    |
|-------------------------|--------------------|
| City Clerk              | City Treasurer     |
| Administrative Services | Public Works       |
| Community Development   | Community Services |

**Action taken by City Council**

Date \_\_\_\_\_ Action \_\_\_\_\_

**THIRD AMENDMENT TO SOLID WASTE AND GREEN WASTE  
PROCESSING, RECYCLING, AND  
TRANSPORTATION AGREEMENT**

This THIRD AMENDMENT TO SOLID WASTE AND GREEN WASTE PROCESSING, RECYCLING, AND TRANSPORTATION AGREEMENT ("Third Amendment") is made and entered into this \_\_\_th day of December, 2013, by and between USA Waste of California, Inc., a Delaware corporation ("Company") and the City of Carson ("City").

A. The Parties entered into that certain agreement entitled "Solid Waste and Green Waste Processing, Recycling, and Transportation Agreement" dated July 15, 2003 ("Transfer Station Agreement"); and

B. The term of the Transfer Station Agreement was extended to September 28, 2013 through a First Amendment to Transfer Station Agreement, and to December 27, 2013 through a Second Amendment to Transfer Station Agreement.

C. The Parties desire to further extend the term of the Transfer Station Agreement in accordance with the terms and conditions set forth in this Third Amendment.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Host Fee.** Section 6.1 of the Transfer Station Agreement is superseded in its entirety and replaced with the following:

"6.1 Beginning on the Effective Date of the Third Amendment, and during the term of this Agreement, and conditioned upon City's strict compliance with its obligations under Section 2, Company agrees to pay City a Host Fee for each ton of solid waste delivered to the Carson Transfer Station/MRF, regardless of the point of generation of such solid waste. The amount of the Host Fee is \$0.52 per ton."

2. **Term of Agreement.** Section 9 of the Transfer Station Agreement is superseded in its entirety and replaced with the following:

"9. **TERM OF AGREEMENT.** The term of this Agreement commences on December 28, 2013 and expires on June 30, 2014."

**"9. TERM OF AGREEMENT.** The term of this Agreement commences on December 28, 2013 and expires on June 30, 2014."

**3. Facility Improvements.** New Section 2.4 is added to the Transfer Station Agreement as follows:

"2.4 Beginning on the Effective Date of the Third Amendment and during the term of this Agreement, Company shall undertake the improvements to the transfer station facility included in the scope of work attached hereto as Exhibit A.

**4. Good Faith Negotiations.** The parties agree that, during the term of this Agreement, they will engage in mutual and good faith negotiations regarding the possible early relocation of the Transfer Station to a more environmentally appropriate location.

**5. Other Provisions.** All terms and conditions of the Transfer Station Agreement remain in affect, except as modified by this First Amendment.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

CITY OF CARSON

ATTEST:

By: \_\_\_\_\_

JAMES DEAR, MAYOR

CITY CLERK

Date: \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

15

EXHIBIT A

SCOPE OF WORK FOR FACILITY IMPROVEMENTS



**SOLID WASTE AND GREEN WASTE  
PROCESSING, RECYCLING, AND  
TRANSPORTATION AGREEMENT**

This SOLID WASTE AND GREEN WASTE PROCESSING, RECYCLING, AND TRANSPORTATION AGREEMENT ("Agreement") is made and entered into this 15th day of July, 2003, by and between USA Waste of California, Inc., a Delaware corporation ("Company") and the City of Carson ("City").

**RECITALS**

A. Company owns and operates the Carson Transfer Station located in Carson, California, which is permitted to receive, process, and arrange for disposal of solid waste and green waste.

B. City has awarded residential and commercial franchise agreements for the collection of solid waste and green waste generated within the City, and desires to arrange for the use of a facility that can provide processing, recycling, and transportation for certain solid waste and all green waste collected in the City.

C. Company is willing to provide to City the requested services, under the terms and conditions set forth herein.

**AGREEMENT**

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings. Unless provided otherwise, all terms used in this Agreement shall have the same meaning as set forth in the Residential Agreement and the Commercial Agreements.

1.1 "Agreement" means this Solid Waste and Green Waste Processing, Recycling, and Transportation Agreement between the City and Company, as it may be amended in writing from time to time.

1.2 "Commercial Agreements" means the agreements made between the City and one or more entities for the non-exclusive collection of commercial and industrial solid waste generated in the City.

1.3 "Effective Date" means the date upon which the last of the following conditions precedent has been satisfied:

1.3.1 The repeal or suspension of the annual permit fee imposed by Section 63153 of the Carson Municipal Code;

1.3.2 The execution of the Residential Agreement as defined in Section 1.7; and

1.3.3 The execution of the Commercial Agreement dated July 15, 2003, between the City and Company.

1.4 "Excluded Waste" means solid waste that: (a) is prohibited from receipt at the Carson Transfer Station/MRF or at a permitted nonhazardous solid waste landfill by state, federal, or local law, regulation, rule, code, ordinance, order, license, permit, or permit condition; (b) is or contains hazardous waste; (c) would, as a result of or upon disposal, be a violation of local, state, or federal law, regulation or ordinance, including land use restrictions; or (d) would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose Company to potential liability.

1.5 "Franchise Holders" means the entities authorized to collect, or arrange for the collection of, solid waste generated within the City under the Residential Agreement or the Commercial Agreements.

1.6 "Permit Fee" means the annual payments required to be paid by operators of waste disposal sites pursuant to Article VI, Chapter 3, Part 5, Section 63153 of the Carson Municipal Code.

1.7 "Residential Agreement" means the agreement dated July 15, 2003, between the City and Company for the exclusive collection of residential solid waste generated in the City.

## **2. DELIVERY, PROCESSING AND DISPOSAL OF SOLID WASTE.**

2.1 City agrees to deliver, or cause to be delivered, all solid waste (except for single-stream recyclables, source-separated recyclables, and special waste, but including construction and demolition debris) and green waste collected within the City by the Franchise Holders. City also agrees to use all reasonable efforts to deliver, or to cause the delivery of, all other solid waste (except for single-stream recyclables, source separated recyclables, and special waste, but including construction and demolition debris) and green waste generated within the City. City shall take all necessary actions, including but not limited to enacting ordinances



entering into enforceable agreements, or filing legal actions, to carry out its obligations under this Section.

2.2 Subject to Section 5, Company agrees to accept, process, recycle, transport or dispose of all solid waste and green waste generated in the City and delivered to the Carson Transfer Station/MRF. Company shall furnish all labor, supervision, equipment, materials, supplies, and other items necessary to perform the services required.

2.3 Company will use all reasonable efforts to divert from disposal all green waste delivered to the Carson Transfer Station/MRF. The Company will also use all reasonable efforts to provide end uses for green waste that maximize diversion credits for the City in accordance with regulations established by the California Integrated Waste Management Board. In addition, where appropriate, Company may separate recyclable materials contained in loads of solid waste delivered to the Carson Transfer Station/MRF for processing and recycling.

### **3. SOLID WASTE RATE; ADJUSTMENT.**

3.1 Company shall charge the Franchise Holders the rate of \$39.00 per ton for solid waste generated within the City and delivered to the Carson Transfer Station/MRF. The Company shall charge other persons delivering solid waste generated within the City to the Carson Transfer Station/MRF the rate determined by Company, not to exceed the posted gate rate for solid waste applicable to all customers. The rates set forth above (collectively, the "Solid Waste Rates") do not include federal, state, and local taxes, fees, and assessments levied on or applicable to the processing, transportation, or disposal of solid waste as of the Effective Date, including but not limited to the Host Fee described below in Section 6. Any such taxes, charges, or fees will be added to the Solid Waste Rates set forth above.

3.2 Beginning July 1, 2004, the Solid Waste Rate charged to Franchise Holders may be adjusted by Company each July 1 during the term of the Agreement to reflect the percentage increase or decrease since the Effective Date, or the date of any prior adjustment, as the case may be, in the average tipping fee per ton charged by the Los Angeles County Landfill at Puente Hills and the DART Materials Recovery Facility in Downey. The average tipping fee is the sum of the tipping fees at Puente Hills and DART, and then divided by two (2). For purposes of the first such adjustment to occur on July 1, 2004, the initial tipping fees utilized in the computation shall be \$18.13 per ton at Puente Hills and \$34.00 per ton at DART, or an average tipping fee of \$26.06. The tipping fee used for this calculation shall exclude all federal, state, and local taxes, fees, and assessments levied on or applicable to the processing, transportation, or disposal of solid waste at Puente Hills or DART. The City Manager or his designee shall review the information submitted by Company and approve the rate adjustment if the information submitted is determined to be accurate. As an alternative, the City Manager may refer the proposed adjustment to the City Council for approval, in its reasonable judgment.

3.3 The Company may from time to time request an adjustment to the Solid Waste Rate charged to Franchise Holders, based upon extraordinary changes in the cost of fuel.

The Company may request only one such adjustment during any calendar year. For each request, the Company must prepare a schedule documenting the extraordinary costs. The request shall be prepared in a form acceptable to the City with support for all assumptions made by the Company determining the amount of the proposed adjustment. The City Manager shall review the Company's request and, in the City Manager's reasonable judgment, make the final determination on the appropriate amount of the adjustment, if any. As an alternative, the City Manager may refer the proposed adjustment to the City Council for approval, in its reasonable judgment.

#### 4. GREEN WASTE RATE; ADJUSTMENT.

4.1 Company shall charge the Franchise Holders the rate of \$34.00 per ton for all green waste generated within the City and delivered to the Carson Transfer Station/MRF. The Company shall charge other persons delivering green waste generated within the City to the Carson Transfer Station/MRF the rate determined by Company, not to exceed the posted gate rate for green waste applicable to all customers. The rates set forth above (collectively, the "Green Waste Rates") do not include federal, state, and local taxes, fees, and assessments levied on or applicable to the processing, recycling, or transportation of green waste as of the Effective Date. Any such taxes, charges, or fees will be added to the Green Waste Rates.

4.2 Beginning July 1, 2004, the Green Waste Rate charged to Franchise Holders may be adjusted by Company each July 1 during the term of the Agreement to reflect the percentage increase or decrease in the Consumer Price Index ("CPI"), All Urban Consumers, for the Los Angeles-Anaheim-Riverside Area, as published by the United States Department of Labor, Bureau of Labor Statistics. The Company shall submit to the City, each April, beginning in April 2004, information in support of an annual adjustment. This information will include changes in the CPI that have occurred during the preceding calendar year. The City Manager or his designee shall review the information submitted by Company and approve the rate adjustment if the information submitted is determined to be accurate. As an alternative, the City Manager may refer the proposed adjustment to the City Council for approval, in its reasonable judgment.

4.3 The Company may from time to time request an adjustment to the Green Waste Rate charged to Franchise Holders, based upon extraordinary changes in the cost of fuel. The Company may request only one such adjustment during any calendar year. For each request, the Company must prepare a schedule documenting the extraordinary costs. The request shall be prepared in a form acceptable to the City with support for all assumptions made by the Company determining the amount of the proposed adjustment. The City Manager or his designee shall review the Company's request and, in the City Manager's reasonable judgment, make the final determination on the appropriate amount of the adjustment, if any. As an alternative, the City Manager may refer the proposed adjustment to the City Council for approval, in its reasonable judgment.

10

## **5. PAYMENT.**

5.1 Company shall invoice the Franchise Holders on a monthly basis for the actual tons of solid waste and green waste generated in the City and delivered to the Carson Transfer Station/MRF during the preceding month. The Franchise Holders shall pay the full amount of each invoice to Company within thirty (30) days of receipt of each invoice. The Franchise Holders shall pay a late fee and service charge on all past due amounts accruing from the date of the invoice at a rate of eighteen percent (18%) per annum or, if less, the maximum rate allowed by law.

5.2 Company may impose additional or different payment terms and conditions on the Franchise Holders, and may establish payment terms for other persons delivering solid waste or green waste generated in the City to the Carson Transfer Station/MRF, in its reasonable judgment, based on factors including but not limited to the tonnage of solid waste or green waste delivered, payment history, and credit-worthiness, which may include a requirement for payment in full in good tender at the time of delivery.

## **6. HOST FEE.**

6.1 Beginning on the Effective Date, and during the term of this Agreement, and conditioned upon City's strict compliance with its obligations under Section 2, Company agrees to pay City a Host Fee for each ton of solid waste delivered to the Carson Transfer Station/MRF, regardless of the point of generation of such solid waste. The amount of the Host Fee is based on the number of tons of solid waste delivered each calendar year, as follows: \$0.40 per ton for the first 839,000 tons of solid waste delivered each calendar year, and then \$0.10 per ton for all additional tons of solid waste delivered during that same calendar year.

6.2 Company shall remit all applicable Host Fee payments on or before the thirtieth day of the month following the end of each calendar quarter. If the Host Fee is not paid on or before the thirtieth day of the month following the end of the calendar quarter, the Company must pay to the City a late fee in an amount equal to five percent (5%) of the amount owing for that quarter. The Company must pay an additional 10 percent (10%) late fee on any unpaid balance for each additional thirty-day period during which the Host Fee remains unpaid. The Company agrees that the late fees required by this Section 6.2 reasonably reflect the cost to the City to monitor and to process all delinquency calculations and notices.

6.3 The City has the right to inspect and review specific documents or records that are required to verify the accuracy and correctness of Host Fee payments.

6.4 Notwithstanding any provision herein to the contrary, Company is not required to pay the Host Fee with respect to any periods of time for which it is required to pay the permit fee that is referenced above in Section 1.6.

## **7. EXCLUDED WASTE; INSPECTION; REJECTION.**

7.1 Company has the right to inspect, analyze or test any solid waste or green waste generated in the City and delivered to the Carson Transfer Station/MRF under this Agreement, including the right to reject, refuse, or revoke acceptance of any solid waste or green waste if, in the opinion of Company, the solid waste or green waste delivered fails to conform with the terms of this Agreement, including the delivery of Excluded Waste. In the event Company rejects or revokes acceptance of solid waste or green waste delivered to the Carson Transfer Station/MRF, the person delivering such material shall be given notice, and shall immediately remove or arrange to have the rejected solid waste or green waste removed. If the rejected solid waste or green waste is not removed within one business day from receipt of notice, Company shall have the right and authority to handle and dispose of the rejected solid waste or green waste. The person delivering the rejected solid waste or green waste shall pay and/or reimburse Company for any and all costs, damages, or fines incurred as a result of or relating to the tender or delivery of the rejected solid waste or green waste or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling, and disposal of the rejected solid waste or green waste. Title to, ownership of, and liability for any rejected solid waste or green waste shall at all times remain with the person delivering it.

7.2 Company may establish reasonable terms, conditions, and procedures to assure compliance with the requirements of Section 7.1 with respect to solid waste or green waste generated in the City and delivered to the Carson Transfer Station/MRF by persons other than the Franchise Holders.

8. **COMPLIANCE WITH LAWS.** Company shall fully comply with all federal, state, and local statutes, regulations, permits, approvals and restrictions, any legal entitlement, and any other rule, regulation, requirement, guideline, permit, action, determination or order of any governmental body having jurisdiction that applies to the processing, transportation, or disposal of solid waste or green waste.

9. **TERM OF AGREEMENT.** The term of this Agreement commences on the Effective Date and expires on June 30, 2013, with an extension authorized up to a maximum of five (5) additional years upon the mutual agreement of the parties and as authorized by vote of the City Council.

10. **TIME OF DELIVERY.** The Franchise Holders, and all other persons delivering solid waste or green waste that is subject to this Agreement, may deliver such solid waste or green waste to the Carson Transfer Station/MRF during normal business hours of operation established from time to time by Company.

## 11. UNCONTROLLABLE CIRCUMSTANCES.

11.1 The parties shall be excused from performing their respective obligations under this Agreement if that performance is prevented by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), strikes or labor unrest, and other similar catastrophic events that are beyond the control of and not the fault of the party claiming excuse from performance.

11.2 The party claiming excuse from performance must, within two days after that party has notice of such cause, give the other party notice of the facts constituting such cause and assert its claim to excuse under this section.

11.3 The interruption or discontinuance of the Company's services caused by one or more of the events listed above shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations for any of the causes listed in this section for a period of seven days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving 10 days' notice.

12. **TERMINATION; DEFAULT.** Either party shall have the right to terminate this Agreement upon giving the other party written notice if the other party (i) fails to make any payment required hereunder within ten (10) days after receiving notice of nonpayment from the non-defaulting Party, or (ii) fails to comply with any federal, state, or local laws, rules, orders or ordinances, or regulations that pertain to the collection, handling, storage, transportation, processing and/or disposal of the acceptable waste, or (iii) defaults in the performance of any other material obligation of the defaulting party under this Agreement and fails to cure such default within thirty (30) days after receiving written notice thereof from the non-defaulting party; provided that, with regard to defaults identified in clauses (ii) or (iii) above, in the event the defaulting party shows cause why it should be entitled to reasonable additional time to cure the default, the non-defaulting party shall allow such additional time as may be required to meet the defaulting party's obligations under this Agreement.

## 13. INDEMNITY

13.1 The Company shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, "Indemnitees"), from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (a) the negligence or willful misconduct of the Company, its officers, employees, agents, subsidiaries or subcontractors in performing services under this Agreement; (b) the failure of the Company, its officers,

employees, agents, subsidiaries or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the environmental laws), ordinances and regulations, or applicable permits and licenses; or (c) the acts of the Company, its officers, employees, agents, subsidiaries or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the environmental laws). The foregoing indemnity applies regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but does not extend to matters resulting from the Indemnitees sole or active negligence, willful misconduct, or breach of this Agreement. The Company further agrees to and will, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the events referenced above.

13.2 The Company's duty to indemnify and defend against the above-referenced events arising during the term of this Agreement, and as it may be extended, shall survive the expiration or earlier termination of this Agreement.

13.3 The Company, upon demand of the City, made by and through the City Attorney, shall protect the City and appear and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the limits of the City's authority with respect to the grant of agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide solid waste processing, recycling, and transportation services. This provision shall survive the expiration of the term during which services are to be provided under this Agreement. The City and the Company will confer following any trial to decide jointly whether to appeal or to oppose any appeal. If the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company will share equally the costs of appeal. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party that decides to appeal, or to oppose an appeal, will bear all fees and costs of the appeal or the opposition to the appeal. The foregoing obligations will not apply to the extent of the City's sole or active negligence, willful misconduct, breach of this Agreement, or violation of law.

13.4 The Company must defend with counsel reasonably acceptable to the City, indemnify, protect, and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limitation all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorneys' fees for the adverse party and expenses (including without limitation attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees,

subsidiaries or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance, hazardous waste, household hazardous waste, solid waste, or other waste that has been delivered to the Carson Transfer Station/MRF pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and will survive the end of the term of this Agreement. The liability of the Company under this Section 13.4 is **not** limited to the limits of the policies of insurance provided for under Section 14.

14. **INSURANCE.** Company shall comply with the insurance requirements set forth in Section 9.4 of the Residential Agreement.

15. **ASSIGNMENT.** Any assignment of this Agreement shall be made in accordance with the terms and conditions of Section 12.5 of the Residential Agreement.

16. **NOTICES.**

16.1 All notices, demands, requests, proposals, approvals, consents and other communications that this Agreement requires, authorizes, or contemplates must be in writing and must either be personally delivered to a representative of the party at the address set forth below, or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to the City:                      City Manager  
   City of Carson  
   701 East Carson Street  
   Carson, California 90749

If to the Company:                      Vice President/Director of Operations  
   Los Angeles Market Area  
   USA Waste of California, Inc.  
   1970 East 213<sup>th</sup> Street  
   Long Beach, California 90810

16.2 The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

16.3 Notice will be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

**17. INDEPENDENT CONTRACTOR.** Each party is, and shall perform this Agreement as, an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act, or be deemed to be the agent, representative, employee, or servant of the other party.

**18. NON-WAIVER.** The failure of either party to enforce its rights under any provision of this Agreement shall not be construed to be a waiver of such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach.

**19. ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes any and all other communications, representations, proposals, understandings, or agreements, either written or oral, between the parties with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by both parties.

**20. SEVERABILITY.** If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, then such provision shall be deemed to be severed from this Agreement and shall not affect the remainder hereof, which shall remain in full force and effect; however, the parties shall amend this Agreement to give effect, to the maximum extent allowed by law, to the intent and meaning of the severed provision.

**21. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California regardless of any conflict of law provisions.

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

/

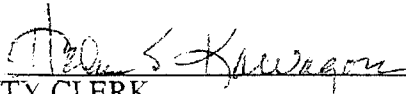
/

(intentionally left blank)




TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

ATTEST:

  
CITY CLERK 7-29-03

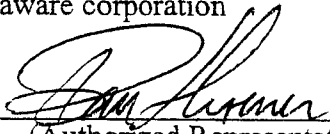
CITY OF CARSON

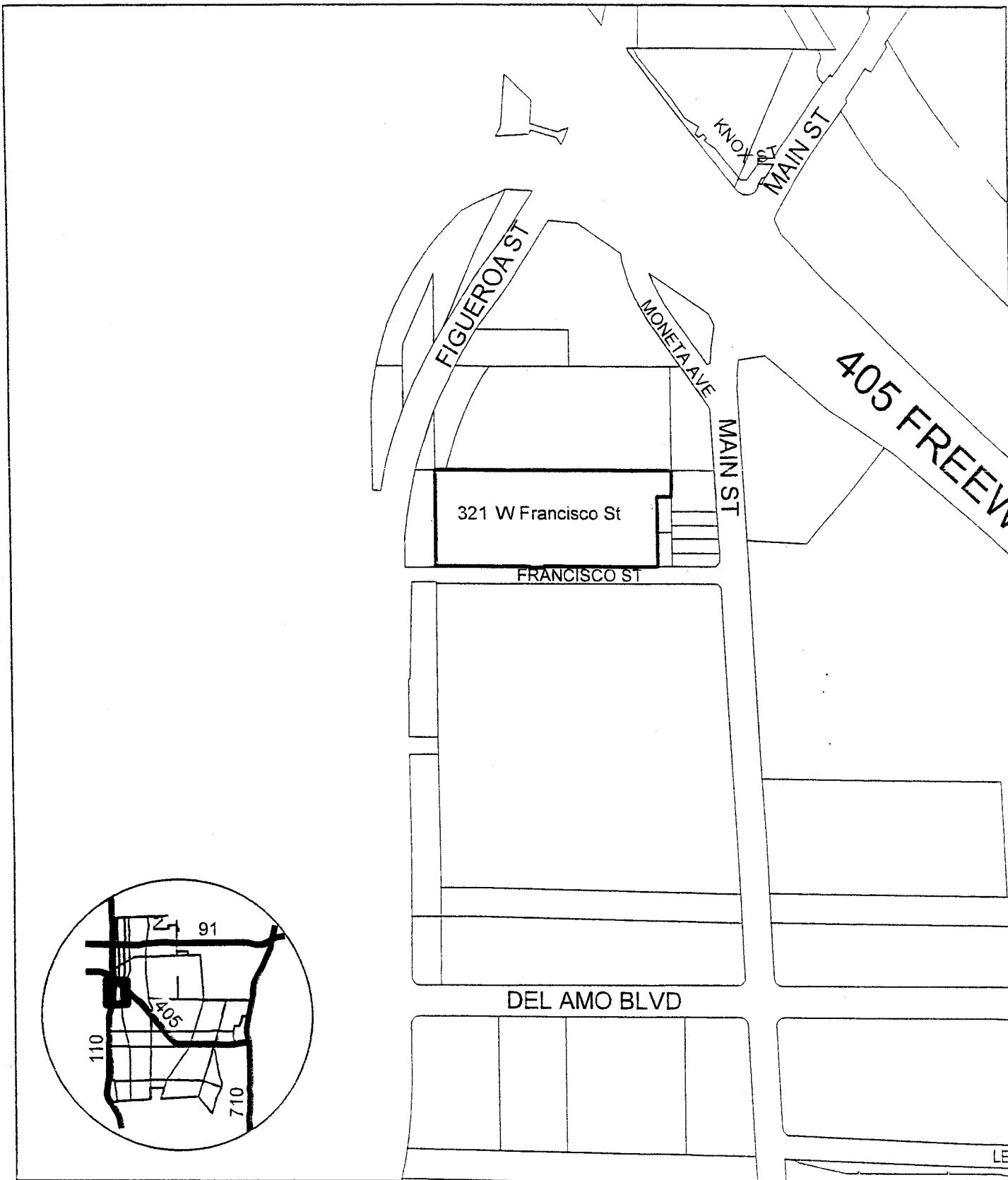
By:   
DARYL W. SWEENEY, MAYOR  
Date: 7/24/03

APPROVED AS TO FORM:

  
CITY ATTORNEY

USA WASTE OF CALIFORNIA, INC.,  
a Delaware corporation

By:   
(Authorized Representative)  
Title: Vice President  
Date: 7-17-03



Location Map  
Carson Transfer Station  
321 W Francisco St

18

**ITEM NO. (10) CITY OF CARSON AND USA WASTE OF CALIFORNIA, INC. - SOLID WASTE AND GREEN WASTE PROCESSING, RECYCLING, AND TRANSPORTATION AGREEMENT (DEVELOPMENT SERVICES)**

Administrative Services General Manager Acosta reported that the correct amount should be \$335,000.

RECOMMENDATION for the City Council:

**TAKE** the following actions:

1. **APPROVE** agreement for Solid Waste and Green Waste Processing, Recycling, and Transportation between the City of Carson and Waste Management of Los Angeles.
2. **AUTHORIZE** the Mayor to execute the agreement after approval as to form by the City Attorney.

**ACTION:** This item was Approved on the New Business Consent Calendar on motion of Dear, seconded by Santarina and unanimously carried by the following vote:

|          |                                     |
|----------|-------------------------------------|
| Ayes:    | Sweeney, Dear, Santarina, and Raber |
| Noes:    | None                                |
| Abstain: | None                                |
| Absent:  | Calas                               |



**ITEM NO. (24)      ORDINANCE NO. 03-1292, AMENDING SECTION 63153 OF ARTICLE VI,  
CHAPTER 3, PART 5 OF THE CARSON MUNICIPAL CODE RELATING TO  
PERMIT FEES FOR WASTE DISPOSAL SITES**

City Attorney Thorson corrected a typographical error in Paragraph 2 and corrected Section "63163" to Section "63153."

ACTION:      WITH FURTHER READING WAIVED, it was moved to PASS, APPROVE, and ADOPT Ordinance No. 03-1292, as read by title only, on motion of Santarina, seconded by Dear and unanimously carried by the following vote:

|          |                                  |
|----------|----------------------------------|
| Ayes:    | Calas, Dear, Santarina and Raber |
| Noes:    | None                             |
| Abstain: | None                             |
| Absent:  | None                             |

**RECONVENE (Agency):**

The Redevelopment Agency was Reconvened at 10:14 P.M. for a joint session with the City Council by Mayor Pro Tem/Chairman Pro Tem Calas with all members previously noted present for Oral Communications.

**9:45 P.M. – 10:00 P.M.**

**ORAL COMMUNICATIONS I (STAFF)**

City Clerk/Agency Secretary Kawagoe requested that this evening's meetings be adjourned in memory of Mida Neff, former city clerk of Springdale, Arkansas and Chi Choon (Cheeda) Yue, friend of Helen Kawagoe, both at the request of Kawagoe; Martha Mary Jacobsen, Jacobsen Printers, at the request of Maria Pilapil; Anita Santa Cruz and Rudy Duarte, mother and brother-in-law of Anita Duarte, neighbor friend of Gloria Murillo, City Clerk's Office, at the request of Murillo; and Rod Aaron S. Reyes, Jr., young cousin of Joy Simarago, City Clerk's Office, at the request of Simarago.

City Manager/Executive Director Groomes requested a memorial adjournment for Annie Williams-Schreckengosh, sister of Nathan Williams, Revenue Division.

**ORAL COMMUNICATIONS II (COUNCIL / AGENCY)**

Council/Agency Member Dear reported that he had attended Unity Day and felt that it emphasized a positive image for the City, contrary to article published in the Daily Breeze.

Council/Agency Member Raber reported that she, too, had attended Unity Day and felt that everyone had a great time. She indicated that she had a letter regarding the Early Childhood Program to give to staff and requested that this item be placed on the agenda.

20

EXHIBIT NO. 15

**ITEM NO. (16)      CONSIDERATION OF APPROVAL OF AN EXTENSION TO THE  
SOLID WASTE AND GREEN WASTE PROCESSING,  
RECYCLING, AND TRANSPORTATION AGREEMENT  
(ADMINISTRATIVE SERVICES)**

RECOMMENDATION for the City Council:

TAKE the following actions:

1.      APPROVE a 5-year extension of the Agreement with Waste Management, Inc.
2.      AUTHORIZE the Mayor to execute the 5-year extension with Waste Management, Inc., following approval as to form by the City Attorney.

ACTION: Upon further discussion, Davis-Holmes moved to extend the Agreement for 90-days, and direct staff to gather facts relating to the agreement, seconded by Robles and unanimously carried by the following vote:

Ayes:            Mayor/Agency Chairman/Authority Chairman Dear, Mayor Pro  
Tem/Agency Vice Chairman/Authority Vice Chairman Santarina, Council  
Member/Agency Member/Authority Commissioner Gipson, Council  
Member/Agency Member/Authority Commissioner Davis-Holmes, and  
Council Member/Agency Member/Authority Commissioner Robles

Noes:            None

Abstain:        None

Absent:         None

Ayes: Mayor/Authority Chairman/Agency Chairman Dear, Mayor Pro Tem/Authority Vice Chairman/Agency Vice Chairman Santarina, Council Member/Authority Commissioner/Agency Member Davis Holmes, and Council Member/Authority Commissioner/Agency Member Robles  
Noes: None  
Abstain: None  
Absent: Council Member/Authority Commissioner/Agency Member Gipson

**ITEM NO. (16) CONSIDER DESIGNATING AN INDIVIDUAL FOR THE 2013 LEAVES OF CARSON VOLUNTEER RECOGNITION PROGRAM IN THE POSTHUMOUS CATEGORY (CITY MANAGER)**

RECOMMENDATION for the City Council:

2. DESIGNATE an individual for the 2013 Leaves of Carson Volunteer Recognition Program in the posthumous category.

ACTION: Item No. 16 was previously continued to October 18, 2013, at the request of Acting City Manager/Acting Authority Executive Director/Acting Agency Executive Director Acosta.

**ITEM NO. (17) CONSIDERATION OF APPROVAL OF AN EXTENSION TO THE SOLID WASTE AND GREEN WASTE PROCESSING, RECYCLING, AND TRANSPORTATION AGREEMENT (ADMINISTRATIVE SERVICES)**

Item No. 17 was heard after Item No. 9 at 10:38 P.M.

Mayor/Authority Chairman/Agency Chairman Dear referred to the recommendation on the printed agenda and corrected the recommendation to read as follows and as reflected in the staff report: "APPROVE for an additional 90 days."

RECOMMENDATION for the City Council:

1. CONTINUE for an additional 90 days.

ACTION: It was moved to approve an additional 90-day extension to the Solid Waste and Green Waste Processing, Recycling, and Transportation Agreement and to include the following items in the final agreement on motion of Robles and seconded by Santarina:

- That Waste Management will make a good faith effort to move the facility within four (4) years.
- The term of the agreement will be for four (4) years.
- That Waste Management will make aesthetic improvements to the facility.
- That Waste Management will implement the latest control technology to prevent odors from escaping facility.

During discussion of the motion, the following items were discussed:

22

Council Member/Authority Commissioner/Agency Member Davis-Holmes offered a friendly amendment that cost per ton be negotiated, which was accepted by the maker and the second.

Council Member/Authority Commissioner/Agency Member Robles inquired whether trucks could travel on Figueroa Street instead of traveling on Main Street. He also directed staff to prepare an RFQ for a third trash hauler.

Mayor/Authority Chairman/Agency Chairman Dear requested that this item be referred to the City Council Committee for review.

The motion, as amended, was carried by the following vote:

Ayes: Mayor/Authority Chairman/Agency Chairman Dear, Mayor Pro Tem/Authority Vice Chairman/Agency Vice Chairman Santarina, Council Member/Authority Commissioner/Agency Member Davis Holmes, and Council Member/Authority Commissioner/Agency Member Robles  
Noes: None  
Abstain: None  
Absent: Council Member/Authority Commissioner/Agency Member Gipson

#### **NEW BUSINESS DISCUSSION (Items 18-23)**

#### **ITEM NO. (18) CONSIDERATION OF NOVEMBER MEETING SCHEDULE DUE TO NOVEMBER 5, 2013 CONSOLIDATED ELECTIONS WHICH INCLUDE THE COMPTON COMMUNITY COLLEGE DISTRICT AND COMPTON UNIFIED SCHOOL DISTRICT ELECTIONS (CITY CLERK)**

**THIS IS A JOINT AGENDA ITEM WITH CARSON HOUSING AUTHORITY ITEM NO. 5  
AND CARSON SUCCESSOR AGENCY ITEM NO. 3**

RECOMMENDATION for the City Council:

1. CONSIDER the meeting schedule for the month of November and PROVIDE direction.

ACTION: Item No. 18 was previously continued to October 1, 2013, at the request of Acting City Manager/Acting Authority Executive Director/Acting Agency Executive Director Acosta.

#### **ITEM NO. (19) CONSIDER AWARDING A PROFESSIONAL SERVICES AGREEMENT WITH JOHN YOUNG ADVOCACY FOR FEDERAL LEGISLATIVE ADVOCACY SERVICES AND CONTINUED DEVELOPMENT AND SUPPORT OF A BROWNFIELD REMEDIATION AND ECONOMIC DEVELOPMENT GUARANTEED LOAN PROGRAM (CITY MANAGER)**

Item No. 19 was heard after the New Business Consent Calendar at 9:20 P.M.

Acting City Manager/Acting Authority Executive Director/Acting Agency Executive Director Acosta summarized the staff report and recommendation.

## Transfer Station Survey

| Facility Operator                | Facility Name                               | Facility Contact Phone # | Facility Location | Facility Type (MRF, TS) | Average (tons/day) | Permitted Cap. (tons/day) | Tip Fee (per ton)                        | Host Fee (per/ton)                            |
|----------------------------------|---|--------------------------|-------------------|-------------------------|--------------------|---------------------------|--|---|
| Waste Management                 | Carson Transfer Station (Robert)            | 310-217-6300             | Carson            | TS                      | 1,100              | 5,300                     | \$69 + fuel surcharge & environmental    | \$0.40 (1st 839,000 tons) & \$0.10 thereafter |
| Allied Waste                     | Allied Waste (Hector) 562-599-8556          | 310-327-8461             | Compton           | TS                      | 980                | 1,500                     | \$53.90                                  | \$1.50 to \$1.75 + \$1.00 per truck           |
| Republic Services                | Compton Recycling & Transfer                | 310-323-0763             | Compton           | TS                      | 1,300              | 1,500                     | \$66.08 + fuel surcharge & environmental | \$1.50 to \$1.75 + \$1.00 per truck           |
| Los Angeles Sanitation District  | Downey Area Recycling & Transfer (Navnit)   | 562-622-3503 x 6401      | Downey            | MRF, TS                 | 650                | 5,000                     | \$47.14                                  | \$1.41  |
| Republic Services                | American Waste Transfer (Hector)            | 310-527-6980             | Gardena           | MRF, TS                 | 1,800              | 2,225                     | \$81.65                                  | \$0.40 (1st 350,000 tons) & \$0.50 thereafter |
| L. A. County Sanitation District | Puente Hills Material Recovery (Navnit)     | 562-622-3503 x 6409      | Industry          | MRF, TS                 | 3,500              | 4,400                     | \$45.75                                  | \$1.41  |
| Valley Vista Services            | Grand Central Recycling (Peter)             | 800-442-6454             | Industry          | TS                      | 1,000              | 5,000                     | \$56.30                                  | \$0.36  |
| Republic Services                | Bel-Art Disposal (Luis)                     | 562-259-2872             | Long Beach        | TS                      | 1,200              | 1,500                     | \$50.00                                  | 18% of gross receipts*                        |
| Paramount Resource Recycling     | Paramount Resource Recycling (Joel & Mario) | 562-602-6505             | Paramount         | TS                      | 550                | 2,400                     | \$78.00                                  | \$1.92  |
| Edco                             | Edco - Signal Hill                          | 562-989-7355             | Signal Hill       | TS                      | 600                | 1,500                     | \$43.00                                  | 2% to 5% of gross receipts based on tonnage   |
| Waste Management                 | South Gate Transfer Station (Robert)        | 323-560-8488             | South Gate        | TS                      | 400                | 2,000                     | \$67 + fuel surcharge &                  | \$2.00  |
| Republic Services                | Innovative Waste Control (Danita)           | 323-264-0202             | Vernon            | TS                      | 900                | 1,250                     | \$56.23                                  | \$1.00  |

### NOTES:

MRF = Material Recovery Facility

TS = Transfer Station

\* = Based on Franchise Agreement