COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF IRVINE
AND
THE COUNTY OF ORANGE
REGARDING THE FRANK R. BOWERMAN LANDFILL

THIS COOPERATIVE AGREEMENT ("Agreement") is entered into on this____ day of_____, 2006 between the City of Irvine ("City") and the County of Orange ("County"), through their respective legislative bodies. The purpose of this agreement regarding the County's proposed expansion of the Frank R Bowerman Landfill ("FRB Landfill"), which it owns and operates near the City, is to establish duties and the procedures regarding the continued operation of the FRB Landfill and other matters of mutual concern.

Although the potential environmental impacts identified in Environmental Impact Report Number 604 for the Regional Landfill Operations for Orange County Strategic Plan ("RELOOC EIR") for 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 additional interests of the City and the County beyond the requirements of the California Environmental Quality Act ("CEQA").

This Agreement shall take effect on the date set forth herein and shall terminate on the date of closure of the FRB Landfill unless either party shall have given the other party 180 days notice in writing of its intent to terminate the Agreement.

A. Public Health and Safety

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

1. Adherence to State Standards:

   The FRB 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 FRB Landfill.

b. All Surface and Groundwater Hydrology and Water Quality Mitigation Measures per the RELOOC EIR 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 FRB 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 ("CIWMB").

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 FRB for a maximum of 90 days per state law. 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.

c. County shall hold the City harmless regarding hazardous materials cleanup to the extent permissible by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

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.

6. Acceptance of Sludge

a. This Agreement supersedes Orange County Resolution No. 81-1106 to the extent that, not only sludge treatment, but also the drying, mixing or dumping of sludge will be prohibited, unless and until the County fully complies with CEQA by preparing a new Environmental Assessment and Environmental Impact Report, with the City serving as a responsible agency. Further, the County shall not allow the drying, mixing, dumping, or treatment of sludge unless it requires (either through mitigation measures adopted as part of the aforementioned Environmental Impact Report, or otherwise) that

(1) Any sludge dumped at the FRB Landfill shall be disposed of at a solid to liquid ratio of ten to one;

(2) All sludge to be dumped at the FRB Landfill will be treated so as to achieve a toxicity content no greater than other materials which may be lawfully disposed of in a landfill;

(3) The City will receive copies of all toxicity reports on sludge to be disposed of on the site; and

(4) The operating agency will explore and implement technological advances as they develop so as to further reduce the hazards relating to sludge disposal on the sites;

(5) Any sludge dumped on the site will be counted in the daily tonnage limit stipulated in Section E.1 and E.2 below.

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 limited to daylight hours Monday through Saturday.

2. Public Dumping

a. County will prohibit non-commercial (public) dumping at the FRB Landfill. A business license or Waste Disposal Agreement (WDA) is required for use of facility.

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

regulations. If the city of origin provided is Irvine, the FRB fee booth staff will request verification in the form of an Irvine business license.

3. Litter Control

   a. The County shall notify haulers of the need to comply with California Highway Patrol 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 Santa Ana wind conditions to ensure proactive litter control as stated in Section 4(e) below.

   d. The County shall ensure that debris on the Bee Canyon 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 FRB 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.

   c. The County will require areas of the FRB 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 Santa Ana 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;

      (5) Additional spraying of water for dust control.

5. Visibility

   a. County will employ operational practices which will 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 Orange County Central and Coastal Subregion Natural Community Conservation Plan and Habitat Conservation Plan (NCCP/HCP). The seed mix will be selected from a plant pallet approved by the US Fish & Wildlife Service for use in the Central and Coastal Subregion NCCP/HCP.

   b. The County will landscape disturbed areas of the FRB Landfill in compliance with the RELOOC EIR and all related biological permits.

7. Closure - Post Closure

   a. During the operation of the FRB Landfill, funds will be collected in compliance with CIWMB guidelines to assure sufficient funding is available for all necessary and required closure activities. Said funds will be deposited in CIWMB-monitored escrow accounts and will not be available for any other purpose except closure of the FRB Landfill.

   b. Closure of the FRB Landfill shall be done in conformance with the Federal and State standards in effect at the time of closure. 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. All soil stockpiles are proposed within the landfill property to avoid impacts on adjacent off-site canyons.

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

C. Access

1. The designated access route for all waste hauling vehicles to the FRB Landfill from Interstates 405 and 5 is via Sand Canyon Avenue, Portola Parkway and

the Bee Canyon Access Road. Waste hauling vehicles are not authorized to travel on Jeffrey Road from the interstates.

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 routes. These routes will be designated as the only permissible landfill truck traffic routes by the jurisdiction in whose boundary routes lie.

3. The County will continue to post signs alerting landfill traffic to the designated access route.

D. Road Rehabilitation and Maintenance

The County's responsibility for road rehabilitation and maintenance is satisfied by Section F of this Agreement.

E. Limitation on Volume

1. The FRB Landfill operation will be limited to maximum annual average of eight thousand five hundred (8,500) tons per day of municipal solid waste, excluding exempt materials such as asphalt, soil, ADC or other exempt material.

2. The maximum tonnage per day of municipal solid waste discharged shall be limited to eleven thousand five hundred (11,500) 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 County will continue its existing practice to monitor daily tonnages using real time data collected at the fee booths at the FRB Landfill. Key County personnel track the information to watch for unusual volumes, unexpected peak flows or other operational anomalies. This information is monitored throughout the day to ensure that daily tonnage limits are not exceeded. If the daily tonnage approaches the limit described in Item E.2 above, waste is diverted to other landfills within the County's landfill system.

4. To monitor annual tonnages, County staff shall use daily and monthly tonnage reports to monitor tonnage actuals. If volumes are forecasted to exceed the maximum annual average, County staff shall meet with waste haulers to manage the waste stream and to divert it to other facilities.

5. If daily tonnage limits or annual tonnage limits are exceeded, the County is subject to penalties and fines from the CIWMB.

6. A weigh station shall be utilized at the site to monitor FRB Landfill daily tonnage volume.

F. Financial Agreement

To compensate City for all costs incurred by City related to the operation of the FRB landfill, County agrees to the following payments to the City:

2007 – 2014: Fixed Amount

A payment amount of $5.5 million for use by the City to benefit community amenities and transportation improvements. The amount will be paid no later than October 1, 2007. These funds represent complete satisfaction of any/all City interests and concerns including costs incurred by the City as a result of the FRB Landfill project.

2014 – 2021: Per Ton Host Fee

The County will pay to City $1.50 per ton of waste accepted at FRB Landfill, excluding (i) exempt waste, (ii) imported waste and (iii) City of Irvine-generated waste. The per ton host fee will be paid to the City on a quarterly basis. Payment will be based on actual tonnage levels. Actual tonnages may vary. No adjustment to the $1.50 per ton fee will apply until 2021.

2021 – 2053: Adjusted Per Ton Host Fee

The County and City will enter into good faith negotiations by 2019 to adjust the per ton host fee in a mutually satisfactory manner with the adjusted rate effective in 2021 or upon closure of the Olinda Alpha Landfill. The $1.50 per ton host fee will remain in effect until agreement is reached on the adjusted per ton fee.

G. Future Use of Landfill

1. The FRB Landfill is located within the Reserve System of the Orange County Central and Coastal Subregional Natural Community Conservation Plan and Habitat Conservation Plan NCCP/HCP, established for the preservation of land in designated areas of Orange County.

2. The FRB Landfill property is designated in the NCCP/HCP as part of the Reserve System and as a Special Linkage. The final end use for the Special Linkage top deck area must be consistent with the of the NCCP/HCP Special Linkage functions for wildlife preservation.

3. The FRB Landfill is identified on the County Master Plan of Regional Recreational Facilities as a proposed passive use wilderness park. During the five-year period prior to the last date of waste acceptance, Resource Development and Management Department/HBP will consider including the FRB site as a regional park in its Five-Year Capital Plan, subject to available funding and other competing needs. This process will involve a needs

analysis for regional, and as appropriate, local uses undertaken in cooperation with adjacent cities and interest groups. During that same time, the County's Integrated Waste Management Department shall begin and complete preparation of a Final Closure Plan and Post-Closure Maintenance Plan to determine final end use of the facility. Processing approvals and/or certifications of the Final Closure Plan and Post-Closure Maintenance Plan shall be accomplished within a reasonable time.

H. Pursuit of Alternatives

1. The County will research, monitor and consider for implementation the use of alternative landfill technology through annual updates to the Regional Landfill Options for Orange County Strategic Plan.

I. Enforcement/Reporting

1. The County will 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 will provide the City a summary report documenting the status of compliance with the mitigation measures listed in EIR 604. Other regulatory compliance reports will be made available to the City upon request.

3. If the ownership or operating responsibilities of the FRB 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.

J. Dismissal of Provisions of Settlement Agreement

1. This Agreement sets forth and contains the entire understanding and agreement of the Parties related to operations at the FRB Landfill, and supersedes all previous agreements, including the provisions of the 1984 Settlement Agreement (as amended) between the two parties. 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.

K. Miscellaneous Provisions

1. CEQA. Any discretionary actions by County set forth in this Agreement which are not covered by EIR No. 604 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 a term 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 Irvine
    City Manager's Office
    1 Civic Center Plaza
    Irvine, California 92606-5208

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

    Director, Integrated Waste Management Department
    County of Orange
    320 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.

THE CITY OF IRVINE, a municipal corporation

Dated:_____ By:_____
Beth Krom, Mayor

Attest:

_____
City Clerk

Dated:_____ _____
Sean Joyce, City Manager

APPROVED AS TO FORM:

_____
City Attorney

"County": COUNTY OF ORANGE

Dated:_____ By:_____
Bill Campbell, Chairman
Orange County Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY
OF THIS DOCUMENT HAS BEEN DELIVERED
TO THE BOARD CHAIR:

By:_____
Darlene J. Bloom, Clerk of the Board
of Supervisors

APPROVED AS TO FORM:

_____
Deputy, County Counsel

Commonly Referred to Terms/Acronyms

ADC – Alternative Daily Cover
CCR – California Code of Regulations
CERCLA – Comprehensive Environmental Response, Compensation, and Liability Act
CEQA – California Environmental Quality Act
CIWMB – California Integrated Waste Management Board
FRB Landfill – Frank R. Bowerman Landfill
EIR – Environmental Impact Report
Exempt Waste – 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.).
HCP – Habitat Conservation Plan
LEA – Local Enforcement Agency
MOU – Memorandum of Understanding
NCCP – Natural Community Conservation Plan
RDMD – Resource Development and Management Department
RELOOC – Regional Landfill Options for Orange County
Reserve System – An area identified in the Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) Implementation Agreement (IA) as a permanent reserve of coastal sage scrub (CSS) and other associated habitat types, exclusive of areas described as "Special Linkage."
RWQCB – Regional Water Quality Control Board
SCAQMD – South Coast Air Quality Management District
Special Linkage –. Areas identified in the NCCP/HCP IA as land outside the Reserve System that essentially exhibits biological characteristics/functions that could enhance linkage/connectivity functions to serve as backup habitat refuge to maintain the long-term genetic pool of "Target and Identified Species" occupying land within the Reserve System.
Working Face – Unloading area of the landfill that accepts daily waste to be buried.