

**MUNICIPAL SOLID WASTE  
IMPORTATION AGREEMENT**

**Between**

**The County of Orange, California**

**And**

**County Sanitation District No. 2 of Los Angeles County**

**TABLE OF CONTENTS**

**RECITALS ..... 4**

**SECTION 1: DEFINITIONS..... 5**

**SECTION 2: TERM OF AGREEMENT ..... 7**

**SECTION 3: DELIVERY OF WASTE ..... 7**

    3.1 COMMITMENT TO DELIVER WASTE ..... 7

    3.2 DISTRICT’S AUTHORITY TO DELIVER WASTE..... 7

**SECTION 4: PROVISION OF DISPOSAL SERVICES ..... 8**

    4.1 COMMITMENT TO PROVIDE DISPOSAL SERVICES ..... 8

    4.2 RATE FOR DISPOSAL SERVICES ..... 8

    4.3 PAYMENT FOR DISPOSAL SERVICES ..... 10

    4.4 AUTOMATIC ANNUAL RATE ADJUSTMENT FOR DISPOSAL SERVICES ..... 9

    4.5 INCREASE IN GOVERNMENTAL FEES ..... 11

**SECTION 5: PROCEDURES FOR DELIVERY AND ACCEPTANCE OF WASTE ..... 10**

    5.1 PROCEDURES FOR DELIVERY AND ACCEPTANCE OF IMPORTED ACCEPTABLE WASTE ..... 10

    5.2 UNACCEPTABLE WASTE..... 10

    5.3 MONTHLY ADJUSTMENT BETWEEN REVENUE CATEGORIES..... 12

    5.4 HAZARDOUS MATERIALS, SUBSTANCES OR WASTE ..... 13

    5.5 EMERGENCY REDESIGNATION OF FACILITY..... 13

**SECTION 6: REGULATORY COMPLIANCE ..... 14**

    6.1 APPLICABLE LAW ..... 14

    6.2 COMPATIBILITY WITH THE ACT ..... 14

    6.3 DISPOSAL REPORTING ..... 14

**SECTION 7: BREACH, ENFORCEMENT AND TERMINATION ..... 14**

    7.1 FAILURE TO DELIVER AGREED WASTE ..... 14

    7.2 TERMINATION FOR CONVENIENCE ..... 15

    7.3 TERMINATION DUE TO INCREASE IN ORANGE COUNTY WASTE..... 15

    7.4 REDUCTION OF TONNAGE DUE TO INCREASE IN ORANGE COUNTY WASTE ..... 15

    7.5 TERMINATION FOR CAUSE ..... 15

    7.6 TERMINATION OTHER ..... 15

    7.7 DISPUTE RESOLUTION ..... 16

**SECTION 8: GENERAL CONDITIONS..... 16**

    8.1 UNCONTROLLABLE CIRCUMSTANCES ..... 16

    8.2 INDEMNIFICATION ..... 16

    8.3 INSURANCE ..... 17

    8.4 CURE ..... 18

    8.5 NON-ASSIGNMENT OF AGREEMENT ..... 18

8.6	NON-DISCRIMINATION .....	16
8.7	SEVERABILITY AND SURVIVAL.....	19
8.8	SOLE AND ONLY AGREEMENT .....	19
8.9	AMENDMENTS .....	19
8.10	NOTICES .....	19
8.11	GOVERNING LAW AND VENUE.....	19
8.12	HEADINGS .....	17
8.13	CALENDAR DAYS.....	17
8.14	ATTORNEY FEES.....	17
8.15	INTERPRETATION.....	17
8.16	AUTHORITY.....	18
8.17	COUNTERPARTS .....	20
<b>EXHIBIT A</b>	.....	<b>22</b>
<b>EXHIBIT B</b>	.....	<b>21</b>
<b>EXHIBIT C</b>	.....	<b>22</b>
<b>EXHIBIT D-1</b>	.....	<b>30</b>
<b>EXHIBIT D-2</b>	.....	<b>32</b>
<b>EXHIBIT D-3</b>	.....	<b>34</b>
<b>EXHIBIT E</b>	.....	<b>37</b>

## MUNICIPAL SOLID WASTE IMPORTATION AGREEMENT

This **Municipal Solid Waste Importation Agreement** (“**Agreement**”) is made and dated this \_\_\_\_ day of \_\_\_\_\_ 2013 (“**Effective Date**”) between the County of Orange, a political subdivision of the State of California (“**County**”), and County Sanitation District No. 2 of Los Angeles County (“**District**”), each a “**Party**” and together the “**Parties.**”

### RECITALS

A. The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated by the cities and the unincorporated area within the County (the “**Disposal System**”). The Disposal System includes three active landfills and four regional household hazardous waste collection centers.

B. The Disposal System is used for the disposal of municipal solid waste which is not reused, recycled or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code).

C. In constructing, operating and managing the Disposal System, the County has entered into long term contracts with the State of California pertaining to landfill closure and post closure monitoring and maintenance and long term debt obligations with related covenants which oblige the County to properly maintain and preserve the system and operate it in an efficient, economical and businesslike manner.

D. Due to various factors including economic, statutory and regulatory, in-County municipal solid waste delivered to the Disposal System has significantly declined in recent years. The result of the shortfall in volume of waste received is under-utilization of the system which is permitted to accept 20,500 tons per day and presently realizes approximately 11,000 tons per day.

E. The County has determined that by accepting municipal solid waste generated outside of the County (“**Imported Acceptable Waste**”) the unused capacity in the Disposal System can be utilized to generate revenue to offset the cost of system operations (including capital improvements) and assist the County’s bankruptcy recovery program.

F. The County has determined that the acceptance for disposal of Imported Acceptable Waste would have minimal impact on the useful life of the Disposal System.

G. The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare of the County by providing a more stable, predictable and reliable supply of municipal solid waste to optimize the Disposal System.

### AGREEMENT

NOW, THEREFORE, the COUNTY and DISTRICT agree as follows:

## SECTION 1: DEFINITIONS

As used in this Agreement, the following terms will have the meanings set forth below:

**“Acceptable Waste”** means all garbage, refuse, rubbish and other materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments and which are acceptable at Class III landfills under Applicable Law.

**“Act”** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

**“Agreement”** means this Municipal Solid Waste Importation Agreement between the County and the District, as it may be amended or modified from time to time.

**“Applicable Law”** means the Act, the Orange County Code, CERCLA, RCRA, CEQA, any legal entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any governmental body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System, the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

**“CEQA”** means the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) as amended or superseded, and the regulations promulgated under the statute.

**“CERCLA”** means the Comprehensive Environmental Responsibility Compensation and Liability Act (42 U.S.C. Section 9601 *et seq.*) as amended or superseded, and the regulations promulgated under the statute.

**“Committed Tonnage”** will be the annual tonnage specified in Section 3.1.

**“Designated Landfill”** means the Olinda Alpha Landfill or other landfill located in the Disposal System, as designated by the Director.

**“Director”** means the Director or designee of OC Waste & Recycling.

**“Disposal Services”** means the solid waste disposal services to be provided to the District by the County under this Agreement.

**“Disposal System”** means the Orange County Waste Disposal System which includes solid waste disposal operations at three active landfills (Olinda Alpha, Frank R. Bowerman and Prima Deshecha); four regional Household Hazardous Waste Collection Centers; as well as

services, such as monitoring and other activities, at closed solid waste disposal stations formerly operated by the County, as appropriate under Applicable Law.

**“Hazardous Material”** or **“Hazardous Substance”** has the meaning given such terms in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*), and Titles 22 and 26 of the California Code of Regulations, as well as other regulations promulgated under these statutes, as they exist now and as they may be amended from time to time.

**“Hazardous Waste”** means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do any of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in Title 40 of the Code of Federal Regulations (CFR) Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in Title 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); and (5) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in Title 10 CFR Part 40.

**“Imported Acceptable Waste”** means Acceptable Waste that is generated outside of the geographical boundaries of the County and delivered to the Disposal System.

**“OC Waste & Recycling”** means the County of Orange Department that is responsible for managing and operating the County of Orange sanitary landfill system.

**“Origin Totals”** means a breakdown of the total tons of Acceptable Waste delivered by the District each calendar month by jurisdiction or origin.

**“RCRA”** means the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, as amended and superseded. **“Source Reduction and Recycling Element”** or **“SRRE”** means a solid waste planning document prepared by each city and County unincorporated area pursuant to Division 30, Section 41000 *et seq.* of the Act.

**“Unacceptable Waste”** means: Hazardous Waste; Hazardous Substances; prohibited medical waste; qualified Household Hazardous Waste separated from Acceptable Waste; explosives, ordinance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine vessels and steel cable; hot loads; and any waste which the Disposal System is

prohibited from receiving under Applicable Law.

**“Uncontrollable Circumstance”** means any act, event or condition affecting the Disposal System, the County, the District and any of their contractors or suppliers to the extent that it materially and adversely affects the ability of either Party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control of and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the Agreement; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either Party. Examples of Uncontrollable Circumstances are:

(1) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and

(2) a Change in Law.

**SECTION 2: TERM OF AGREEMENT**

The term (“**Term**”) of this Agreement will commence on the Effective Date and terminate on June 30, 2025, and may be extended for one subsequent five-year term upon mutual agreement of the Parties.

~~The term (“**Term**”) of this Agreement will commence on the Effective Date, and terminates on June 30, 2016.~~

**SECTION 3: DELIVERY OF WASTE**

3.1 COMMITMENT TO DELIVER WASTE

(a) Beginning July 1, 2016, the District agrees to deliver an amount of “**Committed Tonnage**” as follows:

<u>Landfill</u>	<u>Annual Tonnage Commitment</u>	<u>Monthly Average Tonnage Delivery</u>	<u>Maximum Daily Cap (1)</u>
<u>Olinda</u>	<u>540,000 tons</u>	<u>45,000 tons</u>	<u>1,950 tons</u>
<u>Frank R. Bowerman</u>	<u>252,000 tons</u>	<u>21,000 tons</u>	<u>2,000 tons</u>

(1) Daily cap is to provide flexibility for occasional fluctuations in day-to-day deliveries, and is not intended to increase entitled disposal capacity beyond the tonnage commitment.

Daily caps may be waived, decreased, or increased administratively by mutual agreement of the Director and District’s Chief Engineer and General Manager. Tonnage in excess of contractually permitted amounts may be redirected to the Prima Deshecha Landfill or rejected from the system at Director’s discretion.

If a landfill closes, the Committed Tonnage to that landfill will cease. If capacity is available at other sites, and District wants to utilize available system capacity, the Parties will negotiate an arrangement to accommodate this tonnage at other sites.

~~Beginning November 1, 2013, the District agrees to deliver an amount of “Committed Tonnage” that is a minimum of 255,000 tons of Imported Acceptable Waste annually, based on a 255-day work year, or prorated for years that are less than a full calendar year, to the Designated Landfill, at an average of 21,250 tons per month, and subject to a daily cap as specified in Exhibit A unless authorized in advance by the Director of OC Waste & Recycling for the Term of the Agreement.~~

- (b) ~~Should additional landfill capacity become available, *the Parties may increase the Committed Tonnage*, by mutual written consent of the Director and the District’s Chief Engineer and General Manager, increase tonnage levels.~~
- (c) County affirms that should additional capacity become available within the Disposal System, District will be considered along with other existing contractors to utilize the available capacity for Imported Acceptable Waste. The allocation process shall follow the policy approved by the Director at the time such capacity becomes available.
- (d) *Committed tonnage allocations to each landfill are based on the quantities of in-County waste disposed at each site according to County’s agreements with in-County cities, sanitary districts, and haulers. If District disposes both Imported Acceptable Waste and in-County waste, then Imported Acceptable Waste delivered to one landfill may not be offset by in-County tonnage being shifted from that landfill to another location. Any shift in the delivery of in-County tonnage from its established disposal site to another landfill without County’s prior written approval constitutes a material breach of this Agreement and may be cause for reallocation of Committed Tonnage or other remedies as provided herein.*
- (e) *County recognizes that overall disposal quantities may decline in the future due to increased recycling efforts and/or other factors out of District’s control, and that District’s overall need for disposal options may decrease. The District’s Committed Tonnage is all of the residual waste requiring landfill disposal from its Puente Hills Materials Recovery Facility, South Gate Transfer Station and Downey Area Recycling and Transfer Facility, with the exception of residual waste delivered to the El Sobrante Landfill to meet the District’s 2,500 tons per month contractual commitment at that site. Parties agree to review at the request of the District Committed Tonnage levels during the Term of this Agreement. District must provide documentation acceptable to the Director to support that a decrease in Committed Tonnage is due to changes in disposal demand and not due to use of alternative disposal facilities by District; Committed Tonnage is expected to be delivered to individual landfills in the same approximate ratio, as the original Committed Tonnage reflected.*



### 3.2 DISTRICT'S AUTHORITY TO DELIVER WASTE

The District warrants that it has the right, power, and authority to deliver Imported Acceptable Waste to the Disposal System through contracts, permits, licenses or other arrangements, and affirms it will deliver the agreed tonnage of waste to the Disposal System for the Term of this Agreement.

## SECTION 4: PROVISION OF DISPOSAL SERVICES

### 4.1 COMMITMENT TO PROVIDE DISPOSAL SERVICES

The County agrees to provide Disposal Services to District for the Term of this Agreement under the conditions specified in this Agreement. The County warrants that it can receive District's Imported Acceptable Waste at the Designated Landfill identified in Section 3.1(a), Exhibit A or as adjusted per Section 7.3, under the facility permit for the Term of this Agreement.

### 4.2 RATE FOR DISPOSAL SERVICES

Beginning on July 1, 2016, the County shall charge District for Disposal Services for Committed Tonnage on a per ton basis at the "Contracted Rate" identified in Exhibit B under the conditions of this Agreement. This rate is based on the anticipated delivery of tonnage as specified in Section 3.1 and is being given to District in consideration of its commitment to deliver the tonnage of Imported Acceptable Waste to the Designated Landfills each month during the Term of this Agreement, as provided in Section 3.1, and is subject to the adjustments provided in Sections 3.1, 4.4 and 4.5.

The monthly rate for Disposal Services shall be based on the monthly tonnage delivered by the District and its subcontractors and shall be based on a whole month's delivery. No rate adjustments will be made for a period of less than one month. The appropriate rate may be reflected in the same month's invoice or as an adjustment to subsequent month's invoice.

~~Beginning on the Effective Date, the County shall charge District for Disposal Services for Committed Tonnage at the "Contracted Rate" of twenty three dollars and eighteen cents (\$23.18) per ton under the conditions of this Agreement. This rate is based upon the anticipated delivery of 1,000 tons per day as specified in Exhibit B, and is being given to District in consideration of its commitment to deliver the tonnage of Imported Acceptable Waste to the Designated Landfill each month during the Term of this Agreement, as provided in Section 3.1, and is subject to the adjustments provided in Sections 3.1, 4.4 and 4.5, and Exhibit B.~~

~~The rate for Disposal Services shall be based on the monthly delivery schedule in Exhibit A, and shall be based on a whole month's delivery. No rate adjustments will be made for a period of less than one month. Should the actual delivery of waste fall to a level less than the Committed Tonnage listed in Exhibit A, and should the monthly shortage in volume be such that a higher rate should be charged as specified in Exhibit B, a monthly adjustment will be charged on a subsequent month's invoice.~~

~~The monthly adjustment will be calculated as follows and will be based on the actual delivery for the prior month:~~

~~Actual Waste Delivery in Prior Month × (B - A), where  
 A = per ton rate for monthly Committed Tonnage on Exhibit A  
 B = per ton rate for Actual Waste Delivery  
 (B - A) = per ton additional charge~~

4.3 PAYMENT FOR DISPOSAL SERVICES

Prior to November 1, 2013, the District shall establish deferred billing accounts under separate agreement with the County which will be substantially similar to the agreement in Exhibit C, attached hereto and incorporated by this reference. District shall establish deferred billing accounts as needed to comply with Section 5.3 of this Agreement.

*A calendar year adjustment by landfill will be calculated by March 31 of the subsequent year based on the formula shown below. This calculation shall be prorated for partial contract years. Tonnage in excess of Committed Tonnage at one landfill may not be used to offset a shortfall at another landfill, except to the extent that County has approved the use of alternative landfill to meet another landfill's tonnage commitment. In the event District foresees a shortfall in tonnage delivery to one of its sites for a limited period, District may request such written approval from County, and approval shall not be unreasonably withheld. The year-end adjustment is payable within thirty (30) days of date of invoice.*

~~A calendar year end adjustment will be calculated by March 31 of every year based on the formula shown below. The year-end adjustment is payable within thirty (30) days of date of invoice.~~

**Put or Pay by Landfill**

(Committed Tonnage\* × Contracted Rate\*\*) – Actual Payments

\*Committed Tonnage as listed in Section 3.1 *for applicable landfill, as it may be adjusted.*

\*\*Contracted Rate as listed in Section 4.2 *for applicable landfill, as it may be adjusted.*

4.4 AUTOMATIC ANNUAL RATE ADJUSTMENT FOR DISPOSAL SERVICES

Beginning January 1, 2014, the rate specified in Section 4.2 and all other rates provided for in this Agreement shall be adjusted.

The rates shall be subject to automatic annual adjustments in proportion to changes in the Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County, CA, Area (All Items Index - 1982-84=100, Base Year) promulgated by the Bureau of Labor Statistics of the U. S. Department of Labor. The automatic adjustment shall be effective on ~~July~~ January 1 of each year and shall be calculated by means of the following formula:

A = \$ [base rates x (B/C)] where

A = Adjusted Rate

B = Monthly CPI for the month of ~~December~~ September of the year prior to the date the adjustment is to become effective

C = Monthly CPI for the month of ~~December 2015~~ July 2013

*In the event that the County does not implement the annual July 1 CPI-based rate adjustment provided for in its Waste Disposal Agreements with County cities for in-County*

disposal, the annual CPI-based rate adjustment that would have been effective under this contract as of the same July 1 will be waived for that year.

In no event shall the minimum annual rate be reduced by reason of any such adjustment. In the event that the Consumer Price Index is not issued or published for the period for which such minimum annual rate is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U. S. Department of Labor should cease to publish such index figures, then any similar index published by any other branch or department of the U. S. Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by the County.

~~At such time that the automatic annual rate adjustment for the maximum volume (1,200 tons per day, 5 day week) creates a minimum rate equal to or greater than the rate charged to Orange County cities and haulers under the Waste Disposal Agreements with a Commencement Date of July 23, 2009, as adjusted from time to time as provided in the Waste Disposal Agreements (“Orange County City Rate”), the rate charged for Imported Acceptable Waste shall be set at the Orange County City Rate. At such time as the Orange County City Rate is adjusted, the Contracted Rate would be subsequently adjusted per the terms of this section.~~

#### 4.5 INCREASE IN GOVERNMENTAL FEES

In addition to the other adjustments specified herein, the rate shall be adjusted to reflect the imposition of new fees or increase in existing fees relating to the disposal of solid waste imposed by state, federal or other agencies excluding the County, except insofar as the County acts as Local Enforcement Agency (i.e., the State’s Integrated Waste Management fee, which is currently \$1.40 per ton). The adjustment shall be equal to the amount of any new or increased fee, and the adjustment shall take effect so as to coincide with the imposition of the new or increased fee. The County shall provide notice of any increase as soon as practicable after becoming aware of the imposition of any fees described above.

### **SECTION 5: PROCEDURES FOR DELIVERY AND ACCEPTANCE OF WASTE**

#### 5.1 PROCEDURES FOR DELIVERY AND ACCEPTANCE OF IMPORTED ACCEPTABLE WASTE

District shall deliver Imported Acceptable Waste to the Designated Landfill according to the conditions and procedures in Exhibits D-1, D-2, & D-3. The Director and the District may mutually agree to modify Exhibits D-1, D-2, & D-3, provided such modifications are subject to the terms and conditions of this Agreement.

The District shall bear all costs of collection, transfer, processing, transportation, taxes, permits, or impositions assessed by any governmental body which are related to the delivery of waste to the Disposal System.

#### 5.2 UNACCEPTABLE WASTE

The District shall not deliver any waste to the Disposal System that is defined as Unacceptable Waste under this Agreement.

Only Imported Acceptable Waste may be delivered to County Disposal System pursuant to this Agreement. District shall maintain adequate records and supporting source documents

evidencing the origin of all waste delivered to County Disposal System. Except as provided for in Section 5.3, delivery of Acceptable Waste originating within Orange County pursuant to the terms of this Agreement will constitute a material breach of this Agreement and may result in immediate termination of this Agreement for cause.

District shall maintain records and supporting source documents that adequately identify the origin of all solid waste delivered to County Disposal System pursuant to this Agreement. The records and source documents shall be maintained by District for a minimum of five (5) years. Documents shall be maintained at the District's offices.

County shall, through its duly authorized agents or representatives, have the right to examine and audit records and supporting source documents maintained by District concerning the origin of waste delivered to the Disposal System at any and all reasonable times after thirty (30) days written notice.

The full cost of the audit, as determined by County, shall be borne by District if either or both of the following conditions exist:

- 1) The audit reveals an underpayment to the County of more than two percent (2%).
- 2) District has failed to maintain true and complete books, records, accounts, and supporting source documents in accordance with this clause.

Otherwise County shall bear the cost of the audit.

### 5.3 MONTHLY ADJUSTMENT BETWEEN REVENUE CATEGORIES

When the processing of in-County controllable waste and importation occurs at the same transfer station, both Parties recognize the inherent discrepancies in the system of allocating each truckload by category of in-County vs. importation as each truck leaves the transfer station. Due to the variables of incoming tonnage from many cities, extraction of recyclables, varying waste characterizations by city, complete accuracy of the outbound waste stream is not immediately available at the time the truck leaves the dock on its way to the landfill.

Waste origin is based on an estimate at the time the truck enters the landfill. Discrepancies in allocation by revenue category (in-County vs. importation) will be apparent after each month is concluded and the actual allocations are determined by District. District is expected to provide reasonable estimates on delivery, and significant adjustments between in-County and import tonnage categories are problematic for the County. Net tonnage adjustments between import and in-County categories, from estimates at the landfill to corrected allocations, of more than two percent (2%) of total actual importation tonnage delivered in a given month shall be assessed liquidated damages at a rate of \$2.00 per ton. These damages will be assessed on a per account basis.

~~Both parties recognize the inherent discrepancies in the system of allocating each truckload by category of in-County vs. importation as each truck leaves the transfer station. Due to the variables of incoming tonnage from many cities, extraction of recyclables, varying waste characterizations by city, complete accuracy of the outbound waste stream is not immediately~~

~~available at the time the truck leaves the dock on its way to the landfill.~~

~~Waste origin is based on an estimate at the time the truck enters the landfill. Discrepancies in allocation by revenue category (in County vs. importation) will be apparent after each month is concluded and the actual allocations are determined by District. Maximum tonnage adjustment the County will accept shall be five percent (5%) or less of all waste hauled by District to the Landfill System for that given month.~~

The County shall provide to District by the tenth (10<sup>th</sup>) day of the month, a worksheet listing tons by account number and adjustments received to date by account number that were incurred during the previous month. The District shall submit a completed worksheet to County for monthly accounting of tonnage by the twentieth (20<sup>th</sup>) day of the month. The worksheet shall show District's Origin Totals for the previous month of actual tons by jurisdictions of origin for in-County and importation, and will compare District's Origin Totals to County's Account Totals on the worksheet. The District's Origin Totals represent data reported by District at the Fee Booths upon entry to the landfills. Following the receipt and approval of a written request from District, the Auditor-Controller shall prepare an adjustment either to credit or debit the deferred billing account for each Origin Total that does not match its corresponding Account Total.

Acceptance of District's worksheet for monthly accounting of tonnage and the authorization to credit or debit the deferred billing account shall be at the sole discretion of the County.

This reconciliation shall serve as the official document for authorizing adjusting entries between the in-County and importation accounts for District by the Auditor-Controller.

#### 5.4 HAZARDOUS MATERIALS, SUBSTANCES OR WASTE

The District shall not deliver Hazardous Materials, Hazardous Substances, or Hazardous Waste to the Disposal System. The District's program for detection and removal of Hazardous Materials/Waste or Unacceptable Waste from Acceptable Waste is included by reference to Exhibit D in this Agreement.

The District shall notify the Director in writing at least thirty (30) days prior to making any desired changes or modifications in District's hazardous materials removal program and shall not make any changes prior to County notification that the change or modification is consistent with County guidelines. Delivery of Hazardous Materials/Waste shall constitute a material breach of this Agreement and may result in immediate termination of this Agreement, subject to provisions of Section 8.4. Delivery of any quantity of industrial or commercial hazardous waste may be grounds for immediate termination with no opportunity for cure.

#### 5.5 EMERGENCY REDESIGNATION OF FACILITY

The County shall have the right to change the Designated Landfill at any time for up to forty-five (45) days upon the occurrence of a natural disaster or other emergency condition or Uncontrollable Circumstances that affect the ability of the County to accept, under Applicable Law, District's otherwise Imported Acceptable Waste at the Designated Landfill.

The County will make reasonable efforts to provide advance notice; however, emergency

circumstances may require redesignation on a temporary basis without prior notice. There will be no adjustment in the disposal fee for waste redirected due to an emergency or Uncontrollable Circumstance.

If the County is unable to accept disposal for more than forty-five (45) days, District may seek modification of the Agreement for the purpose of addressing any increased costs being incurred, or which will be incurred as a result of County's inability to accept Imported Acceptable Waste at the Designated Landfill. If after meeting in good faith, negotiations fail to produce a mutually acceptable Agreement, District may terminate the Agreement without penalty.

#### 5.6 TIPPERS AT LANDFILL SITES

County will study the operational feasibility and financial impact of using tippers at its landfills for use by importers. If usage is determined to be a viable option, Director will negotiate with the District's Chief Engineer and General Manager for District to install and use tippers on site.

### **SECTION 6: REGULATORY COMPLIANCE**

#### 6.1 APPLICABLE LAW

Both Parties shall comply with Applicable Law at all times, throughout the Term of this Agreement; and shall obtain and maintain any permits, licenses, or approvals which are required for the performance of the Party's respective obligations under this Agreement.

#### 6.2 COMPATIBILITY WITH THE ACT

The actions of the District in entering into this Agreement shall be compatible with the goals, policies, and agreements of the Source Reduction and Recycling Element(s) ("SRREs") of the jurisdiction(s) generating the waste which is to be accepted in the Disposal System.

#### 6.3 DISPOSAL REPORTING

The District shall supply all information necessary to comply with the Orange County Disposal Reporting System, which is included in Exhibit E and incorporated by reference in this Agreement, and any other information required by the County to comply with the Act, or any other Applicable Law

### **SECTION 7: BREACH, ENFORCEMENT AND TERMINATION**

#### 7.1 FAILURE TO DELIVER AGREED WASTE

Should the tonnage delivered by District fall short of the amounts specified in this Agreement by twenty percent (20%) for three (3) consecutive months, the County will notify the District in writing of such failure. The County may, at its option, take any of the following actions with ten (10) days written notice:

- a) Allow District thirty (30) days to restore delivery of waste to the agreed-upon amount of Imported Acceptable Waste;
- b) Reduce the amount of Imported Acceptable Waste that District may deliver; or

- c) Terminate this Agreement.

Nothing in this Section 7.1 will relieve the District from its obligation to pay for Disposal Services for the tonnage prior to termination.

#### 7.2 TERMINATION FOR CONVENIENCE

Either Party may terminate for convenience with ninety (90) days written notice. If County requests termination, County shall pay District as liquidated damages five dollars (\$5.00) per ton for six (6) months of agreed upon tonnage as provided in Section 3.1. If District requests termination, District shall pay to County as liquidated damages ten dollars (\$10.00) per ton for six (6) months of agreed upon tonnage as provided in Section 3.1. However, if County terminates the Agreement in order to obtain a higher fee for the disposal of Imported Acceptable Waste, District is not limited to recovery of liquidated damages, and may elect to seek actual, non-consequential damages. Nothing in this paragraph shall be interpreted as limiting the County's right to terminate the Agreement if County determines that Disposal System capacity being used by District is needed to provide disposal services for waste originating in Orange County, as a result of an increase in disposal of in-County waste.

#### 7.3 TERMINATION DUE TO INCREASE IN ORANGE COUNTY WASTE

County shall make all reasonable efforts to plan and maintain sufficient permitted capacity within its landfill disposal system to accommodate both in-County and Imported Acceptable Waste. County shall have the right to terminate or reduce the Committed Tonnage under the Agreement without penalty should in-County waste disposal increase such that the County shall be in violation or in jeopardy of violating its permitted capacity on a regular basis.

#### ~~7.4 REDUCTION OF TONNAGE DUE TO INCREASE IN ORANGE COUNTY WASTE~~

~~Should in County waste disposal increase such that the County shall be in violation or in jeopardy of violating its permitted capacity on a regular basis and County determines that it is necessary to reduce the committed Acceptable Waste delivered by District, and such reduction in volume would increase the disposal rate charged, District and County shall negotiate in good faith to determine a mutually acceptable rate. If Parties cannot come to agreement about a mutually acceptable rate, either Party can terminate the Agreement without incurring liquidated damages.~~

#### 7.5 TERMINATION FOR CAUSE

Immediate termination will be exercised if the District is determined to be in violation of Applicable Law and fails to cure as provided in Section 8.4 of this Agreement. The County is not liable for any damages incurred by the District due to early termination under this section 7.5, including, but not limited to, consequential damages.

#### 7.6 TERMINATION OTHER

If the County is ordered by a court of competent jurisdiction to cease providing Disposal Services under the terms and conditions of this Agreement, either Party may immediately terminate this Agreement. In such event, County will not be liable for any damages of any kind whatsoever due to the termination of this Agreement, the inability to provide Disposal Services or in any way resulting from the court order. The obligations to indemnify and defend contained in Section 8.2 of this Agreement do not impose any obligation on either Party to indemnify or

defend the other Party, if that Party is named in such a legal challenge.

#### 7.7 DISPUTE RESOLUTION

Parties agree to mediate any dispute(s) or claim(s) between them arising out of this Agreement or any resulting transaction before resorting to court action. Mediation is a process in which parties attempt to resolve a dispute by submitting it to an impartial, neutral mediator who is authorized to facilitate the resolution of the dispute but who is not empowered to impose a settlement on the parties. Mediation fee, if any, shall be divided equally among the parties involved. Mediator selected shall be acceptable to both Parties. Before the mediation begins, the Parties agree to sign a document limiting the admissibility in any civil action of anything said, any admissions made, and any documents prepared, in the course of mediation, consistent with Evidence Code Section 1152. If any Party commences a court action based on a dispute or claim to which this Paragraph applies without first attempting to resolve the matter through mediation, then in the discretion of the judge, the Party shall not be entitled to recover Attorney's fees even if they would otherwise be available to the Party in any such court action.

### SECTION 8: GENERAL CONDITIONS

#### 8.1 UNCONTROLLABLE CIRCUMSTANCES

Each Party will excuse performance by the other in the event of delays caused by Uncontrollable Circumstances.

#### 8.2 INDEMNIFICATION

(A) Indemnification by the County. The County agrees that, to the extent permitted by Applicable Law, it shall protect, indemnify, and hold harmless the District, the other County Sanitation Districts of Los Angeles County, of all of their officers, directors and employees ("**District Indemnified Parties**") from and against (and pay the full amount of) all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions, and reasonable attorney's fees (collectively, "**Loss-and-Expense**"), and will defend the District Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of (1) the negligence of the County or any of its elected officials, administrators, and employees, in connection with its obligations or rights under this Agreement, (2) the operation of the disposal facilities within the Disposal System, (3) any County breach of this Agreement, or the (4) performance or non-performance of the County's obligations under this Agreement. The County shall not, however, be required to reimburse or indemnify any District Indemnified Party for any Loss-and-Expense to the extent that any such Loss-and-Expense is due to (a) any District breach, (b) the negligence or other wrongful conduct of any District Indemnified Party, or (c) any Uncontrollable Circumstance. A District Indemnified Party shall promptly notify the County of the assertion of any claim against it for which it is entitled to be indemnified, shall give the County the opportunity to defend such claim, and shall not settle the claim without the approval of the County. These indemnification provisions are for the protection of the District Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection shall survive termination of this Agreement.

(B) Indemnification by the District. The District agrees that to the extent permitted by applicable law, it will protect, indemnify, and hold harmless the County and its elected officials,



administrators, and employees (“County Indemnified Parties”) from and against (and pay the full amount of) all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions, and reasonable attorney’s fees (collectively, “Loss-and-Expense”), and will defend the County Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of (1) the negligence of the District or any of its officials, administrators, and employees, in connection with its obligations or rights under this Agreement, (2) any District breach of this Agreement, or the (3) performance-or non-performance of the District’s obligations under this Agreement. The District shall not, however, be required to reimburse or indemnify any County Indemnified Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (a) any County Breach, (b) the negligence or other wrongful conduct of any County Indemnified Party, or (c) any Uncontrollable Circumstance. A County Indemnified Party shall promptly notify the District of the assertion of any claim against it for which it is entitled to be indemnified, shall give the District the opportunity to defend such claim, and shall not settle the claim without the approval of the District. These indemnification provisions are for the protection of the County Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection shall survive termination of this Agreement.

8.3 INSURANCE

District shall maintain insurance coverage as described hereunder effective the first day of and in full force throughout the full Term of this Agreement. Insurers providing coverage as required by this Agreement shall be acceptable to County and must be authorized to do business in the State of California.

Certificates of insurance shall be furnished in duplicate, evidencing District’s coverage of Workers’ Compensation Insurance, Comprehensive General Liability, and Comprehensive Auto Liability; such certificates shall show the insurer’s name, policy number, limit of coverage, and the period of the policy and cancellation conditions of these specifications. Such certificates shall state that coverage thereunder shall not be terminated until thirty (30) days written notice is given to the Director of cancellation or reduction in coverage; allow for severability of interest of County; and be primary and non-contributing with insurance maintained or self-insured by County.

The County of Orange shall be added as an additional named insured on all of the above-described policies, as they pertain to the operations of the named insured performed under this Agreement for the County. Entire limits of liability maintained must be certified but in no event shall limits be less than specified herein below:

<u>Coverage</u>	<u>Minimum Limit</u>
Workers’ Compensation	Statutory
Employer’s Liability	\$1,000,000
Comprehensive General Liability	\$1,000,000 Combined Single limit each occurrence
Comprehensive Auto Liability (including owned, non-owned and hired vehicles)	\$1,000,000 Combined Single limit each occurrence

In accordance with Section 3700 of the California Labor Code, every employer is required to secure payment of compensation to his employees for the work under this Agreement, shall take out and maintain during the life of this Agreement, Workers' Compensation Insurance for all of its employees at the site of the work under this Agreement. Workers' Compensation Insurance Policy shall include a waiver of all rights of subrogation against the County.

#### 8.4 CURE

If either Party fails to perform any of its obligations hereunder, that Party shall have five (5) business days from receipt of written notice of default from the other Party within which to cure such default. However, delivery of industrial or commercial hazardous waste or failure to maintain a Household Hazardous Waste (HHW) Management Program pursuant to Section 5.4 may be grounds for immediate termination without opportunity to cure. Such default may be subject to termination pursuant to Section 7.3. In the case of a default by District involving HHW under Section 5.4, District shall cure the default within twenty-four (24) hours of written notice of the default in compliance with applicable laws and regulations, including County ordinances and established procedures.

#### 8.5 NON-ASSIGNMENT OF AGREEMENT

District may not assign this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the County, which may be withheld at the County's sole discretion. Any person or entity to whom this Agreement is assigned must expressly agree to be bound by all obligations of District. District will remain liable to County for all obligations under this Agreement notwithstanding any assignment made pursuant to this clause.

District may deliver solid waste collected by District or any other entity under subcontract to District, provided said waste does not originate within Orange County and originates within a municipality or special district which has implemented an approved Household Hazardous Waste Collection Program and has fully implemented its SRRE. District must notify County prior to delivery of waste from any transfer station or other facility not owned by District, and District must establish with the County a separate account for each such transfer station or other facility (billing will continue to be in District's name and to District's mailing address).

~~District may not assign this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the County, which may be withheld at the County's sole discretion. Any person or entity to whom this Agreement is assigned must expressly agree to be bound by all obligations of District. District will remain liable to County for all obligations under this Agreement notwithstanding any assignment made pursuant to this clause.~~

~~District may deliver solid waste collected by District or any other entity under subcontract to District, provided said waste does not originate within Orange County and originates within a municipality or special district which has implemented an approved Household Hazardous Waste Collection Program and has fully implemented its SRRE.~~

#### 8.6 NON-DISCRIMINATION

In performance of the terms of this Agreement, District shall not engage in discrimination in the employment of persons because of race, creed, color, religion, national origin, age, disability, marital status, sexual orientation, or gender. Violation of this provision may result in the imposition of penalties referred to in Labor Code Section 1735 or other applicable state and federal regulations.

8.7 SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

8.8 SOLE AND ONLY AGREEMENT

This Agreement constitutes the sole and only Agreement between the Parties with respect to the importation of solid waste to the Disposal System and correctly sets forth the obligations of each Party. Any representations or Agreements not specifically contained in this Agreement are null and void.

8.9 AMENDMENTS

Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except by written Agreement duly authorized and executed by both Parties.

8.10 NOTICES

Any notice required or permitted by this Agreement shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective Parties set forth in this Agreement. Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by notice to the other Party. The present addresses of the Parties are:

COUNTY

OC Waste & Recycling  
Attn: Director  
Location for Direct Deliveries and Certified Mail:  
300 North Flower Street, Suite 400  
Santa Ana, CA 92703

DISTRICT

Solid Waste Management Departmental Engineer  
County Sanitation District No. 2 of Los Angeles County  
Location for Direct Deliveries and Certified Mail:  
1955 Workman Mill Road  
Whittier, CA 90601

8.11 GOVERNING LAW AND VENUE

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Contract, the sole

and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

#### 8.12 HEADINGS

The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

#### 8.13 CALENDAR DAYS

Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

#### 8.14 ATTORNEY FEES

In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.

#### 8.15 INTERPRETATION

This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Agreement.

#### 8.16 AUTHORITY

The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

#### 8.17 COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, County and District have caused this Agreement to be executed by their duly authorized officers or representatives as of the Effective Date.

COUNTY OF ORANGE

Date \_\_\_\_\_

By \_\_\_\_\_  
Director, OC Waste & Recycling

APPROVED AS TO FORM:  
COUNTY COUNSEL  
ORANGE COUNTY, CALIFORNIA  
By \_\_\_\_\_  
Date \_\_\_\_\_

COUNTY SANITATION DISTRICT NO. 2  
OF LOS ANGELES COUNTY

Date \_\_\_\_\_

By \_\_\_\_\_  
Chairperson

ATTEST:

\_\_\_\_\_  
Board Secretary

APPROVED AS TO FORM:

By: \_\_\_\_\_  
District Counsel

**EXHIBIT A**

The District reserves the Committed Tonnage listed below at the Designated Landfill Sites:

Month	Monthly Tonnage Commitment Olinda Landfill	Daily Tonnage Cap*Olinda Landfill
<b>2013</b>		
January	n/a	n/a
February	n/a	n/a
March	n/a	n/a
April	n/a	n/a
May	n/a	n/a
June	n/a	n/a
July	n/a	n/a
August	n/a	n/a
September	n/a	n/a
October	n/a	n/a
November	21,250	1,200
December	21,250	1,200

Month	Monthly Tonnage Commitment Olinda Landfill	Daily Tonnage Cap*Olinda Landfill
<b>2016</b>		
January	21,250	1,200
February	21,250	1,200
March	21,250	1,200
April	21,250	1,200
May	21,250	1,200
June	21,250	1,200
July	n/a	n/a
August	n/a	n/a
September	n/a	n/a
October	n/a	n/a
November	n/a	n/a
December	n/a	n/a

Month	Monthly Tonnage Commitment Olinda Landfill	Daily Tonnage Cap*Olinda Landfill
<b>2014-2015</b>		
January	21,250	1,200
February	21,250	1,200
March	21,250	1,200
April	21,250	1,200
May	21,250	1,200
June	21,250	1,200
July	21,250	1,200
August	21,250	1,200
September	21,250	1,200
October	21,250	1,200
November	21,250	1,200
December	21,250	1,200

If In County Waste increases, County may reduce Tonnage Commitment without penalty.

\*Daily caps are calculated at 120% of daily average, based on a five-day week. Daily caps may be waived or increased administratively by mutual agreement of OCW&R Director, or designee, and District contact.

\*\*Contract termination date is June 30, 2016.

**EXHIBIT B****CONTRACTED RATE SCHEDULE**

*Below is the rate schedule as it may be applied per Section 4. This schedule does not entitle District to bring in greater than its Committed Tonnage per Section 3.1(a), nor relieve the Put-or-Pay obligation per Section 4.3. The rate per ton to be paid for all tons in one month shall be based on the end-of-month total; rates will not be charged on an incremental basis. For example, if District delivers 70,000 tons in one month, each ton that month will be charged at \$25.25.*

<b><u>Monthly Tonnage</u></b> <i>(based on total system tonnage)</i>	<b><u>Rate Per Ton as of July 1, 2016</u></b> <i>(shall be adjusted per Section 4.4)</i>
<u>&lt;10,000</u>	<u>\$29.00</u>
<u>10,000 to 20,000</u>	<u>\$28.00</u>
<u>20,001 to 27,500</u>	<u>\$27.00</u>
<u>27,501 to 35,000</u>	<u>\$26.75</u>
<u>35,001 to 50,000</u>	<u>\$26.50</u>
<u>50,001 to 65,000</u>	<u>\$26.00</u>
<u>&gt; 65,000</u>	<u>\$25.25</u>

<b>TONS PER DAY</b> <i>(Based on 5 day week*)</i>	<b><u>CONTRACT YEAR</u></b>			
	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
1—99	N/A	TBD based on CPI	TBD based on CPI	TBD based on CPI
100—299	\$28.03	TBD based on CPI	TBD based on CPI	TBD based on CPI
300—599	\$26.69	TBD based on CPI	TBD based on CPI	TBD based on CPI
600—999	\$25.35	TBD based on CPI	TBD based on CPI	TBD based on CPI
1,000+	\$23.18	TBD based on CPI	TBD based on CPI	TBD based on CPI

**\*Rate is based on a 5-day week; however, waste may be delivered to the landfills on a 6-day schedule.**

**EXHIBIT C**

**AGREEMENT FOR  
DEFERRED PAYMENT OF  
DISPOSAL FEES  
Thirty Day Pay**

This Agreement for Deferred Payment of Disposal Fees (this “Agreement”) is effective \_\_\_\_\_ by and between the County of Orange, a political subdivision of the State of California, by and through OC Waste & Recycling (the “County”) and \_\_\_\_\_ (“District”), with a place of business at \_\_\_\_\_. County and District are sometimes individually referred to as “Party”, or collectively referred to as “Parties”.

**RECITALS**

WHEREAS, the County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste (the “Disposal System”); and

WHEREAS, The Disposal System is used for the disposal, of municipal solid waste, which is not reused, recycled or otherwise, diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 and other applicable law; and

WHEREAS, the County has established certain disposal fees for disposal of municipal solid waste in the Disposal System; and

WHEREAS, disposal fees are due and owing at the time of delivery to the Disposal System; and

WHEREAS, from time-to-time District disposes of municipal solid waste at the Disposal System; and

WHEREAS, District has requested County to extend the privilege of deferring payment of applicable disposal fees, as more fully provided herein; and

WHEREAS, District agrees to deposit monies with the County to be held in trust, or deliver a letter of credit or surety, as provided herein, as security for District’s payment obligations;

NOW, THEREFORE the Parties agree as follows:

1. **Deferred Payment Privilege.** Subject to the terms and conditions of this Agreement, County hereby grants District the privilege (the “Privilege”) of deferring payment of disposal fees, otherwise immediately due and payable upon delivery of solid waste to the Disposal System, charged to and payable by District. The Privilege may be withdrawn by the County and this Agreement terminated at any time in the sole discretion of the Director of OC Waste & Recycling (the “Director”).



2. **Deferred Payment Cards.** Following the execution of this Agreement by both Parties, District making its Security Deposit, and the completion of such other documentation relating to the Privilege and this Agreement as the Director may determine, County shall issue a Deferred Payment Card, Decal or other deferred payment documentation, approved by and acceptable to the Director (collectively, "Deferred Payment Documentation") to District for each vehicle District uses to deliver waste to the Disposal System. Deferred Payment Documentation issued to District is for the sole and exclusive use of the District. In no event may District allow any other person or District to use District's Deferred Payment Documentation. Any such violation shall result in immediate termination of this Agreement. District shall immediately notify County in the event of any Deferred Payment Documentation being lost, damaged, destroyed or stolen. The Director may issue additional or replacement Deferred Payment Documentation upon the written request of the District. County will charge District a fee of \$5 for item of Deferred Payment Documentation lost, damaged, destroyed or stolen and replaced by County. All Deferred Payment Documentation issued to District shall be returned immediately to the County upon termination of this Agreement or County's written request.

3. **Exercise of Privilege.** In order to properly exercise the Privilege, District shall present or cause to be presented, Deferred Payment Documentation such as a Deferred Payment Card or Letter of Authorization to County disposal site fee station attendant each and every time District delivers waste to a County disposal site. The deferral of fee payments will not be allowed without the District presenting Deferred Payment Documentation.

4. **Payment of Deferred Fees.** County will invoice District for all deferred payment fees due and owing (including applicable expenses and charges) monthly in arrears. District shall issue payment for any and all invoiced deferred disposal fees to be received by County no later than thirty (30) days after the date of the invoice. In the event that District's payment is not received by County within thirty (30) days of the invoice date, District shall be liable to County for an administrative charge equal to one and one-half percent (1½ %) of such payment. In the event District fails, or refuses, to make such payment plus such administrative charge within thirty five (35) days after the date of such invoice, the County may, at its sole discretion a) terminate the Privilege and this Agreement and draw from the Security Deposit the amount due and owing the County, b) draw from the Security Deposit the amount due and owing the County, or c) upon a showing of good cause by the District, the Director may allow District additional time to make the invoiced payment, which could include temporarily closing the deferred account until such payment is received. To the extent District fails to timely pay invoiced fees, in addition to the administrative charge, County may charge District the actual costs of County's fee collection efforts.

5. **Security Deposit; Drawing; Replenishment.** As consideration for the Privilege of deferring payment as permitted herein and as security against non-payment by the District, District shall, as a condition precedent to exercising the Privilege granted herein, deposit with the County the initial sum of \$0.00 (zero dollars) representing two (2) months of disposal activity. The amount deposited with the County under this Agreement Section 5 shall be referred to as the "Security Deposit." The amount of the Security Deposit will be determined by the Director and will be deposited with and held in an interest bearing

trust account (which may be commingled with other monies of OC Waste & Recycling) by the Orange County Treasurer. The Security Deposit may be invested in the Orange County Investment Pool or other investment(s) as determined by the Orange County Treasurer in accordance with California law and the County's Investment Policy Statement (as it may be amended from time-to-time). In lieu of depositing the Security Deposit directly with the County, the following alternative methods are permissible upon the written consent of the Director:

Irrevocable Letter of Credit (LOC): An irrevocable letter of credit, from a financial institution and in a form acceptable to the Director, may be delivered to the County in the required amount of the Security Deposit. The LOC must permit the County by and through its OC Waste & Recycling Department (or successor department) to draw on the LOC, in whole or in part, by written request stating that District has failed to pay any amount due under this Agreement. The LOC must not be revocable by the District and, if the LOC has an expiration date, the financial institution issuing the LOC must notify the County no later than 60 days prior to the LOC expiration date. If District fails to extend the LOC at least 30 days prior to its expiration date or provide the Security Deposit as otherwise permitted herein, this Agreement shall immediately terminate.

Surety Bond: A surety bond (Surety), issued by a surety company with a minimum insurance rating of A- (Secure Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or [ambest.com](http://ambest.com) and authorized to write in California by the Department of the Treasury, and must be listed on the most current edition of the Department of Treasury's Listing of Approved Securities, in a form acceptable to the Director may be delivered to the County in the required amount of the Security Deposit. The Surety must permit the County by and through its OC Waste & Recycling Department (or successor department) to draw on the Surety, in whole or in part, by written request stating that District has failed to pay any amount due under this Agreement. The Surety must not be revocable by the District and, if the Surety has an expiration date, the surety company issuing the Surety must notify the County no later than 60 days prior to the Surety expiration date. If District fails to extend the Surety at least 30 days prior to its expiration date or provide the Security Deposit as otherwise permitted herein, this Agreement shall immediately terminate.

The Security Deposit shall only be drawn to the extent permitted herein and may not be drawn by the County for any other reason. District shall have no ability to withdraw any monies, terminate or lower the amount of a LOC or terminate or lower the amount of a Surety from the Security Deposit during the term of this Agreement or following termination until all disposal fees, costs and expenses are paid to the County.

District shall deposit with the County additional monies or increase the stated amount of a LOC or Surety for the Security Deposit in the event: a) the Security Deposit is drawn upon by County as permitted herein, or b) the Director determines, based upon deferred payment fees for the previous three (3) month period, that the Security Deposit should be increased. District shall deposit additional monies or increase the stated amount of the LOC or Surety for the Security Deposit within ten (10) days of written notice by the County.

6. **Return of Deferred Payment Documentation/Security Deposit.** In the event this agreement is terminated or County revokes District's Privilege, District shall return forthwith to County all the Deferred Payment Documentation issued to District hereunder, and County shall return the balance of the Security Deposit (if held by County) to District, less any unpaid disposal fees, administrative charges and Collection expenses.

7. **Agreement Term.** The Term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2016, unless otherwise extended as provided herein. The County shall have the sole and absolute right and discretion to withdraw the Privilege and terminate this Agreement at any time.

8. **Entire Agreement.** This Agreement contains the entire Agreement between the Parties with respect to the deferral of payment of waste disposal fees by District and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein. This Agreement does not apply to the disposal of solid waste in the Disposal System, the fees attributable thereto or the payment of fees on a non-deferred basis.

9. **No Other Rights.** This Agreement is limited solely to the deferral and payment and security for the payment of disposal fees chargeable to District by the County. This Agreement does not affect, amend or alter any applicable laws, policies, rules, procedures or regulations of the County of any other governmental or regulatory body or authority which has jurisdiction over the Disposal System with respect to the delivery and disposal of solid waste at the Disposal System.

10. **Amendments.** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties.

11. **Termination.** In addition to any other remedies or rights it may have by law or in this Agreement, County has the right to terminate this Agreement after 30 days' written notice. District has the right to terminate this Agreement after 30 days written notice to County.

12. **Consent to Breach Not Waiver.** No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

13. **Remedies Not Exclusive.** The remedies for breach set forth in this Agreement are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Agreement does not preclude resort by either Party to any other remedies provided by law.

14. **Notices.** Any and all notices, requests demands and other communications

contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For District:                      Name:  
    Address:  
  
    Attn.:  
    Title:  
    Phone:  
    Fax:  
    Email:

For County:                      Name:                      County of Orange  
    Address:                P.O. Box 1955  
    Santa Ana, CA 92702  
  
    Attn:                      Accounting  
    Title:  
    Phone:                (714) 834-4178  
    Fax:  
    Email:

15.    **Assignment or Sub-contracting.** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by District without the express written consent of County. Any attempt by District to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of County shall be invalid and shall constitute a breach of this Agreement.

16.    **Change of Ownership.** District agrees that if there is a change or transfer in ownership of District's business prior to completion of this Agreement, the new owners shall be required under terms of sale or other transfer to assume District's duties and obligations contained in this Agreement and complete them to the satisfaction of the

County. In addition, the new owner shall complete an additional application to provide the same owner information that was provided by the original owner.

17. **Headings.** The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

18. **Severability** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19. **Calendar Days.** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

20. **Governing Law and Venue.** This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

21. **Attorney Fees.** In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney’s fees, costs and expenses.

22. **Waiver of Jury Trial.** To the extent enforceable under California law, each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and /or any other claim of injury or damage.

23. **Interpretation.** This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has

drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

24. **Authority.** The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

**SIGNATURE PAGE**

The Parties hereto have executed this Agreement on the dates shown opposite their respective signatures below.

**District\*:**

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

**\* Unless otherwise demonstrated that the person(s) executing this Agreement on behalf of District has the requisite authority to legally obligate and bind District, if the District is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.**

\*\*\*\*\*

County of Orange, a political  
subdivision of the State of California

\_\_\_\_\_  
Print Name Title

\_\_\_\_\_  
Signature Date

APPROVED AS TO FORM:

\_\_\_\_\_

Deputy County Counsel

## **EXHIBIT D-1**

### **PROCEDURES FOR DELIVERY AND ACCEPTANCE OF WASTE** **FRANK R. BOWERMAN LANDFILL**

Location: Frank R. Bowerman (FRB) Landfill is a Class III Sanitary Landfill located in Bee Canyon near the City of Irvine at 11002 Bee Canyon Access Road.

Approved Traffic Route: Truck traffic to the FRB Landfill must use the following approved routes and roads: Santa Ana Freeway (Interstate 5), San Diego Freeway (Interstate 405), Sand Canyon Avenue (two lanes in some places), and Bee Canyon Access Road.

Approved Vehicles: Vehicles delivering waste must be transfer or transfer-type, with a minimum payload capacity of 17 tons.

Site Access Road: Bee Canyon Access Road was constructed for exclusive use by waste hauling traffic. It provides an all-weather paved surface for two (2) lanes of incoming traffic and one (1) lane of exiting traffic. The landfill gate is located north of the Portola Parkway/Bee Canyon Access Road intersection.

The Scales Area: The entrance facility consists of four (4) scale houses with six (6) lanes for the incoming and exiting traffic. Four (4) of the six (6) lanes are equipped with scales, and two (2) lanes are provided for bypass traffic.

~~Customer Service Area: A customer service area with ample parking for vehicles is located near the scales. A privately operated mobile catering service provides food and drinks. Public telephones and public restrooms are available.~~

Weigh Back: The first time a vehicle delivers waste to the landfill, weigh back of the vehicle at the scale house will be required to determine the tare weight of the vehicle before the vehicle exits the facility.

Decal: Subsequent to the determination of the tare weight of the vehicle, a decal may be ordered and applied to the vehicle according to the appropriate regulations which shall be in lieu of a weigh back.

Days and Hours of Operation: The landfill hours are Monday through Saturday, 7:00 a.m. to 5:00 p.m. for transfer trucks, and 7:00 a.m. to 4:00 p.m. for all other haulers. Haulers will receive advance notice of any change in hours. The site is not open to the public. The site is closed on New Year's Day, Independence Day, Memorial Day, Labor Day, Thanksgiving Day and Christmas Day.

Class III Landfill Permitted Wastes Accepted: Acceptable Waste is defined in Section 1 of this Agreement.



## **EXHIBIT D-1**

### **FRANK R. BOWERMAN LANDFILL**

#### **Page 2**

Class III Permitted Waste Types Not Accepted: Unacceptable Waste is defined in Section 1 of this Agreement.

Materials Regulation (MR): The County provides a Materials Regulation program to work with private contractors and generators to determine if their waste can be accepted at the landfill. The staff inspects the waste at the generator's site and determines which laboratory tests are necessary to ascertain the levels of potentially hazardous constituents present in the materials. If the material is in compliance with the established guidelines, the MR staff arranges a time and place for inspection and disposal at the landfill.

Low Level Radioactive Waste Detection: Low Level Radioactive Waste (LLRW) detectors are installed at the fee booths. Any vehicles whose loads are identified with LLRW are segregated and prevented from unloading. The County of Orange Health Care Agency/Environmental Health Division is notified. Repeat offenders are referred to the County of Orange Hazardous Waste Strike Force.

Load Check Program: To prevent the disposal of hazardous materials in the County's landfills, a team of highly trained Waste Inspectors perform random spot checks of vehicles and inspect loads for the presence of hazardous materials or substances. Contents from vehicles found to contain hazardous materials are required to be removed from the site. Disposal is prevented and referral to the appropriate disposal facilities is provided. Repeat offenders are referred to the County of Orange Hazardous Waste Strike Force.

County of Orange Hazardous Waste Strike Force: The Strike Force is a coalition of regulators and enforcement agencies that meets regularly to share information of mutual interest and concern about illegal disposal practices. The District Attorney's Environmental Unit acts as Chair of the meetings. As a result of this coordinated information network, numerous cases have been solved and the suspects have been successfully prosecuted for illegal dumping of hazardous materials.

## **EXHIBIT D-2**

### **PROCEDURES FOR DELIVERY AND ACCEPTANCE OF WASTE OLINDA ALPHA LANDFILL**

Location: Olinda Alpha (OA) Landfill is a Class III landfill located near the City of Brea at 1942 N. Valencia Avenue.

Approved Traffic Route: Truck traffic to the OA Landfill must use the following approved routes and roads: Orange Freeway (route 57) to Imperial Highway (Route 90), east to Valencia Avenue and north on Valencia Avenue to the site.

Approved Vehicles: Vehicles delivering waste must be transfer to transfer-type, with a minimum payload capacity of seventeen (17) tons.

Site Access Road: Valencia Avenue provides access for waste hauling traffic to the landfill. It provides an all weather paved surface for two (2) lanes of traffic.

Scales Area: The entrance to the facility consists of two (2) scale houses with six (6) lanes for incoming and exiting traffic. Four (4) of the six (6) lanes are equipped with scales, and two (2) lanes are provided for bypass traffic.

~~Customer Service Area: A customer service area with ample parking for vehicles is located near the scales. A privately operated mobile catering service provides food and drinks. Public restrooms and public telephones are available.~~

Weigh Back: The first time a vehicle delivers waste to the landfill, weigh back of the vehicle at the scale house will be required to determine the tare weight of the vehicle before the vehicle exits the facility.

Decal: Subsequent to the determination of the tare weight of the vehicle, a decal may be ordered and applied to the vehicle according to the appropriate regulations which shall be in lieu of a weigh back.

Days and Hours of Operation: The landfill hours are Monday through Saturday, 6:00 a.m. to 4:00 p.m. for transfer trucks, and 7:00 a.m. to 4:00 p.m. for the general public. Landfill users will receive advance notice of any change in hours. The site is closed on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Class III Landfill Permitted Wastes Accepted: Acceptable Waste is defined in Section 1 of this Agreement.

## EXHIBIT D-2

### OLINDA ALPHA LANDFILL

#### Page 2

Class III Permitted Waste Types Not Accepted: Unacceptable Waste is defined in Section 1 of this Agreement.

Materials Regulation (MR): The County provides a Materials Regulation program to work with private contractors and generators to determine if their waste can be accepted at the landfill. The staff inspects the waste at the generator's site and determines which laboratory tests are necessary to ascertain the levels of potentially hazardous constituents present in the materials. If the material is in compliance with the established guidelines, the MR staff arranges a time and place for inspection and disposal at the landfill.

Low Level Radioactive Waste Detection: Low Level Radioactive Waste (LLRW) detectors are installed at the fee booth. Any vehicles whose loads are identified with LLRW are segregated and prevented from unloading. The County of Orange Health Care Agency/Environmental Health Division is notified. Repeat Offenders are referred to the County of Orange Hazardous Waste Strike Force.

Load Check Program: To prevent the disposal of hazardous materials in the County's landfills, a team of highly trained Waste Inspectors perform random spot checks of vehicles and inspect loads for the presence of hazardous materials or substances. Contents from vehicles found to contain hazardous materials are required to be removed from the site. Disposal is prevented and referral to the appropriate disposal facilities is provided. Repeat offenders are referred to the County of Orange Hazardous Waste Strike Force.

County of Orange Hazardous Waste Strike Force: The Strike Force is a coalition of regulators and enforcement agencies that meets regularly to share information of mutual interest and concern about illegal disposal practices. The District Attorney's Environmental Unit acts as Chair of the meetings. As a result of this coordinated information network, numerous cases have been solved and the suspects have been successfully prosecuted for illegal dumping of hazardous materials.

Services to the General Public: Private vehicles are permitted to enter the landfill to dispose of wastes in a special area; however, private vehicles are prohibited from entering the active face area of the landfill which is used by commercial haulers. Load checking is also performed on waste delivered by public customers. The County contracts with a salvage District to recover reusable or recyclable materials from the public area. Salvaging is not permitted in the commercial area of the landfill. White goods and air-conditioning units are purged of oil and chlorofluorocarbons (CFCs) before removal from the landfill for recycling.

### **EXHIBIT D-3**

#### **PROCEDURES FOR DELIVERY AND ACCEPTANCE OF WASTE PRIMA DESHECHA LANDFILL**

Location: Prima Deshecha (Prima) Landfill is a Class III Sanitary Landfill located near the City of San Juan Capistrano at 32250 La Pata Road.

Approved Traffic Route: Truck traffic to the Prima Landfill must use the following approved routes and roads: Santa Ana Freeway (Interstate 5), Ortega Highway (Route 74), and La Pata Road.

Approved Vehicles: In order to reduce adverse traffic impacts, vehicles delivering waste must be transfer or transfer-type, with a minimum payload capacity of 17 -20 tons, unless approved in writing by the City Manager of the City of San Juan Capistrano or designee.

Site Access Road: La Pata Road provides access for waste hauling traffic to the landfill and is also used by customers of La Pata Greenwaste located at 31748 La Pata Road. It provides an all-weather paved surface for three (3) lanes of traffic.

The Scales Area: The entrance facility consists of one (1) scale house with three (3) lanes for incoming traffic. Two (2) of the three (3) lanes are equipped with scales, and one (1) lane is provided for bypass traffic.

~~Customer Service Area: A customer service area with ample parking for vehicles is located near the scales. A privately operated mobile catering service provides food and drinks. Public restrooms and public telephones are available.~~

Weigh Back: The first time a vehicle delivers waste to the landfill, weigh back of the vehicle at the scale house will be required to determine the tare weight of the vehicle before the vehicle exits the facility.

Decal: Subsequent to the determination of the tare weight of the vehicle, a decal may be ordered and applied to the vehicle according to the appropriate regulations which shall be in lieu of a weigh back.

Days and Hours of Operation: The landfill hours are Monday through Saturday, 7:00 a.m. to 5:00 p.m. for commercial haulers and 7:00 a.m. to 4:00 p.m. for the general public. Landfill users will receive advance notice of any change in hours. The site is closed on New Year's Day, Independence Day, Memorial Day, Labor Day, Thanksgiving Day and Christmas Day

### **EXHIBIT D-3**

#### **PRIMA DESHECHA LANDFILL**

##### **Page 2**

Class III Landfill Permitted Wastes Accepted: Acceptable Waste is defined in Section 1 of this Agreement.

Class III Permitted Waste Types Not Accepted: Unacceptable Waste is defined in Section 1 of this Agreement.

Materials Regulation (MR): The County provides a Materials Regulation program to work with private contractors and generators to determine if their waste can be accepted at the landfill. The staff inspects the waste at the generator's site and determines which laboratory tests are necessary to ascertain the levels of potentially hazardous constituents present in the materials. If the material is in compliance with the established guidelines, the MR staff arranges a time and place for inspection and disposal at the landfill.

Low Level Radioactive Waste Detection: Low Level Radioactive Waste (LLRW) detectors are installed at the fee booth. Any vehicles whose loads are identified with LLRW are segregated and prevented from unloading. The County of Orange Health Care Agency/Environmental Health Division is notified. Repeat offenders are referred to the County of Orange Hazardous Waste Strike Force.

Load Check Program: To prevent the disposal of hazardous materials in the County's landfills, a team of highly trained Waste Inspectors perform random spot checks of vehicles and inspect loads for the presence of hazardous materials or substances. Contents from vehicles found to contain hazardous materials are required to be removed from the site. Disposal is prevented and referral to the appropriate disposal facilities is provided. Repeat offenders are referred to the County of Orange Hazardous Waste Strike Force.

County of Orange Hazardous Waste Strike Force: The Strike Force is a coalition of regulators and reinforcement agencies that meets regularly to share information of mutual interest and concern about illegal disposal practices. The District Attorney's Environmental Unit acts as Chair of the meetings. As a result of this coordinated information network, numerous cases have been solved and the suspects have been successfully prosecuted for illegal dumping of hazardous materials.

Services to the General Public: Private vehicles are permitted to enter the landfill to dispose of wastes in a special area; however, private vehicles are prohibited from entering the active face area of the landfill which is used by commercial haulers. Load checking is also performed on waste delivered by public customers. The County contracts with a salvage District to recover reusable or recyclable materials from the public area.

**EXHIBIT D-3**

**PRIMA DESHECHA LANDFILL**

**Page 3**

Salvaging is not permitted in the commercial area of the landfill. White goods and air-conditioning units are purged of oil and chlorofluorocarbons (CFCs) before removal from the landfill for recycling. A Household Hazardous Waste Collection Center (HHWCC) is located on the landfill for the exclusive use of Orange County residents for disposal of those hazardous wastes which are generated by households. Businesses or commercial users may not dispose of hazardous wastes at this facility. Out-of-county residents may not use the facility, nor may commercial haulers who deliver out-of-county residential waste to the landfill under contract.

## **EXHIBIT E**

### **ORANGE COUNTY DISPOSAL REPORTING SYSTEM**

#### **I. Scope and Authority**

The California Integrated Waste Management Board (CIWMB) designated each County or Regional Authority as the agency responsible to report quarterly the tons of solid waste disposed by jurisdiction of origin within the agency. The report of solid waste currently disposed will be compared with the amount of solid waste disposed in the base year of 1990, adjusted for changes in population and the economy, in order to determine if the jurisdictions in the County are meeting the state's waste disposal reduction mandates of 25% by 1995 and 50% by 2000. The CIWMB will utilize the disposal reports as one of the tools to determine compliance with The California Integrated Waste Management Act of 1989 (AB 939).

As the designated agency for Orange County, OC Waste & Recycling proposes to implement an Alternative Disposal Reporting System in compliance with the California Code of Regulations, Title 14, Division 7, Chapter 9, Article 9.0, Section 18800 through 18813. Preliminary Workshop Draft Regulations for Informal Public Review dated April 28, 1994, were revised, and a Proposed Disposal Reporting Regulation was published on August 9, 1994, to begin a 45-day public comment period. An additional 15-day comment period ended October 24, 1994. The regulation was approved by the CIWMB at their meeting of October 27, 1994, and approved with amendment by the Office of Administrative Law (OAL). The revised regulation is dated January 10, 1995. The regulation sets forth a disposal reporting system for counties and regions to follow, and it also includes a CIWMB staff approval process for counties and regions that wish to implement alternative reporting systems. Article 9.0, Section 18800 through 18813 provides a method to survey Haulers, Transfer/Materials Recovery Facility Operators and Landfill Operators, for one week of each quarter and report quarterly, by jurisdiction of origin, the tons of municipal solid waste disposed. Section 18800 of the Article states the following:

Nothing in this Article shall prevent an agency or a jurisdiction from requiring haulers or operators to supply additional disposal information.

#### **II. Purpose and Objectives**

The purpose of the Orange County Disposal Reporting System is to comply with the state-mandated regulations in an accurate, cost-effective, and efficient manner.

The objectives of Orange County's reporting system are as follows:

- To collect data on the origin of waste at the point of its greatest accuracy
- To utilize existing data collection processes and methods
- To avoid duplication of effort and collection of superfluous information
- To achieve compliance utilizing existing resources
- To avoid service delays to customers at solid waste facilities

To fulfill these objectives, Orange County's reporting system requires a daily on-going survey of solid waste disposed and a monthly report to OC Waste & Recycling by Haulers, Transfer/MRF Operators, Transformation Operators and Landfill Operators.

### **III. Definitions**

- (1) "Agency" means the local agency responsible for compiling the disposal information from haulers and operators. The County is the agency, unless a region is given the responsibility as part of a regional agreement.
- (2) "Alternative Daily Cover" means any material, other than soil, used as an alternative daily landfill cover. Its use must also be a condition of the Solid Waste Facility Permit.
- (3) "Board" means the California Integrated Waste Management Board (CIWMB).
- (4) "Collection Vehicle" means a vehicle operated by a public or private hauler to collect solid waste.
- (5) "Hauler" means a solid waste enterprise, or a person who is regularly engaged in the business of providing solid waste handling services, and collects solid waste from a generator within California. Hauler includes a person who collects solid waste whether the solid waste is delivered to a transfer station, landfill, or transformation facility.
- (6) "Jurisdiction" means a city, county, or city and county, or regional agency with responsibility for waste management.
- (7) "Landfill Operator" means a person who operates a permitted solid waste landfill.
- (8) "Origin Survey" means a survey or method used to identify the jurisdiction(s) of origin for solid waste disposed.
- (9) "Quarter" means the four, three-month periods in each calendar year, as follows: the first quarter begins January 1 and ends March 31; the second quarter begins



April 1 and ends June 30; the third quarter begins July 1 and ends September 30; and the fourth quarter begins October 1 and ends December 31.

- (10) “Self-haul” means someone other than a public or private hauler who takes solid waste from the place of generation to a transfer facility, transfer/materials recovery facility, landfill, or transformation facility.
- (11) “Self-haul Vehicle” means other than a collection or transfer vehicle.
- (12) “Solid Waste” means municipal solid waste (MSW) generated from residential, commercial, and industrial uses, and disposed in permitted landfills. Solid waste does not include hazardous, radio-active, or untreated medical wastes.
- (13) “Solid Waste Facility Operator” means the owner, operator, or owner/operator of a permitted transfer station, transfer/materials recovery facility, landfill, or transformation facility.
- (14) “Transfer Station” refers to a permitted non-disposal solid waste facility that transfers solid waste directly from smaller to larger vehicles for transport to materials recovery facilities, landfills, or transformation facilities.
- (15) “Transfer/Materials Recovery Facility” means a permitted non-disposal solid waste facility that accepts solid wastes, temporarily stores, separates, converts, or otherwise processes more than 5% of the solid wastes received, and transfers the residual solid wastes to larger vehicles for transport to landfill or transformation facilities.
- (16) “Transfer/Materials Recovery Facility Operator” means an operator, owner owner/operator of a permitted transfer/materials recovery facility.
- (17) “Transfer Vehicle” means a vehicle that transports solid waste from a transfer or materials recovery facility to a landfill or transformation facility.
- (18) “Transformation Facility” means a permitted facility that performs incineration, pyrolysis, distillation, gasification, or biological conversion, other than composting, for recovery of energy from solid waste.
- (19) “Transformation Facility Operator” means an owner, operator or owner/operator of a permitted transformation facility
- (20) “Unassigned Waste” means the jurisdiction of origin of the waste cannot be determined.

#### **IV. Origin Survey Frequency**

- (1) Haulers, Transfer/Material Recovery Facility Operators, and Landfill Operators shall conduct the origin survey every working day.
- (2) Days of operation (working days) are six days per week, Monday through Saturday, excluding New Year's, Memorial, Independence, Labor, Thanksgiving, and Christmas Days.
- (3) The survey period shall commence effective the first working day after January 1, 1995, and shall be continuous until and unless revised by the OCIWMD.

**V. Origin Survey Requirements for Haulers**

- (1) A Hauler shall record daily the amount and jurisdiction of origin of all solid waste collected and disposed in Orange County, as described in IV. (1-3) and report the information monthly to the Orange County OC Waste & Recycling Department in an approved format that shall be provided by the County.
- (2) A Hauler shall record daily the amount and jurisdiction of origin of all solid waste collected and disposed outside of Orange County, including waste exported outside of California, as described in IV. (1-3) and report the information monthly to OC Waste & Recycling in an approved format that shall be provided by OC Waste & Recycling.
- (3) A Hauler disposing of solid waste collected from multiple jurisdictions, combined in one collection vehicle load, shall record and report the jurisdiction(s) of origin of the waste as accurately as possible.
- (4) A Public Hauler that performs solid waste collection services for a jurisdiction(s) shall have the same recording and reporting responsibilities as a Private Hauler.
- (5) The Disposal Reporting System applies only within Orange County Haulers and Operators providing services in other Counties may be required to report the jurisdiction of origin in a method different from Orange County's System.

**VI. Origin Survey Requirements for Transfer/Material Recovery Facility Operators**

- (1) A Transfer/Materials Recovery Facility Operator shall record daily the amount and jurisdiction of origin of all solid waste deposited at the facility by collection, transfer, and self-haul vehicles, that is disposed in Orange County as described in IV. (1-3), and shall report the information monthly to OC Waste & Recycling in an approved format that shall be provided by OC Waste & Recycling.
- (2) A Transfer/Materials Recovery Facility Operator shall record daily the amount and jurisdiction of origin of all solid waste deposited at the facility by collection,

transfer, and self-haul vehicles, that is disposed outside of Orange County, including waste exported outside of California, as described in IV. (1-3), and shall report the information monthly to OC Waste & Recycling in an approved format that shall be provided by OC Waste & Recycling.

- (3) During the entire month, an Operator shall report monthly to OC Waste & Recycling, the jurisdiction of origin for all material identified by the receiving operator as potential alternative daily cover material.
- (4) An operator who exports waste from California shall report monthly to OC Waste & Recycling the total tons of solid waste exported from each jurisdiction of origin during the month.

#### **VII. Origin Survey Requirements for Transformation Facility Operators**

A Transformation Facility Operator of a facility located in Orange County shall determine daily the jurisdiction of origin of all solid waste received and report monthly to OC Waste & Recycling the total amount of solid waste from each jurisdiction that is disposed by transformation at the facility. (Note: At the present time, there are no transformation facilities located in Orange County.)

#### **VIII. Origin Survey Requirements for Landfill Operators**

- (1) A Landfill Operator of a facility located in Orange County shall record daily the amount and jurisdiction of origin of all solid waste deposited by self-haul vehicles at the facility, and shall report monthly to OC Waste & Recycling in an approved format which shall be provided by OC Waste & Recycling.
- (2) A Landfill Operator accepting for disposal, solid waste collected from multiple jurisdictions, contained in one vehicle load, shall record and report the jurisdiction(s) of origin of the waste as accurately as possible.

#### **IX. Disposal Reporting Requirements for Haulers and Operators**

- (1) The monthly report to OC Waste & Recycling by a Hauler, Transfer/Materials Recovery Facility Operator, Landfill or Transformation Facility Operator, shall include the following complete and correct information:
  - (a) Name, address, and telephone number of the hauler or facility operator;
  - (b) Solid Waste Information System (SWIS) number of the facility;
  - (c) Name of contact/responsible person;
  - (d) Name of jurisdiction of origin;

- (e) Name of contact person at the jurisdiction of origin;
  - i. Name and address of each transfer/materials recovery facility, landfill and/or transformation facility utilized;
  - ii. Total tons of solid waste disposed per month at each facility by jurisdiction;
  - iii. Signature of the responsible reporting party and a statement, under penalty of perjury, that the information reported is correct to the best of his/her knowledge.
- (2) The monthly report shall be received by OC Waste & Recycling no later than the last day of the following month. (March report would be due by April 30.)
- (3) Except for items specifically identified in the Board approved Alternative Reporting System Proposal, Haulers and Operators shall adhere to the approved state regulations included in Title 14, Division 7, Chapter 9, Article 9.0, Sections 18800 through 18813.

**X. Disposal Reporting Requirements for the County of Orange**

- (1) OC Waste & Recycling shall use the information provided by Haulers, Transfer/Material Recovery Facility Operators, Landfill Operators, and Transformation Facility Operators to determine quarterly totals for:
  - (a) tons disposed or transformed at each facility;
  - (b) and tons disposed or transformed at each facility allocated to each region, individual city, individual unincorporated County or out-of-state; and
  - (c) tons of alternative daily cover used at each facility; and
  - (d) tons of alternative daily cover from each region, individual city, individual unincorporated County or out-of-state; and
  - (e) tons exported from California from within Orange County; and
  - (f) tons exported from California from within Orange County allocated to each region, individual city, or individual unincorporated County.
- (2) OC Waste & Recycling shall send a quarterly report of this compiled information to:
  - (a) each jurisdiction within the County,

- (b) each jurisdiction outside the County that uses a facility within the County,
  - (c) any region of which the County is a member, and
  - (d) the California Department of Resources Recycling & Recovery (CalRecycle)
- (3) OC Waste & Recycling shall send the quarterly report to the CIWMB and affected local governments on the following schedule:
- (a) by July 15 for the first quarter
  - (b) by October 15 for the second quarter
  - (c) by January 15 for the third quarter of the previous year
  - (d) by April 15 for the fourth quarter of the previous year
- (4) If a Hauler or Operator is unable to determine the jurisdiction of origin, the waste will be listed in a separate category called “Unassigned Waste.” “Unassigned Waste” will be assigned to the County.

**XI. Records: Retention, Access and Audits**

- (1) Haulers and Operators shall prepare disposal reporting records and shall:
- (a) Include all information, methods, and calculations required by state regulations in Title 14, Division 7, Chapter 9, Article 9.0, Sections 18800 through 18813.
  - (b) Use a reasonable method to gather the information, such as facility specific reporting forms, electronic systems, and record the complete and correct information in the format that the County provides.
  - (c) Maintain the source records and reports for three years in a usable format, such as electronic media, or paper copies.
  - (d) Maintain the records at one location.
  - (e) Allow representatives of the involved jurisdictions, the County, and CalRecycle to inspect the records during normal business hours.

**XII. Non-compliance**

- (1) A Hauler or Operator shall inform OC Waste & Recycling if a Hauler or Operator fails to comply with these regulations by not providing the operator with the

information required. The Operator shall send information on specific allegations of noncompliance to OC Waste & Recycling by May 15 for the first quarter, August 15 for the second quarter, November 15 for the third quarter, and February 15 for the fourth quarter of the previous year.

- (2) OC Waste & Recycling shall forward this information on specific allegations of non-compliance to CalRecycle with any additional information it has regarding specific allegations of non-compliance by July 15 for the first quarter, October 15 for the second quarter, and January 15 for the third quarter of the previous year, and April 15 for the fourth quarter of the previous year. CalRecycle shall forward this information to affected local jurisdictions.
- (3) Nothing in these regulations shall prevent a county or jurisdiction from enacting ordinances or other measures to ensure that Operators and Haulers comply with the requirements of Title 14, Division 7, Chapter 9, Article 9.0, Sections 18800 through 18813.