

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

AUTHORIZATION OF THE MAYOR TO EXECUTE THE FOURTH AMENDMENT TO THE WASTE DISPOSAL AGREEMENT WITH THE COUNTY OF SAN BERNARDINO

Summary Statement:

In 1998, the Town of Apple Valley entered into a 15-year term Waste Disposal Agreement, also termed Waste Delivery Agreement (WDA), with the County of San Bernardino, whereby all trash generated within the Town would be taken to county landfills in return for receiving the lowest tipping fee in use at the landfill(s).

The agreement was amended in 2002 to allow Burrtec Waste Industries, Inc., to bring additional waste into the landfill system at a cost of \$20.50 per ton; lower than the \$29.42 per ton then being paid by the WDA cities. In return for allowing this contravention of the contract, the county established a mechanism by which it shares 50% of the net profit generated by the additional tonnage with the WDA cities.

A second amendment was approved by the Town Council in May of 2003, authorizing Burrtec to bring another 75,000 tons of waste into the system. Again, the County agreed to share the net profit generated by the additional tonnage.

The third amendment was passed by Town Council August 14, 2007, which established a new fee to fund landfill-based recycling programs at all major landfills and transfer stations in the county. This program began at the Victorville landfill in May of 2005, diverting almost 4,000 tons of Apple Valley waste in 2005, and over 6,400 tons in 2009.

Attached is a proposed fourth amendment to the WDA. This would change the time for calculating the annual price adjustment of the tipping fee. The purpose of the change is to allow the county's Solid Waste Management Division to calculate the new tipping rate earlier, obtain the Board of Supervisors' approval, and provide the new rate to the cities in time for cities to hold required Proposition 218 public hearings prior to finalizing city budgets in May or June.

Recommendation:

Authorize Mayor to execute attached Amendment No. 4 to the Waste Delivery Agreement with the County of San Bernardino on behalf of the Town of Apple Valley.

Proposed by: _____ Diana McKeen _____ **Item Number** _____

T. M. Approval: _____ **Budgeted Item** Yes No N/A

The fixed portion of the original WDA tipping fee was \$10.87, and the escalating portion subject to the rate change, was \$17.63, as established by the original Waste Disposal Agreement in 1998. The tipping fee for WDA cities was \$28.50 at that time. The adjusted rate for each year is currently determined by (1) calculating the percentage difference between the previous year's Producer Price Index (PPI), Industrial Commodities, and that of 1998, and (2) calculating the percentage difference between the Employment Cost Index (ECI), Compensation, Private Industry Workers, of 1998 and the current year. Both of these indices are published by the U.S. Department of Labor Statistics. Seventy percent of the first calculation is added to 30% of the second one to arrive at the rate change. In formulaic terms, the calculation looks like this:

$$\text{Index} = .7 \left[\frac{\text{PPI}_1}{\text{PPI}_2} \right] + .3 \left[\frac{\text{EI}_1}{\text{EI}_2} \right]$$

As originally established, the month of the PPI index used for comparison was February of the year the adjustment was made. This amendment would change the month used to September of the year previous to the current adjustment being made. Likewise, the original ECI index used was the final quarter of the year preceding the adjustment. This amendment would change the index to the third quarter of the year preceding the adjustment.

This amendment does not change the actual tipping fee, the method of calculating the new rate, nor does it change the July effective date of the recalculated annual fee. It simply calculates the changes at an earlier time in the year.

AMENDMENT NO. 4 TO THE
WASTE DISPOSAL AGREEMENT

On January 27, 1998 the Town of Apple Valley ("Town") and the County of San Bernardino ("County") entered into a Waste Disposal Agreement ("WDA"). The parties hereby amend the WDA, on the Effective Date as provided herein, by their respective execution of this agreement (hereinafter "Amendment").

Recitals.

- A. Following the adoption of the WDA, changes in law occurred relating to the length of the required notice to be given prior to the adoption of certain fees.
- B. Recently, the County has adopted a new policy of enacting its revised fees earlier in the calendar year.
- C. Based on the forgoing, it will assist both the Town and the County if the annual cost of living adjustment to the Contract Rate, provided for in Section 4.2(B) of the WDA, is calculated earlier in a given calendar year. To accomplish this goal, the parties have agreed in this Amendment to adjust the dates used to establish the change in the cost of living to an earlier date, thus allowing the earlier calculation of the required annual cost of living adjustment.
- D. While this Amendment changes the date of the calculation of the change in the cost of living, it does not change the date that such change is effective. The change in the Contract Rate to reflect the annual cost of living adjustment will continue to be effective on July 1 of each year.

NOW THEREFORE, in consideration of the forgoing recitals and the following covenants and promises the parties agree as follows:

1. Amended Section 4.2(B) of the WDA. Section 4.2(B) of the WDA is amended to read:

(B) Calculation of Escalation. For purposes of Section 4.2(A)(ii), the Contract Rate shall be adjusted in accordance with the formula described in this Section each July 1 during the term hereof, commencing July 1, 1999. The adjustment shall be calculated in accordance with the following formula:

Contract Rate = Fixed Portion + [Escalating Portion x Index]

Where,

Fixed Portion = \$10.87

Escalating Portion = \$17.63

Index = Price Index, which shall be determined in accordance with the following formula:

I = .7[PPI₁/PPI₂] + .3[EI₁/EI₂]

PPI₁ = The Producer Price Index, Industrial Commodities, as published by the United States Department of Labor Statistics in the publication *Producer Price Indices*, Table 6, for the month of February in the year the adjustment is being made (e.g., the first adjustment will use the February, 1999 value)

PPI₂ = Producer Price Index, Industrial Commodities for the month of February, 1998

EI₁ = Employment Cost Index, Compensation, Private Industry Workers, as published by the United States Department of Labor Statistics in the publication *Monthly Labor Review*, Table 22, for the last quarter of the year preceding the year the adjustment is being made (e.g., the first adjustment will use the last quarter, 1998 value)

EI₂ = Employment Cost Index, Compensation, Private Industry Workers established for the last quarter of 1997

The adjustment effective on July 1, 2011, and all subsequent adjustments, will be calculated as provided above, except that the parameters of the Index (i.e., I) shall be defined as follows:

PPI₁ = The Producer Price Index, Industrial Commodities Commodity Data, as published at the United States Department of Labor, Bureau of Labor Statistics web site, Series ID WPU03 thru15 for the month of September in the year prior to the year for which the adjustment is being made (e.g., the adjustment effective July 1, 2011 will use the September 2010 value)

PPI₂ = Producer Price Index, Industrial Commodities Commodity Data for the month of September, 1997

EI₁ = Employment Cost Index, Total Compensation, Private Industry All Workers, as published at the United States Department of Labor, Bureau of Labor Statistics web site, Series ID: CIU20100000000001 for the last quarter of the year preceding the year for which the adjustment is being made (e.g., the adjustment effective July 1, 2011 will use the third quarter, 2010 value)

EI₂ = Employment Cost Index, Compensation, Private Industry All Workers, as published at the United States Department of Labor, Bureau of Labor Statistics web site, Table 3, established for the third quarter of 1997

If at any time either the Employment Cost Index or the Producer Price Index is no longer published, or are otherwise unavailable, then the Cost of Living Adjustment shall be determined by using standard official statistics measuring changes to, respectively, labor costs and cost of materials, as the parties shall mutually agree.

All other terms and conditions of Section 4.2 shall remain in full force and effect and are not amended by the provisions of this Amendment.

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EXHIBIT A

CITIES/TOWNS WITH A WASTE DELIVERY AGREEMENT
WITH THE COUNTY OF SAN BERNARDINO

1. ADELANTO
2. APPLE VALLEY
3. BARSTOW
4. BIG BEAR LAKE
5. COLTON
6. FONTANA
7. GRAND TERRACE
8. HESPERIA
9. HIGHLAND
10. LOMA LINDA
11. RIALTO
12. SAN BERNARDINO
13. TWENTYNINE PALMS
14. VICTORVILLE
15. YUCAIPA
16. YUCCA VALLEY

