

FORM APPROVED COUNTY COUNSEL 5/7/15
 DATE
 BY: GREGORY P. PRIAMOS
 Departmental Concurrence

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

927



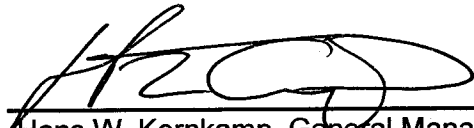
SUBMITTAL DATE:
 May 7, 2015

FROM: Waste Management Department

SUBJECT: Public Hearing for Approval of Requested Gate Fee Increase at Edom Hill Transfer Station, District 4 [\$0 – Waste Enterprise Funds], Project is Exempt under California Environmental Quality Act (CEQA).

RECOMMENDED MOTION: That the Board of Supervisors:

1. Introduce the requested Gate Fee changes at the Edom Hill Transfer Station (EHTS) as proposed by Burrtec Recovery and Transfer (Burrtec) in accordance with the Master Lease Agreement (the Agreement) dated November 5, 2002; and
2. Set a date of June 16, 2015 for a public hearing regarding the gate fee changes; and
3. Direct the Clerk of the Board to advertise the public hearing a minimum of fourteen (14) days pursuant to Section 5(d)(1) of the Agreement; and
4. Approve the gate fee changes at the close of the June 16, 2015 public hearing to be effective July 1, 2015; and
5. Approve Amendment No. 5 of the Agreement that would require Burrtec to provide additional services and also comply with the County's recently adopted compost requirements at the close of the June 16, 2015 public hearing to be effective July 1, 2015, and authorize the Chairman to execute the Amendment on behalf of the Board; and (continued)


 Hans W. Kernkamp, General Manager-Chief Engineer

| | | | | |
|-----------------------|-------------------------------|--------|-------------------------|-------|
| FINANCIAL DATA | Current F.Y. Total Cost: | \$ N/A | In Current Year Budget: | N/A |
| | Current F.Y. Net County Cost: | \$ N/A | Budget Adjustment: | No |
| | Annual Net County Cost: | \$ N/A | For Fiscal Year: | 14/15 |

| | | |
|--|---|--------------------------|
| SOURCE OF FUNDS: Not applicable | Positions To Be Deleted Per A-30 | <input type="checkbox"/> |
| | Requires 4/5 Vote | <input type="checkbox"/> |

C.E.O. RECOMMENDATION:

APPROVE

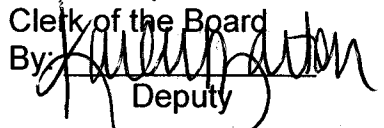
BY: 
 Alex Gamm

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Ashley, seconded by Supervisor Benoit and duly carried, IT WAS ORDERED that the above matter is approved as recommended, and is set for public hearing on Tuesday, June 16, 2015, at 10:30 a.m.

Ayes: Jeffries, Washington, Benoit and Ashley
 Nays: None
 Absent: Tavaglione
 Date: May 19, 2015
 xc: Waste, COB

Kecia Harper-Ihem
 Clerk of the Board
 By: 
 Deputy

Prev. Agn. Ref.: 12.2 (11/5/02);
 12.1 (6/3/14)

District: 4

Agenda Number:

12-2

Dept't Recomm.: Policy Policy
 Consent Consent

May 7, 2015

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6. Find that the Project is exempt from CEQA pursuant to Section 15061(b)(3) (General Rule for Exemption), statutorily exempt from CEQA pursuant to Section 15273 (Rates, Tolls, Fares, and Charges), and categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities).

BACKGROUND:

Summary

On November 5, 2002, the County entered into an agreement with Waste Management of the Desert (WMOD) to develop, construct, and operate a transfer station at the Edom Hill Landfill site once the landfill closed. The Edom Hill Landfill closed in November 2004 and the transfer station began operation at that time. WMOD sold their rights in the agreement to Burrtec Recovery and Transfer (Burrtec) in 2006.

The Agreement between the County and Burrtec as Lessee, states that gate fee adjustments are to be approved by the County Board of Supervisors following a public hearing. On April 8, 2015, Burrtec contacted the Waste Management Department (Department) to request a rate increase as outlined in the Agreement. Pursuant to Section 5(b) of the Agreement, the Department, on behalf of Burrtec, is presenting the request to the Board of Supervisors for consideration.

The gate fee at the Edom Hill Transfer Station is made up of four component parts. The recapture of the capital investment (i.e. the Facility Element) and the City Mitigation Fee are fixed. The Disposal Fee element is based on the long-term hauling contract that Burrtec has with the County and is scheduled to be increased effective July 1, 2015. The Operating & Transport Elements are the only components that Burrtec can increase on an annual basis.

The maximum increase allowable in any one year is equal to 80% of the percent change in the CPI for all Urban Consumers for the Los Angeles/Anaheim/Riverside Metropolitan Area as published by the United States Department of Labor, Bureau of Labor Statistics for the twelve month period ended December 31 of the year prior to the July 1 effective date. For July 1, 2015, the percent increase in the Operating and Transport element of the gate fee, based on 80% of the change in CPI on December 31, 2014 is 0.58%.

Burrtec contends that over the last 9 years, the reduced CPI formula has caused them to operate at a loss; a loss that is further compounded by labor benefits, worker's compensation, equipment and fuel cost increases that have exceeded full CPI. In order to verify Burrtec's contention, staff requested and reviewed documentation verifying Burrtec's current and historical operating costs. Additionally, Department accounting staff reviewed Burrtec's 2014 audited annual Financial Statement, which indicated that the facility is operating at a loss equating to \$2.35/ton, based on current tonnage. Burrtec is therefore requesting an Extraordinary Rate Adjustment, as allowed for under the Master Lease Agreement, to the Operating & Transport Element, to account for the historically low CPI. This would negate the need for a CPI adjustment in the coming FY, but in subsequent fiscal years Burrtec is requesting an adjustment of the current CPI formula to 100% of CPI in order to keep pace with standard annual inflation. (Continued)

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 [\$0 – Waste Enterprise Funds], CEQA Exempt.

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The proposed adjustments are summarized below:

| Gate Fee Components | Gate Fee per Lease Agreement July 1, 2014 | Increase based on 2014 CPI * | Extraordinary Rate Adjustment | Total Proposed Gate Fee effective July 1, 2015 |
|---------------------|---|------------------------------|-------------------------------|--|
| Facility Element | \$0.89 | N/A | N/A | \$0.89 |
| Operating Element | \$5.54 | N/A | N/A | \$5.54 |
| Transport Element | \$6.52 | N/A | \$2.35 | \$8.87 |
| Disposal Fee | \$27.75 | \$0.20 | N/A | \$27.95 |
| City Mitigation Fee | \$ 1.00 | N/A | N/A | \$ 1.00 |
| Total: | \$41.70 | \$0.20 | \$2.35 | \$44.25 |

Staff is recommending approval of the Burrtec rate request, provided additional, no-charge services for household hazardous waste collection, tire collection and shredding services are performed by Burrtec at the facility as identified in Amendment No. 5 to the Agreement, specifically,

- Advertise and pay for four(4) additional residential Household Hazardous Waste events
- Advertise and pay for four(4) residential tire events (up to 6 bins per event)
- Advertise and pay for four(4) residential shredding events (4 legal sized boxes per customer)

Staff also recommends that the CPI adjustment be applied automatically moving forward and that only Extraordinary Rates requests be brought forward for Board approval, consistent with other vendor agreements.

Impact on Residents and Businesses

The Edom Hill Transfer Station is an essential service facility that provides a necessary outlet for solid waste in the Coachella Valley. For residential households, the proposed rate increase will result in a cost increase ranging from approximately \$0.14/month to \$0.28/month, depending on jurisdiction.

Contract History and Price Reasonableness

The lease agreement between the County and the lessee was competitively bid and awarded based largely on the gate rates proposed at that time. The gate rate proposed under this action remains one of the lowest transfer station rates in Riverside County.

California Environmental Quality Act (CEQA) Findings

The proposed rate increase and lease amendment (Project) have been reviewed and determined to be exempt from CEQA under CEQA Guidelines Section 15061(b)(3), Section 15273 (Rates, Tolls, Fares, and Charges) and Section 15301 (Existing Facilities). The proposed rate increase is for the purpose of meeting operating expenses, while the additional services contemplated in the lease involves a negligible expansion of an existing, approved use. A Notice of Exemption to this effect will be filed with the County Clerk upon Project approval.

Amendment No. 5 to

The Edom Hill Transfer Station Master Lease

This Amendment No. 5 to the Master Lease is made and entered into this ___ day of _____, 2015, by and between the Riverside County Waste Management Department, herein called COUNTY, and Burrtec Recovery and Transfer, LLC, herein called LESSEE.

WITNESSETH:

WHEREAS, COUNTY entered into a certain MASTER LEASE with Waste Management of California DBA Waste Management of the Desert dated November 5, 2002 and said MASTER LEASE is for approximately 8.4 acres of land located in an Unincorporated area of Riverside County, California adjacent to the Edom Hill Landfill, referred to herein as the "Premises"; and

WHEREAS, the Premises are leased hereby for the exclusive purpose of providing the financing, permitting, design, construction and operation of a solid waste transfer station with materials recovery capability and other related uses (The Facility); and

WHEREAS, the MASTER LEASE was amended on December 7, 2004 to allow the then Lessee to adjust the gate fee to incorporate COUNTY's disposal rate increase at its landfills and to revise the Transport Element to identify the El Sobrante landfill as a Designated Disposal Facility to be consistent with the Agreement for Disposal of Solid Waste and establish the Transport Element to be the same for all three Designated Facilities; and

WHEREAS, the MASTER LEASE was also amended on May 23, 2006 regarding payment for special services and assigned to LESSEE as part of the same "Amendment and Assignment of Master Lease Agreement"; and

WHEREAS, the MASTER LEASE was also amended on September 18, 2007 to incorporate Parcel "B" (approximately 12 acres) and Parcel "C" (approximately 0.5 acres) for processing of green and wood waste at the facility and incorporate a waterline into the facility into the Master Lease in order to accommodate the new use; and

WHEREAS, the Board of Supervisors approved the Solid Waste Facility Permit Revision Project and Adopted a Mitigated Negative Declaration for Environmental Assessment No. EHTS 2009-02 (EA) on February 9, 2010 to increase permitted maximum daily tonnage from 2,600 tons per day to 3,500 tons per day, increase the permitted area from 8.4 acres to 21.9 acres, permit windrow composting of greenwaste at a capacity of up to 200 tpd, permit chipping and grinding of 300 tpd of green and woody waste, permit the storage of construction/demolition wastes at a capacity of up to 300 tpd, change the hours of operation for the acceptance of incoming material to 6:00 a.m. to 6:00 p.m. Monday through Saturday; and

WHEREAS, the MASTER LEASE was also amended on June 25, 2013 in order to reduce the number of Sundays required to be open per month due to low customer count on those days; and

WHEREAS, the parties desire to amend said MASTER LEASE in order to incorporate Best Management Practices (BMPs) related to the previously approved organics processing operations and increase services offered by the facility;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, the parties have agreed as follows:

1. Section 38(d) of the amended MASTER LEASE dated September 18, 2007 is amended as follows:

Recycling/Diversion Project. LESSEE may propose to COUNTY a Recycling/Diversion Project on Parcel "B". LESSEE must provide enough information in its proposal that COUNTY (and other interested/impacted jurisdictions) can reach a decision on whether to approve the construction of such a project. If COUNTY is unwilling to approve the Recycling/Diversion project as presented by LESSEE and is still interested in investigating such a facility, it shall require LESSEE to conduct a competitive selection process similar to the one outlined above in subitems (a) and (b) for the Conversion Technology project. The one difference being that COUNTY will consider what percentage of diversion is appropriate to use in the equivalent to section 38 (b) (1) above.

Any proposal that utilizes organics processing (chip and grind, composting, etc.) shall follow the Best Management Practices (BMPs) and Financial Assurance (FA) bonding calculation included as Exhibit "I", with the following exception:

The currently approved static pile processing will be allowed for a period of 12 (twelve) months, after which time LESSEE will comply fully with the BMPs.

Failure to follow the BMPs and FA bonding calculation as outline above shall constitute a default under Section 15(a)(4) of the Master Lease.

2. Item number 1 of Exhibit "C" – Facility Description of the MASTER LEASE dated November 5, 2002 is deleted and replaced with the following:

The Transfer Station will have a design capacity of 3,500 tpd.

3. Item number 8 of Exhibit "C" – Facility Description of the MASTER LEASE dated November 5, 2002 is deleted in its entirety.

4. Section 7(g) of the MASTER LEASE dated November 5, 2002 is amended as follows:

LESSEE, or its contract operator, shall provide a maintenance assurance, cleanup/restoration bond (or other acceptable assurance approved by COUNTY'S counsel) in the amount of \$557,000 which sum shall be available to COUNTY to provide maintenance assurance, or environmental remediation to the leased or adjoining parcels in the event LESSEE activities cause environmental damage. This bond amount shall be

maintained throughout the Lease Term and be adjusted every five years. The maximum increase allowable at any time of adjustment 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:

- (1) 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 sixty (60) month period beginning with the execution of this Amendment No.5, and ending sixty (60) months later. The first increase may be effective on the first July 1 date after the sixty month period, based upon changes in the Consumer Price Index formula for the five year period. The adjustment methodology will be repeated every five years during the Term.

5. Section 2(c)(1) of the MASTER LEASE dated November 5, 2002 is amended as follows:

- (1) **HHW Collection Site/Events.** LESSEE will operate a household hazardous waste (HHW) collection site on the Premises paying for operations and its disposal costs of hazardous wastes. This collection site will be the ABOP (i.e. AntiFreeze, Batteries, Oil and Paint) variety (accepting up to 15 gallons of liquid waste or a total of 125 pounds with multiple trips allowed) and be open during all weekend operating hours. The ABOP shall be for residential waste only. In order to accept oil-based paint, LESSEE agrees to participate in the "PaintCare" program, or equivalent program as approved by County, (which will also serve to reduce costs associated with the acceptance of all paint products).

The Premises shall also serve as a site for the County Mobile program or a similar program. LESSEE shall sponsor and pay for a minimum of 4 such events annually (anticipated to be held quarterly) that accept additional hazardous waste items. LESSEE will provide an area away from the tipping floor that is acceptable to LESSEE or COUNTY for these purposes and cooperate with COUNTY regarding its operation if applicable. Prior to LESSEE's or COUNTY's periodic use of the Premises for operation of the HHW collection event, the operator of the HHW collection event shall provide a description of the scope of operation and a written assurance to not interfere with the transfer station operations.

6. Section 2(h) of the MASTER LEASE dated November 5, 2002 is deleted in its entirety and replaced with following:

Truck and waste bin storage and maintenance facilities, as assessed in EA EHTS 2009-02, or subsequent environmental assessments, are allowed during the Term of the Agreement.

7. Section 37(a) of the MASTER LEASE dated November 5, 2002 is amended as follows:

- (a) Opportunities shall be provided for free service during two community cleanups each year for each participating agency served by the Facility. LESSEE is not obligated to

pay disposal fees with respect to materials accepted without charge at the transfer station for participating agencies on their two community cleanup days. COUNTY will provide free disposal with respect to materials accepted without charge on the two community cleanup days, but it is not obligated to pay the transfer station service fee and LESSEE shall not collect said fee. In addition, LESSEE shall sponsor and pay for at least 4 tire events (maximum of 6 bins each) and at least 4 shredding events (maximum of 4 legal sized boxes per resident) on an annual basis. LESSEE shall advertise each event through billing inserts or other methodology as directed by COUNTY. COUNTY shall have the option to direct LESSEE to place any of the 24 bins for tires in locations determined by COUNTY to be advantageous for use in COUNTY's illegal dumping program.

8. The sixth paragraph of Section 5(b) of the MASTER LEASE dated November 5, 2002 is amended as follows:

The Gate Fee shall be adjusted, where applicable, every July 1 for the following year based on the components described above.

9. The second paragraph of Section 5(b)(1) of the MASTER LEASE dated November 5, 2002 is amended as follows:

The Service Fee shall be adjusted every July 1st, based upon the provisions of this section, the annual tonnage of solid waste delivered to and accepted at the Facility during the prior calendar year (except for the first calendar year).

10. Section 5(d)(1) of the MASTER LEASE dated November 5, 2002 is amended as follows:

(1) CPI Adjustments. The Operations and Transport Elements of the Service Fee will be subject to adjustment annually every July 1st. The maximum increase allowable anyone year will be equal the percent change in the Consumer Price Index (CPI). Computation of the change in the CPI will be made according to the following methodology. 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, 2005, based upon changes in the Consumer Price Index formula for the period January, 2004 through December, 2004.

11. Except to the extent specifically modified or amended hereby, all of the terms, covenants and conditions of the November 5, 2002 MASTER LEASE as amended December 7, 2004, May 23, 2006, September 18, 2007, and June 25, 2013 shall remain in full force and effect between the parties.

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IN WITNESS WHEREOF, the parties have caused this Amendment No. 5 to the MASTER LEASE to be duly executed on the day and year first above written.

RIVERSIDE COUNTY WASTE
MANAGEMENT DEPARTMENT
14310 Frederick Street
Moreno Valley, CA 92553

Burrtec Recovery and Transfer, LLC
41575 Eclectic
Palm Desert, CA 92260

Dated: 5/7/15

Dated: 5-11-15

RECOMMENDED FOR APPROVAL

By: 
Hans Kernkamp
General Manager-Chief Engineer

By: 
Responsible Officer

Title: President

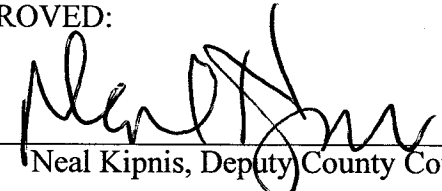
RIVERSIDE COUNTY

By: _____
Chairman, Board of Supervisors

ATTESTED:

By: _____
Kecia Harper-Ihem, Clerk

APPROVED:

By: 
Neal Kipnis, Deputy County Counsel