

EXHIBIT 3:
GUARANTY AGREEMENT

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City of Oakland

This Guaranty, made as of the date written below by CONTRACTOR, to and for the benefit of the City of Oakland (CITY)

WHEREAS, CONTRACTOR, and the CITY, entered into a CONTRACT BETWEEN THE CITY AND CONTRACTOR FOR provision of Disposal Services, dated as of February 20, 2015, (the "**Contract**"), which Contract is incorporated in this Guaranty by reference and by this Guaranty made part of this Agreement; and

WHEREAS, the CITY is willing to enter into the Contract only upon the condition that USA Waste of California, Inc. ("**Guarantor**") execute this Guaranty; and

WHEREAS, in the event the CONTRACTOR fails to timely and fully perform its obligations, including the payment of moneys, pursuant to the Contract and as it may hereafter be amended or modified by CONTRACTOR and the CITY, the Guarantor is willing to guaranty CONTRACTOR'S timely and full performance thereof.

NOW, THEREFORE, as an inducement to the CITY to enter into the Contract as described above, the Guarantor agrees as follows:

Capitalized terms used in the Contract and not otherwise defined in this Agreement, will have the meaning assigned to them in the Contract.

1. **Guaranty of CONTRACTOR'S Performance Under Contract.** Guarantor by this Guaranty directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of CONTRACTOR'S obligations under the Contract in accordance with the terms and conditions contained therein or to cause the timely and full performance. Within thirty (30) days' written request therefore by the CITY, Guarantor will honor the Guaranty. Notwithstanding the unconditional nature of the Guarantor's payment obligations set forth in this Agreement, the Guarantor may assert the defenses provided in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims made under this Guaranty.
2. **Governing law; consent to jurisdiction; service of process.** This Guaranty is governed by the laws of the State of California. The Guarantor by this Guaranty agrees to the service of process in the State for any claim or controversy arising out of the Guaranty or relating to any breach. The Guarantor by this Guaranty agrees that the courts of the State and to the extent permitted by law, the United States District Court for the Northern District of California, will have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the CITY may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach of this Guaranty, waives any objections that it might otherwise have to the venue of any Court for the trial of any suit, action, or proceeding, any consents to the service of process in any suit, action, or proceeding by prepaid registered mail return receipt required.
3. **Enforceability; no assignment.** This Guaranty is binding upon and enforceable against Guarantor, its successors, assigns, and lawful representatives. It is for the benefit of the CITY, its successors and assigns. The Guarantor may not assign or delegate the performance of the Guaranty without the prior written consent of the CITY in its sole

discretion. Any assignment made without the prior written consent of the CITY is voidable by the CITY in its sole discretion. Together with its request for CITY consent, Guarantor will pay CITY \$10,000 for its reasonable expenses for private attorney's fees and investigation costs ("assignment expenses") necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any assignment. CITY will reimburse Guarantor the excess, if any, over those assignment expenses it incurs. Contrariwise, Guarantor will pay CITY the excess assignment expenses, if any, over \$10,000 CITY incurs within thirty (30) days' of CITY'S request therefore. Guarantor will further pay the CITY the CITY'S reimbursement costs for fees of attorneys who are not CITY employees and investigation costs necessary to enjoin the assignment or to otherwise enforce this provision within thirty (30) days of the CITY'S request therefore ("injunction costs"). Guarantor's obligation to pay CITY assignment expenses and injunction costs will not exceed \$35,000 in the aggregate, excluding any costs that the CITY may recover under applicable law, including court costs paid to a prevailing party.

For purposes of the Guaranty "assign" and "assignment" means:

- a) selling, exchanging or otherwise transferring effective control of management of the Guarantor (through sale, exchange or other transfer of outstanding stock or otherwise);
- b) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the then outstanding common stock of the Guarantor;
- c) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Guarantor;
- d) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Guarantor, appointment of a receiver taking possession of any of Guarantor's tangible or intangible property; and,
- e) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any transfer or change of Ownership or control of Guarantor.

For purposes of determining "Ownership", the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, will apply, provided that (1) 10 percent is substituted for 50 percent in Section 318(a)(2)(C) and in section 218(a)(3)(C) thereof; and (2) Section 218(a)(5)(C) is disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than 20 percent is disregarded and percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

4. **Guarantor absolute and unconditional.** The undertakings of Guarantor set forth in this Guaranty are absolute and unconditional, and the CITY is entitled to enforce any or all of those undertakings against Guarantor without being first required to enforce any remedies or to seek to compel the CONTRACTOR to perform its obligations under the Contract or to seek, or obtain recourse against any other party or parties, including but not limited to the CONTRACTOR or any assignee of the CONTRACTOR, who are, or

may be, liable therefore in whole or in part, irrespective of any cause or state of facts whatever. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its state of facts or the happening from time to time of an event, other than the payment of the terms of the Contract, including, without limitation, any of the following, each of which is by this Guaranty expressly waived as a defense to its liability under this Guaranty, except to the extent those defenses would be available to the CONTRACTOR and release, discharge or otherwise offset CONTRACTOR'S obligations under the Agreement:

- a) the invalidity, irregularity, illegality or unenforceability, of or any defect in or objections to the Contract;
- b) any modification or amendment or compromise of or waiver of compliance with or consent to variation from any of the provisions of the Contract by the CONTRACTOR;
- c) any release of any collateral or lien thereof, including, without limitation, any performance bond, or performance security;
- d) any defense based upon the election of any remedies against the Guarantor of the CONTRACTOR, or both, including without limitation, any consequential loss by the Guarantor of its right to recover any deficiency, by the way of subrogation or otherwise, from the CONTRACTOR or any other Person or entity;
- e) the recovery of any judgment against the CONTRACTOR to enforce any of that collateral, performance bond or performance security;
- f) the CITY or its assigns taking or omitting to take any of the actions which it or any of that assign is required to take under the Contract; any failure, omission or delay on the part of the CITY or its assignees to enforce, assert or exercise any right, power or remedy conferred on it or its assigns by the Contract, except to the extent that failure, omission or delay gives rise to an applicable statute of limitations defense by the CONTRACTOR with respect to a specific obligation;
- g) the default or failure of the Guarantor to fully perform any of its obligations set forth in the Guaranty;
- h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the CONTRACTOR or the CITY, or any order or decree of a court, trustee or receiver in any proceeding;
- i) in addition to those circumstances described in item (h), any other circumstance which might otherwise constitute a legal or equitable discharge of a guarantor or limit the recourse of the CITY to the Guarantor;
- j) the existence or absence of any action to enforce the Contract;
- k) subject to the provisions of the Contract relating to uncontrollable circumstances, any present or future law or order of any government or any agency thereof, purporting to reduce, amend or otherwise affect the Contract or to vary any terms of payment or performance under the Contract;

Providing that, notwithstanding the forgoing, Guarantor will not be required to pay any monetary obligation of CONTRACTOR to CITY from which CONTRACTOR would be discharged, released or otherwise excused under the provisions of the Contract.

5. **Waivers.** Guarantor by the Guaranty waives:

- a) notice of acceptance of the Guaranty and of the creation, renewal, extension and accrual of the limited financial obligations Guaranteed under this Guaranty;
- b) notice that any Person has relied on this Guaranty;
- c) diligence, demand of payment and notice of default or nonpayment under this Guaranty or the Contract, and any and all other notices required under the Contract;
- d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the CONTRACTOR;
- e) any right to require a proceeding first against the CONTRACTOR or with respect to any collateral or lien, including, without limitation, any performance bond, or any other requirement that the CITY exercise any remedy or take any other action against the CONTRACTOR or any other Person, or in respect of any collateral or lien, before proceeding under this Guaranty;
- f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any performance bond) for the obligations of the CONTRACTOR under the Contract; any pursuit of exhaustion of remedies against the CONTRACTOR or any other obligor or guarantor of the obligations; and any requirement of promptness or diligence on the part of any Person in connection therewith;
- g) to the extent that it lawfully may do so, any and all demands or notices of every kind and description with respect to the foregoing or which may be required to be given by any statute or rule of law, and any defense of any kind which it may now or hereafter have with respect to this Guaranty or the obligations of the CONTRACTOR under the Contract, *except* any Notice to the CONTRACTOR required pursuant to the Contract or applicable law which Notice preconditions the CONTRACTOR'S obligation or the defenses listed in Section 8 below.

To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to waive, and does by this Guaranty absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does by this Guaranty covenant not to assert, any ~~appraisalment, valuation, stay extension, redemption or similar laws, now or any time~~ hereafter in force, which might delay, prevent or otherwise impede the due performance or proper enforcement of the Guaranty, the Contract, or the obligations of the CONTRACTOR under the Contract and by this Guaranty expressly agrees that the right of the CITY under this Guaranty may be enforced notwithstanding any partial performance by the CONTRACTOR or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond, or performance security) given by the CONTRACTOR for its performance of any of its obligations under the Contract.

6. **Agreements between CITY and CONTRACTOR; Waivers by CITY.** The Guarantor agrees that, without the necessity for any additional endorsement or Guaranty by or any reservation of rights against Guarantor and without any further assent by Guarantor, by mutual agreement between the CITY and CONTRACTOR, the CITY and CONTRACTOR may, from time to time:

- a) renew, modify or compromise the liability of the CONTRACTOR for or upon any of the obligations by the Guaranty Guaranteed; or

- b) consent to any amendment or change of an terms of the Contract; or
- c) accept, release, or surrender any security (including, without limitation, any performance bond), or
- d) grant any extensions or renewals of the obligations of the CONTRACTOR under the Contract, and any other indulgence with respect thereto, and to affect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor under this Guaranty.

The Guarantor further agrees that the CITY or any of its assigns will have and may exercise full power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this Guaranty, to waive compliance with and any default of the CONTRACTOR under, the Contract.

- 7. **Continuing Guaranty.** This Guaranty is a continuing Guaranty and will continue to be effective or be reinstated, as applicable, if at any time any payment of any of the obligations under this Guaranty is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the CONTRACTOR or Guarantor or otherwise, all as though payment had not been made.
- 8. **Defenses.** Notwithstanding any provision in the Guaranty to the contrary, the Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Contract or applicable law which the CONTRACTOR could assert against any party seeking to enforce the Contract against the CONTRACTOR, and nothing in the Guaranty will constitute a waiver thereof by the Guarantor.
- 9. **Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the CITY in enforcing the Guaranty following the default on the part of the Guarantor under this Guaranty whether the same is enforced by suit or otherwise.
- 10. **Enforcement.** The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.
- 11. **Remedies cumulative.** No remedy in this Guaranty conferred upon or reserved to the CITY under this Guaranty is intended to be exclusive or any other available remedy or remedies, but each and every remedy is cumulative and is in addition to every other remedy given under the Guaranty and the Contract or in this Guaranty after existing at law or in equity or by statute.
- 12. **Severability.** The invalidity or unenforceability of any one or more phrases, sentences or clauses in the Guaranty contained will not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.
- 13. **Amendments.** No amendment, change, modification or termination of this Guaranty is made except upon the written consent of Guarantor and the CITY.
- 14. **Term.** The obligations of the Guarantor under this Guaranty will remain in full force and effect until (i) all monetary obligations of the CONTRACTOR under the Contract will have been fully performed or provided for in accordance with the Contract, or (ii) the discharge, release or other excuse of those obligations in accordance with the terms of the Contract.
- 15. **No set-off, etc.**

By Guarantor. The obligation of Guarantor under this Guaranty will not be affected by any set-off, counterclaim, recoupment, defense or other right that Guarantor may have against the CITY on account of any claim of the Guarantor against the CITY; *provided* that Guarantor reserves the right to bring independent claims not arising from the Contract against the CITY so long as any claim will not be used to set-off or deduct from any claims which the CITY may have against the Guarantor arising from this Guaranty.

By CONTRACTOR. The obligation of Guarantor under this Guaranty is subject to any set-off, counterclaim, recoupment, defense or other right that the CONTRACTOR may assert pursuant to the Contract, if any, but the obligation of Guarantor under this Guaranty will not be subject to any set-off counterclaim, recoupment, defense or other right that the CONTRACTOR may assert independently of and outside the Contract.

16. Warranties and representations. The Guarantor warrants and represents that as of date of execution of this Guaranty:

- a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its obligations and undertakings under this Guaranty, and the execution, delivery and performance of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder action on the part of the Guarantor, (ii) have the requisite approval of all federal, State and local governing bodies having jurisdiction or authority with respect thereto, (iii) do not violate any judgment, order, law or regulation applicable to the Guarantor, (iv) do not conflict with or constitute a default under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its assets may be bound or affected; and (v) do not violate any provision of the Guarantor's articles or certificate of incorporation or by-laws.
- b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms; and
- c) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceedings before any court administrative agency which would have a material adverse effect on financial condition of the Guarantor, or the ability of the Guarantor to perform its obligations or undertakings under this Guaranty.

17. ~~No merger; no conveyance of assets.~~ Guarantor agrees that during the term of this Guaranty in accordance with Section 14 Guarantor will not consolidate with or merge into any other corporation where the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or convey, transfer or lease all or substantially all of its properties and assets to any person, firm, joint venture, corporation, and other entity, unless the CITY consents thereto in accordance with Section 3 above.

18. Counterparts. This Guaranty may be executed in any number of counterparts, some of which may not bear the signatures of all parties to the Guaranty. Each counterpart, when so executed and delivered, is deemed to be an original and all counterparts, taken together, will constitute one and the same instrument; *provided, however*, that in pleading or proving this Guaranty, it will not be necessary to produce more than one copy (or sets of copies) bearing the signature of the Guarantor.

19. **Notices.** All notices, instructions and other communications required or permitted to be given to or made upon any party to this Guaranty shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

City Administrator
Office of the City Administrator
City of Oakland
1 Frank Ogawa Plaza, 3rd Floor
Oakland, CA 94612
Telephone: (510) 238-3301
E-mail: cityadministrator@oaklandnet.com

With copies to:

Director of Public Works
Public Works Agency
City of Oakland
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612
Telephone: (510) 238-4470
E-mail: vtroyan@oaklandnet.com

City Attorney
Office of the City Attorney
City of Oakland
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Telephone: (510) 238-3601
E-mail: info@oaklandcityattorney.org

Director of Finance and Management
Finance and Management Agency
City of Oakland
150 Frank Ogawa Plaza, Suite 5215
Oakland, CA 94612
Telephone: (510) 238-2220
E-mail: sjohnson@oaklandnet.com

As to the GUARANTOR:

General Counsel
USA Waste of California, Inc.
1001 Fannin Street
Houston, TX 77002
Telephone: xxx-xxx-xxx
Fax: 713-209-9710
E-mail: xxx@xxx.xxx

With a copy to:

Assistant General Counsel
USA Waste of California, Inc.
222 S. Mill Avenue, #333
Tempe, AZ 85282
Telephone: xxx-xxx-xxx
Fax: 832-668-3141
E-mail: xxx@xxx.xxx

20. **Separate Suits.** Each and every payment default by CONTRACTOR under the Contract will give rise to a separate cause of action under this Guaranty, and separate suits may be brought under this Guaranty by the CITY or its assigns as each cause of action arises.
21. **Headings.** The Section headings appearing in this Guaranty are for convenience only and will not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.
22. **Entire Agreement.** This Guaranty constitutes the entire Guaranty between the parties to this Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any Person other than the Guarantor, the CITY and their permitted successors and assigns under this Guaranty any rights or remedies under or by reason of this Guaranty.
23. **Personal Liability.** It is understood and agreed to by the CITY that nothing contained in the Guaranty will create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations under this Guaranty, and no judgment, order or execution with respect to or in connection with this Guaranty is taken against any director, officer, employee or stockholder.
24. **Events of Default.** Each of the following will constitute an event of default under this Guaranty:
 - a) **Failure to fulfill payment of guaranty.** Guarantor fails to fulfill full and timely payment of any guaranty under this Guaranty, including Section 1, and the failure continues for five (5) days after Notice (which is deemed given upon receipt of registered or certified mailing by U.S. Postal Service or of invoiced commercial service) (hereinafter defined as "**Notice**") has been given to the Guarantor by the CITY, fails to perform any of its obligations under this Guaranty or engages in any acts prohibited under this Guaranty other than failures itemized below, and fails to cure that failure or conduct within thirty (30) days;
 - b) **Breach of Guaranty.** The Guarantor fails to observe and perform any covenant, condition or agreement of this Guaranty, other than any failures listed explicitly in this section, and that failure continues for more than thirty (30) days after Notice has been given the Guarantor by the CITY;
 - c) **Failure to give Notice of proposed assignment, etc.** The Guarantor fails to give CITY Notice in accordance with Section 19 within ten (10) days of the first to occur of
 - (i) CONTRACTOR or any Affiliate issuing a press release as to any proposed assignment, (within the meaning of Section 3), or consolidation, merger,

conveyance, transfer or lease described in paragraph (e) of this Section (24) or

- (ii) The filing with the Securities and Exchange Commission of a Form 8-K or other filing with respect to a memorandum of intent or an agreement and plan therefore

(paragraph (i) and (ii) together defined as, "**Change Notice**");

- d) **Consolidation, merger; conveyance of assets.** The Guarantor consolidates, merges or conveys, transfers or leases assets in violation of Section 17 despite CITY Council action following Change Notice in preceding paragraph c) withholding or denying CITY consent, and on or before 15 days thereafter does not provide CITY with a substitute Guarantor satisfaction to CITY in CITY'S sole discretion;
- e) **Bankruptcy, Insolvency, Liquidation.** Guarantor files a voluntary claim for debt relief under any applicable bankruptcy, on solvency, debtor relief, or other similar law now or hereafter in effect or will consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Guarantor for any substantial part of Guarantor's operating assets or any substantial part of Guarantor's property, or will make any general assignment for the benefit of Guarantor's creditors, or will fail generally to pay Guarantor's debts as they become due or will take any action in furtherance of any of the foregoing.

A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Guarantor consents to or fails to oppose any proceeding, or any court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Guarantor or for any substantial part of the Guarantor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Guarantor.

- f) **Breach of Representations or Warranties.** Any representation or warranty of Guarantor is untrue as of the date thereof, Guarantor knowingly makes, causes to be made or condones the making of any false entry in its books, and accounts, records and reports under this Guaranty.

Upon any Event of Default the CITY may to proceed first and directly against the Guarantor ~~under Guaranty without proceeding against or exhausting any other remedies, which it may have.~~ The Guarantor acknowledges that any CONTRACTOR default comprises a default under the Agreement.

IN WITNESS WHEREOF Guarantor has executed this instrument the day and year first above written.

By: _____ Date: _____

Attest: _____ Date: _____

Proper notarial acknowledgement of execution by Guarantor must be attached.

(1) Chairman, president or vice-president, and (2) secretary, assistant secretary, CFO or assistant treasurer, must sign for corporations. Otherwise, the corporation

must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

IN WITNESS WHEREOF, the CITY and Guarantor have executed this Guaranty as of the day and year first written above.

CITY OF OAKLAND

USA WASTE OF CALIFORNIA, INC.

By: _____.

By: _____.

Name: _____

Name: _____

Title: _____

Title: _____

Approved as to Form:

[Name, Title]