

**AMENDMENT TO AGREEMENT REASSIGNING BENZ SANITATION, INC.
TO USA WASTE OF CALIFORNIA, INC.
JULY 11, 2017
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This action aligns with the County and Chief Executive Officer's goals and objectives of operating in a fiscally-responsible and business-like manner to ensure uninterrupted solid waste handling services for county residents.

The Agreement and County Code Section 46.0303 (b), "Assignment and Change in Ownership" (County Code), require that to consider such a request, the County review financial statements of the proposed transferee; and the County receive satisfactory proof that the proposed transferee (i) have at least three years of adequate solid waste experience; (ii) not have received certain violations related to its solid waste management operations; (iii) conducts its solid waste management operations in compliance with laws and in an environmentally safe and conscientious fashion; and (iv) has adequate financial strength and can obtain the required insurance and bonds.

The County Code and Agreement provide that the County shall not unreasonably withhold its consent to the transfer of a Franchise Agreement or to any Change of Ownership of a grantee under a Franchise Agreement. In this case, the proposed transferee, USA Waste, is currently under contract with the County to provide solid waste handling services in another franchise area. USA Waste has been under contract with the County since 1998 and has continuously provided solid waste handling services to county residents and businesses. The SWMD has reviewed the records and documents identified in the County Code and conclude that USA Waste is qualified, in accordance with the requirements set forth in the County Code and Section 11 of the Agreement to assume the obligations under the Benz Sanitation Agreement.

On June 16, 2009 (Item No. 92), the Board approved the amended and restated Agreement, effective July 2, 2009, granting an exclusive franchise to Benz Sanitation for the provision of solid waste handling services within County Franchise Area 21 (unincorporated area of Trona, Windy Acres, Four Corners, and Red Mountain). Under the Agreement, Benz Sanitation has been providing residential and commercial solid waste handling services for the franchise area. Since 2009, four amendments to the Agreement have been approved by the Board.

On August 23, 2016 (Item No. 51) the Board first approved the assignment of the Agreement from Benz Sanitation to USA Waste. That action became null and void and of no legal effect because the transaction didn't close within 60 days of the Board's approval. The Board approved two additional forms of assignment based on representations from Benz that the transaction was close to closing: on November 15, 2016 (Item No. 36) and on January 9, 2017.

Benz Sanitation advises that the delay in the closing of the transaction has resulted from their need to obtain approvals from several jurisdictions whose solid waste franchise agreements will be impacted by the transaction between Benz and USA Waste. At this time, Benz Sanitation advises that there are no contingencies to complete the transaction to assign the Franchise Agreement to USA Waste and that transaction will be completed by July 11, 2017 upon action by this Board.

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This amendment to the Agreement includes the County's consent to the assignment and assumption of the Agreement by USA Waste, and releases Benz Sanitation from its future obligations under the Agreement. In the event that the transaction does not close prior to the date that is 60 calendar days from the date of the Board's approval of this Agreement, the Board's consent and this amendment shall immediately become null and void and of no legal effect.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Penny Alexander-Kelley, Principal Assistant County Counsel, 387-5455) on June 14, 2017; Finance (Deborah Garth, Administrative Analyst, 387-5426) on June 20, 2017; and County Finance and Administration (Mary Olhasso, Assistant Executive Officer, 387-4599) on June 20, 2017.



F A S

CONTRACT TRANSMITTAL

Amendment No. 5

FOR COUNTY USE ONLY

<input type="checkbox"/> New <input checked="" type="checkbox"/> Change <input type="checkbox"/> Cancel	FAS Vendor Code	SC	Dept.	A	Contract Number 09-616A-5	
ePro Vendor Number				ePro Contract Number		
County Department DPW/Solid Waste Management		Dept. SWM	Orgn. SWM	Contractor's License No.		
County Department Contract Representative Annesley Ignatius, Deputy Director			Telephone (909)386-8703	Total Contract Amount		
Contract Type <input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name Solid Waste Handling Franchise Agreement CFA 21 Amendment No. 5				Estimated Payment Total by Fiscal Year		
				FY	Amount	I/D

CONTRACTOR USA Waste of California, Inc.

Federal ID No. or Social Security No. 95-3400854

Contractor's Representative Joe Cassin

Address 9081 Tujunga Avenue, Sun Valley, Ca. 91352 Phone (661) 822-5272

Nature of Contract: *(Briefly describe the general terms of the contract)*

This is Amendment No. 5 to the Franchise Agreement No. 09-616 originally entered into between Benz Sanitation Inc. and San Bernardino County to provide solid waste handling services in County Franchise Area 21 and is made with respect to the following:

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink) <u>[Signature]</u> Penny Alexander Kelley, County Counsel Date <u>07/27/2017</u>	Reviewed as to Contract Compliance <u>[Signature]</u> Grant Mann, Public Works Engineer IV Date <u>7/27/17</u>	Presented to BOS for Signature <u>[Signature]</u> Kevin Blakeslee, Department Head Date <u>7/27/17</u>
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Auditor-Controller/Treasurer/Tax Collector Use Only	
<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

*Amendment No. 5
to AGREEMENT BETWEEN
THE COUNTY OF SAN BERNARDINO AND
BENZ SANITATION, INC.*

FOR THE COLLECTION OF SOLID WASTE AND OTHER SERVICES dated June 16, 2009

- A. WHEREAS, on June 16, 2009 (Item No. 92) the Board of Supervisors approved County Contract No. 09-616 with BENZ SANITATION, INC. ("Grantee") to provide residential and commercial solid waste handling services.

- B. WHEREAS, on November 6, 2012 (Item No. 96), the Board approved Amendment No. 1 to the Franchise Agreement which amended Section 13.2 to clarify the methodology for the calculation of rates/Cost of Living Adjustment (COLA), allowed adjustments to be made in accordance with Section 13.2 when calculated in error, and updated the Exhibit "E" which sets the current rates for the franchise area.

- C. WHEREAS, on June 18, 2013 (Item No. 70) the Board approved Amendment No. 2 to the Franchise Agreement which amended Section 4. Term.

- D. WHEREAS, on November 19, 2013 (Item No. 35) the Board approved Amendment No. 3 to the Franchise Agreement which amended Section 4. Term.

- E. WHEREAS, on November 18, 2014 (Item No. 71) the Board approved Amendment No. 4 to the Franchise Agreement including Section 4. Term and Section 13.1 Compensation, and made other changes.

- F. WHEREAS, on June 7, 2016, the GRANTEE submitted to the County a request for approval of the assignment of the Franchise Agreement by Benz Sanitation, Inc. to USA Waste of California, Inc. Pursuant to the terms and conditions of the Franchise Agreement, Section 11 Franchise Transferability, a transfer of all or part of the GRANTEE's interest in the Franchise Agreement or change in ownership of the GRANTEE, must be approved by the County Board of Supervisors ("Board").

A. **NOW THEREFORE**, the parties agree as follows:

- 1. USA Waste of California, Inc. agrees that it is the GRANTEE under this Franchise Agreement effective on or before a date that is no later than 60 days from the date this amendment is approved by the Board, and that it succeeds to all of the obligations, as well as all of the rights, of Benz Sanitation, Inc. under this Franchise Agreement.

- 2. County consents to USA Waste of California, Inc. becoming the GRANTEE under this Franchise Agreement, effective on or before September 9, 2017 subject to its agreement, as provided above, that it succeeds to the obligations, as well as the rights, of Benz Sanitation, Inc. under the Franchise Agreement, including all amendments.

The address for USA Waste of California, Inc., as the GRANTEE, is 9081 Tujunga Avenue, Sun Valley, Ca. 91352.

IN WITNESS WHEREOF, the Board of Supervisors of the County of San Bernardino and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers on its respective behalf.

COUNTY OF SAN BERNARDINO

USA WASTE OF CALIFORNIA
(Print or type name of corporation, company, contractor, etc.)

▶ Robert A. Lovinggood
Robert A. Lovinggood, Chair, Board of Supervisors

By: ▶ Joe Cassin
(Authorized signature - sign in blue ink)

Dated: JUL 11 2017

Name: Joe Cassin
(Print or type name of person signing contract)

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

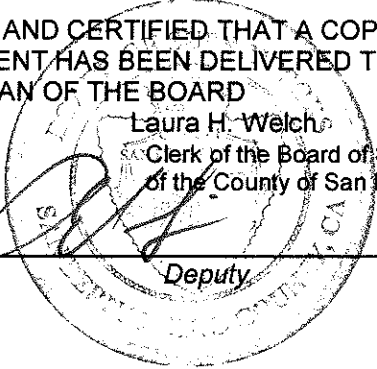
Title: Vice President
(Print or Type)

Laura H. Welch
Clerk of the Board of Supervisors
of the County of San Bernardino

Dated: 6-29-17

By: [Signature]
Deputy

Address: 9081 Tujunga Avenue
Sun Valley, Ca. 91352



ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT (this “**Agreement**”), is made and effective as provided for the benefit of the County of San Bernardino, a public body, organized and existing under the laws of the State of California (“**County**”), by and between BENZ SANITATION, INC., a California Corporation, (“**Benz**”) and USA WASTE OF CALIFORNIA, INC., a Delaware Corporation (“**USA Waste**”). Each of the parties to this Agreement is sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

- A. On June 16, 2009, County and Benz entered into an agreement between the County of San Bernardino and Benz for the Collection and Transportation of Solid Waste and Other Services (the “**Franchise Agreement**”) for County Franchise Area 21 (“**CFA21**”); Agreement No. 09-616.
- B. By letter dated June 7, 2016, Benz advised County that Benz has agreed to sell substantially all of its assets, including its rights under the Franchise Agreement, to USA Waste pursuant to an Agreement of Purchase and Sale of Assets dated as of April 22, 2016. At that time, Benz advised that the transaction included operations in San Bernardino County as well as Kern County and that the entire transaction involving operations in both counties was expected to close in August 2016. (the “**Transaction**”). While the San Bernardino County Board of Supervisors has previously approved the transfer of the franchise in this County, Benz was unable to assign its Franchise Agreement prior to the expiration of such approval because the Transaction did not close as expected due to certain procedures required in Kern County regarding Benz’s franchise operations in that County.
- C. Benz advises that as of June 21, 2017, it has closed certain portions of the Transaction not involving San Bernardino County or Kern County (the “**First Closing**”), and that now that the First Closing has occurred, there are no longer any conditions preventing Benz from assigning its Franchise Agreement to USA Waste other than obtaining the approval of the San Bernardino County Board of Supervisors. Benz therefore requests that this County again indicate its approval of the assignment of its Franchise Agreement to USA Waste and advises that Benz intends to assign its Franchise Agreement to USA Waste immediately upon receiving the County’s approval.
- D. On July 11, 2017, the County Board of Supervisors at its regularly scheduled meeting found, pursuant to Section 11 of the Franchise Agreement, that it had satisfactory information concerning WM as the proposed transferee in order to gauge its experience, management and good standing and, further, that WM is an existing franchise contractor to County residents and businesses since July 1, 1998.
- E. Subject to this County’s approval, upon the assignment by Benz of its Franchise Agreement to USA Waste, USA Waste agrees to assume Benz’s performance obligations

under the Franchise Agreement, and will abide by the terms and conditions of the Franchise Agreement.

- F. Subject to this County's approval, upon the assignment of its Franchise Agreement to USA Waste, Benz desires to have the County release Benz from all future obligations under the Franchise Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, the Parties hereto agree as follows:

Section 1. Assignment. Upon the approval by the County at its regularly scheduled meeting on July 11, 2017, but not prior to, Benz hereby assigns, transfers, and conveys to USA Waste all of Benz's rights, benefits, and interests in the Franchise Agreement and delegates to USA Waste all of Benz's duties and obligations under the Franchise Agreement commencing on the Actual Effective Date as defined in Section 3, of this Agreement.

Section 2. Acceptance of Obligations of Franchise Agreement. Upon the approval by the County at its regularly scheduled meeting on July 11, 2017, but not prior to, USA Waste hereby accepts the assignment, transfer and conveyance of the Franchise Agreement and hereby assumes all of Benz's duties and obligations under the Franchise Agreement commencing on the Actual Effective Date as defined in Section 3, of this Agreement. Furthermore, USA Waste (i) approves, ratifies, and confirms the terms, covenants, conditions and provisions of the Franchise Agreement, (ii) agrees to perform all of the duties and obligations imposed by the Franchise Agreement, and (iii) agrees to be bound by all of the terms, covenants, conditions, provisions and obligations under the Franchise Agreement.

Section 3. County's Consent to Assignment. In accordance with the Franchise Agreement, the County consents to the assignment and assumption of the Franchise Agreement by USA Waste, and releases Benz from its future obligations under the Franchise Agreement contingent upon the approval by the County at its regularly scheduled meeting on July 11, 2017.

Section 4. Severability. If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or provisions of them, will not be affected.

Section 5. Headings. The headings in this Agreement are included for convenience only and shall neither affect the construction nor the interpretation of any provision in this Agreement nor affect any of the rights and obligations of the Parties of this Agreement.

Section 6. Ambiguities. Each Party has had an opportunity to consult with legal counsel and that legal counsel has participated fully in the review of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting this Agreement.

Section 7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed one instrument. Facsimile copies shall be deemed to be original copies.


Section 8. Authority. Each signatory to this Agreement represents and warrants that he/she is duly authorized to execute this Agreement on behalf of the respective Party.


IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Assignment as of the date first above written.

[Signatures Follow]

Benz Sanitation, Inc.

USA Waste of California, Inc.

By: 
Name: PAUL BENZ
Its: _____

By: 
Name: JOE CASSIN
Its: VP

