

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

437



FROM: Waste Management Department

SUBMITTAL DATE:
November 14, 2013

SUBJECT: Long Term Waste Delivery Agreement for the Acceptance of Out-of-County Waste, 5th/5th District [No ongoing cost to County]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Amended and Restated Waste Delivery Agreement with Burrtec Waste Industries, which authorizes the disposal of up to 225,000 tons per year; and
2. Authorize the Chairman to execute the Agreement on behalf of the Board.

BACKGROUND:

Summary

On June 25, 2013, the Board authorized an extension and increase in tonnage to a month-to-month agreement with Burrtec to import up to 800 tons per day (208,000 tons per year based on 5 days per week) of waste from San Bernardino and directed staff to continue negotiations for long term agreement. Staff and Burrtec have reached agreement on a seven and one-half year term (to match the Coachella Valley Transfer Station waste delivery agreement term expiration), and includes a "put or pay" clause which guarantees delivery of a minimum of 200,000 tons per year or equivalent revenue. (continued)


Hans Kernkamp
General Manager-Chief Engineer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 0	\$ 0	\$ 0	\$ 0	Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/>
NET COUNTY COST	\$	\$	\$	\$	

SOURCE OF FUNDS: N/A

Budget Adjustment:

For Fiscal Year:

C.E.O. RECOMMENDATION:

APPROVE

BY:


Steven C. Horn, MPA

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 12-1C (6/25/13)

District: 5/5

Agenda Number

12-3 C

FOR UNAPPROVED COUNTY COUNSEL
 BY: 
 NEAL R. KIPNIS
 DATE: 11/14/13
 Departmental Concurrence

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FORM 11: Long Term Waste Delivery Agreement for the Acceptance of Out-of-County Waste, 5th/5th District [No ongoing cost to County]

DATE: November 14, 2013

PAGE: Page 2 of 2

BACKGROUND:

Summary (continued)

The long-term delivery agreement is anticipated to generate approximately \$2,225,000 annually for the General Fund. Staff is recommending that the Board executes the agreement.

Impact on Citizens and Businesses

The Amended and Restated Waste Delivery Agreement (WDA) has been reviewed and determined to be categorically exempt from CEQA under CEQA Guidelines Section 15301, Class 1 – Existing Facilities, and Section 15273, Rates, Tolls, Fares, and Charges. The Lamb Canyon and Badlands Landfills are existing regional facilities permitted to accept up to 5,000 and 4,000 tons daily of municipal solid waste (MSW) and 913 and 612 vehicles/day, respectively. Currently, a total of up to 800 tons per day of imported MSW is delivered to the regional facilities from Burrtec. Since the WDA simply changes the term of the import with Burrtec from a month-to-month term to a longer term agreement, not increasing the amount of imported waste or truck trips accepted or delivered to the regional facilities, the proposed WDA will not result in any impacts nor exceed any environmental threshold established for the regional facilities. The regional facilities have sufficient permitted capacity to provide waste disposal service for in-County residents.

SUPPLEMENTAL:

Additional Fiscal Information

There is no cost to the County for this agreement, which secures a long-term revenue stream.

Contract History and Price Reasonableness

There is no cost to the County. The revenue stream is currently based on a month-to-month agreement. This amendment will secure tonnage and associated revenue for a minimum of seven and one-half years.

1 **SECOND AMENDED AND RESTATED IMPORTATION AGREEMENT FOR**
2 **DISPOSAL OF SOLID WASTE**

3
4 RIVERSIDE COUNTY, a political subdivision of the State of California, hereinafter
5 referred to as "COUNTY" and Burrtec Waste Industries, Inc., on behalf of itself, its subsidiaries,
6 affiliates, partners, contractors and subcontractors, collectively hereinafter referred to as
7 "VENDOR", hereby agree as follows:

8 RECITALS

9
10 **WHEREAS**, VENDOR is obligated to provide for the collection and disposal of Solid
11 Waste and to dispose of the Solid Waste in a manner consistent with the protection of public
12 health and safety; and

13
14 **WHEREAS**, VENDOR desires to arrange for the disposal of imported non-hazardous
15 Solid Waste; and

16
17 **WHEREAS**, COUNTY owns and operates the Lamb Canyon Landfill and Badlands
18 Landfill (Class III sanitary landfills) and is willing and able to accept imported Solid Waste from
19 VENDOR for disposal under the terms and conditions set forth herein;

20
21 **WHEREAS**, COUNTY and VENDOR entered into an agreement to deliver imported
22 Solid Waste from the East Valley Transfer Station on March 26, 2013 for 400 tons per day;

23
24 **WHEREAS**, COUNTY and VENDOR amended and restated the agreement on June 25,
25 2013 (the "Prior Agreement") to increase the tonnage and add the West Valley Transfer Station;

1 **WHEREAS**, COUNTY and VENDOR wish to enter into a long-term arrangement for
2 the import of Solid Waste, supersede the Prior Agreement and enter into this Second Amended
3 and Restated Importation Agreement for Disposal of Solid Waste;

4
5 **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

6
7 **SECTION 1.** **DEFINITIONS.**

8
9 A. Applicable Law

10
11 Applicable law means all statutes, rules, regulations, permits, orders, or
12 requirements of the United States, State, County and local government authorities and agencies
13 having applicable jurisdiction that apply to or govern the duties or actions of VENDOR related
14 to this Agreement.

15
16 B. Solid Waste

17
18 Solid Waste to be delivered by VENDOR to COUNTY and acceptable to
19 COUNTY, shall all be non-hazardous residential and commercial refuse, garbage and/or rubbish
20 and Construction/Demolition Debris which was first collected for disposal or generated outside
21 the geographic boundaries of Riverside County, which COUNTY's Landfills may receive under
22 its permits and standard operating policies and includes or excludes any other materials that
23 COUNTY designates in writing from time to time upon at least ninety (90) days' prior written
24 notice to VENDOR. As used in this Agreement, Solid Waste shall also include "Solid Waste
25 Residue," as that term is hereinafter defined. Notwithstanding the foregoing, Solid Waste shall
not include the following:

1 (1) **Unpermitted landfill wastes**, including all materials at Lamb Canyon and
2 Badlands, or other site(s) which the COUNTY designates for disposal, which are
3 not allowed to be landfilled;

4 (2) **Asbestos**, including friable materials that can be crumbled with pressure
5 and are therefore likely to emit fibers, being a naturally occurring family of
6 carcinogenic fibrous mineral substances, which may be a Hazardous Waste,
7 defined in item (6) below, if it contains more than one percent asbestos;

8 (3) **Ash** residue from the incineration of solid wastes, including municipal
9 waste, infectious waste described in item (8) below, wood waste, sludge, and
10 agricultural wastes;

11 (4) **Auto shredder** “fluff” consisting of upholstery, paint, plastics, and other
12 non-metallic substances which remains after the shredding of automobiles;

13 (5) **Large dead animals**;

14 (6) **Hazardous Wastes**:

15 (a) “Hazardous Waste” pursuant to Section 40141 of the California
16 Public Resources Code; regulated under Chapter 7.6 (commencing with
17 Section 25800) of Division 20 of the California Health and Safety Code;
18 all substances defined as hazardous waste, acutely hazardous waste, or
19 extremely hazardous waste by Sections 25110,02, 25115, and 25117 of the
20 California Health and Safety Code (the California Hazardous Waste
21 Control Act), California Health and Safety Code Section 25100 et seq.,
22 and future amendments to or recodification of such statutes or regulations
23 promulgated thereunder, including 23 California Code of Regulations
24 Sections 2521 and 2522; and

25 (b) Materials regulated under the Resource Conservation and
Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but

1 not limited to, amendments thereto made by the Solid Waste Disposal Act
2 Amendments of 1980), and related federal, State and local laws and
3 regulations;

4 (c) Materials regulated under the Toxic Substance Control Act, 15
5 U.S.C. Section 2601 et seq., as amended, and related federal, State of
6 California, and local laws and regulations, including the California Toxic
7 Substances Account Act, California Health and Safety Code Section
8 25300 et seq.;

9 (d) Materials regulated under the Comprehensive Environmental
10 Response, Compensation and Liability Act, 42 USC 9601, et seq., as
11 amended, and regulations promulgated thereunder; and

12 (e) Materials regulated under any future additional or substitute
13 federal, State or local laws and regulations pertaining to the identification,
14 transportation, treatment, storage or disposal of toxic substances or
15 hazardous wastes.

16
17 **(7) Industrial** solid or semi-solid wastes which are prohibited at the landfill
18 or are inconsistent with the operation of the facility including cement kiln dust,
19 and ore process residues.

20 **(8) Infectious wastes** which have disease transmission potential and are
21 classified as Hazardous Wastes by the State Department of Health Services,
22 including pathological and surgical wastes, medical clinic wastes, wastes from
23 biological laboratories, syringes, needles, blades, tubings, bottles, drugs, patient
24 care items, such as linen or personal or food service items from contaminated
25 areas, chemicals, personal hygiene wastes, and carcasses used for medical
purposes or with known infectious diseases;

1 **(9) Liquid wastes** which are not spadeable, usually containing less than fifty
2 percent solids, including cannery and food processing wastes, landfill leachate
3 and gas condensate, boiler blowdown water, grease trap pumpings, oil and
4 geothermal field wastes, septic tank pumpings, rendering plant byproducts, and
5 sewage sludge, which liquid wastes may be Hazardous Wastes;

6 **(10) Radioactive wastes** under Chapter 7.6 (commencing with Section 25800)
7 of Division 20 of the State Health and Safety Code, and any waste that contains a
8 radioactive material, the storage or disposal of which is subject to any other State
9 or federal regulation;

10 **(11) Sewage sludge** comprised of human and industrial residue, excluding grit
11 or screenings, removed from a waste water treatment facility or septic tank,
12 whether in a dry or semidry form.

13 **(12) Semi-solid waste** which contains less than 50 percent solids.

14 **(13) White Goods** which refers to commercial and residential appliances such
15 as washing machines, clothes dryers, water heaters, refrigerators, trash
16 compactors, microwaves and stoves/ovens which commonly contain mercury,
17 PCBs, Freon and oil.

18 **(14) Tires** which refers to passenger vehicle tires, on-road/off-road heavy
19 equipment tires and agricultural tires that are of a commercial or residential nature
20 in any size, primarily constructed out of vulcanized rubber, polyester fibers and
21 steel belts.

22 **(15) E-Waste** which refers to electronic products nearing the end of their
23 “useful life.” Computers, televisions, VCRs, stereos, copiers, and fax machines
24 are common electronic products. Many of these products can be reused,
25 refurbished, or recycled.

1 **(16) Universal Waste** means any of the following wastes that are conditionally
2 exempt from classification as hazardous wastes pursuant to section 66261.9:

3 (a) Batteries as described in section 66273.2;

4 (b) Thermostats as described in section 66273.4;

5 (c) Lamps as described in section 66273.5;

6 (d) Cathode ray tube materials as described in section 66273.6;

7 Note: The above referenced sections for Universal Waste are found in California
8 Code of Regulations, Title 22. Social Security. Any other wastes that become
9 categorized as Universal Waste will also not be considered Solid Waste.

10
11 C. Solid Waste Residue

12
13 Solid Waste Residue means Solid Waste that remains after undergoing any processing,
14 including the separation and removal of recyclables, and is then loaded into transfer
15 trailers for delivery to landfills.

16
17 D. Construction/Demolition Debris

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19 Construction/Demolition debris means building materials together with packaging and
20 rubble resulting from construction, remodeling, repair and demolition operations on
21 pavements, houses, commercial buildings, and other structures. Construction refers to
22 SIC (Standard Industrial Code) 152 through 1794, 1796 and 1799. Demolition refers to
23 SIC Code 1795.

24
25 E. Imported Solid Waste

1 Imported Solid Waste means Solid Waste that is generated outside of the geographical
2 boundaries of the COUNTY.

3
4 **SECTION 2. COMPLIANCE WITH APPLICABLE LAW.**

5
6 VENDOR shall perform all of its respective duties hereunder, and shall cause all of its
7 employees, contractors and agents to perform all of their respective duties hereunder, in
8 accordance with Applicable Law and permits.

9
10 **SECTION 3. DELIVERY OF SOLID WASTE.**

11
12 A. **Designated COUNTY Landfills:**

13
14 COUNTY landfill(s) designated to receive Imported Solid Waste shall be the
15 Lamb Canyon Landfill (“Lamb Canyon”) or Badlands Landfill (“Badlands”) provided that
16 COUNTY reserves the option to require VENDOR to deliver Imported Solid Waste to such other
17 landfill designated by COUNTY if the daily capacity at Lamb Canyon or Badlands is exceeded,
18 is anticipated to be exceeded or in the event of short term unforeseen circumstances that prevent
19 VENDOR from disposing Solid Waste at Lamb Canyon or Badlands.

20
21 B. **Tonnage Notification:**

22
23 VENDOR will notify COUNTY as soon as possible on any day it appears that
24 information about the day’s tonnage being forwarded to the landfill would be helpful for the
25 landfill site staff to know as they operate the facility (for example, an inordinate amount of one
waste type, unusually high daily peak, etc.).

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C. Size and Type of Delivery Equipment:

The size of tractors and trailers used to transfer Imported Solid Waste to COUNTY landfills will be appropriate to properly fulfill the task. The size will also conform to all standards of the California Highway Patrol.

(1) Transfer trailers used to deliver Imported Solid Waste to COUNTY landfills will be limited to models with “walking floors” or if an unloading lift is available at the landfill, to those vehicles which can be serviced by the landfill operator.

D. Hazardous Waste Load Check Program:

VENDOR shall ensure that an active hazardous waste load check program is operating at the facilities from which Imported Solid Waste is delivered, as required by California law and by County of Riverside Ordinance 779.

VENDOR agrees that COUNTY personnel may inspect facilities owned or contracted by VENDOR no more than once every three months and that these inspections will include a review of the facility’s load check activities, access to load check documents including load check reports, training records, and load check waste manifests. These inspections may include up to three days each of performing actual load checks at the facility using COUNTY Hazardous Waste Inspectors in an effort to judge the effectiveness of the facility’s hazardous waste exclusion efforts. These additional inspection efforts will be performed by COUNTY at no additional cost to VENDOR.

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E. Rejection of Solid Waste; Rights of Refusal

COUNTY shall reject receipt of any material that does not meet the definition of Solid Waste included herein. VENDOR shall remove any material that is unloaded at COUNTY'S landfills by VENDOR and does not meet the definition of Solid Waste included herein within 24 hours and dispose of it in a safe and lawful manner at VENDOR'S sole expense.

F. Tonnage Tracking Compatible with COUNTY's Current System:

VENDOR shall ensure that a tonnage tracking system is operated at VENDOR owned and contracted facilities that will determine on a daily basis the amount and origin of generation for the entire waste stream delivered to COUNTY landfills. The tonnage tracking system shall be fully compatible with the COUNTY'S current system. VENDOR shall provide COUNTY with monthly reports broken down by the origin of generation for the waste stream (including source separated and other diverted recyclables reported separately) delivered to the Transfer Stations and all disposal sites within thirty (30) days of the end of the calendar month. The format of said reports shall be approved by the COUNTY.

VENDOR shall provide COUNTY with information on the users of the Facility (i.e. names, number of visits, dates of visits, tonnage, etc.) whenever requested by COUNTY.

VENDOR will notify COUNTY of any discrepancies of more than 5% between tonnage weights reported by VENDOR and by COUNTY when the discrepancy becomes apparent to VENDOR. Both parties agree to have their scales recertified within five (5) working days of said notice. COUNTY will continue using weights as reported by its certified scales.

1 COUNTY shall have the right to obtain copies of VENDOR'S weight tickets on ten (10)
2 sequential transfer loads once a month upon request.

3
4 G. Unloading Safety:

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6 VENDOR and/or its subcontractor shall unload its transfer vehicles at the landfill in a
7 safe and orderly manner. It will observe all of the operational rules of the landfills and take
8 direction in regard to site management from landfill staff while on the premises. COUNTY will
9 provide a safe and accessible unloading area at the landfill.

10
11 H. Solid Waste:

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13 VENDOR agrees to deliver, or cause to be delivered, a minimum of 200,000 tons of
14 Imported Solid Waste annually to Lamb Canyon or Badlands, as directed by COUNTY, up to a
15 maximum of 225,000 tons in any 12-month period. All deliveries of Imported Solid Waste to
16 COUNTY disposal sites will be evaluated in regards to the resultant impact on the appropriate
17 facility operating permit and any other COUNTY policies or agreements. VENDOR warrants
18 that it has the right, power, and authority to deliver Imported Solid Waste to COUNTY
19 designated landfills through contracts, permits, licenses or other arrangements, and affirms it will
20 deliver the agreed tonnage of waste for the term of the agreement.

21
22 In the event VENDOR desires to dispose of more than 225,000 tons of Imported Solid
23 Waste in any twelve (12) month period to COUNTY disposal sites, VENDOR shall notify
24 COUNTY in writing sixty (60) days in advance stating the source, amount and nature of the
25 waste it wishes to dispose. The COUNTY's Board will then determine the policy issue of
whether or not to allow the additional import residual to be delivered and to which COUNTY

1 disposal site. All potential deliveries of import residual to COUNTY disposal sites will be
2 evaluated in regards to the resultant impact on the appropriate facility operating permit and any
3 other COUNTY policies or agreements. COUNTY retains the right to reject the receipt of
4 residual quantities of all such additional out-of-county waste.

5
6 I. Source Separated Recyclables:

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8 Source separated recyclables and substantially green and/or wood waste loads shall not
9 be delivered by VENDOR to the landfill without prior written approval from COUNTY.

10
11 J. Conflicts

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13 In the event that this agreement conflicts with or violates other existing contractual
14 arrangements or agreements regarding the delivery of Solid Waste that COUNTY is party to,
15 then VENDOR shall indemnify, defend and hold harmless the County of Riverside, its Agencies,
16 Districts, Special Districts and Departments, their respective directors, officers, Board of
17 Supervisors, elected and appointed officials, employees, agents and representatives from any
18 liability, claim, damage or action whatsoever relating thereto. With respect to any action or claim
19 subject to indemnification herein by VENDOR, VENDOR shall, at its sole cost, have the right to
20 use counsel of its own choice and shall have the right to adjust, settle, or compromise any such
21 action or claim as has been approved by COUNTY (which shall not unreasonably withhold its
22 approval).

23
24 **SECTION 4. ACCEPTANCE OF SOLID WASTE.**

1 A. COUNTY anticipates that during the term of this agreement, as hereinafter
2 defined, it will have sufficient disposal capacity at Lamb Canyon or Badlands to enable it to
3 accept all of the Solid Waste delivered to the landfill facilities under this agreement.
4 Notwithstanding the foregoing, COUNTY shall have no obligation to accept or dispose of the
5 Solid Waste at Lamb Canyon, Badlands or an optional site as designated pursuant to Section 3
6 above if:

7
8 (1) Lamb Canyon, Badlands and the optional site are closed due to weather or
9 other operational or regulatory concerns, or because of the exhaustion or
10 anticipated exhaustion of the permitted disposal capacity of Lamb Canyon and
11 Badlands; COUNTY may direct VENDOR to the landfill not impacted by the
12 closure and/or if available, may designate a new COUNTY Class III sanitary
13 landfill for use by VENDOR.

14
15 (2) Lamb Canyon, Badlands and the optional landfill, are closed concurrently
16 for a period of twenty-four (24) or more continuous hours, VENDOR may utilize
17 a non-COUNTY facility of VENDOR'S choice during this period of no access.
18

19 B. COUNTY shall not voluntarily close both the Badlands landfill and Lamb
20 Canyon landfill permanently during the term of this Agreement for any reason, with the
21 following exceptions: (i) as required by state or federal law, (ii) exhaustion of permitted disposal
22 capacity, or (iii) force majeure.
23

24 **SECTION 5. LANDFILL HOURS.**
25

1 A. Landfill hours will be established within the parameters of the landfill facility
2 operating permit.

3
4 (1) Lamb Canyon will be open between 6:00 a.m. and 4:30 p.m. Monday
5 through Saturday to receive Solid Waste from the Transfer Stations. Due to
6 darkness, deliveries to Lamb Canyon Landfill between November 15 and January
7 15 shall be completed by 4:00 p.m. Longer operating hours each day are possible
8 at Lamb Canyon, but not guaranteed. COUNTY will notify VENDOR when (and
9 if) Lamb Canyon will be opened for longer hours each day. It will be closed on
10 legal Holidays (New Years Day, Memorial Day, Independence Day, Labor Day,
11 Thanksgiving and Christmas).

12
13 (2) Badlands will be open between 6:00 a.m. and 4:30 p.m. Monday through
14 Saturday to receive Solid Waste from the Transfer Stations (when made available
15 by COUNTY). Due to darkness, deliveries to Badlands Landfill between
16 November 15 and January 15 shall be completed by 4:00 p.m. It will be closed on
17 legal Holidays (New Years Day, Memorial Day, Independence Day, Labor Day,
18 Thanksgiving and Christmas).

19
20 B. COUNTY will provide VENDOR with reasonable notice any time landfill
21 operating hours are planned to change.

22
23 C. VENDOR agrees it has examined access routes to COUNTY landfills and shall
24 make no claims as to deficiencies thereof.

25
SECTION 6. **TERM.**

1
2 The term of this Agreement shall commence on January 1, 2014 (“the Effective Date”)
3 and shall end on June 19, 2021, unless extended by mutual agreement of COUNTY and
4 VENDOR.
5
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9 **SECTION 7. DISPOSAL FEE, BILLING, and SECURITY.**
10

11 A. Disposal Fee:
12

13 VENDOR shall be charged a per ton disposal fee (\$27.44) on the Effective Date of this
14 Agreement for solid waste that is transported to the landfill in a transfer vehicle with walking
15 floors (typical minimum 20+ tons per pay load) or “possum belly” trucks (typically 23+ tons per
16 pay load). The disposal fee shall be adjusted annually according to the provisions of SECTION
17 8 and maybe revised by COUNTY in the event of a change in law or regulations after the
18 Effective Date of this Agreement affecting COUNTY’S landfill costs. At least 30 days before
19 any increase in the disposal fee based on a change in law or regulations, the COUNTY shall
20 notify VENDOR of the COUNTY’s calculation of the new per ton disposal fee (the “New
21 Rate”), and the COUNTY shall include with the notice the methodology used to calculate the
22 New Rate. VENDOR will have fifteen (15) days from the date of such notice to dispute the
23 New Rate or the manner in which it was calculated. If VENDOR timely disputes the New Rate
24 in good faith, VENDOR will not be obligated to pay the New Rate to the COUNTY until the
25 Parties resolve the dispute. Upon resolution of the dispute, VENDOR shall pay immediately any
amounts that came due to the COUNTY after the date of the notice.

1
2 In the event VENDOR fails to deliver, or cause to be delivered, 200,000 tons of Imported
3 Solid Waste to COUNTY in a 12-month period (other than due to the unavailability of Lamb
4 Canyon, Badlands or the optional site), VENDOR shall pay COUNTY the monetary amount for
5 tonnage that was not delivered, as if it had been delivered.
6
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8
9 B. Billing:

10
11 COUNTY shall bill VENDOR monthly, based upon certified weigh tickets prepared by
12 COUNTY, for each load of Solid Waste delivered to the landfill. Monthly payments shall be
13 made by VENDOR to COUNTY by the thirtieth (30th) day of each calendar month for the
14 previous month's deliveries of Solid Waste..
15

16 C. Security:

17
18 Security deposits (i.e. bonding, late fees, etc.) will be in accordance with current practice
19 established by the Riverside County Waste Management Department.
20

21 **SECTION 8. DISPOSAL FEE ADJUSTMENT.**

22
23 The disposal fee will be subject to adjustment annually every July 1st following public
24 hearings. The first adjustment may be made on July 1, 2014. The maximum increase or
25 decrease allowable any one year will be equal to the percent change in the Consumer Price Index

1 (CPI) during the year which shall immediately precede the adjustment. Computation of the
2 change in the CPI will be made according to the following methodology.

3
4 A. Said computation shall be equal to the change in the Consumer Price Index for
5 all Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area,
6 (1982-84 = 100), as published by the United States Department of Labor, Bureau of Labor
7 Statistics. Said change shall be measured for the twelve (12) month period January through
8 December. The first increase may be effective July 1, 2014, based upon changes in the
9 Consumer Price Index formula for the period January, 2013 through December, 2013.

10 **SECTION 9. INSURANCE.**

11
12 VENDOR shall obtain, and keep in force for the term of this Agreement the following
13 insurance policies which cover any acts or omissions of VENDOR, its employees, contractors,
14 and agents engaged in the provision of service specified in the Agreement:

15
16 A. Worker's Compensation coverage in accordance with the statutory requirements
17 of the State of California.

18
19 B. VENDOR shall obtain and maintain in full force and effect throughout the entire
20 Term of this Agreement a Broad Form Comprehensive General Liability (occurrence) Policy
21 with a minimum limit of three million dollars (\$3,000,000.00) aggregate and two million dollars
22 (\$2,000,000.00) per occurrence for bodily injury and property damage. Said insurance shall
23 protect VENDOR, , the County of Riverside, its Agencies, Districts, Special Districts, and
24 Departments, their respective directors, officers, Board of Supervisors, employees, elected or
25 appointed officials, agents or representatives, from any claim for damages for bodily injury,

1 including accidental death, as well as from any claim for property damage which may arise from
2 operation of the transfer vehicle while on the landfill site, whether such operations be by
3 VENDOR itself, or by its agents and/or employees. Copies of the policies or endorsements
4 evidencing the above required insurance coverage shall be filed with the General Manager-Chief
5 Engineer.

6
7 C. Automobile Liability. VENDOR shall maintain liability insurance for all owned,
8 non-owned or hired vehicles so used in an amount not less than two million dollars (\$2,000,000)
9 per occurrence combined single limit. If such insurance contains a general aggregate limit, it
10 shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.
11 The Policy shall name the County of Riverside, its Agencies, Districts, Special Districts, and
12 Departments, their respective directors, officers, Board of Supervisors, employees, elected or
13 appointed officials, agents or representatives as Additional Insureds.

14
15 All of the following endorsements are required to be made a part of the insurance policies
16 required by this Section:

17
18 (1) "This policy shall be considered primary insurance as respects any other
19 valid and collectible insurance COUNTY may possess including self-insured
20 retention COUNTY may have, and any other insurance COUNTY or District does
21 possess shall be considered excess insurance and shall not contribute with it."

22
23 (2) "This insurance shall act for each insured, as though a separate policy had
24 been written for each. This, however, shall not act to increase the limit of liability
25 of the insuring company."

1 (3) VENDOR shall cause its insurance carrier(s) to furnish COUNTY and
2 District by direct mail with certificate(s) of insurance showing that such insurance
3 is in full force and effect, and the County of Riverside, its Agencies, Districts,
4 Special Districts, and Departments, their respective directors, officers, Board of
5 Supervisors, employees, elected or appointed officials, agents or representatives
6 are named as additional insureds with respect to this Agreement and the
7 obligations of VENDOR hereunder. Further, said certificate(s) shall contain the
8 covenant of the insurance carrier(s) that thirty (30) days written notice shall be
9 given to COUNTY and District prior to modification, cancellation or reduction in
10 coverage of such insurance. In the event notice has been provided to COUNTY
11 and District of any such modification, cancellation or reduction in coverage and
12 on the effective date thereof, COUNTY and District shall have the right to
13 terminate this Agreement, unless County and District receive prior to such
14 effective date another certificate from an insurance carrier that the insurance
15 required herein is in full force and effect.

16
17 The limits of such insurance coverage, and companies, shall be subject to review and
18 approval by the Riverside County Board of Supervisors every year and may be modified at that
19 time at the Board of Supervisors' sole discretion and a demonstration of reasonable need. The
20 County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective
21 directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or
22 representatives shall be named as additional insureds on all policies and endorsements.

23
24 **SECTION 10.** **INDEMNIFICATION**

25
A. **General Indemnification of County**

1
2 VENDOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts,
3 Special Districts and Departments, their respective directors, officers, Board of Supervisors,
4 elected and appointed officials, employees, agents and representatives from any liability, claim,
5 damage or action whatsoever, based or asserted upon any act or omission of VENDOR, its
6 officers, employees, subcontractors, agents or representatives arising out of or in any way
7 relating to this Agreement, including but not limited to property damage, bodily injury, or death.

8 VENDOR shall defend, at its sole cost and expense, including but not limited to attorney fees,
9 cost of investigation, defense and settlements or awards, the County of Riverside, its Agencies,
10 Districts, Special Districts and Departments, their respective directors, officers, Board of
11 Supervisors, elected and appointed officials, employees, agents and representatives in any such
12 action or claim. With respect to any action or claim subject to indemnification herein by
13 VENDOR, VENDOR shall, at its sole cost, have the right to use counsel of its own choice and
14 shall have the right to adjust, settle, or compromise any such action or claim without the prior
15 consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in
16 no manner whatsoever limits or circumscribes VENDOR's indemnification of COUNTY.
17 VENDOR's obligations hereunder shall be satisfied when VENDOR has provided to COUNTY
18 the appropriate form of dismissal (or similar document) relieving the COUNTY from any
19 liability for the action or claim involved. The specified insurance limits required in this
20 Agreement shall in no way limit or circumscribe VENDOR's obligations to indemnify and hold
21 harmless the COUNTY.

22
23 B. General Indemnification of Vendor
24

25 COUNTY shall indemnify and hold harmless the VENDOR, its respective directors, officers,
employees, agents and representatives from any liability, claim, damage or action whatsoever,

1 based or asserted upon any act or omission of COUNTY arising out of or in any way relating to
2 this Agreement, including but not limited to property damage, bodily injury, or death. COUNTY
3 shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of
4 investigation, defense and settlements or awards, the VENDOR, its respective directors, officers,
5 employees, agents and representatives in any such action or claim. With respect to any action or
6 claim subject to indemnification herein by COUNTY, COUNTY shall, at its sole cost, have the
7 right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any
8 such action or claim without the prior consent of VENDOR; provided, however, that any such
9 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes
10 COUNTY's indemnification of VENDOR. COUNTY's obligations hereunder shall be satisfied
11 when COUNTY has provided to VENDOR the appropriate form of dismissal (or similar
12 document) relieving the VENDOR from any liability for the action or claim involved.

13
14 C. CERCLA Indemnification

15
16 COUNTY shall indemnify, defend with counsel approved by VENDOR and hold
17 harmless VENDOR, its respective officers, employees, agents, assigns, volunteers and any
18 successor to VENDOR'S interest, from and against all third party claims, actual damages
19 (including but not limited to special and consequential damages), natural resources damages,
20 punitive damages, injuries, costs, response remediation and removal costs, losses, demands,
21 debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines,
22 charges, penalties, and expenses, (including but not limited to attorneys' and expert witness fees
23 and costs incurred in connection with defending against any of the foregoing or in enforcing this
24 indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, VENDOR
25 or its respective officers, employees, or agents arising from or attributable to any pickup, repair,
cleanup, or detoxification, or preparation and implementation of any removal, remedial,

1 response, closure or other plan (regardless of whether or not undertaken due to governmental
2 action) concerning any hazardous substances or hazardous wastes including the release of such
3 substances or wastes arising out of the deposit of VENDOR'S Solid Waste at COUNTY'S lined
4 landfills (Per Subtitle D – which includes Lamb Canyon and Badlands Landfills.
5

6 Notwithstanding any of the foregoing terms and provisions, COUNTY'S CERCLA
7 indemnification shall not extend to any such claims for actual damages (including but not limited
8 to special and consequential damages), natural resources damages, punitive damages, injuries,
9 costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of
10 action, suits, legal or administrative proceedings, interest, fines, charges, penalties, expenses
11 (including but not limited to attorneys' and expert witness fees and costs incurred in connection
12 with defending against any of the foregoing or in enforcing this indemnity), of any kind
13 whatsoever paid, to the extent that such claims are, or can be shown to have been, caused by the
14 failure of VENDOR, its respective officers, employees, agents, assigns, volunteers, and any
15 successor to VENDOR'S interest to properly operate the required hazardous waste load check
16 program at the Transfer Stations as required by California law and COUNTY Ordinance and as
17 set forth in this Agreement.
18

19 The foregoing indemnity is intended to operate as an agreement pursuant to Section 107
20 (e) of the Comprehensive Environmental Response, Compensation and Liability Act,
21 ("CERCLA"), 42 U.S.C. Section 9607 (e) and California Health and Safety Code Section 25364,
22 to insure, protect, hold harmless, and indemnify VENDOR from all liability (with the exception
23 noted above). The CERCLA indemnity provided here is separate and in addition to the general
24 indemnification described above.
25

SECTION 11. FORCE MAJEURE.

1
2 Neither VENDOR or COUNTY shall be in default under this Agreement in the event that
3 the delivery of Solid Waste or the disposal of Solid Waste are temporarily interrupted or
4 discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances,
5 insurrection, explosion, natural disasters such as floods, earthquakes, landslides, and fires,
6 strikes, lockouts, and other labor disturbances or other catastrophic events which are beyond the
7 reasonable control of VENDOR and COUNTY. Other catastrophic events do not include the
8 financial inability of VENDOR or COUNTY to perform or failure of VENDOR or COUNTY to
9 obtain any necessary permits or licenses from other governmental agencies or the right to use the
10 facilities of any public utility where such failure is due solely to the acts or omissions of
11 VENDOR or COUNTY.

12
13 **SECTION 12. DISPUTES.**
14

15 The parties shall make a good faith effort to settle any dispute or claim arising under this
16 Agreement. If the parties fail to resolve such disputes or claims, they shall submit them to
17 nonbinding mediation in Riverside County, California. If mediation does not arrive at a
18 satisfactory result, litigation may be pursued.

19
20 Should any dispute arise between the parties concerning the terms, interpretation, effect
21 or operation of this Agreement, and should such dispute result in litigation or mediation between
22 parties, or any of them, the prevailing party in such litigation or mediation shall be entitled to
23 recover from the unsuccessful party(ies) any and all attorneys' fees, disbursements and costs
24 incurred by the prevailing party in such litigation or mediation.
25

1 In the event neither party prevails, but a compromise position is imposed, both parties
2 shall bear their own legal expenses.

3
4 **SECTION 13. ASSIGNMENT:**

5
6 Neither this Agreement nor any part thereof shall be assigned by VENDOR without the
7 prior written consent of COUNTY.

8
9
10 If COUNTY relinquishes its ownership of a landfill used by VENDOR, or no longer
11 operates a landfill used by VENDOR as specified in the landfill's operating permit, VENDOR
12 reserves the right to cancel this Agreement. VENDOR'S opportunity to approve COUNTY'S
13 successor in interest and cancel this Agreement upon transfer of ownership or operating permit
14 of a COUNTY landfill site must be exercised within thirty (30) days after VENDOR has
15 received written notice from COUNTY that ownership has formally changed hands or will be
16 lost to VENDOR.

17
18 **SECTION 14. LAW TO GOVERN.**

19
20 The law of the State of California shall govern this Agreement.

21
22 **SECTION 15. NOTICES:**

23
24 All notices, consents or other communications which are required or permitted by this
25 Agreement to be served on or given to any party shall be in writing and shall be deemed served
or given when personally delivered or, in lieu of personal delivery, on receipt, rejection or return

1 undelivered, when deposited in the United States mail first-class, certified or registered, postage
2 prepaid, return receipt requested or overnight mail delivery service, addressed to the applicable
3 party at the address set forth below:

4 To COUNTY: Riverside County Waste Management Department
5 14310 Frederick Street
6 Moreno Valley, CA 92553

7 To VENDOR: Burrtec Waste Industries, Inc.
8 9890 Cherry Ave.
9 Fontana, CA 92335

10 or to such other address as either party may from time to time designate by notice to the other
11 given in accordance with this Section.

12 **SECTION 16. PRE-EXISTING RIGHTS AND LIABILITIES**

13
14 COUNTY and VENDOR agree that their respective rights and liabilities to each other outside of
15 the parameters of this Agreement remain intact.

16
17 **SECTION 17. WAIVER.**

18
19 No waiver by either party of any one or more defaults or breaches by the other in the
20 performance of this agreement shall operate or be construed as a waiver of any future defaults or
21 breaches, whether of a like or different character.

22
23 **SECTION 18. BINDING UPON SUCCESSORS.**

24
25 All agreements, covenants, conditions, and provisions of this Agreement shall be binding
upon and inure to the benefit of the successors and assigns of each of the parties hereto.

1
2 **SECTION 19.** **SEVERABILITY.**
3

4 If any non-material provision of this Agreement shall for any reason be held to be invalid
5 or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity
6 and enforceability of any of the remaining provisions of this Agreement.
7

8
9 **SECTION 20.** **NON-DISCRIMINATION.**
10

11 VENDOR shall not discriminate in its recruiting, hiring, promotion, demotion or
12 termination practices on the basis of race, religious creed, color, national origin, ancestry,
13 physical handicap, medical condition, marital status or sex in the performance of this contract
14 and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of
15 the California Fair Employment Practices Act (commencing with Section 1410 of the Labor
16 Code), and the Federal Civil Rights Act of 1964 (P.L. 88-352).
17

18 **SECTION 21.** **ENTIRE AGREEMENT.**
19

20 This Agreement embodies the entire agreement between COUNTY and VENDOR. Each
21 represents that in entering this Agreement it does not rely on any previous oral or implied
22 representations, inducement or understanding of any kind or nature. This Agreement may not be
23 modified or amended, in whole or in part, except by a written amendment signed by authorized
24 representatives of both parties.
25

SECTION 22. **CONSTRUCTION OF AGREEMENT.**

1
2 The parties hereto have negotiated this Agreement at arm's length and with advice of
3 their respective attorneys, and no provision contained herein shall be construed against
4 COUNTY solely because it prepared this Agreement in its executed forms.

5
6 IN WITNESS WHEREOF, this Agreement has been executed and is effective on the date the
7 Board of Supervisors takes action on it.

8
9 RIVERSIDE COUNTY WASTE
10 MANAGEMENT DEPARTMENT
11 14310 Frederick Street
12 Moreno Valley, CA 92335

Burrtec Waste Industries, Inc.
9890 Cherry Avenue
Fontana, CA 92335

12 Dated: 11/14/13

Dated: 11/18/13

13 RECOMMENDED FOR APPROVAL

14 By: [Signature]
15 Hans Kernkamp
16 General Manager-Chief Engineer

By: [Signature]
Tracy A. Sweeney
Chief Operating Office/Vice President

17 RIVERSIDE COUNTY

18 By: _____
19 Chairman, Board of Supervisors

20 ATTESTED:

21 By: _____
22 Kecia Harper-Ihem, Clerk

23 APPROVED AS TO FORM:

24 By: [Signature]
25 Neal Kipnis, Deputy County Counsel