

FIRST AMENDMENT TO JOINT EXERCISE OF POWERS AGREEMENT

This First Amendment (the "Amendment") to Joint Exercise of Powers Agreement Creating Coachella/Indio Waste Transfer Station Authority is entered into as of April 19, 2012, and is made by and between the CITY OF COACHELLA, a municipal corporation ("Coachella") and the CITY OF INDIO, a municipal corporation ("Indio").

RECITALS

A. Coachella and Indio entered into that certain Joint Exercise of Powers Agreement Creating Coachella/Indio Waste Transfer Station Authority (the "Agreement") as of April 12, 1999. All capitalized terms used herein without definition when first set forth shall have the same meanings assigned to them in the Agreement.

B. The parties desire to enter into this Amendment in order to include additional provisions on the financial operations of the Authority, on the terms and conditions below.

NOW, THEREFORE, the parties hereto agree as follows:

AGREEMENT

1. In Section 3.1, Commission, the following new sentence is added to the end of the first paragraph of that section:

"Each Member may designate Councilpersons as alternate members of the Commission to act in the absence of the designated Commission members."

2. In Section 3.3, Compensation, the first sentence is hereby deleted in its entirety and replaced by the following:

"Members of the Commission shall be compensated with a stipend of fifty dollars (\$50.00) for attendance at each meeting of the Commission."

3. The following new Section 6.6, Host City, is hereby added to the Agreement:

"Host City. The parties shall select one Member to provide administrative services on behalf of the Authority (the "Host City") for a five (5) year term. The Host City shall be eligible for reappointment in the discretion of the parties. The Host City shall have the authority to contract on behalf of the Authority for contracts not to exceed \$25,000; any contract that exceeds that amount shall require the approval of the Commission. Notwithstanding the foregoing sentence, the Host City may pay amounts exceeding \$25,000 under subleases between the Members without Commission authorization, provided

that budgeted funds are available for that purpose and provided further that the Host City follow its own generally applicable administrative procedures. The Host City shall be compensated in the amount of \$10,000 for each year in which it serves as Host City.”

4. In Section 7.3, Accounts and Reports, the following sentence is hereby added to the end of the first paragraph:

“The Host City shall prepare and submit to the Commission a monthly financial statement for the Authority. The statement shall be filed within thirty (30) days of the month that is the subject of the report.”

5. In Section 7.3, Accounts and Reports, the following sentence is hereby added to the end of the third paragraph:

“An additional audit shall be undertaken at the cost of the Authority within sixty (60) days after a new Host City is designated.”

6. In Section 7.3, Funds, the following new sentence is hereby added as the first sentence:

“Authority Funds shall be maintained in an account or accounts in the name of the Authority and separate from the funds of the Host City or other Members.”

7. In Section 7.3, Funds, the following new paragraph is added at the end of that section:

“The Authority shall establish an Operating Reserve Fund to accumulate sufficient reserve funds necessary to satisfy the general cash flow demands and requirements of the Authority. The reserve fund will preserve credit worthiness, ensure that adequate financial resources are available for timely payment of JPA obligations, and provide liquidity throughout the fiscal year. The amount deposited into the Operating Reserve Fund shall be designated through the annual budget by the Authority, but it is the goal of the Authority that the Operating Reserve Fund contain twenty percent (20%) of the Authority’s annual budget. The Operating Reserve: (a) shall be designated as a non-restricted reserve fund; and (b) may be expended by the Host City, without prior approval of the Commission, in response to day-to-day cash flow requirements. These policies for the amount and use of the Operating Reserve Fund shall be reviewed by the Commission on an as-needed basis to assure long-term adequacy and appropriate use restrictions, and may be changed by the adoption of a resolution by the Commission without the need to amend this Agreement.”

8. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same instrument.

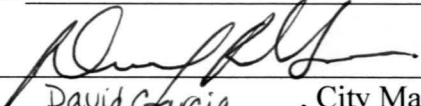
9. Except as expressly modified by this First Amendment, all other terms and conditions of the Agreement remain in full force and effect.

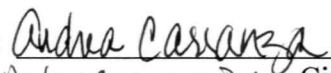
[Signatures appear on next page.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and attested by their proper officers thereunto duly authorized as of the date first written above.

CITY OF COACHELLA,
a municipal corporation

Dated: JAN 08 2013

By: 
David Garcia, City Manager

Attest: 
Andrea Carranza Deputy City Clerk

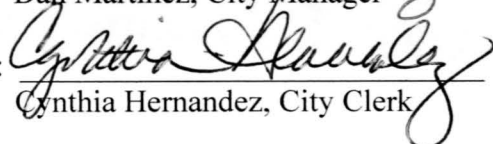
APPROVED AS TO FORM:


Carlos Campos, City Attorney

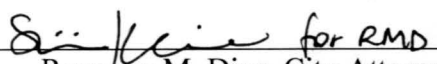
CITY OF INDIO,
a municipal corporation

Dated: 11-15-12

By: 
Dan Martinez, City Manager

Attest: 
Cynthia Hernandez, City Clerk

APPROVED AS TO FORM:

 for RMD
Roxanne M. Diaz, City Attorney

**JOINT EXERCISE OF POWERS AGREEMENT
CREATING COACHELLA/INDIO WASTE TRANSFER STATION AUTHORITY**

THIS JOINT EXERCISE OF POWERS AGREEMENT (the "JPA"), entered into as of April 12, 1999, is made by and between the City of Coachella ("Coachella") and the City of Indio ("Indio"), with respect to the following facts.

RECITALS

This Agreement is made with reference to the following recital of essential facts:

A. Coachella and the Riverside County Waste Resources Management District ("District") have previously executed a Master Lease dated December 23, 1997 (the "Master Lease"), pursuant to which Coachella acquired a leasehold interest in certain real property (the "Property") owned by the District and previously utilized as the Coachella Landfill. The Master Lease has previously been amended on February 24, 1998, on March 24, 1998, on June 9, 1998 and on August 18, 1998.

B. Concurrently with its entry into the Master Lease, Coachella entered into an Agreement for Disposal of Solid Waste with the District (the "Waste Disposal Agreement"), pursuant to which Coachella agreed that all of the solid waste residue to be removed from the Facility (as defined below) would be delivered to landfills operated by District. The Waste Disposal Agreement has previously been amended on February 24, 1998, on March 24, 1998, on June 9, 1998 and on August 18, 1998.

C. In accordance with the terms of the Master Lease and that certain Solid Waste Facility Permit No. 33-AA-0248/97-01 issued by the local enforcement agency of the State Waste Management Board (the "Facility Permit"), Coachella is required to construct and operate upon the Property a solid waste transfer station (the "Facility").

D. As a condition precedent to the effectiveness of the Master Lease, Coachella is required to obtain commitments for a waste flow stream to be processed at the Facility of not less than Two Hundred (200) tons of solid waste per day (the "Condition Precedent").

E. In furtherance of its obligations under the Master Lease, Coachella entered into a Facility Operations and Sublease Agreement dated April 1, 1998 (the "Sublease"), with Burrtec Waste industries, Inc. ("Burrtec"), pursuant to which Coachella assigned to Burrtec, and Burrtec agreed to perform, the obligations of Coachella under the Master Lease and the Waste Disposal Agreement for the construction, operation and marketing of the Facility.

F. Indio generates a sufficient tonnage of solid waste which, if considered together with the solid waste generated by Coachella, would satisfy the Condition Precedent and allow the Master Lease to become effective.

G. Agencies formed under Article 1 (commencing with Section 6500) of the Joint Powers Law (as defined herein) may jointly exercise any power common to the contracting

parties, including without limitation the construction, marketing and operation of a public capital improvement.

H. Indio and Coachella desire to enter into this JPA for the limited purpose of establishing a public entity, separate and apart from Coachella and Indio, which shall cause Burrtec to construct, market and operate the Facility in accordance with the terms of the Sublease.

NOW THEREFORE, Coachella and Indio agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. The following terms, whether in the singular or in the plural, when used in this Agreement and capitalized shall have the meanings specified.

- (a) "Agreement" means this JPA, as originally entered into or as amended from time to time in accordance with Section 9.5 hereof.
- (b) "Authority" means the Coachella/Indio Waste Transfer Station Authority established pursuant to Section 2.2 hereof.
- (c) "Commission" means the Commission referred to in Section 3.1 hereof, which shall be the governing body of the Authority.
- (d) "Facility" means the solid waste transfer station which is being built on the Property, including but not limited to all facilities, properties and improvements at any time leased, owned or operated by or on behalf of the Authority for the construction and operation of the Facility, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto hereafter acquired, constructed or installed by the Authority, and such other enterprises as the Commission may determine from time to time.
- (e) "Fiscal Year" means the fiscal year of the Authority as established from time to time by the Commission, being at the date of this Agreement, the period from July 1 in any calendar year to and including June 30 in the succeeding calendar year.
- (f) "Indebtedness" means bonds, notes or other evidences of indebtedness, and all other obligations, instruments and agreements pursuant to any provision of law to finance the acquisition, construction or improvement of the Facility, working capital requirements, or liability or other insurance needs of the Facility, if any.
- (g) "Joint Powers Law " means Articles 1 through 4 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the California Government Code, as amended from time to time.

- (h) "Liability Share" means, with respect to any Member, the amount of a judgment for damages divided by the number of Members at the time the act or omission occurred, unless any portion of the judgment arises from an act or omission directly related to the studying, planning, financing, developing, acquiring, purchasing, construction, reconstructing, implementing, improving, enlarging, enhancing, operating, maintaining, selling, disposing of, or decommissioning of any project undertaken by the Authority under this Agreement, in which case, with respect to such portion, the term "Liability Share" shall mean, with respect to any Member, the amount of such portion multiplied by a fraction equal to (i) such Member's entitlement or right, if any, to participate in such project at the time the act or omission occurred, divided by (ii) the aggregate amount of all Member's entitlements or rights to participate in such project at the time the act or omission occurred.
- (i) "Members" means, collectively, Coachella and Indio.
- (j) "Participating Agency Agreement" means that certain agreement substantially in the form of attached Exhibit A.
- (k) "Public Agency" has the meaning given to the term "public agency" in Section 6500 of the Joint Powers Law.

ARTICLE 2

GENERAL PROVISIONS

2.1 Purpose. This Agreement is made pursuant to the Joint Powers Law providing for the joint exercise of powers common to the Members, and for other purposes as permitted under the Joint Powers Law. The purpose of this Agreement is for the Authority to hold the interests under the Master Lease and the Facility Permit, the Waste Disposal Agreement, and the Sublease, and to cause the construction, marketing and operation of the Facility and to do all things related to, incident to or in furtherance of that business.

2.2 Creation of Authority. Pursuant to the Joint Powers Law, the Authority is hereby created. The Authority shall be a public entity separate and apart from the Members, and shall administer this Agreement.

2.3 Operational Issues. Coachella and Indio acknowledge that the following operational issues will be applicable to the business of the Authority:

- (a) The Members shall consider whether to amend the Waste Disposal Agreement to provide for a longer term and a reduction in tonnage rate.
- (b) All reasonable efforts shall be made to amend all project documents as are necessary to accommodate the formation of this JPA.

- (c) Each of the Participating Agency Agreements to be executed by Coachella and Indio shall contain provisions allowing one (1) free dump day per month for residents of the cities of Coachella and Indio.
- (d) Each of the Participating Agency Agreements to be executed by Coachella and Indio shall contain provisions providing for a "most favored nation" clause, pursuant to which Coachella and/or Indio may elect to modify their respective Participating Agency Agreements to obtain the benefit of any favorable provision contained in a waste flow agreement entered into between the Authority and an entity other than Coachella or Indio.

ARTICLE 3

COMMISSION

3.1 Commission. The Authority shall be governed by a Commission which shall be constituted as provided in this Section 3.1. There shall be a Commission consisting of two Councilpersons from each Member and the City Administrator/Manager from each Member or such City Administrators/Managers designee. The City Administrator/Manager or such persons designee shall be a non-voting Commission member. As to those members of the Commission who are members of the City Council of a City and notwithstanding anything contained in this Section 3.1 to the contrary, no such member of the Commission shall hold membership on the Commission after the expiration of his or her term as a member of the City Council of a City, or until he or she resigns, is removed or for any other reason and no longer serves as a member of the City Council of a City.

Day to day operations of the Facility shall be managed, however, by Burrtec in accordance with the Sublease. Burrtec shall be authorized to carry on all normal business operations of the Facility in accordance with the provisions of this Agreement and the Sublease, in accordance with Burrtec's assumption of the various obligations of Coachella under the Sublease, including but not limited to the following:

- (a) Construction and operation of the Facility;
- (b) Marketing of the Facility, including but not limited to seeking waste flow agreements with other cities and companies which are potential customers of the Facility; provided that Burrtec shall not, without the prior consent of the Commission, proceed with any form of marketing of the Facility which would result in the entry of a new Member in the JPA, or which would otherwise reduce the potential share of profits enjoyed by either of the Members;
- (c) All accounting and banking functions required in connection with the operation of the Facility.

Notwithstanding the foregoing, Burrtec shall not have authority to execute contracts on behalf of the JPA (except as specifically granted by the Commission), and shall additionally obtain approval from the Commission prior to any of the following:

- (w) Transactions between the JPA and Burrtec or any affiliate of Burrtec, or transactions in which Burrtec, or any affiliate of Burrtec's, has a material financial interest, including without limitation the lending of money by the JPA to Burrtec or any affiliate of Burrtec.
- (x) Any act which would make it impossible to carry on the ordinary business of the JPA.
- (y) The confession of a judgment against the JPA.
- (z) Any other transaction described in this Agreement as requiring the vote, consent, or approval of the Members.

3.2 Powers. Subject to the limitations of this Agreement and the laws of the State of California, the powers of this Authority shall be vested in and exercised by and its property controlled and its affairs conducted by the Commission of the Authority. The Commission shall have the responsibility for the general management of the affairs, property and business of the Authority and may, from time to time, adopt and modify such By-Laws and other rules and regulations for that purpose and for the conduct of its meetings as it may deem proper.

3.3 Compensation. Members of the Commission shall serve without compensation. Each such member may be reimbursed for necessary and actual expenses, including travel incident to his or her services as member of the Commission, pursuant to resolution of the Commission. Any member of the Commission may elect, however, to decline said reimbursement.

3.4 Meetings of the Commission; Voting; Call, Notice and Conduct of Meetings. All meetings of the Commission, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, held and conducted in accordance with the Ralph M. Brown Act, being Sections 54950 et seq. of the California Government Code, as amended from time to time.

(a) **Regular Meetings.** The Commission shall hold a regular meeting not less than once each calendar year. Regular meetings of the Commission shall be held at such time as the Commission may fix by resolution from time to time, and if any day so fixed shall fall upon a legal holiday, then, upon the next succeeding business day at the same hour. No notice of any regular meeting of the Commission need be given to the members of the Commission.

(b) **Special Meetings.** Special meetings of the Commission shall be held whenever called by the chairperson of the Commission or by a majority of the members of the Commission, in accordance with the provisions of the California Government Code, as amended from time to time.

(c) **Quorum.** A majority of the total number of members of the Commission shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn from time to time.

(d) Voting. Each voting member of the Commission shall have one vote. The affirmative votes of a majority of the voting members of the Commission shall be required for the Commission to take any action. Every act or decision done or made by a majority of the voting members of the Commission shall be the act of the Commission.

ARTICLE 4

OFFICERS AND EMPLOYEES

4.1 Officers and Employees. The Commission shall have the power to appoint and employ such officers, employees, consultants and independent contractors as it may deem necessary for the purposes of this Agreement, any of whom may be employees of a Member, and who shall have such powers, duties and responsibilities as are determined by the Commission.

4.2 Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents, or employees of a public agency when performing their respective functions shall apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

None of the officers, agents, or employees directly employed by the Authority shall be deemed, by reason of their employment by the Authority to be employed by any of Members or, by reason of their employment by the Authority, to be subject to any of the requirements of any of the Members.

ARTICLE 5

POWERS

5.1 General Powers. The Authority shall exercise in the manner herein provided powers common to Members, or as otherwise permitted under the Joint Powers Law, and necessary or convenient to the accomplishment of the purposes of this Agreement, subject to the restrictions set forth in Section 5.3 hereof.

As provided in the Joint Powers Law, the Authority shall be a public entity separate from the Members. The Authority shall have all of the powers provided in the Joint Powers Law, including but not limited to Article 4 of the Joint Powers Law (commencing with Section 6584).

5.2 Specific Powers. For the purpose of acquiring, owning, operating, and improving the Facility, the Authority is hereby authorized, in its own name, to do all acts necessary for the exercise of the foregoing powers, including but not limited to, any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents or employees;

(c) to plan, develop, acquire, construct, manage, maintain, repair, replace or operate any public capital improvement, including the common power of the Members to acquire any public capital improvement by the power of eminent domain;

(d) to acquire (by the exercise of the power of eminent domain or otherwise), hold, lease, sell or otherwise dispose of any real or personal property, tangible or intangible, and any interests therein, wherever located;

(e) to issue or incur indebtedness and otherwise to incur debts, liabilities or obligations for the purpose of acquiring, owning, operating or improving the Enterprises, provided that no such indebtedness, debt, liability or obligation shall constitute a debt, liability or obligation of any of the Members;

(f) to sue and be sued in its own name;

(g) to establish a budget and authorize expenditures therefrom;

(h) to apply for, accept, receive and disburse grants, loans and other aids from any agency of the United States or of the State of California or from any private sources;

(i) to enter into agreements for the creation of separate public entities and agencies pursuant to the Joint Powers Law;

(j) to invest any money in the treasury as determined by the Authority, in accordance with applicable provisions of the Joint Powers Law and Section 53601 of the California Government Code, as amended from time to time;

(k) to apply for letters of credit or other forms of financial guarantees in order to secure the repayment of indebtedness and enter into agreements in connection therewith;

(l) to carry out and enforce all the provisions of this Agreement;

(m) to establish non-profit corporations or for-profit corporations to assist in accomplishing any of its objectives; and

(n) to exercise any and all other powers as may be permitted by State Law and/or the Joint Powers Law (including Section 6588 of the Joint Powers Law).

5.3 Restrictions on Exercise of Powers. The powers of the Authority shall be exercised in the manner provided in the Joint Powers Law, subject only to the restrictions upon the manner of exercising such powers as are imposed upon the Members in the exercise of similar powers.

5.4 Liability; Contribution. Pursuant to the Joint Powers Law, the debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the Members, except as provided by Section 895.2 of the California Government Code, as amended from time

to time, in the case of injury caused by a negligent or wrongful act of omission occurring in the performance of this Agreement. If any Member is held liable upon any judgment for damages caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, and pays in excess of its Liability Share of such judgment, such Member shall be entitled to contribution from each other Member and may require each other Member to pay an amount towards the judgment for damages, but in no event shall any such other Member be required to pay in excess of its Liability Share of such judgment. No Member, Commission member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or premium or interest on any obligations of the Authority or be subject to any personal liability or accountability by reason of any obligations of the Authority, but nothing herein contained shall relieve any such Member, Commission member, officer, agent or employee from the performance of any official duty provided by law or by the instruments authorizing the issuance of any obligations of the Authority. Nothing contained in this Agreement shall in any way diminish the liability of any Member or other party with respect to any contract between such Member or other party and the Authority.

5.5 Indemnity by Authority for Litigation Expenses of Officer, Commission Member or Employee. If any Commission member, officer or employee of the Authority shall be sued, either alone or with others, because he or she is or was a Commission member, officer or employee of the Authority, in any proceeding arising out of his or her alleged misfeasance or nonfeasance in the performance of his or her duties or out of any alleged wrongful act against the Authority or by the Authority, indemnity to such person for reasonable expenses, including attorneys' fees incurred in the defense of the proceedings, may be assessed against the Authority or its receiver by the court in the same or separate proceeding if the person sued acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful. The amount of such indemnity shall equal the amount of the expenses, including attorneys' fees, incurred in the defense of the proceeding.

5.6 Execution of Contracts. The Commission, except as otherwise provided in this Agreement, may authorize any officer or officers, agent or agents, to enter into any contract or execute any contract or execute any instrument in the name of and on behalf of the Authority and such authorization may be in general or confined to specific instances and unless so authorized by the Commission, no officer, agent or employee shall have any power or authority to bind the Authority by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

ARTICLE 6

OPERATION OF FACILITY

6.1 Contracts and Covenants; Funds. It shall be competent for the Authority to make contracts and covenants for the benefit of the holders of any bonds payable solely from any of the revenues of the pledges for the establishment of a fund or funds, if any, for the maintaining of adequate rates or charges, for restrictions upon further indebtedness payable out of the same fund, for restrictions upon transfers out of such fund, and other appropriate covenants. Money placed in any such special fund for the payment of principal and/or interest on any issue of such

bonds, if any, or to assure the application thereof to a specific purpose shall not be expended for any purpose whatever except for the purpose for which such special fund was established and shall be deemed segregated from all other funds of the Authority and reserved exclusively for the purpose for which such special fund was established until the purpose of its establishment shall have been fully accomplished.

6.2 Accounting Procedure. The Facility shall be operated as a separate unit and all accounting respecting the Facility shall be on that basis. Charges shall be made by the Facility for all service, property or other things of value supplied or rendered by it to any office, department or agency of any Member.

6.3 Purchases and Expenditures. The purchase of equipment, materials and supplies peculiar to the needs of the Facility need not be made through the centralized purchasing systems of any of the Members. The expenditure and disbursement of funds of the Authority shall be made and approved as elsewhere provided in this Agreement.

6.4 Profits/Losses. All profits and losses from the Facility, as determined and distributed/allocated pursuant to the Sublease, shall be shared equally by the Members and paid into the general funds of such Members.

6.5 Additional Payment. Notwithstanding anything to the contrary in this Agreement, including without limitation Section 6.4, in recognition of the City of Coachella's extensive efforts which resulted in the creation of the Master Lease, the Waste Disposal Agreement, the Facility Permit and the Sublease, the City of Coachella shall receive Twenty Thousand Dollars (\$20,000) from the first dollars received by the Authority pursuant to the Sublease and thereafter all dollars received shall be allocated pursuant to Section 6.4 of this Agreement.

ARTICLE 7

CONTRIBUTION; ACCOUNTS AND REPORTS; FUNDS

7.1 Initial Contribution. Coachella's and Indio's initial contribution to the capital of the Authority shall be as set forth below:

- (a) The contribution of Coachella shall be (i) an assignment of its rights under the Master Lease and Facility Permit, the Waste Disposal Agreement and the Sublease to the Authority, pursuant to the assignment attached as Exhibit B and (ii) the commitment of all solid waste generated within the city limits of Coachella, the disposition of which is controlled by Coachella, to the Facility, pursuant to the terms of a Participating Agency Agreement substantially in the form of EXHIBIT A.
- (b) The contribution of Indio shall be (i) the commitment of all solid waste generated within the city limits of Indio, the disposition of which is controlled by Indio, to the Facility, pursuant to the terms of a Participating Agency Agreement substantially in the form of attached EXHIBIT A, and (ii) an ABOP facility which is currently located in Indio, and which shall be relocated to the Property and conveyed to the Authority.

7.2 Contributions. In accordance with Section 6504 of the Joint Powers Law, as the same may be amended from time to time, the Members may, by unanimous vote of the Members, in the appropriate circumstances when required hereunder: (a) make contributions from their treasuries for the purposes set forth herein; (b) make payments of public funds to defray cost of such purposes; (c) make advances of public funds for such purposes set forth in this Agreement, such advances to be repaid as provided herein, or (d) use their personnel, equipment or property in lieu of other contributions or advances. The provisions of Section 6512 of the Joint Powers Law are hereby incorporated into this Agreement. The Authority may make such arrangements relative to the repayment or return to the Members of such contributions, payments and advances as are approved from time to time by the Commission.

Any Member which fails to make or pay when due any required contribution, payment or advance to the Authority shall continue to be liable for its obligations under any contract with the Authority and for any unpaid contribution, payment or advance approved by the Commission prior to such Member's exclusion and not objected to by such Member by written notice to the Authority within thirty (30) days after such approval.

7.3 Accounts and Reports. There shall be strict accountability of all funds and reporting of all receipts and disbursements of the Authority. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of the Authority securing its indebtedness, if any. The books and records of the Authority shall be open to inspection at all reasonable times by the Members and their representatives. The Authority shall give an audited written report of all financial activities for each Fiscal Year to the Members within one hundred eighty (180) days after the close of each Fiscal Year.

The Authority, shall contract with a certified public accountant or public accountant to make an independent annual audit of the accounts and records of the Authority. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code, as amended from time to time, and shall conform to generally accepted auditing standards. When such an audit of an account and record is made by a certified public accountant or public accountant, a report thereof shall be filed as public records with each of the Members and with the county auditor of Riverside County. Such report shall be filed within six (6) months of the end of the Fiscal Year under examination.

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants, in making an audit pursuant to this Section shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for the purpose.

7.4 Funds. Subject to the applicable provisions of any instrument or agreement which the Authority may enter into, which may provide for a trustee to receive, have custody of and disburse Authority funds, the Authority shall receive, have the custody of and disburse Authority funds as nearly as possible in accordance with generally accepted accounting practices, and shall make the disbursements required by this Agreement or to carry out any of the provisions or purposes of this Agreement.

7.5 Annual Budget and Administrative Expenses. The Commission shall prepare and adopt a budget for the Authority prior to July 1st of each year. The budget may provide for administrative expenses, which shall include all expenses not included in any financing issue of the Authority.

ARTICLE 8

TERM; DISSOLUTION

8.1 Term. This Agreement shall become effective as of the date first set forth above, and the Authority shall come into existence, on the date of execution and delivery hereof, and this Agreement shall thereafter continue in full force and effect until the later of December 23, 2022 or the date on which all Indebtedness of the Authority and the interest thereon, if any, shall have been paid in full or until adequate provision for such payment shall have been made in accordance with the instruments governing such Indebtedness, and no material contracts (including without limitation any lease of any of the Facility) to which the Authority is a party remain in effect, unless earlier dissolved pursuant to Section 8.2 hereof.

8.2 Dissolution. With the approval of the Commission, the Authority may be dissolved, if at the time of such dissolution the Authority has no Indebtedness outstanding and is not a party to any contract remaining in effect (unless adequate provision shall have been made for the discharge of such contract). Upon the dissolution or termination of the Authority, and after payment or provision for payment, all debts and liabilities, the assets of the Authority shall be distributed to the Members in such manner as shall be determined by the Commission.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Notices.

(a) Any notice demand or request to any Member provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to the person designated by such Member upon the commencement of its membership in the Authority.

(b) A Member may, at any time, by written notice to each other Member and the Authority, designate different persons or different addresses for the giving of notices, demands or requests to it hereunder.

(c) Any notice, demand or request to the Authority provided for in this Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by registered or certified mail, postage prepaid, to Coachella/Indio Waste Transfer Station, c/o City of Coachella, 1515 Sixth Street, Coachella, CA 92236 and City of Indio, 100 Civic Center Mall, Indio, California 92201, or at the notice address most recently provided by said Member pursuant to this Section 9.1.

(d) The Authority may, at any time, by written notice to each Member, designate a different or additional person or a different address for giving notices, demands to it hereunder.

9.2 Section Heading. All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

9.3 Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

9.4 Law Governing. This Agreement is made in the State of California under the constitution and laws of the State of California, and is to be so construed.

9.5 Amendments. This Agreement may be amended at any time, or from time to time, except as limited by contracts with the owners of Indebtedness issued or incurred by the Authority, or a Member or by applicable regulations or laws of any jurisdiction having authority, by one or more supplemental agreements executed by all then current Members either as required in order to carry out any of the provisions of this Agreement or for any other purpose.

9.6 Enforcement by Authority. The Authority is hereby authorized to take any or all legal or equitable actions, including but not limited to injunction and specific performance, necessary or permitted by law to enforce this Agreement.

9.7 Severability. In the event that any term, covenant or condition of this Agreement or the application of such term, covenant or condition shall be held invalid as to any person or circumstance by any court having jurisdiction in the premises, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect.

9.8 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Members. No Member may assign any right or obligation hereunder without the written consent of the other Members. The immediately preceding sentence shall not affect any right of assignment under any other contract between any Member and the Authority.

9.9 Execution of Counterparts. This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall together constitute but one and the same instrument.


9.10 Order of Precedence. Whenever a provision of this JPA shall be in conflict with a provision of the Master Lease, the Waste Disposal Agreement, and/or the Sublease, the provisions of this JPA shall be controlling.

IN WITNESS WHEREOF, The parties hereto have caused this Agreement to be executed as attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

City of Coachella,
A Municipal Corporation

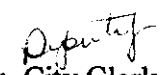
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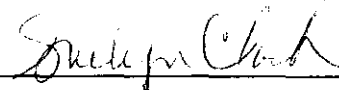
ATTEST: City Clerk



City of Indio,
A Municipal Corporation

By: 

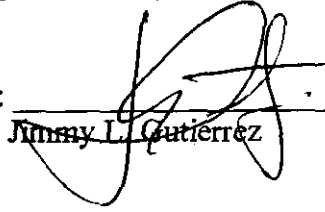

ATTEST: City Clerk



[signatures continued on next page]

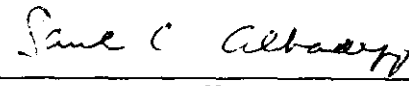
Approved: City Attorney

By: _____


Jimmy L. Gutierrez

Approved: City Attorney

By: _____


Samuel C. Alhadeff

[continuation of signatures to Joint Exercise of Powers Agreement]

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EXHIBIT A

PARTICIPATING AGENCY AGREEMENT

THIS PARTICIPATING AGENCY AGREEMENT is made and entered into by and between Coachella/Indio Waste Transfer Station Authority, (hereafter "JPA") a Joint Powers Authority between the City of Coachella, a municipal corporation ("Coachella") and the City of Indio, a municipal corporation, (hereafter "Indio"), on the one hand, and the City of _____, a municipal corporation, ("City").

WITNESSETH:

WHEREAS, the Riverside County Waste Resources Management District (hereafter called "District") owns and operates landfills in the County of Riverside for the disposal of municipal solid waste which have been and continue to be utilized by the Cities within the Coachella Valley for the disposal of their solid waste;

WHEREAS, the capacity of several District landfills in the Coachella Valley have been exhausted, leaving only the Edom Hill landfill available for disposal of solid waste by the Cities in Coachella Valley;

WHEREAS, the Cities in Coachella Valley need a transfer station with material recovery capabilities as an alternative to District landfills;

WHEREAS, the District certified a mitigated negative declaration for a solid waste transfer station with materials recovery capability (the "Facility") on October 1, 1996, and prepared a Report of Station Information ("RSI") dated January 1997 thereon;

WHEREAS, JPA's predecessor in interest, as Lessee, and District, as Lessor, executed a "Master Lease" on December 16, 1997 and December 23, 1997 respectively whereby District leased approximately 73.62 acres of land at the closed Coachella Landfill (the "Premises") requiring the construction and operation of the Facility and said Master Lease, which was assigned to the JPA, is incorporated herein by this reference;

WHEREAS, JPA's predecessor in interest and District executed an "Agreement for Disposal of Solid Waste" on December 16, 1997 and December 23, 1997 respectively whereby JPA is required to dispose of all solid waste accepted at the Facility at District landfills for a period of six (6) years at the rates set by District and approved by the Riverside County Board of Supervisors and said agreement, which was assigned to the JPA, is incorporated herein by this reference;

WHEREAS, Solid Waste Facility Permit No. 33-AA-0248/97-01 (the "Facility Permit") has been issued in connection with the operation of the Facility;

WHEREAS, JPA's predecessor in interest issued two Requests for Proposal on October 7, 1996 and December 26, 1997 by which the JPA solicited firms to submit proposals to construct and operate the Facility;

WHEREAS, JPA's predecessor in interest determined that Burrtec Waste Industries, Inc. (hereafter called "Contractor") submitted the most competitive proposal and was well suited to construct and operate the Facility in the most economic and beneficial manner for the Cities and residents of Coachella Valley;

WHEREAS, JPA's predecessor in interest and Contractor executed a Facility Operations and Sublease Agreement dated April 8, 1998 (the "Operations Agreement") through which Contractor has subleased the Premises from JPA's predecessor in interest for purposes of constructing thereon and operating the Facility, and which Operations Agreement, which was assigned to the JPA, is incorporated herein by this reference;

WHEREAS, JPA and City fully appreciate that capacity at nearby District landfills will be depleted within the near future (between 2003 and 2006) and that thereafter the cost and inconvenience to dispose of its municipal solid waste will increase considerably;

NOW, THEREFORE, THE PARTIES HERETO, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN AND INTENDING TO BE BOUND THEREBY, DO HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS, INTERPRETATION

1.01. Definitions. For the purposes of this Agreement, the words and phrases defined in the Operations Agreement shall have the same meaning in this Agreement as they have in the Operations Agreement

ARTICLE II

REPRESENTATIONS AND WARRANTIES

2.01. Of JPA. The JPA represents and warrants as of the date hereof as follows:

- a. **Status.** The JPA is a joint powers authority formed by Coachella and Indio, and is duly organized and validly existing under the Constitution and laws of the State of California.
- b. **Authority.** The JPA has the legal authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed

and delivered by JPA and constitutes a valid and binding agreement enforceable against JPA in accordance with its terms.

- c. **No Conflicts.** Neither the execution nor delivery of this Agreement by the JPA nor the performance thereof by the JPA (1) conflicts with, violates or results in a breach of Applicable Law, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or (3) conflicts with, violates or results in a breach of any agreement or instrument to which the JPA is a party.
- d. **No Approvals.** No approval, authorization, consent or license, or filing or registration with any governmental agency is required for the valid execution and delivery of this Agreement by the JPA.
- e. **No Litigation.** There is no action, proceeding or investigation pending before any court or threatened by any governmental agency, to the JPA's knowledge, wherein an unfavorable decision or finding would adversely and materially affect the performance by the JPA of its obligations hereunder, or which would adversely and materially affect the validity of this Agreement or any other agreement entered into by the JPA in connection with this transaction.
- f. **Maintain Other Agreements.** JPA covenants that it will maintain, in full force and effect, the Master Lease, the Agreement for Disposal of Solid Waste and the Operations Agreement subject to its rights in the event of breach or default by the other parties thereto.
- g. **JPA Performance through Contractor.** JPA represents that its obligations to City hereunder shall be fulfilled primarily by Contractor pursuant to the Operations Agreement; and City agrees to accept such performance of this Agreement by Contractor. Further, JPA represents that it will maintain the Operations Agreement in full force and effect subject to its rights thereunder, that it will enforce the provisions thereof as to Contractor and that it will use Reasonable Business Efforts to keep the Facility operational even if the Contractor breaches or defaults on the Operations Agreement.

2.02. Of City. City represents and warrants as of the date hereof:

- a. **Status.** City is a municipal corporation duly organized and validly existing under the Constitution and laws of the State of California.
- b. **Authority.** City has the legal authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by City and constitutes a valid and binding agreement enforceable against City in accordance with its terms.

- c. No Conflicts. Neither the execution or delivery of this Agreement by the City nor the performance thereof by the City (1) conflicts with, violates or results in a breach of Applicable Law, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or (3) conflicts with, violates or results in a breach of any agreement or instrument to which the City is a party.
- d. No Approvals. No approval, authorization, consent or license, or filing or registration with any governmental agency is required for the valid execution and delivery of this Agreement by the City.
- e. No Litigation. There is no action, proceeding or investigation pending before any court or threatened by any governmental agency, to the City's knowledge, wherein an unfavorable decision or finding would adversely and materially affect the performance by City of its obligations hereunder, or which would adversely and materially affect the validity of this Agreement or any other agreement entered into by City in connection with this transaction.
- f. Investigation. City has performed its own independent investigation, to its satisfaction, of the circumstances and matters relating to this Agreement including the obligations thereof and their consequences to City. However, City makes no warranties with respect to the types and amount of Permitted Waste to be delivered to the Facility by City hereunder except that City agrees to deliver, or cause to be delivered, all Permitted Waste generated within the territorial limits of the City to the Facility.
- g. Refuse Collection Contract. City represents and warrants that any approval, contract, franchise, lease, license, obligation, ordinance, permit or resolution, to which it is a party or which it has issued or adopted, pertaining to Permitted Waste provides, or shall be amended to provide, that City has, or shall have, the right to direct the delivery of all Permitted Waste generated from within the territorial limits of the City to the Facility. Further, City represents and warrants that it shall provide for the collection of all Permitted Waste generated within the territorial limits of City and for its delivery to the Facility. Finally, City represents and warrants that it shall not enter into any contract, nor issue any approval, license or permit nor adopt any ordinance or resolution which are materially inconsistent with the provisions of this Agreement or which would constitute a breach of any provision hereof.

ARTICLE III

TERM AND COMMENCEMENT OF DUTIES

3.01. Effective Date and Term. This Agreement shall become effective upon the date hereof; and it shall commence thereon and continue in full force and effect until December 23, 2022 unless terminated as provided herein.

ARTICLE IV

ACCEPTANCE OF PERMITTED WASTE

4.01. Duty to Accept Permitted Waste. During the term of this Agreement, the JPA shall accept at the Facility all Permitted Waste collected within the City and delivered to the Facility as set forth herein, provided that the Facility is constructed and operational. Thereupon, the JPA's duty to accept such Permitted Waste shall commence from notice thereof to City; and it shall continue until the expiration of this Agreement. In addition, the JPA shall maintain and operate the Facility such that it has the capacity to accept all Permitted Waste collected by or for City and delivered to the Facility except for those periods during which the Facility is not operational or operates at reduced capacity due to an uncontrollable circumstance or emergency affecting the public health, safety and welfare. The JPA shall notify City as soon as practicable after the occurrence of the uncontrollable circumstance or emergency that causes an operational incapacity, the expected duration of the incapacity, the amount of City's Permitted Waste, if any, that still can be accepted at the Facility.

4.02. Hours of Operation. The Facility shall be open to receive Permitted Waste from City in accordance with the Facilities Permit. Initially, it is anticipated that the hours of operation will be Mondays through Saturdays from 8:00a.m. to 4:30p.m., but such schedule shall be subject to change in the event that it becomes impracticable or economically infeasible in the reasonable discretion of the JPA. Likewise, JPA may extend said hours and may open on Sundays if warranted by public demand. The JPA shall keep open and operate the Facility continuously during said days and times except when prevented from doing so by any Uncontrollable Circumstance or emergency.

4.03. Right to Refuse Delivery. The JPA may refuse to accept any delivery to the Facility (1) that contains, or is reasonably suspected to contain, Unpermitted Waste, (2) that is delivered at times other than the times during which the Facility is open to accept Permitted Waste, (3) that is attempted to be delivered by an unauthorized person or entity, (4) that is delivered by a driver who is, or reasonably suspected, of being under the influence of alcohol or drugs, (5) that is attempted during any period in which City is in breach of its obligation under this Agreement or in which it is reasonably suspected that the delivery would be in violation of applicable law (6) that cannot be accepted due to an operational incapacity caused by an uncontrollable circumstance or (7) that cannot be accepted due to an emergency that threatens the public health, safety or welfare.

4.04. Hazardous Waste Load Check Program. The JPA will operate a Hazardous Waste Load Check Program at the Facility as required by California Law, by Permits and pursuant to Section 3.3.4 entitled "Materials Handling Activities" of the Report of Station Information. The Hazardous Waste Load Check Program shall (1) detect and reject the acceptance of all hazardous waste and Unpermitted Waste at the Facility and (2) deter the delivery of hazardous waste and Unpermitted Waste to the Facility by or for City. The JPA shall use best practices to detect Hazardous Waste and other Unpermitted Waste delivered to the Facility and it shall not accept any such Waste. Instead, JPA shall reject the delivery of any Hazardous Wastes discovered through the Hazardous Waste Load Check Program. In addition, the JPA shall use best practices to identify the persons who collect and deliver such Hazardous Waste and other Unpermitted Waste and to pursue remedies against such persons.

4.05. Prevention of Illegal Dumping. In order to attempt to prevent illegal dumping in Coachella Valley, the JPA offers to City one (1) day every month during which the Facility will accept Permitted Waste from bona fide residents of City at no charge to said residents. Such service shall be limited to self haul loads, not commercial loads, of Permitted Waste that do not exceed six hundred (600) pounds in weight. However, JPA reserves the right to impose such regulations and restrictions on such service as it deems to be reasonably necessary. This offer of service shall not confer any rights upon any City resident.

4.06. Recycling of Permitted Waste. The JPA has required Contractor to use good faith efforts to remove as much Recyclable Materials as can be removed from the Permitted Waste delivered to the Facility in order to assist City to comply with the requirements of AB939. As an incentive, the JPA has permitted Contractor to retain all sums received from the sale of such Recyclable Materials. Provided, however, the JPA and Contractor acknowledge that, for purposes of this Agreement, Permitted Waste and Recyclable Materials shall not include Source Separated Recyclable Materials and/or any other recyclable materials to which rights are expressly granted to the Franchisee. In addition, the JPA has required Contractor to provide annual reports on a standardized form describing the amounts and types of Recyclable Materials recovered from the Permitted Waste delivered to the Facility by or for City.

4.07. Disposal of Permitted Waste. Under the Master Lease and the Agreement for Disposal of Solid Waste, City understands that the District has required JPA to dispose of all Permitted Waste delivered to the Facility at the District owned landfills for a period of six (6) years. It is anticipated that the Master Lease and the Agreement for Disposal of Solid Waste will be extended beyond the initial six (6) year period. In the event that such agreements are not extended, however, City understands that the JPA shall have the right to designate the disposal of all Permitted Waste delivered to the Facility; provided that the JPA may, in its sole discretion, permit City to direct the disposal of Permitted Waste collected from within City provided that City shall approve the disposal fees and related transportation costs thereof and accept such other reasonable conditions as may be necessary.

4.08. License to Enter Facility. City, its Solid Waste Collectors and their respective employees are hereby granted the right to enter the Facility for the limited purpose of delivering Permitted Waste, provided that such right may only be exercised at such times as the Facility is open for such purpose and to the extent necessary to fulfill the obligations of the Parties

hereunder. Further, City, its Solid Waste Collectors and their respective employees shall comply with all laws and regulations applicable to its transportation and delivery of materials to the Facility and with all rules and directions of JPA, Contractor or their employees. Except in an emergency or upon the express direction of JPA or Contractor, City, its Solid Waste Collectors and their respective employees shall remain in close proximity to their vehicles and after off-loading the Permitted Waste, they shall exit the Facility as soon as practicable.

4.09. Non Exclusive Right. Nothing in this Agreement shall be construed to prohibit the JPA from entering into similar arrangements with other haulers, persons or entities, whether private or public, within the service area of the Facility that may desire to utilize the services therein provided.

ARTICLE V

DELIVERY OF PERMITTED WASTE

5.01. Duty to Deliver Permitted Waste. City shall deliver, or cause the delivery of, all Permitted Waste generated from within the territorial limits of City, as they may change from time to time, and collected by or on behalf of City to the Facility. Furthermore, City shall not dispose of, nor permit others to dispose of, any such Permitted Waste at any landfill, transfer station or other such disposal site except the Facility. In the event that Franchisee fails to deliver said Permitted Waste to the Facility as required hereunder, City agrees to take such measures as it deems appropriate to compel Franchisee to comply with said obligation but such efforts shall not relieve City of its obligation to deliver Permitted Waste to the Facility pursuant to this Agreement.

5.02. Commencement of Duty to Deliver. The obligation of City to deliver, or cause the delivery of, Permitted Waste to the Facility shall commence on the date that is thirty (30) days after written notice from JPA to City that the Facility is ready to accept Permitted Waste (hereafter called the "Delivery Date"). In addition, the JPA may request City to deliver all, or less than all, of its Permitted Waste during a Facility start up period which shall not exceed a period of sixty (60) days from the Delivery Date. If the JPA requests the delivery of less than all of such Permitted Waste during a Facility start up period, City shall use its best efforts to deliver the amount of Permitted Waste requested pursuant to the schedule provided by the JPA during the Facility start up period. In the event that City has been requested to deliver less than all of its Permitted Waste to the Facility during the start up period, the JPA shall advise City when all of the remaining Permitted Waste shall be delivered to the Facility provided that JPA shall give City at least seven (7) days prior written notice thereof. Thereafter, City shall deliver all of its Permitted Waste as provided herein.

5.03. No Delivery of Unpermitted Waste. City shall deliver only Permitted Waste to the Facility. City agrees that it will not deliver, nor cause the delivery of, any Unpermitted Waste to the Facility. In furtherance hereof, City agrees to maintain, or cause to be maintained, an identification and training program calculated to identify and segregate Unpermitted Waste from the solid waste and other materials it collects, or causes to be collected. In the event that JPA discovers, or reasonably suspects the existence of, any Unpermitted Waste in the vehicles

that purport to deliver Permitted Waste from City to the Facility, JPA may refuse to accept the delivery thereof. In that event, JPA may require City to remove such Unpermitted Waste from the Facility at City's sole cost, or require Franchisee to remove and dispose of such Unpermitted Waste, or the JPA may remove and dispose of such Unpermitted Waste and charge the cost thereof to City or to Franchisee. Upon notice from JPA, City shall immediately cease any attempted delivery of material which contains, or is reasonably suspected to contain Unpermitted Waste. City shall be liable to JPA for releases occurring in connection with the delivery or attempted delivery of materials which contain Unpermitted Waste including Hazardous Waste into the environment, including from the final disposal site, including any repair, cleanup or detoxification thereof, or preparation and implementation of any removal, remedial, response, closure or other plan with respect thereto (regardless of whether undertaken due to governmental action).

5.04. Enforcement Program. City shall establish and implement a program sufficient to assure the delivery of all Permitted Waste to the Facility pursuant to the requirements of this Agreement and provide for the enforcement thereof. Without limitation, such enforcement program shall consist of the following: (1) the imposition, maintenance and extension by City of the requirement to deliver all Permitted Waste collected within the City to the Facility in each approval, contract, franchise, license, ordinance, permit or resolution that authorizes Franchisee or other person or entity to collect solid waste including Permitted Waste from within the territorial limits of the City; and (2) the imposition, maintenance and extension of City's right to suspend, revoke or terminate any approval, right or privilege, the imposition of fines, the collection of damages and the pursuit of injunctive relief against Franchisee or other person or entity upon any failure to comply with the requirement to deliver Permitted Waste to the Facility.

5.05. Transportation Routes. The JPA may establish the routes to and from the Facility to be utilized by vehicles transporting City's Permitted Waste to the Facility. In that event, City and Franchisee shall abide by such routes.

ARTICLE VI

GATE FEE AND PAYMENT

6.01. Gate Fee Payable by City. City shall pay a Gate Fee for each ton of Permitted Waste delivered to and accepted at the Facility as said Gate Fee may be set from time to time based upon the formula contained in the Operations Agreement.

6.02. Gate Fee for the Initial Service Year. During the annual period from July 1, 1999 through June 30, 2000 (hereafter called "Initial Service Year"), City shall pay a Gate Fee equal to \$38.50 per ton for each ton of Permitted Waste delivered to and accepted at the Facility.

6.03. Annual Computation of Gate Fee. Prior to the commencement of each service year and no later than June 1, the Gate Fee shall be re-determined in accordance with the Operations Agreement.

6.05. Payment Procedures. On or before the fifteenth (15th) day of each month, the operator of the Facility shall invoice City for the Gate Fee due for each ton of City's Permitted Waste delivered to and accepted at the Facility during the prior calendar month based on the Gate Fee then in effect.

- (a) **Review of Invoices and Disputes.** If City disputes the amount of such invoice or any information thereof, it shall notify the operator of the Facility of such dispute within ten (10) days of receipt of invoice, and shall provide any request for additional information, identified with reasonable specificity, with respect thereto. Within ten (10) days of receiving City's Notice, the operator of the Facility shall respond to City's dispute and supply all information so requested. If the operator of the Facility fails to respond to City's notice within such time, its failure shall validate City's claim and City's position shall become binding and final as between the Parties. If the operator of the Facility responds but City disagrees, then the operator of the Facility and City shall meet and confer, in good faith, to resolve said dispute within ten (10) days. In the event that the dispute remains unresolved, then the Parties shall submit the matter to an Independent Engineer selected in the same manner as that provided in the Operations Agreement who shall resolve the dispute.
- (b) **Payment.** If the operator of the Facility submits invoices on or before the fifteenth (15th) day of any month, City shall pay to the operator of the Facility all amounts by the first (1st) day of the next succeeding month. If the operator of the Facility submits any invoice after the fifteenth (15th) day of any month, City shall pay all amounts within fifteen (15) days of receipt of the invoice.
- (c) **No Offset.** City's obligation to pay amounts due pursuant to this Section is unconditional and shall be made without offset. In the event of a dispute as described herein, City shall nevertheless pay the full amount of the invoice. If the dispute is subsequently resolved in City's favor, the operator of the Facility shall pay to City the disputed amount plus interest thereon at the reference rate of Bank of America, NT & SA then in effect from the date when payment was made by City.

6.06. Unpermitted Waste. In the event that City delivers Unpermitted Waste to the Facility which is not discovered until after the vehicle which delivered the Unpermitted Waste has left the Facility, but before such Unpermitted Waste is loaded for transfer for final disposal, the operator of the Facility shall dispose of such waste in a lawful manner pursuant to the Operations Agreement. It shall then send an invoice to City for the delivery of the Unpermitted Waste. In the event that City fails to pay such invoice within thirty (30) days of its delivery, the operator of the Facility shall place the amount of such invoice on City's next regular Gate Fee invoice and City shall pay it pursuant hereto.

6.07. Rate Covenant. City agrees to set and adjust rates to the residents and businesses within City so as to produce sufficient funds to enable City or Franchisee to pay the Gate Fees required hereunder.

ARTICLE VII

INSURANCE AND INDEMNIFICATION

7.01. Insurance by JPA. JPA is required to maintain insurance coverages for workers compensation, general liability, automobile liability, environmental impairment and property damage under the Master Lease; and JPA has required Contractor to maintain said insurance coverages through the Operations Agreement. JPA agrees to maintain, or cause Contractor, to maintain said coverages

7.02. Insurance by City. City shall maintain, and shall ensure that Franchisee or any persons or entities collecting Permitted Waste from within the City and delivering it to the Facility shall obtain and maintain insurance at levels imposed by statute or, if no statute applies, with firms of a size and insurance at levels normally carried by firms engaged in the collection, transportation and disposal of solid waste and recyclable materials in Southern California including, but not limited to Worker's Compensation and Employers Liability Insurance, commercial general liability and automobile liability and property insurance covering all owned and non-owned vehicles.

7.03. Indemnification by JPA. JPA shall indemnify and hold City harmless from and against any and all liability arising out of or resulting from any negligent or wrongful act or omission by JPA occurring in the performance of this Agreement.

7.04. Indemnification by City. City shall indemnify and hold JPA harmless from and against any and all liability arising out of or resulting from any negligent or wrongful act or omission by City occurring in its performance of this Agreement.

ARTICLE VIII

BREACH AND DEFAULT

8.01. Default by City. The following acts or omissions of City shall constitute breaches of this Agreement upon their occurrence and City shall be in default hereof upon failure to cure said breaches after notice thereof from JPA which shall entitle JPA to the remedies in Section 8.02 hereof:

- a. **Failure to Deliver Permitted Waste.** The failure to deliver all of the Permitted Waste collected within City to the Facility as provided herein.
- b. **Failure to Pay Gate Fee.** The failure to pay the Gate Fee within thirty (30) days of the date due for payment thereof pursuant to this Agreement.
- c. **Failure to Set Rates.** The failure to set and adjust rates and charges to residents and businesses within City in a timely manner and at levels which will allow City or its Solid Waste Collector(s) to pay the Gate Fee.

- d. **Uncured Breaches.** The failure to cure any breach within thirty (30) days of receiving notice from JPA specifying the nature of the breach provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences to cure such breach and diligently proceeds to cure and does cure same; or the failure to cure any breach immediately if the nature of the breach is such that the health, welfare or safety of the public is endangered thereby.

8.02. Remedies of the JPA. In the case of Default by City, the JPA shall be entitled to the following rights and remedies:

- a. **Equitable Relief.** The JPA shall have the right to commence an action for equitable relief or mandamus from a court of competent jurisdiction requiring City to perform those obligations giving rise to the Default. The Parties hereby agree that with respect to such actions brought against City by the JPA, the award of damages shall not be an adequate remedy or capable of ascertainment for such an event of Default for several reasons including:
 - (1) The Permitted Waste from City and the Gate Fees expected to be paid by City in consideration of the acceptance of such Permitted Waste, materials recovery and disposal thereof provided by JPA are necessary for the construction and continued operation of the Facility in compliance with the JPA's obligations under the Master Lease;
 - (2) The Permitted Waste from City and the Gate Fees expected to be paid by City constitutes a significant portion of the revenues to be received by the JPA and the attraction of a replacement amount of Permitted Waste is unlikely to be geographically and economically feasible and therefore the revenue stream represented thereby is unique and irreplaceable;
 - (3) The long term and significant investment of money and personnel by JPA and Contractor in the construction and operation of the Facility, none of which would have been committed without the long term nature of this agreement and the Gate Fees to be paid.
- b. **Compensatory Damages.** In addition to any other remedies at law or in equity to which the JPA may be entitled, in the event of breach by City of its obligation to deliver Permitted Waste to the Facility, the JPA may commence an action to recover compensatory damages from City in the amount that would be due JPA if City had delivered Permitted Waste until such time as City resumes delivery of Permitted Waste to the Facility or the remaining unexpired term of this Agreement.
- c. **Available Remedies.** To exercise any or all of its remedies described herein and any other remedies at law or in equity to which the JPA shall be entitled.

8.03. Default by JPA. The following acts or omissions of JPA shall constitute breaches of this Agreement upon their occurrence and JPA shall be in default hereof upon failure to cure said breaches after notice thereof from City which shall entitle City to the remedies in Section 8.04 hereof unless performance of the obligation giving rise to the Default by JPA is excusable as an Uncontrollable Circumstances as provided herein or due to a previously occurring breach or Default of City:

- a. Failure to Accept Permitted Waste. Failure to accept all of the Permitted Waste collected within City and delivered to the Facility as provided herein.
- b. Uncured Breaches. The failure to cure any breach under this Agreement within thirty (30) days of receiving notice from City specifying the nature of the breach provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, JPA shall not be in default so long as JPA promptly commences to cure such breach and diligently proceeds to cure and does cure same; or the failure to cure any breach immediately if the nature of the breach is such that the health, welfare or safety of the public is endangered thereby.

8.04. Remedies of City. In the case of Default by JPA, City shall be entitled to the following rights and remedies:

- a. Equitable Relief. City shall have the right to commence an action for equitable relief or mandamus from a court of competent jurisdiction requiring JPA to perform those obligations giving rise to the Default. The Parties hereby agree that with respect to such actions brought against JPA by City that the award of damages is not an adequate remedy or capable of ascertainment for such an event of Default.
- b. Compensatory Damages. In addition to any other remedies at law or in equity to which City may be entitled, in the event of breach by JPA of its obligation to accept Permitted Waste at the Facility, City may commence an action to recover compensatory damages from JPA.
- c. Available Remedies. To exercise any or all of its remedies described in this Article and any other remedies at law or in equity to which the JPA shall be entitled.

8.05. Waiver. A waiver by either Party of any breach or Default by the other Party shall not be deemed to be waiver of any other breach or Default by the Defaulting Party including ones with respect to the same obligations hereunder. The subsequent acceptance by the non-Defaulting Party of any damages or other money paid by the Defaulting Party hereunder shall not be deemed to be a waiver by the non-Defaulting Party of any pre-existing or concurrent breach, or Default by the Defaulting Party.

8.06. Remedies Not Exclusive. Each Party's rights and remedies in event of the other Party's breach and default hereunder are not exclusive unless specifically provided herein. A Party's exercise of one such remedy shall not an election of remedies.

8.07. Intent of Remedies. The intent of the Parties is to continue the operations of the Facility, the delivery of City's Permitted Waste thereto and the acceptance of Permitted Waste at the Facility if it is economically feasible even in the event of material breach or Default of this Agreement or any related agreement between JPA and City, between JPA and Contractor or between City and Franchisee. Therefore, in the event of any ambiguity, this Agreement shall be construed to avoid termination and to give the Parties and Contractor (and Contractor's lender) reasonable latitude in attempting to cure material breaches or defaults of JPA or City.

ARTICLE IX

UNCONTROLLABLE CIRCUMSTANCES

9.01. Procedures in the event of Uncontrollable Circumstances. When the occurrence of an event of Uncontrollable Circumstances causes an inability by either Party to meet one or more of its obligations hereunder, provided it complies with the notification requirements of this Section, then such Party shall be permitted to suspend performance of said obligations only to the extent, and only for a period of no longer duration, than required by the nature of the event. The Party claiming the event of Uncontrollable Circumstances as excuse from any of its obligations shall also use its best efforts, subject to the terms of this Agreement and such Party's continued compliance with the terms hereof, to remedy its inability to perform and to mitigate any damages that may occur as a result of such Event. During any period in which the Facility cannot be operated, the JPA, upon the request by City and if feasible using Reasonable Business Efforts, will provide alternative disposal and transportation at the lowest reasonable cost to City then available.

9.02. Uncontrollable Circumstance, Damage to Project. In the event that an Uncontrollable Circumstance causes damage to, or destruction of the Facility and the Facility is not rebuilt pursuant to the terms of the Operating Agreement, JPA may terminate this Agreement upon written notice to City. In the event that an increase in the Service Fee pursuant to the Operating Agreement is sought by the Contractor pursuant thereto due to uninsured costs, City shall have the right to terminate this Agreement if it does not wish to pay the Gate Fee that would result from the increase in the Service Fee necessary for reimbursement of those uninsured costs. However, approval of such increased Gate Fee shall not be unreasonably withheld by City if the increased Gate Fee is not materially higher than the amount it would pay another transfer station or disposal site (including applicable transportation) performing substantially similar services as the Facility if the Facility were not repaired or rebuilt.

9.03. Notice Required. The party claiming excuse due to an event of Uncontrollable Circumstance shall file with the other party a written notice of intent to claim excuse from performance under this Agreement by reason of such event. Notices required herein shall be filed

not later than seven (7) calendar days after the party claiming excuse learns, or should have learned, of the event of Uncontrollable Circumstances, and shall fully describe said Event, including the performance or obligation impacted by the claimed event and, if applicable, the work required to complete the planning, design, construction of the Project and/or on the operations and maintenance of the Facility.

ARTICLE X

MISCELLANEOUS

10.01. Third Party Beneficiaries. This Agreement is between the JPA and City. Except to the extent that Contractor is described as having rights and responsibilities hereunder, there are no third party beneficiaries hereto, except that the Contractor and its lender are third party beneficiaries of City's obligation to deliver Permitted Waste, set collection rates and pay the Gate Fee.

10.02. City Inspection Rights. JPA agrees that City shall have the right, but not the obligation, to observe and inspect the Facility operations during hours that the Facility is open to receive waste, upon one working day's notice to the operator of the Facility at a mutually agreeable time. In connection therewith, City and its representatives shall have the right to speak to any JPA or Contractor employees; provided that they shall comply with reasonable safety and security rules and shall not interfere with the work of JPA or Contractor. Upon City's request, JPA shall make specified personnel available to accompany City employees on inspections. JPA shall ensure that its employees and those of Contractor cooperate with City and reasonably respond to City's inquiries.

10.03. Attorney's Fees. In the event of any litigation between City and JPA to enforce any of the provisions of this Agreement, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred therein by the prevailing party.

10.04. Authorized Representatives.

- a. JPA.** For purposes of this Agreement, JPA's authorized representatives shall be the City Managers of Coachella and Indio, or their designees, who shall have joint (but not individual) authority to make operational decisions in accordance with both City Councils' policies with respect to this Agreement, provided that both City Councils reserve the right to appoint other authorized representatives.
- b. City.** For purposes of this Agreement, City's authorized representatives shall be the City Manager, or designee, who shall have the authority to make operational decisions in accordance with City's City Council policy with respect to this Agreement provided that the City Council reserves the right to appoint other authorized representative.

10.05 Assignment. Neither Party shall assign its rights nor delegate or otherwise transfer its obligations hereunder to any other person without the prior written consent of the other Party provided that City understands and agrees that the performance of JPA's obligations hereunder shall be through the Contractor or other transferee under the Operations Agreement. Any assignment permitted hereunder shall not relieve the assigning party from any of its obligations hereunder. Further, any purported assignment with the consent of the other shall be null and void.

10.06. Binding on Successors. Both JPA and City, and their respective assigns and successors in interest if any, shall be bound by all the covenants and conditions contained in this Agreement.

10.07. Entire Agreement. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. No verbal agreement or implied covenant, representation, inducement or understanding of any kind or nature shall be held to vary the provisions hereof. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by either party. Each Party has relied on its own examination of this Agreement and the documents incorporated herein, the warranties, representations, and covenants contained in this Agreement and the advice of their own counsel and advisers. The failure or refusal of a Party to examine this Agreement or other documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any contention or objection that might have been based on such reading, examination or advice. No provision of this Agreement may be amended or varied except by an agreement in writing signed by the parties hereto, and the lender under the first leasehold encumbrance or their respective successors.

10.08. Estoppel Certificates.

- (a) In the event of a proposed sale or refinancing of the Facility and the Premises or any part thereof, at any time and from time to time, within twenty (20) days after notice of request by either party, the other party shall execute, acknowledge, and deliver to the requesting party, or to such other recipient as the notice shall direct, a statement certifying that this Agreement is unmodified and in full force and effect; or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement and acknowledging that there are no uncured defaults or failures to perform any covenant or provision of this Agreement on the part of the requesting party or specifying any such defaults or failures which are claimed to exist. The statement shall also state the dates to which the agreed payment and any other charges have been paid in advance. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker, and investment banker of either Party and by any prospective purchaser or the lender of the Facility or the Premises or all or any part or parts of JPA's interests under this Agreement.

- (b) Either party's failure to execute, acknowledge, and deliver, on request, the certified statement described above within the specified time shall constitute acknowledgment by such party to all persons entitled to rely on the statement that this Agreement is unmodified and in full force and effect and that the agreed payment and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request and shall constitute a waiver, with respect to all persons entitled to rely on the statement, of any defaults on the requesting party's part that may exist before the date of the notice.

10.09. Covenants and Conditions. All provisions, whether covenants or conditions, on the part of either party shall be deemed to be both covenants and conditions.

10.10. Exhibits. All exhibits to which reference is made in this Agreement are hereby incorporated by reference; and any reference to "this Agreement" includes matters incorporated by reference.

10.11. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10.12. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

10.14. Records. City or any representative or designee thereof may examine the books and records of JPA, as such books and records relate to the delivery of City's Permitted Waste to the Facility, the recovery of Recyclable Materials therefrom, and the transfer of Permitted Waste after such recovery to the final disposal site.

10.15. Notices. All notices, consents or other communications which are required or permitted by this Agreement to be served on the other party shall be in writing and shall be deemed served or given when personally delivered or, in lieu of personal delivery when deposited in the United States mail, first-class, certified or registered, postage prepaid, return receipt requested or overnight mail delivery service, addressed to the applicable party at the address provided herein. Unless notice of a different address has been given in accordance with this Section, all such notices shall be addressed as follows:

JPA:	City Manager	and	City Manager
	City of Coachella		City of Indio
	1515 Sixth Street		100 Civic Center Mall
	Coachella, CA 92236		Indio, California 92201

City: _____

10.17. **Severability.** The invalidity of any provision in this Agreement as determined by a court of competent jurisdiction shall not affect the validity of any other provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

THE JPA: THE CITY OF COACHELLA ATTEST

DATED: **BY:** _____
APRIL __, 1999 **GILBERT RAMIREZ, JR, MAYOR**

BY: _____

THE CITY OF INDIO ATTEST

DATED: **BY:** _____
APRIL __, 1999 **CHRIS SILVA, MAYOR**

BY: _____

CITY: THE CITY OF _____

DATED: **BY:** _____
APRIL __, 1999 _____, **MAYOR**

EXHIBIT B

ASSIGNMENT OF MASTER LEASE AND FACILITY PERMIT, WASTE DISPOSAL AGREEMENT AND SUBLEASE

For value received, Coachella hereby transfers, conveys and assigns to Coachella/Indio Waste Transfer Station Authority all of its right, title and interest in and to the Master Lease and Facility Permit, the Waste Disposal Agreement and the Sublease, all as amended, as the same are defined in the Coachella/Indio Waste Transfer Station Joint Exercise of Powers Agreement to which this Assignment is attached (the "JPA"). This assignment is given in connection with the JPA, and is to be interpreted in accordance therewith.

City of Coachella,
A Municipal Corporation

By: _____

ATTEST: City Clerk

Approved: City Attorney

By: _____
Jimmy L. Gutierrez

ACKNOWLEDGEMENT OF ASSIGNMENT

Burrtec Waste Industries, Inc., a California corporation, hereby acknowledges the foregoing assignment of the Sublease, and agrees to be bound by any additional obligations to be performed by Burrtec as set forth in the JPA document to which this Assignment is attached.

Burrtec Waste Industries, Inc,
a California Corporation

By: _____