

March 26, 2009

Staff Report Waste Disposal Agreements

Summary

- **Requires** – Cities to direct their trash to the County disposal system from July 1, 2010 to June 30, 2020;
- **Rate** – Annually adjusted per ton rate beginning at \$29.95 effective July 1, 2010;
- **Results** – Provides long-term capacity at below market rate (projections indicate OC capacity exceeding 50 years with importation ending in 2016; the negotiated rate is estimated to be \$8 to \$10 below market in 2010, and about \$30 below market in 2015).

Background

In 1997, the County and Cities of Orange County entered into waste disposal agreements for a fixed rate per-ton for the disposal of solid waste in the County disposal system. The term of the agreement will end on June 30, 2010. Since late 2006, OC Waste & Recycling and the Waste Management Committee of the Orange County City Manager's Association have worked to negotiate another multi-year agreement to fulfill city waste disposal needs and provide for the financial stability of the County disposal system.

Following the completion of negotiations, which included analysis of the rate structure by a third-party financial consultant and legal review of the agreement by a "committee" of city attorneys, the final agreement was presented to the County Board of Supervisors for consideration on March 24, 2009. The Board approved the agreement.

Orange County enjoys a unique resource in its landfill system. Managed with long-term capacity and environmental sensitivity as key objectives, the system has provided the County with a reliable place to deposit approximately 4 million tons of solid waste per year at competitive rates. While surrounding County's scramble to find new disposal alternatives at great expense, Orange County has long-term capacity at reasonable costs. Working cooperatively through this agreement, the Cities and County are jointly seeking to continue this positive benefit to the residents and businesses of Orange County.

The Rate

The rate is \$29.95 per ton for Franchise Haulers beginning July 1, 2010, adjusted annually by CPI, for a ten year term. This rate is:

- **Reasonable** – The current disposal fee of \$22.00 per ton has been in effect since 1997 with no increase. Had the disposal fee in 1997 been increased by the CPI and new regulatory costs added on, the disposal fee in 2010 would likely exceed this rate;
- **Competitive** – Surrounding landfills are presently and will soon be charging significantly more than the negotiated rate (e.g. Puente Hills, Los Angeles County, will be at \$37.62 effective July 1, 2010);

- Secure—Revenues from cities go into an enterprise fund that is to the long term benefit of the participants, namely: the cities of Orange County, and will continue as an asset that has tremendous economic value; and,
- Protected—The County agrees that for the term no other rate will be offered at less than that being charged to cities.

The current rate of \$22.00 per ton will continue unchanged until the new rate takes effect on July 1, 2010. The County projects the impact of the rate increase on the average residential ratepayer's monthly solid waste collection bill to be about \$1.00, an increase of less than 6% (and recall that this is the first such disposal rate increase in 13 years). Subsequent annual changes, based on the projected change in CPI, would range from \$0.12 to \$0.14 per home per month. This may vary by city.

The Terms

For the agreement to take effect, it requires that cities representing 85% of the "acceptable" waste generated in the County adopt the terms within 120 days following approval of the agreements by the County Board of Supervisors. During the term all participants are required to direct their solid waste to the County system. The agreement does provide extraordinary circumstances whereby the County may raise the rate in excess of CPI (e.g. changes in law, unforeseen claims in excess of insurance proceeds, capital costs exceeding the "cumulative capital costs" set forth); the agreement requires the County to reduce operating costs and/or utilize unrestricted reserves for typical operating impacts (e.g. tonnage shortfalls).

The System

The County landfill system is comprised of three (3) active landfills and twenty-one (21) closed landfill sites. The County has created an Environmental Liability Fund for the purpose of protecting the cities' general funds from any cost liabilities in the event of an environmental incident at the closed landfill sites. The system is managed by OC Waste & Recycling (formerly known as the Integrated Waste Management Department), with a staff of approximately 250. As a result of the County Bankruptcy, the system has been accepting "imported" solid waste as a means to payoff bankruptcy debt. Pursuant to this agreement, importation will end in June 30, 2016. The result is a landfill system with a projected capacity of over 50 years.

Next Steps

The County Board of Supervisors adopted a resolution approving the waste disposal agreements and other disposal fees on March 24, 2009. Subsequent to that date, cities have 120 days to execute the agreement. County staff will work with cities to secure approval and execution of agreements by June 23, 2009, including providing briefings as cities request. If cities representing at least 85% of County acceptable waste have signed agreements by June 23, 2009, the Director of OC Waste and Recycling will execute the agreements. If less than 85% of the County acceptable waste is secured by June 23, 2009, the agreements will not be adopted and County staff will return to the Board of Supervisors to present alternative rate strategies.

**ORANGE COUNTY WASTE DISPOSAL AGREEMENT (“WDA”)
SUMMARY OF MAJOR PROVISIONS***

ARTICLE I: DEFINITIONS AND INTERPRETATION

- Sets forth the definitions used throughout the Agreement, as well as basic matters of interpretation.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

- Contains standard representations and warranties concerning the authority of the parties to enter into the Agreement.

ARTICLE III: DELIVERY AND ACCEPTANCE OF WASTE AND PROVISION OF DISPOSAL SERVICE

- Sets forth (i) the obligations of the City to deliver or cause the delivery of all “Controllable Waste” to the Disposal System and (ii) the obligation of the County to accept such Controllable Waste.
- “Controllable Waste” generally means all waste acceptable for disposal at the Disposal System. It generally does not include hazardous waste of any type or waste which residents or business choose to haul to a landfill or other disposal facility themselves.
- In order to meet their waste delivery obligation, the Cities are required to include a requirement, in any franchise agreement they execute or hauling permit they issue, that the franchise hauler or permit holder utilize the Disposal System.
- The County is obligated to accept waste delivered by the Cities (or by haulers operating pursuant to a franchise or permit from the Cities), subject to certain exceptions (including waste in amounts which would cause the County to exceed permit limitations).
- Article III also contains a provision which sets forth the terms on which the County may enter into Waste Disposal Agreements after the initial period in which all Cities are offered the WDA. Generally, any such subsequent agreement must provide that the party delivering waste shall pay a Posted Disposal Rate at least 10% higher than the Contract Rate under the Waste Disposal unless the County determines it is in the best interest of the Disposal System to establish a Posted Disposal Rate less than 10% higher than the Contract Rate.
- Pursuant to Section 3.6(A) of the Agreement, the County is permitted to accepted imported waste (i.e., waste from outside of the County) pursuant to contracts, but any waste importation contracts must expire by June 30, 2016.

* This is a brief summary of certain terms of the WDA, and is not intended to be exhaustive. The WDA should be read in its entirety.

ARTICLE IV: CONTRACT RATE

- This Article sets forth the Contract Rate payable by Cities or haulers delivering waste to the Disposal System.
- Commencing July 1, 2010, the Contract Rate will be \$29.95. The Contract Rate will be subject to annual escalation in accordance with an established formula. (The current rate of \$22.00 per ton will remain in effect until the new rate becomes effective.)
- The Contract Rate is subject to adjustment to reflect the impact of various contingencies, including:
 - Uncontrollable Circumstances, such as fire, flood, and earthquake
 - Changes in Law that increase the County's cost of providing disposal services
 - Capital costs in excess of those planned by the County
 - Lower than expected waste deliveries
 - Any costs incurred by the County remediating environmental conditions at the Disposal System (in excess of available insurance proceeds and amounts available in the Environmental Fund for such purposes)
- Under certain circumstances, the County is required to utilize specific reserves prior to adjusting the Contract Rate.
- A mechanism for implementing Contract Rate is set forth in the WDA, which requires the County to prepare a detailed report specifying the reason for any rate adjustment, as well as a calculation of the amount. The Cities have the opportunity to object to the increase, and judicially challenge it if they do not agree that the adjustment is permitted under the terms of the WDA.

ARTICLE V: BREACH, ENFORCEMENT AND TERMINATION

- This Article describes the events of default and remedies in the event of breach or termination.

ARTICLE VI: TERM

- This Article sets forth the term of the Agreement, which runs through June 30, 2020.
- The Article also provides that the WDA will not take effect until WDAs are executed by Cities representing approximately 85% of the total waste stream in the County.

ARTICLE VII: GENERAL PROVISIONS

- This Article sets forth general operating requirements, amendment provisions, notice provisions and other general contract provisions.
- Section 7.3 of the WDA provides that the County indemnifies the City for any liability which may arise from the City's activity as an "arranger" (for purposes of and as such term is defined under CERCLA) of solid waste disposal pursuant to the WDA. This indemnification obligation by the County survives termination of the WDA.