

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

May 21, 2024

FROM

NOEL CASTILLO, Director, Department of Public Works – Solid Waste Management

SUBJECT

Revenue Agreement with the California Department of Food and Agriculture for the Disposal of Fruit Collected from the San Bernardino/ Riverside Oriental Fruit Fly quarantine area at the San Timoteo Sanitary Landfill

RECOMMENDATION(S)

1. Approve **Revenue Agreement No. 24-416** (State Agreement No. 23-0226) with the California Department of Food and Agriculture, Pest Detection/Emergency Projects Branch, including non-standard terms, for the disposal of fruit collected from the San Bernardino/Riverside Oriental Fruit Fly quarantine area at the San Timoteo Sanitary Landfill, for the term of May 21, 2024 through August 31, 2024, in an amount not to exceed \$102,630.
2. Authorize the Director of the Department of Public Works or the Deputy Director of the Solid Waste Management Division, to allow the disposal of fruit collected from the San Bernardino/Riverside Oriental Fruit Fly quarantine area from counties outside San Bernardino County upon advance request from the California Department of Food and Agriculture.

(Presenter: Noel Castillo, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as the Department of Public Works – Solid Waste Management Division (SWMD) is funded by fee revenue. SWMD establishes fees that are charged to the public and other agencies for utilization of the County's Waste Disposal System. The California Department of Food and Agriculture (CDFA) will be charged the published Gate Rate, plus a Special Handling fee, in accordance with the County's Fee Ordinance. Based on the current fees (Gate Rate of \$48.80 plus Perchlorate Fee of \$0.69 and Special Handling Fee of \$53.14, totaling \$102.63), revenue is not to exceed \$102,630 (based on 1,000 tons of waste). Revenue is included in SWMD's 2023-24 budget and will be included in the 2024-25 Recommended Budget.

BACKGROUND INFORMATION

The proposed revenue agreement with the CDFA Pest Detection/Emergency Projects Branch and County will allow SWMD to dispose of the fruit collected in the Oriental Fruit Fly quarantine

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area removed from citrus trees infected with the Oriental Fruit Fly Disease at the San Timoteo Sanitary Landfill.

California is experiencing an unusually high number of invasive fruit fly detections and has taken measures to eradicate and prevent the statewide spread of the Oriental Fruit Fly and has established the San Bernardino/Riverside Oriental Fruit Fly quarantine area. CDFA will be removing the infected fruit and transporting it to the San Timoteo Sanitary Landfill for immediate burial. CDFA will ensure that the fruit is double bagged and tarped prior to landfill entry. The estimated tonnage for May 2024 through August 2024 is 1,000 tons. The recommended revenue agreement is the CDFA's standard agreement and includes non-standard terms and omits certain County standard language. The non-standard and missing terms include the following:

1. The revenue agreement requires the County to indemnify CDFA against any failure of County to pay into funds providing rights under the Labor Code, Unemployment Insurance Code, and Industrial Welfare Commission Order, or failure to pay such amount into these funds as required by law.
 - The County standard contract does not include any indemnification or defense by the County of another party.
 - Potential Impact: By agreeing to indemnify, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against CDFA without such limitations and the County would be responsible to defend and reimburse CDFA for costs, expenses, and damages, which could exceed the total agreement amount.
2. There is no termination for convenience. The County may only terminate the revenue agreement if CDFA substantially fails to perform its responsibilities or for a termination for cause.
 - The County standard contract gives the County the right to terminate the contract, for any reason, with a 30-day written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
 - Potential Impact: The County can only terminate the agreement during the term of an uncured breach. Any attempted termination by County without cause could result in payment or other liability, which could exceed the agreement amount.

SWMD recommends approval of the revenue agreement, including non-standard terms, as it is necessary for CDFA to process payment to the County for the disposal services at the County's landfill in an amount not to exceed \$102,630, and for a term of May 21, 2024 through August 31, 2024.

This action supports the County's and the Chief Executive Officer's goals and objectives of working with other agencies and providing for the safety, health and social services needs of County residents by assisting CDFA with the burial of diseased fruit from citrus trees infected with the Oriental Fruit Fly Disease.

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Agriculture for the Disposal of Fruit Collected from the San Bernardino/
Riverside Oriental Fruit Fly quarantine area at the San Timoteo Sanitary
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PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Aaron Gest, Deputy County Counsel, 387-5455) on April 25, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on April 25, 2024; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on May 3, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 6, 2024.

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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Curt Hagman Seconded: Joe Baca, Jr.
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 21, 2024



cc: SWMD - Meeka w/ agrees for sign
Contractor c/o SWMD w/ agree
File w/ agree
JLL 05/24/2024