

COOPERATIVE AGREEMENT BETWEEN
THE CITY OF BREA
AND
THE COUNTY OF ORANGE
REGARDING THE OLINDA ALPHA LANDFILL

THIS COOPERATIVE AGREEMENT ("Agreement") is entered into on this day of _____, 2009 between the City of Brea ("City") and the County of Orange ("County"), through their respective legislative bodies. The purpose of this agreement regarding the County's expansion of the Olinda Alpha Landfill ("OA Landfill") which it owns and operates near the City, is to establish an agreement regarding the continued operation of the OA Landfill and other matters of mutual interest.

On April 17, 2007, the Orange County Board of Supervisors approved Environmental Impact Report Number 588 for the Regional Landfill Operations for Orange County Strategic Plan-Olinda Alpha Landfill Implementation ("RELOOC EIR 588") which analyzed the environmental impacts related to the expansion of the OA Landfill (Project) and concluded that the potential environmental impacts of the Project have been substantially avoided or mitigated through the identification and adoption of Project Design Features, and Mitigation Measures (as more specifically described in the Statement of Findings of Fact approved for the Project).

This Agreement is an appropriate means to address interests of the City and the County.

A. Public Health and Safety

Proper operation and monitoring of OA Landfill operations shall be enforced to ensure public health and safety are protected. The following conditions are provided to achieve the continued environmentally safe operation of the OA Landfill.

1. Adherence to State Standards:

The OA Landfill will continue to be operated in conformity with State regulations for a Class III landfill as contained in the applicable Chapters and Sections of the California Code of Regulations ("CCR"), Title 14, Title 23 and Title 27, and will be subject to regulator enforcement actions, fines and/or other sanctions in the event of nonconformity. Strict adherence to applicable regulatory standards is the legal responsibility of the landfill operating entity.

2. Surface and Groundwater Quality

- a. Desiltation basins, surface water quality sampling, and hazardous and toxic materials management procedures will be established to reduce nonpoint source pollution discharges to "the maximum extent practicable."

All applicable "Best Management Practices" shall be implemented at the OA Landfill.

- b. All surface and groundwater related water quality mitigation measures per the RELOOC EIR 588 shall be followed.
- c. The County shall meet all National Pollutant Discharge Elimination System standards.

3. Methane Collection, Migration and Control Systems

- a. Activities at the OA Landfill shall be conducted under and in compliance with both (i) South Coast Air Quality Management District ("SCAQMD") Rule 1150.1 and (ii) the regulations in CCR Titles 14,23 and 27.
- b. The County will monitor and maintain the peripheral monitoring probes as required by the Local Enforcement Agency (LEA) and SCAQMD to detect lateral gas migration.
- c. The County will monitor and maintain a gas collection system per requirements set forward by SCAQMD and the California Integrated Waste Management Board ("CJWMB").

4. Hazardous Waste Exclusion

- a. The County will continue operating a load check program to inspect for, identify and remove any hazardous materials not permitted in Class III landfills as identified in CCR Titles 14,23 and 27.
- b. Hazardous materials removed shall be stored in a secure area at the OA Landfill in accordance with state law, namely for a maximum of 90 days. The County shall contract with a licensed hazardous material hauling & disposal company to dispose of hazardous materials removed from the landfill. The County shall maintain copies of hazardous material load manifests.

5. Hazardous Material Training

- a. The operating agency will provide training for all landfill operating personnel and fee booth operators in accordance with CCR Title 8, section 5192(e)(3) to increase their awareness and skills in the identification of potentially hazardous, toxic and other undesirable wastes, to assure continual monitoring and inspection of dumped loads.

B. Operating Procedures

In addition to meeting State standards, the County shall require adherence to the following standards, even where they go above and beyond State standards, as a condition for landfill operation.

1. Operating Hours

Operating hours shall be as specified in the Olinda Alpha Solid Waste Facility Permit.

2. Public Disposal

a. County will limit disposal of waste from the general public at the OA Landfill to only Orange County residents. Proof of residency or a Waste Disposal Agreement (WDA) is required for use of facility. Out of county waste will only be accepted from commercial haulers with proof of Waste Disposal Agreement.

b. OA Landfill fee booth staff will continue to require identification of the city of origin for all trash loads entering the OA Landfill per CIWMB regulations.

3. Litter Control

a. The County shall notify haulers of the need to comply with California Highway Patrol and City requirements with regard to covering all loads on trash hauling vehicles.

b. The County shall control on-site windblown debris according to the latest acceptable landfill methods.

c. The County shall implement extended litter control provisions in high wind conditions, as defined in RELOOC EIR 588, to ensure proactive litter control as stated in Section 4(e) below.

d. The County shall ensure that debris on the OA Landfill Access Road is routinely cleaned up, on a schedule of at least once every week.

e. The City and County will continue to notice and enforce their respective illegal dumping ordinances as able.

4. Odor and Dust Control

- a. The working face of the OA Landfill will be kept as small as possible.
- b. The County will require daily cover of the working face of six inches of dirt, or use of other CIWMB approved alternative daily cover (ADC).
- c. The County will require areas of the OA Landfill not being used for 180 days or more to be covered with 12 inches of dirt.
- d. Grading areas and access roads shall be watered daily, or more frequently as necessary to control dust, except when raining. Dust limits shall comply with SCAQMD standards.
- e. The County will continue its high wind condition practices already in place. These include, but are not limited to:
 - (1) Use of temporary wind fences for windblown litter control;
 - (2) Use of portable wind cages for windblown litter control;
 - (3) No use of tarps as ADC on windy days;
 - (4) Prohibiting clean-out of hauling vehicles; and
 - (5) Additional spraying of water for dust control.

5. Visibility

- a. The County will employ operational practices to minimize the visual impact of the existing landfill as well as the proposed landfill expansion. Such practices may include, but are not limited to, use of berms and accelerated front face phasing plans.

6. Landscaping

- a. To minimize the visual impact of the landfill, the County will hydroseed all interim slopes with a seed mix consistent with the native slopes in the surrounding region. The seed mix will be selected from a plant pallet recommended by a certified biologist and approved for use in region.
- b. The County will landscape disturbed areas of the OA Landfill in compliance with the RELOOC EIR 588 and all related biological permits.
- c. A phased interim landscape plan will be developed to continue visual screening of the landfill operations and facilities of the expansion and to assist in blending the manufactured slopes with surrounding open space prior to landfill closure.
- d. A final landscaping plan will be prepared by the County in consultation with the City and will be included in the Closure Plan.

7. Closure- Post Closure

- a. During the operation of the OA Landfill, closure funds will be collected in compliance with CIWMB guidelines to assure sufficient funding is available for all necessary and required closure activities. Said closure funds will be deposited in CIWMB-monitored escrow accounts and will not be available for any other purpose except closure of the OA Landfill.
- b. Closure of the OA Landfill shall take place when the landfill reaches an elevation of 1,415 feet above mean sea level (amsl) and it will be done in conformance with the Federal and State standards in effect at the time of closure.
- c. Post closure maintenance shall be performed in conformance with any applicable Federal and State standards, including new or modified standards in effect during the post closure period.

8. Soil Management/Daily Cover

- a. The County may use alternative daily cover material as approved by landfill regulators, LEA, CIWMB, and the Regional Water Quality Control Board.

C. Revised Solid Waste Facilities Permit

The Project will require that the County revise its current Solid Waste Facilities Permit and this revision will require approval by the California Integrated Waste Management Board and its Local Enforcement Agency. The City agrees not to oppose the issuance of a revised Solid Waste Facilities Permit that is consistent with the Project described in RELOOC EIR 588.

D. Access

1. The designated access route for all commercial waste hauling vehicles to the OA Landfill will be from State Route 57 via Imperial Highway, Valencia Avenue, and the Olinda Alpha Landfill Access Road.
2. The County shall prepare and have ready for periodic distribution a statement indicating the designated access route. These are to be handed to each incoming hauler and shall include a map clearly designating the approved access route. This route will be designated as the only permissible landfill truck traffic route by the jurisdiction in whose boundary routes lay.
3. The County will continue to post signs alerting landfill traffic to the designated access route.

E. Road Rehabilitation and Maintenance

1. The County's responsibility for road rehabilitation and maintenance is satisfied by Section G of this Agreement and by the mitigation measures set forth in RELOOC EIR 588. The County has no other obligation.

F. Volume and Landfill Expansion

1. The OA Landfill operation shall be limited to an annual average of seven thousand (7,000) tons per day of municipal solid waste, excluding exempt materials such as asphalt, soil, ADC or other exempt material.
2. Except as provided in Paragraph F.3 below, the maximum tonnage per day of municipal solid waste discharged shall be limited to eight thousand (8,000) tons, excluding exempt materials defined by the CIWMB for beneficial use in the construction and/or operation of the landfill (e.g. asphalt for construction of wet weather unloading area, clean soil for daily cover, or alternative daily cover material as approved by the LEA.)
3. The City agrees to allow continuation of the management of the High Tonnage Days Project for the OA Landfill, which will allow the OA Landfill to accept up to 10,000 tons per day up to 36 days per year.
4. All tonnage constraints will be superseded by the regulatory constraint of the final closure elevation of 1,415 feet average mean sea level (amsl) as set forth in the OA Landfill revised Solid Waste Facility Permit.
5. The County shall continue its existing practice to monitor daily tonnages using real time data collected at the fee booths at the OA Landfill. Key County personnel shall track the information to watch for unusual volumes, unexpected peak flows or other operational anomalies. This information shall be monitored throughout the day to ensure that daily tonnage limits are not exceeded. If the daily tonnage approaches the limit described in Item F.2 above, waste shall be diverted to other landfills within the County's landfill system.
6. To monitor annual tonnages, County staff shall use daily and monthly tonnage reports to calculate tonnage actuals. If volumes are forecasted to exceed the annual average, County staff shall meet with waste haulers to manage the waste stream and to divert it to other facilities.
7. If daily tonnage limits or annual tonnage limits are exceeded, the County is subject to penalties and fines from the CIWMB.
8. A weigh station shall be utilized at the site to monitor the OA Landfill daily tonnage volume.

9. The City agrees that County may begin construction activities for the landfill expansion upon receipt of the revised OA Landfill Solid Waste Facility Permit from the CIWMB.

G. Financial Agreement

The potential environmental impacts identified in the RELOOC EIR 588 have been substantially avoided or mitigated through the identification and adoption of Project Design Features and Mitigation Measures. The provisions of this Agreement address any and all interests of the City related to the operation and closure of the OA Landfill.

To compensate City for all costs incurred by the City related to the operation and closure of the OA Landfill, County agrees to the following payments to the City:

1. 2008-2014: Fixed Amount
Payment will be made in the cumulative amount of \$10.5 million for use by the City to benefit community amenities and transportation improvements. The amount will be paid in installments with \$3.5 million to be paid for road improvements as cited in Section G.1 (a). The remaining \$7 million will be dispersed to the City to benefit community amenities as cited in G.1 (b). The funds from both sections G.1 and G.2 represent complete satisfaction of any/all City interests and concerns including costs incurred by the City as a result of the OA Landfill project.
 - a. Valencia Avenue Road Improvement: \$3.5 million will be paid to the City for a road project to enhance the landscaping on Valencia Avenue between Imperial Highway and Lambert Road as shown in Exhibit A, hereafter referred to as the Valencia Avenue Road Improvement. The amount shall be paid by the County to the City upon the signing of this agreement and the Brea City Council's approval of the City's Capital Improvement Plan (CIP), which will include Valencia Avenue Road Improvement project. The City shall provide the County with an annual accounting of expenditures for the Valencia Avenue Road Improvement project. The County may, at any time, conduct an audit of the City's specified Valencia Avenue Road Improvement project accounts and expenditures. In the event the approved contract is less than \$3.5 million, the difference shall be reserved by the City to use on community amenities in conjunction with funds from Section G.1 (b). Any project cost for the Valencia Avenue Road Improvement project, including but not limited to the total amounts paid by the City under the contract with all amendments and change orders in excess of \$3.5 million, will be the responsibility of the City.
 - b. County Fund: The remaining \$7.0 million will be reserved by the County in a County administered fund and designated for the sole use

by the City for community amenities including but not limited to environmental and transportation improvements, open space acquisition, parks and trails development, equestrian and recreational facilities. The County shall pay the City \$3.5 million upon the County's receipt of approval of the OA Landfill's revised Solid Waste Facility Permit by the California Integrated Waste Management Board estimated to be secured in FY 09110. The County shall pay the City the remaining \$3.5 million on December 31, 2011 based on the active status of the OA Landfill. The City shall provide the County with an annual accounting of expenditures for the community amenities projects. The County may, at any time, conduct an audit of the City's specified community amenities accounts and expenditures.

- c. All City improvements made with funds resulting from G.1 (a) and (b) will be marked with signage attributing the improvement to the fund sponsored by the Orange County Board of Supervisors. Signage will be paid for out of the funds received and will be posted for a minimum of the first two years the improvement is in place.

2. 2014- Landfill Closure: Per Ton Host Fee

- a. The County will pay to the City \$1.50 per ton on waste accepted at the OA Landfill, excluding (i) exempt waste, (ii) imported waste and soil, (iii) city of Brea generated waste. The per ton host fee will be paid by the County to the City on a quarterly basis beginning with the January 1- March 31, 2014 quarter, and payable forty-five days after the end of each quarter. Payment will be based on actual tonnage levels. Actual tonnage may vary. The payment of this host fee to the City will continue until the landfill stops accepting waste, subject to the provisions of Paragraph 2.b. below.
- b. By December 31, 2018, the County will notify the City if the tonnage projections indicate that the EIR 588 approved elevation of 1,415 feet will not be achieved by the estimated closure date of 2021. If the County determines that operations at OA Landfill will extend beyond the estimated closure date, the County will provide notice to the City of its interest to enter into discussions with the City for the sole purpose of negotiating an adjustment in the per ton host fee to compensate the City for the extension of landfill operations beyond December 31, 2021 only. Any host fee adjustments agreed to as a result of such discussions shall become effective no earlier than December 31, 2021.

3. Real Property Transfer

- a. Within 90 days of the execution of this agreement by the parties, the County shall transfer to the City title to certain real property the County currently owns located generally along the south side of Imperial

Highway east of Valencia Ave. and comprising of approximately 1.5 acres in total area. (See Exhibit B attached) The City's intent is to complete a beautification project on this property, at the City's sole expense, to complement improvements planned for the north side of Imperial Highway. Any normal processing costs, transfer fees or other charges associated with the transfer of title to real property shall be the responsibility of the County excluding title reports, insurance certificates, hazardous materials studies or any other special reports requested by the City, which shall be the responsibility of City. The County's cost shall be limited to the costs of County staff time and overhead involved in preparing the documents and the legal descriptions of the property as well as any costs and fees associated with the recording of the deeds.

- b. In accepting title to this property (See Exhibit C attached), the City agrees to the following:
- (1) The City's agrees that the property is an undeveloped trail segment of the regional trail (Imperial Highway Trail) and is listed as a future trail connection between Carbon Canyon Regional Park and Yorba Regional Park;
 - (2) The City agrees that the property will be used for public recreation purposes;
 - (3) The City agrees that any change in the use of the property will necessitate the City following County procedures for Park Abandonment, as found in Orange County Codified Ordinance Section 2-5-301; and
 - (4) The City agrees that if, in the future, the property or any portion of the property is sold, all proceeds of the sale will be paid to County of Orange, Community Service Area 26.

4. FY 2017 – Importation Host Fee

a. Through June 30, 2016: Per Ton Importation Fee - Through June 30, 2016, the County will pay to City an importation fee of \$1.16 per ton for each ton of Out-of-County Waste deposited in the Landfill.

b. Beginning July 1, 2016: Per-Ton Importation Fee – The per-ton host fee for importation will follow the per-ton host fee for in-County waste. Beginning July 1, 2016, the County will increase the per-ton host fee for importation from the current \$1.16 per ton to \$1.50 per ton for waste imported from outside the County and accepted at Olinda Alpha Landfill, excluding exempt waste and soil received at Olinda Alpha Landfill. The per-ton importation fee will be paid to the City on a quarterly basis beginning with the July 1-September 30, 2016 quarter, and payable forty-five days after the end of each quarter. Payment will be based on actual tonnage levels.

5. FY 2017 - Environmental Education Funding

Effective July 1, 2016, coterminous with the City's WDA, the County will fund environmental education programs to be developed cooperatively between City and County staff up to a cost of \$25,000 per fiscal year.

H. Future Use of Landfill

1. The OA Landfill is identified on the County Master Plan of Regional Recreational Facilities as a proposed passive use wilderness park.
2. During the five-year period prior to the last date of waste acceptance, OC Parks will develop a long term plan for the future use of the site. This process will involve a needs analysis for regional, and as appropriate, local uses undertaken in cooperation with adjacent cities and interest groups.
3. During that same time, the County shall begin to prepare a Final Closure Plan and Post-Closure Maintenance Plan to determine final end use of the facility.
4. Processing approvals and/or certifications of the Final Closure Plan and Post-Closure Maintenance Plan shall be accomplished within a reasonable time.

I. Pursuit of Alternatives

1. The County will research, monitor and consider for implementation the use of alternative technology for waste disposal through annual updates to the RELOOC Strategic Plan.

J. Enforcement/Reporting

1. The County shall conform with all applicable regulations, restrictions and statutes at the Federal, State, and local level, as well as all provisions in this Agreement.
2. Annually, the County shall provide the City a summary report documenting the status of compliance with the mitigation measures listed in RELOOC EIR 588. Other regulatory compliance reports shall be made available to the City upon request.
3. If the ownership or operating responsibilities of the OA Landfill are transferred or assigned to any other entity or agency, public or private, the County shall ensure that the obligations identified in this Agreement will also be reassigned so that the terms of this agreement shall continue to be met.

K. Dismissal of Provisions of Memorandums of Understanding and Amendments

- I. Tills Agreement sets forth and contains the entire understanding and agreements of the Parties related to operations at the OA Landfill, and supersedes all previous agreements, including the provisions of the 1992 Memorandum of Understanding (MOU) and the three (3) subsequent amendments between the two parties. However, provision five (5) of the MOU dated May 16, 1995 entitled "Memorandum of Understanding between the City of

Brea and the County of Orange Regarding the Olinda/Olinda Alpha Landfill" shall remain in full force and effect and continue to govern compensation for disposal of Out-of-County Waste at the OA Landfill. All oral or written representations, understandings or agreements are expressly stated in this Agreement. No testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

L. Miscellaneous Provisions

1. CEQA. Any discretionary actions by County set forth in this Agreement which are not covered by RELOOC EIR 588 are subject to future CEQA compliance. The County agrees to expeditiously process any such future environmental analysis(es) pursuant to CEQA at its own expense, not including any review costs incurred by the City. If the County is unable to perform any provision of this Agreement as a result of either a successful third party legal challenge or the County's inability to certify an appropriate environmental document, then the County and City shall enter into good faith negotiations regarding appropriate substitute performance .
2. Amendment. This Agreement may be amended at any time by mutual consent in writing of the City and County .
3. Severability. If any term, provision, covenant, or condition of this Agreement is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this Agreement shall nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions, to the extent allowable under the California law.
4. Interpretation and Governing Law. This Agreement and any related dispute shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed according to its plain language and fair and common meaning to achieve the objectives and purposes of the Parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement since all Parties have been represented by counsel.
5. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
6. Singular and Plural. As used herein, the singular of any word includes the plural.
7. Waiver. The failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure of a Party to exercise its rights upon the default of the other Party, shall not constitute a

waiver of that Party's right to demand and require, at any time, the other Party's strict compliance with the terms of this Agreement.

8. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.
9. Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement.
10. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and shall have the same effect as if all of the parties had executed the same instrument.
11. Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the State of California, County of Orange. The Parties waive all provisions of law providing for the filing, removal or change or venue to any other court.
12. Authority to Execute. Any person or persons executing this Agreement on behalf of the City and County warrants and represents that he/she has the authority to execute this Agreement on behalf of his/her agency and to bind that Agency to the performance of its obligations pursuant to this Agreement.
13. Notice. All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and shall be deemed served when delivered personally or on the third business day after deposit in the United States mail, postage prepaid, first class mail, addressed as follows:

All notices, demands, requests or approvals to CITY shall be addressed to:

City of Brea
City Manager's Office
1 Civic Center Circle
Brea, California 92821

All notices, demands, requests or approvals to COUNTY shall be addressed to:

Director, OC Waste & Recycling
County of Orange
300 N. Flower Street, Suite 400
Santa Ana, California 92703

14. Effective Date. This Agreement shall become effective as of the date on which both entities have executed it.