

FORM APPROVED COUNTY COUNSEL
 BY: *G.P.P.* GREGORY P. PRIAMOS DATE: 2/26/15

Departmental Concurrence

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

274



FROM: Waste Management Department

SUBMITTAL DATE:
 February 25, 2015

SUBJECT: Second Amended and Restated Agreement for Disposal of Solid Waste with the Coachella/Indio Waste Transfer Station Authority, District 4 [\$0 - Waste Management Department Enterprise Funds], Project is Exempt under CEQA.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (General Rule for Exemption), categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities), and statutorily exempt from CEQA under Section 15273 (Rates, Tolls, Fares, and Charges); and
2. Approve and authorize the Chairman to sign the Second Amended and Restated Agreement for Disposal of Solid Waste with the Coachella/Indio Waste Transfer Station Authority.

BACKGROUND:

Summary

The Coachella/Indio Waste Transfer Station Authority (Authority) has been responsible for building, maintaining and operating the Coachella Transfer Station on County land via a lease with the Riverside County Waste Management Department (Department) since August 10, 1999. (continued)

Hans Kernkamp
 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 type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

SOURCE OF FUNDS: Waste Management Department Enterprise Funds	Budget Adjustment: No
	For Fiscal Year: 14/15

C.E.O. RECOMMENDATION: APPROVE
 BY: *Alex Gann*
 County Executive Office Signature Alex Gann

MINUTES OF THE BOARD OF SUPERVISORS

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

COUNTY

Prev. Agn. Ref.: 10.4 (6/19/01); 12.3C (11/26/13) | District: 4 | Agenda Number: 12-4

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11 Second Amended and Restated Agreement for Disposal of Solid Waste with the
Coachella/Indio Waste Transfer Station Authority, District 4 [\$0 – Waste Management Department
Enterprise Funds] CEQA Exempt**

DATE: February 25, 2015

PAGE: 2 of 2

BACKGROUND: (cont.)

The Authority subleases day-to-day operations to Burrtec Waste. As part of the lease, the Authority also entered into a Waste Delivery Agreement (WDA) to bring the residual waste from the transfer station to County owned landfills until 2021. On November 26, 2013, the County entered into a 7-year import agreement with Burrtec Waste for up to 225,000 tons per year to County owned landfills. As part of the negotiations related to the import agreement, Burrtec, as sub-lessee to the Authority, requested that additional facilities be allowed to accept waste from the transfer station prior to the expiration of the current WDA. The Second Amended and Restated Agreement WDA completes import negotiations, and was approved by the Authority on February 19, 2015.

The main terms of the agreement are summarized as follows:

- Authority may dispose of solid waste residue at facilities other than those owned and/or operated by the County;
- Authority will limit delivery of solid waste residue into Non-County facilities to 130,000 tons in any twelve (12) month period;
- Authority agrees to pay County \$1.175 per ton for each ton of solid waste residue delivered to non-County facilities (per Board Policy, County transfers \$1.00 for CVMSHCP fees for distribution to the Coachella Valley Association of Governments (CVAG) and \$0.175 for city code enforcement fees for disbursement to Indio and Coachella, based on proportional population, for actual costs incurred by Indio and Coachella associated with the removal of litter, illegal dumping, and graffiti).
- Authority may still continue to dispose of solid waste residue at County facilities for the transfer rate, as adjusted annually by the Consumer Price Index (CPI), currently \$27.75/ton.

California Environmental Quality Act (CEQA) Findings

The Project is exempt from CEQA pursuant to Section 15061(b)(3) (General Rule for Exemption), categorically exempt from CEQA pursuant to Section 15301 Existing Facilities, and statutorily exempt from CEQA under Section 15273 Rates, Tolls, Fares, and Charges. A Notice of Exemption (NOE) to this effect will be filed with the County Clerk upon approval of the WDA.

Impact on Citizens and Businesses

None.

**SECOND AMENDED AND RESTATED AGREEMENT FOR DISPOSAL
OF SOLID WASTE**

RIVERSIDE COUNTY (hereinafter referred to as "COUNTY") and The Coachella/Indio Waste Transfer Station Authority (hereinafter referred to as "AUTHORITY"), hereby agree as follows:

RECITALS

WHEREAS, COUNTY and AUTHORITY previously entered into that certain AGREEMENT FOR DISPOSAL OF SOLID WASTE dated on or about August 10, 1999, which AGREEMENT was superseded in its entirety by that certain First Amended Agreement for Disposal of Solid Waste dated on or about June 19, 2001 (the "FIRST AMENDED AGREEMENT FOR DISPOSAL OF SOLID WASTE");

WHEREAS, the parties desire to amend the FIRST AMENDED AGREEMENT FOR DISPOSAL OF SOLID WASTE substantially in its entirety; and

WHEREAS, this document amends and supersedes the FIRST AMENDED AGREEMENT FOR DISPOSAL OF SOLID WASTE and the parties agree that none of the provisions of the original AGREEMENT and FIRST AMENDED AGREEMENT shall have any effect whatsoever except to the extent they are specifically restated herein; and

WHEREAS, COUNTY owns and operates landfills for the disposal of Solid Waste and COUNTY desires to assure a flow of Solid Waste, particularly from sources within the County of Riverside, to said landfills; and

WHEREAS, AUTHORITY has constructed a Transfer/Recycling Station ("Transfer Station") at the closed Coachella Landfill which is also a part of the Riverside County Recycling Market Development Zone with which to provide processing and transfer of Solid Waste Residue; and

WHEREAS, AUTHORITY desires to arrange for the disposal of all of the non-hazardous Solid Waste Residue from the Transfer Station in a Class III sanitary landfill owned and operated by COUNTY; and

WHEREAS, COUNTY owns and operates Class III sanitary landfills and COUNTY is prepared to accept Solid Waste Residue from the Transfer Station delivered by AUTHORITY for disposal under the terms and conditions set forth herein;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Any obligation imposed upon AUTHORITY under this Agreement may be transferred by the AUTHORITY to its operator provided said duties are described in the Operations Agreement between AUTHORITY and its operator which requires the operator to assume and comply with those duties provided however, AUTHORITY shall remain ultimately responsible for the performance of any and all such obligations.

SECTION 1. DEFINITIONS.

A. Applicable Law.

Applicable law means all statutes, rules, regulations, permits, orders, or requirements of the United States, State, County and local government authorities and agencies having applicable jurisdiction, that apply to or govern the duties of AUTHORITY hereunder.

B. Solid Waste.

Solid Waste to be delivered by AUTHORITY to COUNTY and acceptable to COUNTY, shall all be non-hazardous residential and commercial refuse, garbage and/or rubbish and Construction/Demolition Debris which COUNTY's Landfills may receive under its permits and standard operating policies and includes or excludes any other materials that COUNTY designates in writing from time to time upon at least ninety (90) days' prior written notice to AUTHORITY. Notwithstanding the foregoing, Solid Waste shall not include the following:

(1) Unpermitted landfill wastes, which includes all materials that Badlands and Lamb Canyon, or other site which the COUNTY designates for disposal pursuant to Section 3.A, are not permitted to landfill;

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

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

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

(5) Large dead animals;

(6) Hazardous Wastes:

(a) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and

(b) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related

federal, State and local laws and regulations;

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

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

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

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

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

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

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

(11) Sewage sludge comprised of human and industrial residue, including grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semi-dry form.

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

C. Solid Waste Residue

Solid Waste Residue means Solid Waste that remains after undergoing any processing, including the separation and removal of recyclables consistent with the Lease Agreement between AUTHORITY and COUNTY, at the transfer station and is then loaded into transfer trailers for delivery to landfills.

D. Construction/Demolition Debris

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

SECTION 2. COMPLIANCE WITH APPLICABLE LAW.

AUTHORITY shall perform all of its respective duties hereunder, and shall cause all of its employees, contractors and agents to perform all of their respective duties hereunder, in accordance with Applicable Law and Permits.

SECTION 3. DELIVERY OF SOLID WASTE.

Subject to the provisions of sub item H, AUTHORITY shall deliver or cause to be delivered Solid Waste Residue from the Transfer Station to a designated COUNTY landfill(s).

A. Designated COUNTY Landfills:

COUNTY landfill(s) designated to receive Solid Waste from the Transfer Station shall be the Badlands Landfill ("Badlands") and Lamb Canyon Landfill ("Lamb County"), provided that COUNTY reserves the option to require AUTHORITY to deliver Solid Waste to such other landfill as may be designated by COUNTY if the daily capacity at Lamb Canyon or Badlands is exceeded, is anticipated to be exceeded or in the event of short term unforeseen circumstances that prevent AUTHORITY from disposing Solid Waste at Lamb Canyon or Badlands.

B. Tonnage Notification:

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

C. Size and Type of Delivery Equipment:

The size of tractors and trailers used to transfer Solid Waste from the Transfer Station 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 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:

AUTHORITY shall operate a hazardous waste load check program at the Transfer

Station as required by California law and by County Ordinance.

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. AUTHORITY shall remove any material that is unloaded at COUNTY'S landfills by AUTHORITY 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 AUTHORITY'S sole expense.

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

AUTHORITY shall operate a tonnage tracking system that will determine on a daily basis the amount and origin of generation for the entire waste stream delivered to COUNTY and Non-COUNTY landfills. The tonnage tracking system shall be fully compatible with the COUNTY'S current system. AUTHORITY 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 Station and all disposal sites within fifteen (15) days of the end of the calendar month, and a year-end report that displays all data broken down by month along with a year total for the calendar year. The format of said reports shall be approved by the COUNTY.

AUTHORITY shall also provide monthly source (residential/commercial/industrial) percentage splits for the waste hauled from each jurisdiction. These reports are due within fifteen (15) days of the end of the month.

The format of all reports shall be approved by the COUNTY.

When the COUNTY implements an electronic reporting system, upon sixty (60) days notice, AUTHORITY shall transmit origin and source data electronically via the internet within one (1) day of receipt of the prior day's landfill transactions in lieu of monthly reports.

AUTHORITY will notify COUNTY of any discrepancies of more than 5% between tonnage weights reported by AUTHORITY and COUNTY when the discrepancy becomes apparent to AUTHORITY. 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.

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

G. Unloading Safety:

AUTHORITY shall unload its transfer vehicles at the landfill in a safe and orderly manner. It will observe all of the posted operational rules of the landfills and take direction in regard to site management from landfill staff while on the premises. COUNTY will provide a safe and accessible unloading area at the landfill.

H. Use of other Facilities

AUTHORITY may dispose of the Solid Waste Residue from the Transfer Station at facilities other than those owned and/or operated by COUNTY. AUTHORITY will limit delivery of Solid Waste Residue from the Transfer Station into Non-COUNTY facilities to 130,000 tons (Export Tons) in any twelve (12) month period. AUTHORITY agrees that in the event the Non-COUNTY facility accepting the Export Tons does not possess an active Solid Waste Facility Permit issued by CalRecycle, Solid Waste collected by AUTHORITY or its franchisees in the unincorporated areas of Riverside County will not be delivered to such facility.

For Solid Waste Residue delivered from the Transfer Station to COUNTY Landfills, there is included the following fees: Coachella Valley Multi-Species Habitat Conservation Plan (CVMSHCP) at \$1.00 per ton and City Code Enforcement at \$0.175 per ton for a total of \$1.175 per ton. It is agreed that COUNTY will not lose these fees when Solid Waste Residue is delivered to Non-County facilities. Therefore, AUTHORITY agrees to pay COUNTY \$1.175 per ton for each ton of Solid Waste Residue delivered from the Transfer Station to Non-County facilities. If these fees are changed, then the amount to be paid shall be correspondingly increased. Per Board Policy, COUNTY transfers the collected CVMSHCP fees to the Coachella Valley Association of Governments (CVAG) and the City Code Enforcement Fees are disbursed to Indio and Coachella, based on proportional population, for actual costs incurred by Indio and Coachella associated with the removal of litter, illegal dumping, and graffiti.

I. AUTHORITY Controlled In-County Waste:

Except as is stated elsewhere, AUTHORITY shall, during the term of this Agreement, deliver or cause to be delivered to COUNTY Landfills all Solid Waste Residue from the Transfer Station. This shall include, but not necessarily be limited to, Solid Waste collected by AUTHORITY or its franchisees anywhere within the cities of Coachella and Indio, or by any agency or other entity utilizing the Transfer Station.

SECTION 4. ACCEPTANCE OF SOLID WASTE.

A. COUNTY anticipates that during the Term of this Agreement, as hereinafter defined, it will have sufficient disposal capacity at Badlands and Lamb Canyon to enable it to accept all of the Solid Waste Residue delivered to the landfill facilities from the Transfer Station. Notwithstanding the foregoing, COUNTY shall have no obligation to accept or dispose of the Solid Waste Residue at Badlands and Lamb Canyon if:

(1) Badlands or Lamb Canyon are closed due to weather or other operational or regulatory concerns, or because of the exhaustion of the permitted disposal capacity of Badlands and Lamb Canyon. COUNTY may direct AUTHORITY to the landfill not impacted by the closure and/or if available, may designate a new COUNTY Class III sanitary landfill for use by AUTHORITY.

(2) Badlands, Lamb Canyon and the optional landfill are closed concurrently for a period of twenty-four (24) or more continuous hours, AUTHORITY may utilize a non-County facility of AUTHORITY's choice during this period of no access.

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

SECTION 5. LANDFILL HOURS.

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

(1) Badlands Landfill will be open between 6:00 a.m. and 4:30 p.m. Monday through Saturday to receive Solid Waste from the Transfer Station.

(2) Lamb Canyon Landfill will be open between 6:00 a.m. and 4:30 p.m. Monday through Saturday to receive Solid Waste from the Transfer Station.

B. COUNTY will provide AUTHORITY with reasonable notice any time landfill operating hours are planned to change.

C. AUTHORITY agrees it has examined access routes to COUNTY landfills and shall make no claims as to deficiencies thereof.

SECTION 6. TERM.

The term of the waste delivery commitments included in this Agreement shall commence on the date this Agreement is executed by the Riverside County Board of Supervisors (the "Effective Date"), and shall end on June 19, 2021 unless extended by mutual agreement of COUNTY and AUTHORITY or if the Master Lease between AUTHORITY (AKA "LESSEE") and COUNTY is terminated.

SECTION 7. DISPOSAL FEE, BILLING, and SECURITY.

A. Disposal Fee:

AUTHORITY shall be charged a per ton disposal fee on the Effective Date of this Agreement of \$27.75 for Waste Delivery of Solid Waste Residue that is transported to a COUNTY landfill in a transfer vehicle with walking floors (i.e. typical minimum 20+ tons per pay load) or "possum belly" trucks (typically 23+ tons per pay load). The disposal fee shall be adjusted annually according to the provisions of SECTION 8 and may be revised by COUNTY in the event of a change in law or regulations after the Effective Date of this Agreement affecting COUNTY'S landfill costs.

At least 30 days before any increase in the disposal fee based on a change in law or regulations, the COUNTY shall notify AUTHORITY of the COUNTY'S calculation of the new per ton disposal fee (the "New Rate"), and the COUNTY shall include with the notice the methodology used to calculate the New Rate. AUTHORITY will have fifteen (15) days from the date of such notice to dispute the New Rate or the manner in which it was calculated. If AUTHORITY timely disputes the New Rate in good faith, AUTHORITY will not be obligated to pay the New Rate to the COUNTY until the Parties resolve the dispute. Upon resolution of

the dispute, AUTHORITY shall pay immediately any amounts that came due to the COUNTY after the date of the notice.

All other vehicles of AUTHORITY will pay according to the appropriate rate schedule then in effect at COUNTY facilities.

AUTHORITY shall accept all self haul non hazardous loads delivered to its Transfer Station. In order to help address illegal dumping, AUTHORITY agrees to accept and charge all self-haul, non-hazardous, non-commercial, Solid Waste loads (with less than 50% of the load green and/or woody waste) weighing up to 600 pounds (the "Minimum Load Charge") not more than \$10.00 per load. The Minimum Load Charge shall not apply to any other type of load delivered to the Transfer Station. Each such small load is assumed to be .3 tons. In the event AUTHORITY'S contract with the operator requires rates that are lower than stated herein, the lower rates will prevail for all such customers.

B. Billing:

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

C. Security:

Security deposits (i.e. bonding, late fees, etc.) will be the same as the then current practice established by Riverside County Waste Management Department.

SECTION 8. DISPOSAL FEE ADJUSTMENT.

The disposal fee will be subject to adjustment annually every July 1st following public hearings provided that COUNTY shall give AUTHORITY not less than 14 (fourteen) days prior written notice of said hearing and AUTHORITY shall have an opportunity to be heard and present evidence at said hearing. The first adjustment may be made on July 1, 2015. The maximum increase allowable any one year will be equal to the percent change in the Consumer Price Index (CPI). Computation of the change in the CPI will be made according to the following methodology.

A. Said computation shall be equal to the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the Los Angeles/Anaheim/Riverside Metropolitan Area, (1982-84 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics. Said change shall be measured for the twelve (12) month period January through December. The first increase may be effective July 1, 2015, based upon changes in the Consumer Price Index formula for the period January, 2014 through December, 2014.

SECTION 9. INSURANCE.

AUTHORITY shall obtain, and keep in force for the term of this Agreement all insurance required in the Master Lease between AUTHORITY (aka. LESSEE) and COUNTY.

SECTION 10. **INDEMNIFICATION**

A. General Indemnification

Separate and distinct from the CERCLA indemnification found in this Agreement, COUNTY agrees to defend, indemnify, and hold harmless, AUTHORITY and its officers, agents, and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including, but not limited to, injury to County and COUNTY'S officers, agents, or employees which arise from or are connected with or are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of COUNTY, and its officers, agents, or employees, in operating COUNTY landfill facilities, and all costs and expenses of investigating and defending against same; provided, however, that COUNTY'S duty to indemnify and hold harmless shall not include any claims or liability arising from the active negligence or willful misconduct of AUTHORITY and its agents, officers, or employees.

AUTHORITY agrees to defend, indemnify, and hold harmless, Riverside County Waste Resources Management District (District) and COUNTY and their officers, agents, and employees from and against any and all claims, demands, damages, liabilities, costs or expenses for any damages or injuries to any person or property, including, but not limited to, injury to AUTHORITY'S officers, agents, or employees which arise from or are connected with or are caused or claimed to be caused by the negligent acts or omissions or willful misconduct of AUTHORITY, and its officers, agents, or employees, in operating the Transfer Station, and all costs and expenses of investigating and defending against same; provided, however, that AUTHORITY'S duty to indemnify and hold harmless shall not include any claims or liability arising from the active negligence or willful misconduct of District and COUNTY and their agents, officers, or employees.

B. CERCLA Indemnification

COUNTY shall indemnify, defend with counsel approved by AUTHORITY and hold harmless AUTHORITY and any participating agency, or either of them, that enters into an agreement with AUTHORITY for the acceptance of Solid Waste at the Transfer Station, their respective officers, employees, agents, assigns, volunteers and any successor to the AUTHORITY'S and any such participating agency's interest, from and against all third party claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses, (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, AUTHORITY and any such participating agency or their respective officers, employees, or agents arising from or attributable to any pickup, repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether or not undertaken due to governmental action) concerning any hazardous substances or hazardous wastes including the release of such substances or wastes arising out of the deposit of AUTHORITY'S, and any such participating agency's, Solid Waste at COUNTY'S lined landfills.

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

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

SECTION 11. FORCE MAJEURE.

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

SECTION 12. DISPUTES.

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

Should any dispute arise between the parties concerning the terms, interpretation, effect or operation of this Agreement, and should such dispute result in litigation or mediation between parties, or any of them, the prevailing party in such litigation or mediation shall be entitled to recover from the unsuccessful party(ies) any and all attorneys' fees, disbursements and costs incurred by the prevailing party in such litigation or arbitration. In the event neither party prevails, but a compromise position is imposed, both parties shall bear their own legal expenses.

SECTION 13. ASSIGNMENT:

A. Neither this Agreement nor any part thereof shall be assigned by AUTHORITY without the prior written consent of COUNTY.

B. If COUNTY relinquishes its ownership of a landfill used by AUTHORITY, AUTHORITY reserves the right to cancel this Agreement. AUTHORITY'S opportunity to approve COUNTY'S successor in interest and cancel this Agreement upon transfer of ownership of a COUNTY landfill site must be exercised within thirty (30) days after AUTHORITY has received written notice from COUNTY that ownership has formally changed hands or will be lost to AUTHORITY.

SECTION 14. LAW TO GOVERN.

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

SECTION 15. NOTICES:

All notices, consents or other communications which are required or permitted by this 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 undelivered, when deposited in the United States mail, first-class, certified or registered, postage prepaid, return receipt requested or overnight mail delivery service, addressed to the applicable party at the address set forth below:

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

Copy: County Counsel

To AUTHORITY: Coachella/Indio Waste Transfer Station Authority
c/o City of Indio
100 Civic Center Center Mall
Indio, CA 92201

Copy To: Authority Attorney

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

SECTION 16. WAIVER.

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

SECTION 17. BINDING UPON SUCCESSORS.

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.

SECTION 18. SEVERABILITY.

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

SECTION 19. NON-DISCRIMINATION.

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

SECTION 20. ENTIRE AGREEMENT.

This Agreement, together with the Master Lease, embodies the entire Agreement between COUNTY and AUTHORITY. Each represents that in entering this Agreement it does not rely on any previous oral or implied representations, inducement or understanding of any kind or nature.

This document amends in its entirety that certain Agreement entitled FIRST AMENDED AGREEMENT FOR DISPOSAL OF SOLID WASTE executed on June 19, 2001 between Riverside County and the Coachella/Indio Waste Transfer Station Authority. This Agreement may not be modified or amended, in whole or in part, except by writing signed by both parties hereto.

SECTION 21. CONSTRUCTION OF AGREEMENT.

The parties hereto have negotiated this Agreement together with the Master Lease at arms length and with advice of their respective attorneys, and no provision contained herein shall be construed against COUNTY solely because it prepared this Agreement in its executed forms.

[Rest of this page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been executed and is effective on the Effective Date (defined in Section 6).


RIVERSIDE COUNTY WASTE
MANAGEMENT DEPARTMENT


COACHELLA/INDIO WASTE
TRANSFER STATION AUTHORITY

Dated: _____

Dated: February 25, 2015

RECOMMENDED FOR APPROVAL

By: 
Hans W. Kernkamp
General Manager/Chief Engineer
RIVERSIDE COUNTY WASTE
MANAGEMENT DEPARTMENT

By: 
Michael H. Wilson
Chairman
COACHELLA/INDIO WASTE
TRANSFER STATION AUTHORITY

RIVERSIDE COUNTY

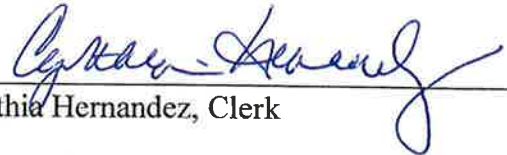
By: _____
Chairman, Board of Supervisors

Dated: February 25, 2015

ATTESTED:

ATTESTED:


By: _____
Kecia Harper-Ihem, Clerk

By: 
Cynthia Hernandez, Clerk

APPROVED:

APPROVED:

By: 
Neal Kipnis, Deputy County Counsel

 FOR RD
Roxanne Diaz, Counsel
Coachella/Indio Waste Transfer Station
Authority