



# CITY OF CARSON

## Legislation Text

File #: 2019-885, Version: 1

### Report to Mayor and City Council

Tuesday, September 17, 2019

Consent

#### SUBJECT:

**SETTLEMENT AGREEMENT BETWEEN USA WASTE OF CALIFORNIA, INC. ("USA WASTE"), THE CITY OF CARSON AND WASTE RESOURCES TECHNOLOGIES, INC./WASTE RESOURCES, INC. ("WRT"). AMENDMENT TO WRT FRANCHISE AGREEMENT TO ACCOMMODATE TERMS OF SETTLEMENT (CITY COUNCIL)**

#### I. SUMMARY

Since March 2018, the City has been party to several litigation pieces relating to its award of an exclusive solid waste hauling franchise to WRT. The City's former franchised hauler, USA Waste, has challenged the City's award of franchise to WRT and the transition of certain solid waste accounts to WRT. The City and USA Waste have also had other longstanding disputes with respect to USA Waste's operation of a solid waste "transfer station" in the City.

All parties to the litigation have worked diligently for several months towards a global settlement of all disputes. To that end, the parties have reached the global settlement package at Exhibit "A". The terms of this settlement were approved by the Council in closed session on September 3, 2019. The settlement provides several benefits to the City, including:

- Dismissal and release from all pending, litigation;
- A onetime payment of \$1.2 Million to the City;
- A proposal to negotiate and effect at least \$5 Million Dollars in improvements to USA Waste's transfer station, including enclosing same, landscaping and development of a state of the art ventilation system;
- An option for the Carson Reclamation Authority ("CRA") to purchase certain parcels on Main Street for redevelopment purposes; and
- New, increased "host fees" payable to the City from USA Waste- estimated to

generate approximately an additional \$500,000 in revenues to the City, annually;

As an integral component of the settlement, it is also recommended that the Council approve that “First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Management Services” (Exhibit “C”) in order to harmonize the terms of WRT’s franchise with the terms of settlement.

## II. RECOMMENDATION

**CONSIDER TAKING** the following actions:

1. **RECEIVE AND FILE** the following documents, all as collectively presented in Exhibit “A” hereto:
  - a. That global “Settlement Agreement and Releases” and all exhibits thereto between USA Waste of California, Inc. (“USA Waste”), the City of Carson and Waste Resources Technologies, Inc. / Waste Resources, Inc. (“WRT”) settling and releasing all litigation pending between said parties, attached hereto at Exhibit “A” (all such instruments collectively referred to as the “Settlement”). The terms of the Settlement were approved by the Council in closed session and the Settlement was reported out by the City Attorney from closed session on September 3, 2019; and
  - b. That “Carson Transfer Station Agreement” between the City and USA Waste, which is attached and incorporated into the above-referenced Settlement, and is also separately attached hereto as Exhibit “B”. In consideration for the Settlement, the Carson Transfer Station Agreement provides for: 1) payment of \$1.2 Million Dollars to the City, (2) at least \$5 Million Dollars of improvements to be installed by USA Waste at the Carson Transfer Station (i.e., enclosing the Station, landscaping and developing state of the art ventilation systems), and (3) a new and increased schedule of “host fees” to be paid by USA Waste to the City for Transfer Station operations. The terms of the Carson Transfer Station Agreement were approved by the Council in closed session and reported out by the City Attorney on September 3, 2019; and
  - c. Such other instruments and exhibits attendant to the Settlement at Exhibit “A”. The terms of the Settlement, including the Carson Transfer Station Agreement, were approved by the Council in closed session on September 3, 2019.
2. **APPROVE** that “First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Management Services” (the “Amendment”) in order to harmonize the terms of WRT’s solid waste handling services with the terms of the Settlement. The Amendment is attached and incorporated into the above-referenced Settlement, and is also separately attached hereto as Exhibit “C” for Council approval.

- 3. AUTHORIZE** the Mayor to execute all instruments attendant to the Settlement that require City execution, subject to City Attorney approval as to form.

Notably, instruments attendant to the Settlement that require approval and execution by the Carson Reclamation Authority (“CRA”) will be brought to the CRA at its upcoming regular meeting on October 1, 2019.

### **III. ALTERNATIVES**

Take other action as considered appropriate and consistent with law.

### **IV. BACKGROUND**

On July 15, 2003, City granted to USA Waste a ten (10) year non-exclusive franchise for the collection, transportation and processing of solid waste from certain commercial and industrial premises in the City, titled Franchise between the City of Carson and USA Waste of California, Inc. for Integrated Commercial and Industrial Waste Management Services. USA Waste also held an exclusive franchise for the collection, transportation and processing of solid waste from residential premises in the City. However, on July 18, 2017, the City issued a request for proposals (RFP P171-19) from qualified solid waste companies to provide solid waste collection, transportation, recycling, and disposal services with the intent to enter into an exclusive franchise agreement for residential and commercial solid waste management services (the “RFP”).

As a result of the City’s RFP process, on or about December 5, 2017, the City Council authorized negotiations with WRT to enter into an exclusive franchise agreement for residential and commercial solid waste handling services, and on March 15, 2018, such agreement was awarded to WRT.

On March 15, 2018, USA Waste filed a Verified Petition for Writ of Mandate against the City and WRT, Los Angeles Superior Court Case No. BS172744, to overturn the City’s RFP award to WRT. And, on May 22, 2018, USA Waste filed another Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive relief against the City and WRT, Los Angeles Superior Court Case No. BS173645, in furtherance of USA Waste’s intent to exercise its statutory continuation rights (i.e., continued provision of solid waste services to commercial accounts) pursuant to Public Resource Code Section 49520. Other disputes and pleadings were attendant to these litigation actions, including the filing of a Cross-Complaint by the City (in Case No. BS173645) and the City’s issuance of legislative subpoenas to USA Waste. (Collectively, all actions referenced herein as the “Litigation”).

Additionally, USA Waste owns and operates the Carson Materials Recovery Facility /Transfer Station located at 135-401 Francisco Street, 19803-19809 Main Street, 19821 Main Street and 19831 Main Street, Carson, CA 90745 (“Transfer Station” or “Site”), which is permitted to receive, process, and arrange for disposal and transport of municipal solid waste. The Transfer Station has been a matter of dispute between the City and USA Waste for several years, namely:

- i. City and USA Waste dispute the expiration or termination date of the Transfer

Station's conditional use permit No. 391-92 and zoning and general plan designations associated with the Transfer Station;

- ii. City and USA Waste dispute whether additional permit fees are allegedly owed to the City relating to the operations of the Transfer Station under Carson Municipal Code §63153 or otherwise; and
- iii. City and USA Waste dispute whether any activities at the Transfer Station have resulted in or caused any nuisance due to odors or otherwise.
- iv. Collectively, the "Transfer Station Dispute."

All parties to the Litigation have worked diligently for several months towards a global settlement of the Litigation and the Transfer Station Dispute. To this end, the parties have reached the global Settlement package at Exhibit "A". The Carson Transfer Station Agreement (Exhibit "B" hereto) and the Amendment (Exhibit "C" hereto) are integral components of the Settlement.

#### **A. Global Settlement / Carson Transfer Station Agreement**

The Settlement at Exhibit "A" includes mutual releases by all parties and requires prompt dismissal of the Litigation. The Settlement resolves the issue of USA Waste's continued hauling services to commercial solid waste customers by stipulating to an end-date of December 31, 2019, by which time USA Waste will relinquish all commercial hauling accounts to WRT. The Settlement also authorizes WRT to utilize USA Waste's Transfer Station for purposes of "tipping" its solid waste collected in the City.

In addition to dismissing the Litigation, the Settlement includes the "Carson Transfer Station Agreement" between the City and USA Waste, which is attached and incorporated into the Settlement, and is also separately attached hereto as Exhibit "B". The Carson Transfer Station Agreement, in conjunction with the Settlement of Litigation, is designed to settle the City's Transfer Station Dispute with USA Waste.

1. *\$1.2 Million Dollar One-Time Payment to City:* USA Waste will pay the City \$1,200,000.00 no later than thirty (30) calendar days after the execution of all Settlement documents.
  
2. *\$5 Million or more in Transfer Station Improvements by USA Waste.* The Carson Transfer Station Agreement requires USA Waste to negotiate towards the end of obtaining permits and an "Operations/Improvement Agreement" to install at least \$5,000,000.00 in improvements to the Transfer Station. By obtaining entitlements to improve the Transfer Station to a state-of-the art condition, USA Waste would be permitted to operate the Station for 15 years (or up-to December 31, 2024). Contemplated Transfer Station improvement include:
  - a. Landscaping and fencing improvements to beautify area;

- b. Foundational slab expansion;
  - c. Ventilation/Air Filtration System installed to prevent odor issues;
  - d. Remodel 2-story office building to be consistent with presentation boards;
  - e. Demolition of certain facilities to accommodate additional space;
  - f. Additional paving as needed;
  - g. Relocate scale & scale house, replace load-out scales;
  - h. Electrical upgrades and power to scales;
  - i. Replace or put in place walls and translucent materials on Transfer Station building \*metal & translucent) and appropriate doors;
  - j. A wall or other agreed-upon visual barrier on the maintenance facility lot to improve appearance from Main Street.
3. *Reimbursement of City Costs:* USA Waste agrees to reimburse the City for all actual City staff, City consultants and attorneys' time and materials reasonably expended in the course of the permitting and approval process related to the Transfer Station improvements and negotiations (with a cap of \$75,000 for attorneys' fees related to negotiations).
4. *Option to Purchase Main Street Parcels:* Another substantial benefit negotiated on behalf of the City is that USA Waste will grant the Carson Reclamation Authority ("CRA") an "option to purchase" two parcels of real property located at the northwest corner of Main Street and Francisco (the "Main Street Parcels"). The purchase price for the Main Street Parcels will be mutually-agreed upon by USA Waste and the CRA, or determined by appraisal. These Parcels may be used for redevelopment by the CRA. The option to purchase the Main Street Parcels lasts until December 31, 202, and thereafter the CRA will have a "right of first refusal" to buy the Main Street Parcels for a period of one year.
5. *New, Increased Host Fees on Transfer Station:* The Transfer Station Dispute includes a dispute over the amount of "host fees" that have historically been paid by USA Waste to the City for Waste's operation of the Transfer Station. Currently, it is estimated that USA Waste pays the City *less than sixteen cents (16¢) per ton* for the processing of externally-generated waste at the Transfer Station. As part of the Settlement, a new, significantly increased schedule of host fees has been negotiated:

Settlement Host Fee**	Effective Date
\$1.00 per ton of City MSW	January 1, 2020 through December 31, 2020.
\$1.45 per ton of City MSW	January 1, 2021 through December 31, 2021.
\$1.65 per ton of City MSW	January 1, 2022 through December 31, 2022.
\$1.65 per ton of City MSW plus CPI Adjustment	January 1, 2023 through December 31, 2023; CPI Adjustment applied annually thereafter effective January 1 through December 31 of each particular year.
\$2.75 per ton of Non-City MSW	January 1, 2020 through December 31, 2020.
\$2.75 per ton of Non-City MSW plus CPI Adjustment	January 1, 2021 through December 31, 2021; CPI Adjustment applied annually thereafter effective January 1 through December 31 of each particular year.

\*\* "City MSW" has the same meaning as "Solid Waste" as defined in Public Resources Code §40191, including putrescible and non-putrescible refuse, that is generated in the City, and is delivered to the Transfer Station; provided, however, "Solid Waste" does not include recyclable material and source-separated organic waste, food waste, green waste, manure and livestock bedding waste.

\*\* "Non-City MSW" has the same meaning as "Solid Waste" as defined in Public Resources Code §40191, including putrescible and non-putrescible refuse, that is generated outside of the City, and is delivered to the Transfer Station; provided, however, "Solid Waste" does not include recyclable material and source-separated organic waste, food waste, green waste, manure and livestock bedding waste.

Finally, despite the complexity of the Litigation, the Transfer Station Dispute, and the Settlement now proposed, it bears emphasis that the City Attorney has utilized the contractual indemnity and defense obligations of WRT to secure the benefits of this Settlement at little or no cost to the City, as WRT has been reimbursing the City for such costs to date.

The terms of the Settlement, including the Carson Transfer Station Agreement, were approved by the Council in closed session on September 3, 2019, and reported out by the City Attorney.

**B. Franchise Agreement Amendment**

As a further component to the Settlement, it is recommended that the City Council approve that "First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Management Services" ("Amendment") attached hereto at Exhibit "C". The Amendment is proffered merely to harmonize the terms of WRT's solid waste handling franchise with the terms of the Settlement. As noted above, the Settlement contemplates that WRT will utilize USA Waste's Transfer Station for delivery of its solid waste collected from within the City. And, the parties have stipulated that USA Waste will relinquish all commercial hauling accounts to WRT by December 31, 2019.

To that end, certain amendments to WRT's Franchise Agreement were needed. First, the Amendment memorializes the fact that WRT may utilize USA Waste's Transfer Station. Second, the Amendment acknowledges that to the extent WRT delivers waste to USA Waste's Transfer Station, WRT should not be held accountable for the diversion of such waste (i.e., WRT should not be held accountable for waste streams that are delivered to a third-party outside WRT's ownership and control). Third, because WRT has not held a full market share of all waste hauling accounts in the City as a result of USA Waste's continued operations under Public Resource Code Section 49520, the Amendment proposes to relieve WRT of 20% of the administrative fees that would have

otherwise been payable had WRT held a full market share. This temporary reduction in administrative fees will only be in-place until December 31, 2019.

## **V. FISCAL IMPACT**

Fiscal impacts to the City are expected to be positive. The City shall receive a \$1.2 Million Dollar in payment upon execution of all Agreements. Further, the increased, per-ton host fees payable to the City from USA Waste for continued operation of the Transfer Station are significantly higher than the current host fees accruing to the City. It is estimated that the new fees will generate approximately over \$500,000 in additional revenues to the City annually.

## **VI. EXHIBITS**

- A. "Settlement Agreement and Releases" (pp. 8-91)
- B. "Carson Transfer Station Agreement" (pp. 92-123)
- C. "First Amendment to Exclusive Franchise Agreement for Integrated Solid Waste Management Services" (pp. 124-130)

Prepared by: City Attorney's Office