AMENDMENT TO WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF ORANGE, CALIFORNIA

and the

CITY OF COSTA MESA

Dated June 2, 2015

County Amendment Authorization Date:

_____ __, 2015

County Notice Address:

Director
OC Waste and Recycling
300 N. Flower, Suite 400
Santa Ana, CA 92703

City Amendment Authorization Date:

_____ __, 2015

City Notice Address

City of Costa Mesa
77 Fair Drive
Post Office Box 1200
Costa Mesa CA 92628-1200

AMENDMENT TO WASTE DISPOSAL AGREEMENT

THIS AMENDMENT TO WASTE DISPOSAL AGREEMENT (the "Amendment") is made and dated as of the date indicated on the cover page hereof between the County of Orange, a political subdivision of the State of California (the "County"), and the City designated on the cover page of this Amendment, a general law or charter city and political subdivision of the State of California (the "City").

RECITALS

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.

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) (the "Act").

The County has entered into waste disposal agreements in 2009 (the "Original Waste Disposal Agreements") with all of the cities in the County, including the City, as well as certain sanitary districts located in the County (the "Participating Cities"), pursuant to which the County agreed to provide disposal capacity for waste generated in or under the control of the Participating Cities, and the Participating Cities agreed to deliver or cause the delivery of waste generated in or under the control of the Participating Cities to the Disposal System, as more specifically set forth in, and subject to the terms and conditions of, the Original Waste Disposal Agreements.

The City has determined that the execution of this Amendment by the City is in the best interest of the City and will serve the public health, safety and welfare by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and sound environmental management.

The County has determined that the execution by the County of this Amendment will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis consistent with its obligations to the State and the holders of obligations secured by its Disposal System.

Official action approving this Amendment and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the County on the County authorization date indicated on the cover page hereof.

Official action approving this Amendment and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on the City authorization date indicated on the cover page hereof.

It is, therefore, agreed as follows:

Section 1. Amendment to Original Waste Disposal Agreement.

(a) Sections 3.6(C) and 3.6(E) of the Original Waste Disposal Agreement are deleted and replaced in their entirety, as set forth below:

"(C) Receipt of Imported Acceptable Waste on a Contract Basis. Throughout the Term hereof, the County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the Participating Cities and to generate Net Import Revenues. The County certifies that in its good faith judgment the contract or other agreement for the delivery of such waste will not materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the Participating Cities in accordance with the applicable Disposal Agreements throughout the Term thereof. "

"(E) Application and Use of Revenues From Other Users. (1) Throughout the term hereof, all revenues received by the County from the disposal of County Acceptable Waste by the Disposal System, and all revenues received by the County from the disposal of Imported Acceptable Waste by the Disposal System (including amounts received by the County as a result of the failure of contract counterparties to deliver minimum required amounts of Imported Acceptable Waste) , shall be deposited by the County in the County OC Waste & Recycling Enterprise Fund and shall constitute revenues of the Disposal System. Pursuant to the County's Plan of Adjustment, the County is entitled to receive net revenues (after payment of all costs attributable to the acceptance of such Imported Acceptable Waste at the Disposal System) ("Net Import Revenues") from the disposal of Imported Acceptable Waste by the Disposal System. Costs attributable to the disposal of Imported Acceptable Waste include deposits to the Environmental Fund, deposits to closure and postclosure reserves, City host fees (if applicable), operating costs (such as manpower expenditures, equipment, services and supplies expenditures), state surcharges, and a pro rata share of capital project costs. Net Import Revenues shall be used for the payment of bankruptcy related obligations until payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment. It is estimated that payment in full of such bankruptcy related obligations required to be paid from such Net Import Revenues pursuant to the Plan of Adjustment will occur by the end of Fiscal Year 2017-18.

(2) Until the County's obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as provided in Section (3.6)(E)(1). For any period after the County's obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full, Net Import Revenues shall be calculated as follows:

(i) in Fiscal Year 2017-18, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess of $17.57 per ton;

(ii) in Fiscal Year 2018-19, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported

Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess of $18.01 per ton;

(iii) in Fiscal Year 2019-20, Net Import Revenues for each ton of Imported Acceptable Waste received shall be equal to the revenues received for the disposal of such ton of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located) in excess in excess of $18.46 per ton; and

(iv) thereafter, Net Import Revenues shall be equal to 30% of the revenues received by the County from the disposal of Imported Acceptable Waste (excluding any newly established per-ton fees or increases to existing per-ton fees with respect to Imported Acceptable Waste payable to the State, other regulatory agencies or cities in which facilities in the Disposal System are located).

(3) After the County's obligation to apply Net Import Revenues for the payment of bankruptcy related obligations in accordance with the Plan of Adjustment has been satisfied in full (i) 50% of any Net Import Revenues (as calculated pursuant to Section 3.6(E)(2)) shall be paid to the County General Fund; and (ii) 50% of such Net Import Revenues shall be paid to the Participating Cities (and to the County, with respect to the unincorporated area) listed in Appendix 5 for use for any purpose by the Participating City, including but not limited to state mandated solid waste programs. Payments of such amounts to the County General Fund and the Participating Cities shall be made by the County within 90 days after the end of each fiscal year. The portion of Net Import Revenues specified above payable to the Participating Cities shall be apportioned in the percentages set forth in Appendix 5.

(4) The percentages set forth in Appendix 5 with respect to each Participating City will be adjusted at the end of Fiscal Year 2019-20 to reflect the percentage of actual deliveries of Acceptable Waste from each Participating City as compared to the total amount of actual deliveries from all of the Participating Cities during Fiscal Years 2017-18, 2018-19, and 2019-20. The County shall notify each Participating City of the revised percentages in Appendix 5 within 120 days after the end of Fiscal Year 2019-20. The revised percentages will be used for the allocation of Net Import Revenues generated during Fiscal Year 2020-21 and thereafter.

(b) Section 4.2(A)(z) is added to the Original Waste Disposal Agreement (immediately following Section 4.2(A)(y)) as follows:

"(z) decrease the amount of Net Import Revenues otherwise payable to the County General Fund and the Participating Cities pursuant to Section 3.6(E)(2) and Section 3.6(E)(3) and use the amount of such decrease to pay costs of the Disposal System."

(c) Section 6.1(A) and Section 6.1(B) of the Original Waste Disposal Agreement are deleted and replaced in their entirety with the following:

"SECTION 6.1 EFFECTIVE DATE AND TERM.

(A) Initial Term. This Agreement shall continue in full force and effect until June 30, 2025, unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination.

(B) Option to Renew. This Agreement shall be subject to renewal by mutual agreement of the parties, on or before June 30, 2023, for an additional term of ten years (the "Renewal Term") on the same terms and conditions as are applicable during the Initial Term hereof. The City shall give the County written notice of its irrevocable election to renew this Agreement on or before June 30, 2022. If the parties do not renew this Agreement by June 30, 2023, the Agreement shall expire on June 30, 2025."

(c) The first sentence of Section 6.1(C) of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the following:

"In connection with the parties' right to renew this Agreement for an additional ten-year term pursuant to Section 6.1(B), the parties shall, on or before June 30, 2023, negotiate an applicable change in the Contract Rate for such renewal term."

(d) Appendix 2 of the Original Waste Disposal Agreement is deleted in its entirety and replaced with the form attached hereto.

(e) Appendix 5 shall be added to the Original Waste Disposal Agreement as a new appendix, in the form attached hereto.

(f) All other terms and conditions of the Original Waste Disposal Agreement shall remain in full force and effect.

Section 2. Initial Payment. As consideration for the execution of this Amendment by all of the Participating Cities, and subject to the occurrence of the Amendment Effective Date pursuant to Section 3, the County agrees to pay, from the County OC Waste & Recycling Enterprise Fund, the Amendment Payment to the Participating Cities listed in Appendix 5. The aggregate Amendment Payment shall be $5,400,000, and shall be distributed to the individual Participating Cities (including the City) in the percentages set forth in Appendix 5 by September 30, 2016.

Section 3. Effectiveness of Amendment. The provisions of this Amendment shall not become effective unless and until the Amendment has been executed by the County and all of the Participating Cities. The date on which all of the Participating Cities have executed the Amendment shall be the "Amendment Effective Date." The County shall give written notice of the Amendment Effective Date to the City. In the event that the Amendment Effective Date does not occur by June 30, 2015, this Amendment shall be automatically terminated and the County shall have no obligation to make the Amendment Payment; provided, however that the County Board of Supervisors may extend such automatic termination date to a date no later than September 30, 2015.

Section 4. REPRESENTATIONS AND WARRANTIES OF THE PARTIES. Each of the parties to this Amendment represent and warrant that it is a political subdivision of the State of California validly existing under the Constitution and laws of the State and (ii) it has duly authorized the execution and delivery of this Amendment, and has duly executed and delivered the Amendment.

All other terms and conditions of the 2009 Original Waste Disposal Agreement not specifically changed by this Amendment, shall remain in full force and effect.

IN WITNESS WHEREOF, COUNTY and CITY have caused this Amendment to be executed by their duly authorized officers or representatives as of the day and year first above written.

COUNTY OF ORANGE

Date _____ By _____
DIRECTOR,
OC WASTE & RECYCLING

Date _____ By _____
STEPHEN M. MENSINGER
MAYOR
CITY OF COSTA MESA

Date _____ By _____
BRENDA GREEN
CITY CLERK
CITY OF COSTA MESA

Date _____ By _____
APPROVED AS TO FORM
THOMAS DUARTE
CITY ATTORNEY
CITY OF COSTA MESA

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

By _____

Date _____

APPENDIX 2

County Acceptable Waste Tonnage Target to be Used for Purposes of Section 4.2(b)

Fiscal Year	Tonnage	Cumulative
FY 2015-16	2,724,250	2,724,250
FY 2016-17	2,681,153	5,405,403
FY 2017-18	2,638,746	8,044,149
FY 2018-19	2,597,017	10,641,166
FY 2019-20	2,558,522	13,199,688
FY 2020-21	2,520,605	15,720,293
FY 2021-22	2,483,256	18,203,549
FY 2022-23	2,483,256	20,686,805
FY 2023-24	2,483,256	23,170,061
FY 2024-25	2,483,256	25,653,317

APPENDIX 5

PARTICIPATING CITY ALLOCATION PURSUANT TO SECTION 3.6

City	Allocation Percentage for Purposes of Section 3.6	Allocation of Initial Payment
Anaheim	13.18%	$711,509
Aliso Viejo	0.67	36,416
Buena Park	2.34	126,275
Brea	2.28	123,085
Costa Mesa	2.18	117,936
Costa Mesa Sanitary District	1.48	79,976
Cypress	2.56	138,115
Dana Point	0.99	53,278
Fullerton	4.10	221,271
Fountain Valley	1.76	95,217
Garden Grove/ GG Sanitary District	7.17	387,197
Huntington Beach	6.13	330,807
Irvine	8.22	444,036
Laguna Beach	1.14	61,796
Laguna Hills	0.74	40,098
Laguna Niguel	1.36	73,341
Laguna Woods	0.41	22,274
La Habra	1.69	91,431
Lake Forest	2.45	132,214
La Palma	0.32	17,325
Los Alamitos	0.58	31,362
Mission Viejo	2.42	130,902
Newport Beach	3.68	198,946
Orange	4.90	264,468
Placentia	1.58	85,116
Rancho Santa Margarita	1.11	60,009
Santa Ana	10.60	572,184
San Clemente	1.40	75,728
San Juan Capistrano	1.23	66,420
Seal Beach	0.82	44,292
Stanton	1.62	87,287
Tustin	1.42	76,648
Villa Park	0.21	11,081
Westminster/Midway Sanitation District	2.13	114,893
Yorba Linda	1.78	96,344
County Unincorporated	3.35	180,723
Totals	100%	$5,400,000