



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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IN REPLY PLEASE

REFER TO FILE: **EP-2**

March 18, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012-2756

Dear Supervisors:

**APPROVE AGREEMENT FOR THE ANTELOPE VALLEY
PERMANENT HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY
SUPERVISORIAL DISTRICT 5
3 VOTES**

IT IS RECOMMENDED THAT YOUR BOARD:

Approve and instruct the Chairman to sign the enclosed Construction and Operating Agreement with the Cities of Lancaster and Palmdale, Waste Management, and the County of Los Angeles for the development and operation of a permanent household hazardous waste collection facility in the Antelope Valley.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Pursuant to your Board's recommendation in 1986 and subsequent followup actions by your Board, the County established the Countywide Household Hazardous Waste Management Program in 1988. The Program is administered by Public Works and its objective is to keep residential household hazardous waste (e.g., paint, solvents, chemicals, etc.) from being disposed at municipal solid waste landfills. The Program provides a free and convenient means for residents to manage their household hazardous waste by conducting weekly collection events throughout the County. In late

2002, the Program was expanded to include the collection of electronic waste (e.g., televisions, computers, cell phones, etc.).

Every year, approximately 72 collection events are conducted through the Program, of which 20 are conducted in partnership with the City of Los Angeles. In the Antelope Valley, four collection events are conducted each year—a large event in Lancaster in April (in concert with the Antelope Valley Environmental Pride Week), a large event in Palmdale in October, plus concurrent satellite events in the unincorporated communities of Lake Los Angeles and Acton, respectively. The Program is funded by a fee imposed on each ton of solid waste generated in the County of Los Angeles.

In 2002, the California Integrated Waste Management Board (CIWMB) awarded the Cities of Lancaster and Palmdale a “2001/2002 Used Oil Opportunity Grant” (Grant) to establish, among other things, a permanent household hazardous waste collection facility (Facility) in the Antelope Valley to enhance the level of service to residents. The Grant (\$698,667) is expected to fund the engineering, design, and construction costs of the Facility.

Since awarding of the Grant, the Cities of Lancaster and Palmdale have requested the County’s assistance in developing and operating the Facility. As a result, the County, Cities of Lancaster and Palmdale, and Waste Management have been meeting on a regular basis to develop an agreement for the financing, construction, and operation of the Facility that would be mutually beneficial to all parties. Although the household hazardous waste collection events have been successful, the Facility will further enhance the level of service provided to Antelope Valley residents by providing the most efficient mechanism for the collection of household hazardous waste and electronic waste.

Accordingly, Waste Management has agreed to make approximately 38,000 square feet of Antelope Valley Public Landfill available for the construction of the Facility. To expedite the construction of the Facility prior to disbursement of the Grant proceeds by the CIWMB, the Cities of Lancaster and Palmdale and the County will each advance one-third of the Facility’s engineering, design, and construction costs in the amount of \$232,889 which will be reimbursed from the Grant proceeds. In the event the engineering, design, and construction costs exceed the Grant amount (subject to a cap of \$1,000,000), the County would pay one-third of the additional costs. The County’s Solid Waste Management Fund (GD1 Fund) will be utilized to advance the County’s portion under the Agreement as well as the operational and maintenance portions of the Agreement as described below.

After the Facility has been constructed, for a period of three years, the County and Waste Management would each fund an annual contribution of \$180,000 to \$210,000 towards the operation and maintenance of the Facility. The Facility is expected to be open at least twice a month for residents to drop off their household hazardous waste. In addition, during one Saturday every three months, the Facility would accept electronic waste. If the County is successful in securing separate grant funds from third-party sources (e.g., the CIWMB), the Facility will also be used to collect waste tires on a quarterly basis.

After 30 months of the Facility's continued operation, the Cities of Lancaster and Palmdale, the County, and Waste Management will jointly evaluate the Facility's cost-effectiveness and level of service in relation to the household hazardous waste collection events currently conducted in the Antelope Valley. Based on the findings of the evaluation, Waste Management and the County will determine whether to continue to fund the Facility's operation and maintenance or to terminate the Agreement.

During the engineering, design, and construction period, the County would continue to conduct household hazardous waste collection events in the Antelope Valley in the same manner it would customarily conduct such events. However, the events would no longer be conducted while the Facility is operational.

Implementation of Strategic Plan Goals

This action is consistent with the County's Strategic Plan Goal of Service Excellence by enhancing the level of service to Antelope Valley residents through the construction and operation of a permanent household hazardous waste collection facility. The facility would provide a mechanism for residents to drop off their household hazardous waste twice a month and electronic waste on a quarterly basis. Subject to the receipt of separate grant funds, waste tires would also be collected on a quarterly basis. This action would also protect the environment, the health and safety of residents, as well as improve the quality of life in the Antelope Valley.

FISCAL IMPACT/FINANCING

There will be no impact on the County's General Fund. The County's obligations under the enclosed Agreement will be funded from the County's Solid Waste Management Fund (GD1 Fund). Sufficient funding is available in the 2003-04 Budget to fund the engineering, design, and construction of the Facility. Funding for the additional engineering, design, construction costs, if any, as well as the operation and

The Honorable Board of Supervisors
March 18, 2004
Page 4

maintenance of the Facility will be available in the budget for the subsequent fiscal years.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The enclosed Agreement has been approved as to form by County Counsel.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

There will be no negative impact to current County services or projects as a result of this action.

CONCLUSION

Please return three approved copies of this letter and the original signed enclosed Agreement to Public Works, Environmental Programs Division, for processing by the Cities of Lancaster and Palmdale and Waste Management.

Respectfully submitted,

JAMES A. NOYES
Director of Public Works

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P:\sec\antv\hhw

Enc.

cc: Chief Administrative Office
Executive Office
County Counsel (Fred Pfaeffle)

**CONSTRUCTION AND OPERATING AGREEMENT
FOR HOUSEHOLD HAZARDOUS WASTE
COLLECTION AND TRANSFER FACILITY**

THIS CONSTRUCTION AND OPERATING AGREEMENT FOR HOUSEHOLD HAZARDOUS WASTE COLLECTION AND TRANSFER FACILITY (“Agreement”), is entered into by the CITY OF LANCASTER, a municipal corporation, (“Lancaster”) the CITY OF PALMDALE, a municipal corporation (“Palmdale”) (Lancaster and Palmdale collectively referred to as “Cities”), the COUNTY OF LOS ANGELES, a political subdivision of the State of California (“County”), and Antelope Valley Recycling and Disposal Facility, Inc., a California corporation, which is a wholly-owned subsidiary of USA Waste of California, a Delaware corporation (“Waste Management”).

RECITALS:

A. The County has conducted in the Antelope Valley household hazardous waste, electronic waste, and used tire collection events at temporary locations (collectively, “Roundups”).

B. The Roundups are intended to offer all Antelope Valley residents within Los Angeles County an environmentally safe means of disposing of or recycling their household hazardous waste, electronic waste, and waste tires in accordance with applicable laws and regulations.

C. Cities and County, in collaboration with Waste Management, have been working together to enhance the level of service provided to all residents of the Antelope Valley within Los Angeles County and to provide the safest, most efficient and convenient method for the collection of household hazardous waste, electronic waste, and waste tires.

D. The Cities have proposed establishing in the Antelope Valley a permanent Household Hazardous Waste Collection and Transfer Facility (“Facility”) to enhance the level of service to residents in lieu of Roundups.

E. County has requested that the Facility accept (i) Electronic Waste and (ii) waste tires, to the extent that the acceptance and processing of waste tires can be funded from new grant proceeds for said purpose.

F. Consequently, at the Cities’ request, the California Integrated Waste Management Board (“CIWMB”) has awarded to the Cities a “2001/2002 Used Oil Opportunity Grant” (“Grant”) for the purpose, among other things, of establishing the Facility.

G. The Grant amount in the sum of \$698,667 is expected to equal the “Facility Cost,” as defined below in Section 2.

H. Waste Management owns and operates the Antelope Valley Public Landfill (the “Landfill”), a portion of which has recently been annexed to the City of Palmdale, and has agreed to make approximately 38,000 square feet of that Landfill available to the Cities as a site, as depicted in Exhibit A of the License Agreement (as defined below) (the “Site”), for the construction of the Facility.

I. Concurrently with the execution of this Agreement, the Cities and Waste Management have entered into a License Agreement (“License Agreement”), that, among other things, provides access to the Site to the Cities for construction of the Facility and also provides for the transfer of the Facility to Waste Management upon its completion by the Cities. A copy of the License Agreement is attached as Exhibit “A” to this Agreement.

J. To expedite the construction of the Facility prior to disbursement by CIWMB of the Grant proceeds, Lancaster, Palmdale and the County will each advance one-third of the Facility Cost, which will be reimbursed from the Grant proceeds.

K. Upon completion of construction of the Facility, the Cities are obligated under the provisions of the License Agreement to provide to Waste Management (i) a copy of the notice of completion executed by the Cities in statutory form and recorded in the Official Records of Los Angeles County, California, and (ii) a quitclaim deed in recordable form evidencing the termination of any right, title or interest in the Site and the conveyance of title to the Facility to Waste Management.

L. Following construction of the Facility and Waste Management’s acquisition of title, Waste Management will assume responsibility for the operation and maintenance of the Facility during an initial three-year period.

M. For the initial three year period, the County and Waste Management will each fund an annual contribution of not less than \$180,000 and not to exceed \$210,000 toward the operation and maintenance of the Facility under the terms herein.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the parties and the promises herein contained, it is agreed as follows:

1. REPRESENTATIVES OF THE PARTIES AND SERVICE OF NOTICES

A. Unless a party designates a different representative or address for itself by written notice to all other parties, the representatives of the parties who are primarily responsible for the administration of this Agreement, and to whom notices, requests, demands and other communications must be given, are as follows:

- (1) The principal representative of Lancaster is:

Mr. James R. Williams
Director of Public Works
City of Lancaster
44933 North Fern Avenue
Lancaster, California 93534-2461
Fax: (661) 723-6182

With a copy to:

David R. McEwen
Lancaster City Attorney
Stradling Yocca Carlson & Rauth
660 Newport Center Drive
Suite 1600
Newport Beach, California 92660
Fax: (949) 823-5162

- (2) The principal representative of Palmdale is:

Mr. Leon E. Swain
Director of Public Works
City of Palmdale
38250 Sierra Highway
Palmdale, California 93550
Fax: (661) 267-5322

With a copy to:

W. Matthew Ditzhazy
Palmdale City Attorney
38300 Sierra Highway
Palmdale, California 93550
Fax: (661) 267-5122

- (3) The principal representative of the County is:

Mr. James A. Noyes
Director of Public Works
County of Los Angeles
Department of Public Works
P.O. Box 1460
Alhambra, California 91802-1460
Fax: (646) 458-4022

With a copy at the same address to: Shari Afshari Fax: (646) 458-3569

- (4) The principal representative of Waste Management is:

Antelope Valley Recycling and Disposal Facility, Inc.
1200 W. City Ranch Road
Palmdale, California 93550
Attn: Steve Paulson
Fax: (661) 726-3462

With copies to:

Waste Management – Western Group
7025 North Scottsdale Road, Suite 200
Scottsdale, Arizona 85253
Attn: Sharon Fabian, Senior Legal Counsel
Fax: (713) 286-7570

Mr. Dan Shoener
Los Angeles Area Vice President
Waste Management of Los Angeles
9081 Tujunga Avenue – 2nd Floor
Sun Valley, California 91353

B. Notices and demands given by a party must be in writing and must be given to all other parties by personal delivery, by overnight courier, by receipted facsimile transmission or by certified mail, return receipt requested. Notices, requests, demands, and other communications delivered or transmitted under paragraph (A) above will be deemed to have been duly received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day. Otherwise, any such notice, request, demand or communication will be deemed to have been received on the next succeeding business day.

C. If the name of the principal representative or other recipients designated to receive the notices, requests, demands, and other communications, or the address or facsimile number of those persons, is changed, written notice must be given at least five working days before the effective date of that change. Notices given before actual receipt of a notice of change will not be invalidated by the change.

2. DEFINITIONS

For the purposes of this Agreement, the following words, terms, phrases and their derivations have the meanings set forth below. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number:

“City Advance” has the meaning attributed to such term in Section 4B(1).

“Construction Contract” means the agreement between the Cities and the construction contractor for the construction of the Facility.

“Cost of Facility” or “Facility Cost” means the cumulative costs authorized by the Grant and reasonably incurred by Palmdale or paid to third party contractors and subcontractors for Preliminary Engineering, the construction contract, contract administration, project management, construction engineering and inspection, initial Facility promotion and public outreach, and all other work required to design, permit, and construct the Facility in accordance with plans and specifications that are prepared by the Cities and submitted for review and approval by the County and Waste Management.

“County Advance” has the meaning attributed to such term in Section 4B(2).

“Electronic Waste” means cathode ray tubes or CRTs and consumer electronic devices, as said terms are defined in Section 66273, Article 1, Chapter 23, Division 4.5, Title 22 of the California Code of Regulations or any superseding or related regulations of the California Department of Toxic Substances Control or the CIWMB.

“Governmental Requirements” means all past, present and future federal, state and/or local laws, ordinances, statutes, codes, rules, regulations, permits, orders and/or decrees in any way affecting the design and construction of the Facility or its operation.

“Hazardous Materials” means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County of Los Angeles, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §13-17), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

“Household Hazardous Waste” means Hazardous Materials or hazardous wastes, as defined in Section 25117 of the Health & Safety Code, which are generated by households and which "should be separated from the solid waste stream", as such terms are used in Sections 41500 and 41510 of the Public Resources Code, including, without limitation, pesticides, cleaning solvents, automotive fluids, waste oil, paint and related products, hobby and art chemicals, batteries, and similar items.

“Operating Period” has the meaning attributed to such term in Section 5A(2).

"Operation" means accepting and processing at the Facility all Household Hazardous Waste, Electronic Waste as provided in Section 5A(8), and waste tires as provided in Section 5A(7), when delivered to the Facility by the Public (*not* from Waste Management or its agents, contractors, employees, affiliates or representatives, or from the Landfill) in a manner that complies with all Governmental Requirements.

“Operational Costs of the Facility” means only the following costs when paid to third party contractors or subcontractors and reasonably incurred for the administration, Operation, and maintenance of the Facility: (i) all recycling, disposal, and handling costs associated with the management and processing under this Agreement of all Household Hazardous Waste and Electronic

Waste, delivered by the Public to the Facility; (ii) with the prior written approval by the County, not to be unreasonably withheld, delayed, or conditioned, all costs associated with responses to any unforeseen emergencies; and (iii) all costs associated with the administration of the Facility. Notwithstanding the foregoing, Operational Costs of the Facility shall *exclude*: (i) non-cash items such as depreciation or amortization; (ii) capital expenditures or improvements to the Facility; and (iii) the costs of processing waste tires at the Facility.

“Preliminary Engineering” means permitting of the site and the Facility, the preparation of environmental documents, the preparation of plans, specifications, and cost estimates, and all other work required prior to obtaining construction bids for the Facility.

“Public” means the public from anywhere within the boundaries of the County of Los Angeles, including any jurisdiction in Los Angeles County, but in all cases excluding Waste Management or its affiliates, employees, representatives or agents.

3. DELEGATION OF ADMINISTRATIVE AUTHORITY.

A. Except for the approval of any excess costs of the Facility in accordance with Section 4B(3) below, and except for prior review and comment on the design of the Facility as an element of the Preliminary Engineering of the Facility, as provided for below in Section 4A(4), Palmdale will act on behalf of Lancaster in connection with the execution and administration of this Agreement, including the award of construction contracts and the construction of the Facility.

B. Notwithstanding the foregoing delegation of administrative authority from Lancaster to Palmdale, Palmdale and Lancaster will each remain jointly and severally responsible and/or liable for the Cities' obligations and/or liabilities under this Agreement, which obligations and/or liabilities otherwise are not hereby expanded, including obligations to indemnify, hold harmless or reimburse, such as, by way of example only, the Cities' obligations in Sections 4A(15), 4A(16), and 4B(5) of this Agreement, and including those instances when Palmdale is designated to act on behalf of the Cities. The provisions of this Section 3 shall survive the expiration or early termination of this Agreement.

4. CONSTRUCTION OF THE FACILITY AND FINANCING OF CONSTRUCTION.

A. Construction of the Facility and Transfer to Waste Management.

With regard to construction of the Facility, the parties will have the following rights and obligations:

- (1) Waste Management will prepare and submit to Palmdale all applications and site plans, and will comply with all Governmental Requirements, including the California Environmental Quality Act and the ordinances and regulations of Palmdale, required to obtain zoning approval for the Facility and any applicable conditional use permit or other land use entitlements. Notwithstanding the foregoing, the Cities shall be responsible for obtaining all necessary permits and/or approvals for the completion of the Facility. Without relieving Waste Management or the Cities of the foregoing obligations, or of their obligations to comply with all applicable laws or regulatory requirements or procedures, the County agrees to cooperate in

good faith to allow the Cities to obtain all permits necessary for the construction of the Facility.

- (2) The Cities and Waste Management will be in compliance with all terms and provisions of the License Agreement.
- (3) Palmdale, on behalf of the Cities, is responsible for the Preliminary Engineering, award of construction contract, contract administration, project management, construction engineering and inspection, and all other work required for the design and construction of the Facility in order that Waste Management may accept the Facility as complete and operational within a reasonable period of time that is agreed upon by the parties.
- (4) Palmdale, on behalf of the Cities, will design, construct, and deliver to Waste Management by means of a quitclaim deed a “turn-key” Facility constructed in accordance with plans and specifications that are prepared by Palmdale on behalf of the Cities and reviewed and approved by Waste Management and the County. In this regard, Palmdale will convene one or more joint meetings of all parties to review the plans, specifications, and design of the Facility. Because time is of the essence, if approval of the design of the Facility cannot be obtained from all parties following the joint meeting or meetings, then Palmdale may give final approval to that design, provided that the design, size, and location of the Facility are consistent with all applicable provisions of this Agreement, the License Agreement and all Governmental Requirements. Participation by the County or Waste Management in this design review process or any approvals granted in connection with the design and/or construction of the Facility impose no liability upon either the County or Waste Management in connection with the design or construction of the Facility and shall not relieve or expand the responsibility of the Cities or their agents or contractors from the obligations set forth elsewhere in this Agreement, including, without limitation, those set forth in the immediately following paragraph A(5) and in Sections 4A(15) and 4A(16). The provisions of this paragraph A(4) shall survive the expiration or early termination of this Agreement.
- (5) Notwithstanding the foregoing paragraph A(4), all work done by or on behalf of the Cities in the design and construction of the Facility and any ancillary structures on the site must be performed free from material defects in a safe and workmanlike manner using quality materials and finishes and must be in compliance with accepted construction and design industry standards, the requirements of any applicable conditional use permit or land-use approval, and all applicable Governmental Requirements.
- (6) The Cities must transfer the Facility to Waste Management in a condition that is satisfactory to Waste Management and that will enable Waste Management to operate and maintain the Facility as set forth below in Section 5. Prior to the transfer, if Waste Management, in the exercise of its reasonable judgment, determines that the condition of the completed Facility is not satisfactory, then Waste Management must give written notice to the Cities of any defects

or deficiencies, including those that may be related to the design and construction standards specified above in paragraph A(4). The Cities will then have a reasonable period of time, not to exceed six months, within which to cure those defects or deficiencies.

- (7) The Cities shall not suffer or permit to be enforced against the Site any mechanics', materialmen's, contractors' or subcontractors' liens or any stop notices, or any claim for damage arising from construction of the Facility, and Cities shall pay, or cause to be paid, all of such liens, stop notices, claims or demands before any action is brought to enforce the same against the Site. Notwithstanding the foregoing, if Cities shall, in good faith, contest the validity of any such lien, stop notice, claim or demand, then Cities shall, at their expense, defend the Site against the same and shall pay and satisfy any adverse judgment that may be rendered in that action prior to any enforcement of that judgment against the Site; provided, however, that if Waste Management shall so require, Cities shall procure and record or furnish to Waste Management a surety bond, or other security satisfactory to Waste Management, in an amount equal to at least 150 percent of the amount of such contested lien, stop notice, claim or demand, holding the Site free from the effect thereof. Waste Management reserves the right, at any time and from time to time, to post and maintain on the Site such notices of nonresponsibility as may be necessary to protect Waste Management against liability for all such liens, stop notices, claims and demands.
- (8) Promptly upon commencement of construction of the Facility, Cities shall, at their expense, post on the Site and record in the Official Records of Los Angeles County, California, a notice of nonresponsibility executed by Waste Management in statutory form.
- (9) Promptly upon completion of the Facility, Cities shall, at their expense, post on the Site and record in the Official Records of Los Angeles County, California, a notice of completion executed by Cities in statutory form.
- (10) In addition to, and not in limitation of, Waste Management's other rights and remedies, if Cities within 20 days after a request from Waste Management fail to pay and discharge any lien, stop notice, claim, or demand as provided for in paragraph A(7) then, in any such case, Waste Management may, at its option, pay any such lien, stop notice, claim or demand, or settle or discharge any action therefor, or satisfy any judgment thereon, and all reasonable costs, expenses and other amounts incurred by Waste Management in connection therewith (including reasonable attorneys' fees) shall be paid to Waste Management by Cities upon demand.
- (11) Palmdale, on behalf of the Cities, will require all contractors and subcontractors engaged to construct the Facility to carry casualty and liability insurance equivalent to or in excess of the coverage typically required by owners of comparable facilities, with insurers rated A:VIII or better by A.M. Best's and licensed to do business in the State of California, but in no event less than the following:

- (a) Property insurance on the Facility in the form of an All Risk, Special Form or Direct Damage policy with Boiler & Machinery coverage, both in the full replacement cost thereof. Coverage shall also include Building Ordinance and Demolition coverage with a limit of not less than \$100,000; and
 - (b) Commercial General Liability Insurance in an amount of not less than \$1,000,000 per occurrence, \$1,000,000 personal injury and property damage, \$2,000,000 products and completed operations aggregate, \$3,000,000 per occurrence, with no exclusions or limitations from coverage. Coverage shall include, but not be limited to, coverage for bodily injury, loss of life, or property damage occurring in or upon the Site or on any portion of the property surrounding the Site that is within the Landfill.
 - (c) The Cities, Waste Management and the County each shall be named as insureds or additional insureds on endorsements in the form satisfactory to the Cities, Waste Management and the County for all policies of insurance required herein to construct the Facility. Palmdale, on behalf of the Cities, shall deliver to Waste Management and the County written proof of the requisite insurance upon awarding contracts and prior to commencement of the construction of the Facility.
- (12) Palmdale, on behalf of the Cities, shall comply with all applicable laws and Governmental Requirements pertaining to the Site and to the construction of the Facility, including environmental laws, laws that regulate Hazardous Materials, and building codes.
 - (13) All project development documents for the Facility, including design and construction drawings, plans, and specifications (“Project Documents”) shall be prepared in strict compliance with the latest edition of all local, state, or national building codes applicable to the Facility and shall be approved in advance by the parties in accordance with paragraph A(4) above. Any material changes to the Project Documents after initial approval by the parties will also be subject to prior approval by the parties.
 - (14) A record copy of the as-built Project Documents bearing the original seal of a California registered architect or California registered professional engineer, as appropriate, shall be furnished by Cities to Waste Management and to the County.
 - (15) Notwithstanding the provisions of Government Code section 895.4 or the License Agreement, Cities will release, indemnify, defend, and hold the County and its special districts and their elected and appointed boards, commissions, officers, employees and agents, harmless from any liability imposed for injury (as defined by Government Code section 810.8) occurring in connection with any work or any alleged defects relating to the design or construction of the Facility. The foregoing obligation of the Cities in this

paragraph (15) shall be in addition to the Cities' obligation to reimburse the County pursuant to Section 4B(5) below and shall survive the expiration or early termination of this Agreement.

- (16) The Cities agree to release, indemnify, defend and hold harmless the County and its special districts and their elected and appointed boards, commissions, officers, employees and agents, and Waste Management and its officers, agents, and employees, from and against all claims, losses, damages, proceedings, causes of action, liability, costs and expenses arising from or in connection with, or caused by any of the following:
- (a) The status of ownership of the Facility or any transfer of the Facility, whether by quitclaim deed or otherwise and whether to Waste Management or any other party;
 - (b) any alleged violations of the terms and conditions of the Grant or any demand asserted for repayment of all or a portion of the Grant, but not including any event or action which results in the failure of CIWMB to fund the full amount of the Grant; and
 - (c) any alleged violations of any Governmental Requirements relating to the design or construction of the Facility.

The provisions of this paragraph A(16) shall be observed in addition to the Cities' obligations under the immediately preceding paragraph A(15) and in addition to their obligations to reimburse the County pursuant to Section 4B(5) and shall survive the expiration or early termination of this Agreement.

- (17) Notwithstanding any provision in this Agreement to the contrary, Palmdale will release, indemnify, defend and hold harmless Lancaster, and its elected and appointed officers, employees and agents, from any and all claims, losses, damages, proceedings, causes of action, liability, cost and expenses arising from, or in connection with, or caused by, any of the following:
- (a) any defects relating to the design or construction of the Facility;
 - (b) any alleged violations of any Governmental Requirements relating to the design or construction of the Facility; and
 - (c) any alleged violation or failure to comply with the provisions of Section 4A of this Agreement.

The provisions of this paragraph A(17) shall survive the expiration or early termination of this Agreement.

B. Financing of Construction Work for the Facility.

With regard to the financing of construction work for the Facility, the parties will have the following rights and obligations:

- (1) Lancaster and Palmdale will each advance \$232,889 (the “City Advance”) toward the Cost of Facility to ensure its construction and completion and will take all actions required to obtain payment of the Grant proceeds, which proceeds will be used to reimburse each City’s advance and the County’s advance under paragraph B(3) below. Lancaster will make installment payments to the City of Palmdale on its total obligation of \$232,889 at each major stage of completion of the Facility (the design and permitting stage, the construction stage, and the educational and outreach stage) as determined by Palmdale, upon receipt of invoices and upon Lancaster’s verification that the funds are needed for the next major stage of the Facility’s completion. Notwithstanding the foregoing, the License Agreement must be in full force and effect and the parties thereto must be in full compliance with the License Agreement as a pre-condition of Cities’ obligations under this paragraph B(1).
- (2) Upon the Cities providing written evidence of the award of the Grant to the Cities from the CIWMB, County will advance (the “County Advance”) the total sum of \$232,889 to Palmdale, acting on behalf of both Cities, to be applied toward the Cost of Facility, subject to the Cities’ commitment to reimburse the County as set forth in paragraph 4B(5) below. County will make installment payments of said funds to Palmdale, on behalf of the Cities, at each major stage of completion of the Facility (the design and permitting stage, the construction stage and the educational and outreach stage) as determined by Palmdale, on behalf of the Cities, upon receipt of invoices and upon County’s verification that the funds are needed for the next major stage of the Facility’s completion. Notwithstanding the foregoing, the License Agreement must be in full force and effect and the parties thereto must be in full compliance of the License Agreement as a pre-condition of County’s obligations under this paragraph B(2).
- (3) The Cost of Facility to be constructed shall not exceed \$698,667 without the prior written approval of each of the Cities and the County. Any cost to construct the Facility in excess of \$698,667, but subject to a cap of \$1,000,000, will be funded one-third each by Lancaster, Palmdale, and the County if each one of those parties pre-approves that excess cost in writing. Although costs in excess of \$698,667 (subject to a cap of \$1,000,000) that are approved will be paid equally by the Cities and the County (one-third per entity), neither the Cities nor the County will be obligated to approve any expenditure, including construction change orders, any costs incurred internally by any party, or any other cost that would cause the Cost of Facility to exceed the amount of the Grant, and approval may be withheld at the sole and absolute discretion of each of the Cities or the County.
- (4) Palmdale, on behalf of the Cities, will deliver to the County, Waste Management and Lancaster at the end of each month a written report, in the same format that is required by the CIWMB, containing a detailed accounting of all expenditures made from all of the County’s advances and Cities’ advances towards the Cost of Facility, including the advances referenced above in paragraphs B(1) and B(2) and excess costs referred to above in

paragraph B(3), if any. The provisions of this paragraph B(4) shall survive the expiration or early termination of this Agreement.

- (5) Cities will comply with all terms and conditions of the Grant for construction of the Facility. Upon receipt of any Grant proceeds from the CIWMB, Cities will reimburse the Cities and County, with each entity entitled to one-third equal share of the Grant proceeds until all amounts advanced by the Cities and County toward the Cost of Facility are reimbursed. The obligation of the Cities to reimburse each City and the County for the City Advance and the County Advance, respectively, shall be limited solely to the proceeds of the Grant received by the Cities. The provisions of this paragraph B(5) shall survive the expiration or early termination of this Agreement.
- (6) Palmdale, on behalf of the Cities, will provide to the County, Waste Management and Lancaster, within 120 calendar days after Waste Management's acceptance of title to the Facility, a written final accounting of the total Cost of Facility, in such reporting format as may be prescribed by the CIWMB, together with additional information and in such alternate format as the County, Waste Management or Lancaster may reasonably request. The provisions of this paragraph B(6) shall survive the expiration or early termination of this Agreement.

5. OPERATION OF THE FACILITY.

A. Operational Costs of the Facility. Waste Management shall perform Operation of the Facility in accordance with the following terms:

- (1) Waste Management shall commence Operation within thirty (30) days of the transfer of title to the Facility or at another date as agreed by the parties. Prior to commencing the operation of the Facility, Waste Management shall obtain all necessary permits and approvals for the operation and maintenance of the Facility, including, without limitation, those that may be required from the County and/or Palmdale in their capacities as regulators, including from the County's Department of Health Services under State law as an enforcement agency pursuant to California Public Resources Code Sections 43200, *et seq.*, and including those pertaining to Hazardous Materials or fire safety.
- (2) During any and all times when the County contributes any monies to the Operational Costs of the Facility pursuant to Section 5B below (the "Operating Period"), Waste Management will perform the Operation, and generally administer, operate, and maintain the Facility, in accordance with all Governmental Requirements by means of an operating agreement (the "Operating Agreement") between, on the one hand, a qualified contractor that is pre-approved in writing by the County and the Cities, and, on the other hand, Waste Management. Waste Management and the County shall agree to the timing and amount of periodic payments to the contractor to be made by the County in connection with the County's one-half share of the Operational Costs of the Facility. Notwithstanding the foregoing, the County's and/or

Cities' approval or any oversight of the Operating Agreement, or any acts performed pursuant to Section 5B(6) below, shall not relieve Waste Management of its obligations to conduct the Operation in a competent manner or of any of its obligations in this Agreement, including without limitation, Waste Management's obligations under Section 5B(12) below.

- (3) Waste Management will fully insure the Facility to cover at minimum its full replacement value, naming the County and the Cities as additional insureds. Waste Management will also fully insure its operations under this Agreement based on limits and types of coverage consistent with the standards generally applied to similar facilities in the State, naming the County and the Cities as additional insureds. Such insurance and the limits contained therein shall be subject to review and approval of the Cities and County. Waste Management shall provide written proof of insurance to the Cities and County prior to commencing Operation. Notwithstanding the foregoing, Waste Management's compliance with the insurance requirements of this Section 5A(3) shall not relieve Waste Management of its obligations in this Agreement including, without limitation, Waste Management's obligations under Section 5B(12) below.
- (4) Waste Management shall install and operate such equipment, and implement and adhere to such procedures, as are consistent with the standards generally applied to similar projects in Los Angeles County, including the storage, use, removal, and disposal of Hazardous Materials on and from the Facility and Landfill
- (5) Notwithstanding any other provision in this Agreement, during the Operating Period, Waste Management, through its qualified approved contractor, must conduct the Operation of the Facility in compliance with the following additional standards and requirements to promote and serve the public interest:
 - (a) The Facility must be open to the Public for the disposal of Household Hazardous Waste at least twice a month, with regularly scheduled hours for public access.
 - (b) Subject to written pre-approval by the County upon the County's receipt of separate grant monies for this activity from third-party sources, the Facility must be open to the Public during one Saturday every three months to accept waste tires, as provided in Section 5A(7).
 - (c) During one Saturday every three months, the Facility must be open to the Public to accept Electronic Waste, as provided in Section 5A(8).
 - (d) The Facility must be available to all residents of Los Angeles County free of charge.
 - (e) The Public must be notified on a regular basis regarding the availability of the services offered at the Facility.

(f) The Facility must be staffed with trained personnel to assist the Public in the recovery of used oil and other household hazardous waste that the Facility may accept.

(g) Waste Management or its contractor must annually report to the CIWMB (through the County) the collection at the Facility of used oil and Household Hazardous Waste through the Grant reporting requirements and Form 303.

(6) During the Operating Period, the Facility will not be used by Waste Management for its own purposes or for any purposes other than the Operation, conducted in a manner consistent with this Agreement, including, without limitation, Section 5A(5) above; provided, however, that temporary storage in the Facility of Household Hazardous Waste collected at the gate of the Landfill only from residential customers who are members of the Public (not from commercial sources or from Waste Management or its agents, contractors, employees, affiliates or representatives, or the Landfill) at times other than on days regularly scheduled for the drop-off of Household Hazardous Waste will be authorized, if: (i) those materials are not commingled with hazardous waste collected by Waste Management at curbside under its franchise agreements and/or other operations; (ii) the collection of those materials is recorded on the same County-approved forms that are used during the Roundup events; and (iii) the resident seeking to dispose of the Household Hazardous Waste at the gate of the Landfill is not charged for that disposal.

(7) Subject to written pre-approval by the County upon the County's receipt of separate grant monies from third-party sources for waste tires, during the Operating Period Waste Management will conduct quarterly waste tire events to accept waste tires from the Public, and Waste Management will arrange for the proper handling, disposal, or recycling of waste tires, in accordance with all Governmental Requirements. Waste Management must recycle all waste tires unless disposal is authorized in advance in writing by the County. To the extent that the County receives separate grant monies from third-party agencies for the collection and processing of waste tires, the County shall pay directly to Waste Management's contractor that is pre-approved by the County for collecting and processing waste tires at the Facility, those reasonable amounts due and payable as binding contractual obligations of Waste Management for work performed relating to waste tires at the Facility. Without limiting Waste Management's obligations set forth elsewhere in this Agreement, the provisions of Sections 5B(2)-5B(6) below also shall apply to this paragraph A(7), *mutatis mutandis*.

(8) During the Operating Period, Waste Management will conduct quarterly Electronic Waste collection events and arrange for the proper handling, disposal, or recycling of that waste, in accordance with all Governmental Requirements. Waste Management must recycle all Electronic Waste unless its disposal is authorized in advance in writing by the County. The cost of these events shall be included in the Operational Costs of the Facility.

B. Funding Operational Costs of the Facility.

- (1) During the Operating Period, the County and Waste Management each will be responsible for one-half of the total Operational Costs of the Facility in an amount not less than \$180,000 annually, and not more than \$210,000 annually as determined by a detailed accounting by Waste Management, including a detailed itemization of actual Operational Costs of the Facility that are incurred for the Operation, to be reported by Waste Management in a written report to the County in a form acceptable to the County, which report shall also track quantities of waste by type of waste received and/or processed by the Facility. Waste Management will prepare and submit to the County, not later than ninety (90) days prior to the date set for the commencement of Operation of the Facility and April 1 of each year thereafter, an annual budget for advertising costs to promote the Facility. Waste Management and the County will agree on said budget to be included as part of the Operational Costs of the Facility for the upcoming year, which budget must in good faith comply with the requirements of California Public Resources Code Section 41802(b)(3). Waste Management shall provide a copy of said budget to the Cities upon reaching agreement with the County.
- (2) The County shall have the right, at the County's sole and absolute discretion, to audit: (i) any reports submitted to the County; and (ii) Waste Management's or its contractors' and subcontractors' records relating to the Facility and/or its operation and maintenance. Waste Management and its contractors and subcontractors shall cooperate fully with the County in connection with any audit.
- (3) Waste Management will make a good faith effort to minimize and mitigate all Operational Costs of the Facility and any other costs for which the County may need to reimburse Waste Management pursuant to this Agreement.
- (4) Waste Management will accept written evidence of installment payments by the County for its share of the Operational Costs of the Facility, which payments will be made by the County directly to the pre-approved third-party contractor operating the Facility subject to agreement by Waste Management and the County as to the timing and amount of such periodic payments.
- (5) Waste Management will prepare and deliver to the County and the Cities quarterly status reports regarding waste characterization at the Facility and expenditures attributable to the Facility's Operation and use its best efforts to ensure that the projected Operational Costs of the Facility do not exceed the \$420,000 annual limit. If the Operational Costs of the Facility are expected to exceed \$420,000 for any 12-month period of operation, Waste Management will immediately inform the County and the Cities of the projected cost overrun with a detailed explanation of the cause of the overrun. Notwithstanding the foregoing, neither the County nor Waste Management shall be obligated to fund any cost overruns under any circumstances.

- (6) During the Operating Period, the County, the Cities, and the CIWMB will have the right to monitor and evaluate the operations of the Facility; provided, however, that neither the County or the Cities will be deemed to own or operate the Facility under applicable environmental laws or otherwise. If an operating deficiency at the Facility is determined to exist, then written notice must be given to Waste Management and the contractor of that operating deficiency, and Waste Management and the contractor shall have thirty (30) days from receipt of notice to cure the operating deficiency. If the operating deficiency is of a nature that cannot be cured within thirty (30) days, Waste Management and the contractor shall be given a reasonable additional period of time to complete the cure, provided that Waste Management and/or the contractor has commenced the cure within the initial thirty (30) day period and thereafter diligently pursues completion of the cure in a timely manner and in accordance with a cure schedule agreed to in writing by the Cities, the County and Waste Management. If Waste Management and/or the contractor fails to cure within the applicable cure period specified in the cure schedule, the Cities and County may terminate this Agreement upon thirty (30) days prior written notice to Waste Management and the contractor, provided that the Cities and County shall not have the right to terminate the Agreement if Waste Management or the contractor completes the cure of any breach or default during the thirty (30) day period following the date of notice of termination. All rights and remedies of the Cities and County herein are cumulative, and none shall exclude any other remedy allowed by law or equity.
- (7) During a time period of six (6) months (the "Evaluation Period") commencing the first day of the thirty-first (31st) month after the transfer of the title of the Facility to Waste Management and Waste Management's commencement of operation of the Facility, the Cities will organize a meeting(s) for the Cities, Waste Management, and the County to evaluate the operation of the Facility in accordance with the following evaluation criteria:
- (a) Cost per volume (or tonnage) of specific household hazardous wastes and specific electronic wastes collected when compared to that of Roundups in the vicinity of the Antelope Valley based on data from 2002 through the commencement of the evaluation;
 - (b) Quantities of household hazardous waste and electronic waste collected compared to that of Roundups in the vicinity of the Antelope Valley based on data from 2002 through the commencement of the evaluation;
 - (c) The Facility's ability to serve all Antelope Valley residents based on surveys conducted at the Facility compared to that of Roundups conducted from 2002 through the commencement of the evaluation. The surveys will include, but not be limited to, the total number of participants from each jurisdiction;

- (d) Accessibility and convenience to residents of each jurisdiction based on periodic surveys; and
 - (e) Other criteria deemed significant and relevant.
- (8) Upon completion of the evaluation provided for above in the immediately preceding paragraph (B)(7) but before the end of the Evaluation Period, the Cities, Waste Management, and the County will meet again to conclude whether the continued operation of the Facility will be mutually beneficial and cost-effective. If no agreement is reached prior to the expiration of the Evaluation Period regarding the continued operation of the Facility, the Facility's operations will continue in effect during the remainder of the Evaluation Period under the terms and conditions of this Agreement, and the County's and the Cities' staffs and Waste Management will continue to meet for the purpose of reviewing options available for the continued operation of the Facility. However, the parties acknowledge that no party will be obligated to enter into any agreement regarding the operation of the Facility or the funding of any activities conducted therein following the Evaluation Period. Furthermore, notwithstanding the foregoing or paragraph B(9) below, any agreement or commitment on behalf of the County that applies to the period following the Evaluation Period will require the affirmative official approval of the Los Angeles County Board of Supervisors, at its sole and absolute discretion.
- (9) If agreement is not reached by the parties concerning the continued operation of the Facility, as provided for above in the immediately preceding paragraph B(8), and the Operating Period terminates, then the following provisions will apply:
- (a) The County's obligations hereunder will terminate; and
 - (b) Waste Management may either:
 - (i) continue to operate the Facility as a private venture in a manner consistent with the requirements specified above in Section 5A(5), and with the requirements of all applicable permits, including conditional use permits; or
 - (ii) continue to operate the Facility as a private venture, whether for the collection of household hazardous waste or for other purposes, without complying with the requirements specified above in Section 5A(5), in which event Waste Management will be obligated to immediately repay to the Cities the fair market value of the Facility, taking into consideration depreciation, amortization, and all other relevant factors. This repayment obligation of Waste Management will survive the termination of this Agreement.
 - (c) Cities and County will direct their respective staffs to meet and confer regarding cooperating to continue to provide household hazardous waste collection programs for the benefit of all Antelope Valley residents, including the possible funding of the Facility or other

permanent facilities to be considered at the sole discretion of each of the governing boards of said entities.

- (10) Upon Waste Management's acquisition of title to the Facility, and following commencement of Operations, County will provide to Waste Management and to the Cities all written data that is available from the County's records from the three previous calendar years associated with the Roundups in the Antelope Valley, including data relating to vehicles used, Roundup costs incurred, volume of waste collected, and performance of waste characterization.
- (11) The parties will cooperate in good faith to identify and apply for all grants that may become available to help offset the Operational Costs of the Facility. The parties agree to meet and confer concerning the use of proceeds from the grants for the Facility. Nothing herein shall prevent the parties from obtaining other grants not related to the Operational Costs of the Facility.
- (12) Waste Management will release, indemnify, protect, and hold harmless the Cities and the County, their elected and appointed boards, commissions, officers, employees, and agents (collectively, Indemnitees) from and against all claims, 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, reasonable attorneys' fees for the adverse party and expenses (including reasonable 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 operation or maintenance of the Facility, including any allegation of a breach of Governmental Requirements relating to the operation or maintenance of the Facility, and including the 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 Materials, hazardous substance, hazardous waste, Household Hazardous Waste, solid waste, or other waste that is collected, stored, transported, treated, or disposed of at the Facility or at the Landfill. 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 termination of this Agreement. The parties hereby subrogate to Waste Management their rights to proceed against any insurance coverage to the extent Waste Management seeks reimbursement of any amounts expended in connection with its foregoing obligations under this paragraph B(12). The provisions of this paragraph B(12) shall survive the expiration or early termination of this Agreement.

- (13) Notwithstanding any provision of this Section 5, no act or failure to act, no receipt of any information or report, and no monitoring activity by the Cities shall obligate the Cities to fund any portion of the Operating Costs.

6. MISCELLANEOUS PROVISIONS.

A. Time of the Essence. With regard to the performance of their respective obligations under this Agreement, the parties acknowledge that time is of the essence in view of the fact that all Grant proceeds from the CIWMB must be expended by April 15, 2004, unless a one-year extension of that deadline is applied for and granted.

B. Amendments. This Agreement may be amended or modified only by mutual written consent of the parties.

C. Termination of the Agreement. Subject to the provisions above wherein certain provisions of this Agreement shall survive the expiration or early termination of this Agreement:

(1) This Agreement shall terminate immediately if the CIWMB communicates to the Cities a denial of the Grant.

(2) This Agreement may be terminated prior to commencement of construction at the option of Palmdale, Lancaster or the County, if in its reasonable judgment, the construction of the Facility cannot be completed by the date set for the termination of the Grant.

(3) The obligations of all parties under this Agreement will terminate if the License Agreement referenced in paragraph (I) of the Recitals is terminated prior to completion of construction of the Facility.

(4) Upon termination or early expiration of this Agreement, the Cities shall return to the County any portion of the County Advance not expended as of the termination date, as provided in this Agreement

D. Jurisdiction and Venue. If any action at law or in equity is brought to enforce or interpret any provisions of this Agreement, that action must be initiated in federal or state courts located within Los Angeles County, State of California, regardless of any other possible jurisdiction or venue.

E. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will not be affected unless their enforcement under the circumstances would be unreasonable, inequitable, or would otherwise frustrate the purposes of this Agreement.

F. Binding Upon Successors. This Agreement is binding upon and inures to the benefit of each of the parties and to their respective transferees, successors and assigns.

G. Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which is deemed to be an original and all of which constitute one and the same instrument.

H. Applicable Law. This Agreement and the transactions contemplated by it are to be construed in accordance with and governed by the applicable laws of the State of California.

I. Authority. The persons signing below represent that they have the requisite authority to bind the entities on whose behalf they are signing.

J. Effective Date. This Agreement will become effective on the date that the last of the parties, whether Lancaster, Palmdale, the County, or Waste Management, executes this Agreement. Following its execution by all parties, the Palmdale City Clerk will insert the Effective Date in all counterparts of this Agreement and transmit one or more fully executed counterparts to all parties.

K. Relationship. Nothing herein contained shall in any manner be construed as creating any relationship between the parties as partners, joint-venturers, agents, employers, or employees.

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:

COUNTY OF LOS ANGELES

VIOLET VARONA-LUKENS
Executive Officer of the
Board of Supervisors of
The County of Los Angeles

By _____
Chair, Board of Supervisors
Dated: _____

By _____
DEPUTY

APPROVED AS TO FORM:

LLOYD W. PELLMAN
County Counsel

By _____
DEPUTY

ATTEST:

CITY OF LANCASTER

By _____
CITY CLERK

By _____
Title _____
Date _____

APPROVED AS TO FORM:

CITY ATTORNEY

ATTEST:

CITY OF PALMDALE

By _____
CITY CLERK

By _____
Title _____
Date _____

APPROVED AS TO FORM:

CITY ATTORNEY

ANTELOPE VALLEY RECYCLING AND
DISPOSAL FACILITY, INC., a California
corporation

APPROVED AS TO FORM:

CORPORATE COUNSEL

By _____
Title _____
Date _____

EXHIBIT "A"

LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is entered into this ____ day of _____, 2004 ("Effective Date"), by ANTELOPE VALLEY RECYCLING AND DISPOSAL FACILITY, INC., a California corporation, which is a wholly-owned subsidiary of USA Waste of California, a Delaware corporation ("Licensor"), the CITY OF PALMDALE, a municipal corporation ("Palmdale"), and the CITY OF LANCASTER, a municipal corporation ("Lancaster"). For the purposes of this Agreement, Palmdale and Lancaster are collectively referred to in the singular as "Licensee."

RECITALS:

- A. The California Integrated Waste Management Board has awarded to Licensee a 2001/2002 Used Oil Opportunity Grant ("Grant") to, among other things, establish a permanent Household Hazardous Waste Facility ("Facility") to serve residents in the Antelope Valley area of the County of Los Angeles by facilitating the collection and transfer of household hazardous waste.
- B. As a public service by or on behalf of the Licensee, and under the terms of the Construction and Operating Agreement as defined below in paragraph (E), the Facility will be used by residents of the Antelope Valley as a safe means of disposing of or recycling their household hazardous waste, electronic waste, and waste tires in accordance with applicable laws and regulations.
- C. Licensor is the owner of certain real property located in the City of Palmdale, County of Los Angeles, State of California, which is commonly known as the Antelope Valley Public Landfill (the "Landfill").
- D. Licensor and Licensee have identified an area within the Landfill upon which the Facility is proposed to be constructed, which area consists of approximately 38,000 square feet and is more particularly described in the attached Exhibit "A" which is incorporated by this reference. That area is referred to in this Agreement as the "Site."
- E. Concurrently with the execution of this Agreement, Licensor, Licensee, and the County of Los Angeles have entered into a Construction and Operating Agreement for Household Hazardous Waste Collection and Transfer Facility ("Construction and Operating Agreement") to establish terms and conditions for the construction, operation, and maintenance of the Facility at the Site.

- F. Licensor is willing to grant to Licensee a non-exclusive license for access to and use of the Site in connection with the construction of the Facility, which license is more particularly described in this Agreement.
- G. Upon completion of construction of the Facility, Licensee will transfer the Facility to Licensor to enable the operation and maintenance of the Facility pursuant to the terms and conditions of the Construction and Operating Agreement, which will include the participation of the County of Los Angeles as set forth in the Construction and Operating Agreement.
- H. In addition to allowing Licensee to construct the Facility at the Site, a principal goal of this Agreement is to enable the parties to accomplish the goals of the Construction and Operating Agreement.

AGREEMENTS

For and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. License and Restrictions.
 - 1.1 Subject to the terms and conditions of this Agreement, Licensor hereby grants a non-exclusive license (the "License") to Licensee and its duly authorized agents, employees, and contractors to access and use the Site for the following purposes (the "License Purposes"): (a) construction of the Facility on the Site in accordance with the terms and provisions of the Construction and Operating Agreement referenced in paragraph (E) of the Recitals; and (b) as may be reasonably necessary for the completion of construction of the Facility, the storage of equipment and materials to be used in connection with that construction.
 - 1.2 The Licensee shall not conduct any activity on the Site other than in connection with the License Purposes. The Licensee shall not use the Site in any manner that will conflict with any law, statute, ordinance, rule, regulation, or requirement of any duly constituted public authority with jurisdiction over the Site, whether now in force or hereafter enacted or promulgated. The Licensee shall not permit any party other than the Licensee or the County of Los Angeles, or their duly authorized agents, employees, and contractors, to enter upon the Site in connection with the License.

1.3 Licensee covenants and agrees to use good faith efforts to cause the fueling, servicing, and repair of any vehicles that are used exclusively in connection with the construction of the Facility to be conducted within those areas of the Site that are mutually agreed to by the Licensor and Licensee.

2. Term of License.

2.1 The License will remain in full force and effect from the Effective Date of this Agreement until the earlier of (a) May 31, 2006, or (b) the date that Licensor receives a copy of the notice of completion executed by Licensee in statutory form and recorded in the Official Records of Los Angeles County, California ("Notice of Completion").

2.2 Notwithstanding Subsection 2.1 above, if the Facility is not completed by May 31, 2006, then the term of the License will automatically be extended until construction is completed, provided that the Licensee is proceeding reasonably with the construction of the Facility, or, if applicable, Licensee is diligently curing any default pursuant to Section 2.4 below.

2.3 Simultaneously with the issuance of a certificate of occupancy for the Facility, Licensee shall execute and deliver to Licensor a quitclaim deed in recordable form evidencing the termination of any right, title or interest in the Site and the conveyance of title to the Facility to Licensor. The conveyance of title to the Facility to Licensor shall be without representation or warranty by the Licensee as to its condition, and shall be acquired by Licensor in its "AS IS" condition and "WITH ALL FAULTS" on the date of its acquisition.

2.4 This Agreement may be terminated by Licensor (a) if Licensee fails to begin construction of the Facility within 12 months after the Effective Date; or (b) if Licensee defaults in the performance of any of its obligations under this Agreement after written notice from Licensor and an opportunity to cure as provided herein. If Licensee defaults in the performance of its obligations hereunder, Licensor shall notify Licensee in writing, and Licensee shall have 30 days from receipt of Licensor's notice to cure the performance failure. If the failure is of a nature that cannot be cured within 30 days, Licensee shall be given a reasonable additional period of time to complete the cure, provided that Licensee has commenced the cure within the initial 30-day period and thereafter diligently pursues completion of the cure in a timely manner and in accordance

with a cure schedule agreed to in writing by the Licensor and Licensee. If Licensee fails to cure within the applicable cure period specified in the cure schedule, Licensor may terminate this Agreement upon 30 days prior written notice to Licensee, provided that Licensor shall not have the right to terminate the Agreement if Licensee completes the cure of any breach or default during the 30-day period following the date of Licensor's notice of termination. All rights and remedies of Licensor herein are cumulative, and none shall exclude any other remedy allowed by law or equity.

2.5 If this Agreement terminates prior to the completion of the Facility, Licensee shall have the right to remove from the Site and to salvage all or any combination of structures, buildings, equipment, facilities, appurtenances, and Personal Property ("Licensee Property") within 90 days following that termination. Any Licensee Property not removed by Licensee within that 90-day period will be deemed abandoned and Licensor shall be free to use or dispose of that property as it sees fit.

3. Agreement to Cooperate and Coordinate.

Licensee acknowledges and agrees that Licensor may, and is entitled to, perform work on or near the Site concurrently with the construction of the Facility. To that end, Licensee and Licensor agree to meet as often as is reasonably necessary in order to coordinate the schedules for construction of the Facility and for Licensor's work in order to minimize as much interference between the same as is reasonably possible and to complete that work as efficiently as possible. Notwithstanding the foregoing, if the schedules for the Licensee's construction work and the Licensor's work conflict in a manner that is not susceptible to resolution through the reasonable cooperation of the parties, then the completion of the Facility's construction will take precedence.

4. Personal Property and Fixtures.

Licensor acknowledges and agrees that the Licensee may bring equipment, tools, supplies and materials onto the Site in connection with the License Purposes. Licensor further acknowledges and agrees that such equipment, tools, supplies and materials are the personal property ("Personal Property") of the Licensee, that Licensor has no, and shall not claim any, right, title or interest therein, and that the Licensee has the right to remove them at any time without Licensor's consent, except as set forth above in Section 2.5.

5. Indemnity.

Licensee will protect, indemnify, defend and hold Licensor, and its employees, contractors, representatives, officers, directors, and agents (collectively, "Licensor's Indemnitees"), free and harmless from and against (collectively, "Indemnify") any and all claims, causes of action, demands, damages, liens, liabilities, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) to which Licensor's Indemnitees may become exposed or which Licensor's Indemnitees may incur in connection with the Licensee's exercise of its rights and performance of its obligations hereunder (collectively, "Losses"). Notwithstanding the foregoing, it is the intent of Licensee and Licensor that Licensee shall not be liable to Indemnify Licensor's Indemnitees under this Section 5 for Losses that result from the negligence or willful misconduct of Licensor. Notwithstanding anything to the contrary contained herein, the provisions of this Section 5 shall survive the termination of the License as provided in Section 2 for one year, except as to claims made and pending at that time.

6. Notices.

6.1 Any notice or demand (excluding routine correspondence) that is given by any party to another party or parties pursuant to this Agreement shall be delivered to each of the representatives of the parties and of the County of Los Angeles at the addresses listed below, or to such other representative or address as may from time to time be given by written notice:

City of Palmdale
38250 Sierra Highway
Palmdale, California 93550
ATTN: Leon E. Swain, Director of Public Works
Fax #: (661) 267-5322

W. Matthew Ditzhazy, Esq.
Palmdale City Attorney
Office of the City Attorney
38300 Sierra Highway
Palmdale, California 93550
Fax #: (661) 267-5122

City of Lancaster
44933 Fern Avenue
Lancaster, CA 93534-2461
ATTN: James R. Williams, Director of Public Works
Fax #: (661) 723-6182

David R. McEwen, Esq.
Lancaster City Attorney
Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Fax #: (949) 823-5162

Antelope Valley Recycling and Disposal Facility, Inc.,
Antelope Valley Landfill
1200 W. City Ranch Road
Palmdale, CA 93550
ATTN: Steve Paulson
Fax #: (661) 726-3462

Waste Management – Western Group
7025 N. Scottsdale Road – Suite 200
Scottsdale, Arizona 85253
ATTN: Sharon Fabian, Senior Legal Counsel
Fax #: (713) 286-7570

Waste Management of Los Angeles
9081 Tujunga Avenue, 2nd Floor
Sun Valley, CA 91353
ATTN: Dan Shoener, Los Angeles Area Vice President
Fax #: (818) 252-3249

County of Los Angeles Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803
ATTN: Jim Noyes, Director of Public Works
Fax #: (646) 458-4022

County of Los Angeles Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803
ATTN: Shari Afshari, Assistant Deputy Director
Fax #: (626) 458-3569

- 6.2 Notices and demands given by a party must be in writing and may be effected by personal delivery, by overnight courier, by receipted facsimile transmission or by certified mail, return receipt requested.
- 6.3 Notices and demands delivered or transmitted under Subsection 6.2 above will be deemed to have been duly received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a business day. Otherwise, any such notice or demand will be deemed to have been received on the next succeeding business day.
- 6.4 If the name of the recipient designated to receive the notices and demands, or the address or facsimile number of that recipient, is changed, written notice must be given at least five working days before the effective date of that change. Notices given before actual receipt of a notice of change will not be invalidated by the change.

7. Authorized Representative.

- 7.1 Except as otherwise specifically provided, any reference herein to Licensor shall include its authorized representatives. Any reference to Licensee shall include both the City of Palmdale and the City of Lancaster and the authorized representatives of each city. Any reference herein to the County of Los Angeles will include its authorized representatives.
- 7.2 The initial authorized representatives, in addition to the individuals listed above in Section 6, are the following:

City of Palmdale	Leon E. Swain Sayne Redifer Terry Connell David Wu
City of Lancaster	Richard M. Long
Licensor	Steve Paulson John Workman
County of Los Angeles	Shari Afshari Carlos Ruiz

8. Right to Enter.

The right is reserved to Licensor and the County of Los Angeles during the term of the License to enter upon the Site at any time and for any purposes necessary or convenient in connection with making inspections, managing the Landfill, and assisting the Licensee, as may be applicable.

9. Ingress and Egress.

This License includes the right of ingress and egress by Licensee on property adjacent to the Site that is owned or controlled by Licensor and not described in Exhibit "A", during the hours of Licensor's normal operation, provided such access is necessary for the License Purposes and that Licensee obeys all Landfill operational and safety rules and regulations and does not disturb the normal operation of the Landfill. Any such ingress or egress shall first be coordinated and approved by Licensor. The maintenance and operation of the routes for ingress and egress is the responsibility of Licensor.

10. Protection of the Site.

During the term of the License, a temporary fence may be installed around the perimeter of the Site while construction activities are in progress. Licensee shall keep, or cause to be kept, the Site in good order and in a clean, safe condition, consistent with the construction of the Facility, by and at the expense of Licensee. Licensee is responsible for any damage that may be caused to property of Licensor at the Landfill as a result of the construction of the Facility, and Licensee shall exercise due care and diligence in the protection of all property located on the Site and the Landfill against fire or damage from other causes. Any property of Licensor that is damaged or destroyed by Licensee, incident to the exercise of the privileges herein granted, shall be promptly repaired or replaced by Licensee to a condition reasonably satisfactory to Licensor or, at the election of Licensor, reimbursement shall be made by Licensee in an amount necessary to restore or replace the property to a condition reasonably satisfactory to Licensor.

11. Successors and Assignment.

This Agreement is binding upon and enforceable against, and inures to the benefit of, the parties and their respective heirs, legal representatives, and successors; provided, however, that neither

Licensor nor Licensee may delegate or assign any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.

12. Subject to Easements.

The License is subject to all existing easements, or those subsequently granted, as well as to all established access routes for roadways and utilities located, or to be located, on the Site or at the Landfill, provided that the proposed grant of any new easement or access route by Licensor will be coordinated with Licensee, and easements will not be granted that will unreasonably interfere with the License granted by this Agreement.

13. Interpretation.

Licensor and Licensee acknowledge that they have each been advised, or were given the opportunity to have this Agreement reviewed, by their respective counsel. The parties agree that the rule of construction that a written agreement is construed against the party preparing or drafting such an agreement will not be applicable to the interpretation of this Agreement.

14. Amendments.

Subject to Section 15 below, this Agreement contains the entire agreement between the parties as to the matters addressed herein, and no modifications of this Agreement, or waiver, or consent hereunder shall be valid unless the same is in writing, signed by the parties to be bound or by a duly authorized representative of such party, and this provision applies to all terms and conditions of this Agreement. Notwithstanding the foregoing, the parties acknowledge the Construction and Operating Agreement that has been concurrently entered into and shall comply with its provisions as they relate to the License granted by this Agreement.

15. Effect of Construction and Operating Agreement

15.1 Notwithstanding any other provision of this Agreement, if any material provision of this Agreement conflicts with any material provision of the Construction and Operating Agreement, including Section 4 ("Construction of the Facility and Financing of Construction") or Section 5 ("Operation of the Facility"), the provision of the Construction and Operating Agreement will prevail. Furthermore, if necessary, this Agreement will be

amended to enable the parties to fulfill their respective obligations under the Construction and Operating Agreement.

15.2 The County of Los Angeles is designated as a third-party beneficiary for purposes of enforcing Sections 8 and 15.1 above.

16. Resolution of Disputes.

Disputes regarding the interpretation or application of any provisions of this Agreement will, to the extent reasonably feasible, be resolved through good faith negotiations between the parties; provided, however, that the preceding provision shall not apply to the County of Los Angeles. If any action is brought at law or in equity to enforce or interpret any provisions of this Agreement, such action must be brought in federal or state courts located within Los Angeles County, California. The prevailing party in any such action is entitled to reasonable attorneys' fees, costs and expenses, in addition to any relief that may be sought and awarded; provided, however, that the preceding provision shall not apply to the County of Los Angeles.

17. Counterpart Execution.

This Agreement may be executed in multiple counterparts, each of which is deemed to be an original and all of which constitute one and the same instrument.

18. Severability.

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will not be affected unless their enforcement under the circumstances would be unreasonable, inequitable or would otherwise frustrate the purposes of this Agreement.

19. Applicable Law.

This Agreement is to be construed in accordance with all applicable laws of the State of California.

20. Binding Upon Successors. This Agreement is binding upon and inures to the benefit of each of the parties and to their respective duly-authorized transferees, successors and assigns.
21. Authority and Effective Date.
- 21.1 The persons signing below represent that they have the requisite authority to bind the entities on whose behalf they are signing.
- 21.2 It is the intention of the parties that the Licensor will first execute this Agreement and then submit it to the Cities of Lancaster and Palmdale. Following its execution by both Cities, the Palmdale City Clerk will insert the Effective Date in all counterparts of this Agreement and transmit one or more fully executed counterparts to the Licensor. The Effective Date is the date on which the last of the parties constituting the Licensee, whether Palmdale or Lancaster, executes this Agreement.
- 21.3 This Agreement will become operative and binding upon the parties only upon the execution of the Construction and Operating Agreement that is referenced in paragraph (E) of the Recitals.

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.

PALMDALE:

CITY OF PALMDALE, CALIFORNIA,
a municipal corporation

By _____
Title _____
Date _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

LANCASTER:

CITY OF LANCASTER, CALIFORNIA,
a municipal corporation

By _____
Title _____
Date _____

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

LICENSOR:

**ANTELOPE VALLEY RECYCLING AND
DISPOSAL FACILITY, INC.**, a California
corporation

By _____
Title _____
Date _____

ATTEST:

By _____
Title _____

APPROVED AS TO FORM:

By _____
Corporate Counsel

EXHIBIT "A"

Legal Description of the Site

That portion of the Southeast Quarter of the Northeast Quarter of Section 33, in Township 6 North, Range 12 West, San Bernardino Meridian, in the County of Los Angeles, State of California, described as follows:

Commencing at the east quarter corner of said Section 33;

Thence northerly along the easterly line of the northeast quarter of said Section 33, North $00^{\circ}36'50''$ West, 509.17 feet to the "True Point of Beginning";

Thence continuing northerly along the easterly line of the northeast quarter of said Section 33, North $00^{\circ}36'50''$ West, 172.33 feet;

Thence North $85^{\circ}32'50''$ West, 208.71 feet;

Thence South $00^{\circ}36'50''$ East, 193.54 feet;

Thence North $88^{\circ}37'07''$ East, 207.91 feet, to the "True Point of Beginning".

Containing 38,031 Sq. Ft. (0.87 Acres), more or less.