

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

January 24, 2023

FROM

BRENDON BIGGS, Director, Department of Public Works – Solid Waste Management

SUBJECT

Amendment to Four-Party Implementation Agreement Between Cities of Rialto and Colton, Emhart Industries, Inc., and San Bernardino County

RECOMMENDATION(S)

Approve **Amendment No. 3 to the Four-Party Implementation Agreement No. 15-636**, between the Cities of Rialto and Colton, Emhart Industries, Inc., and San Bernardino County regarding the operation of the combined capture system and combined treatment plan for contaminated groundwater in the Rialto-Colton Basin, adding a two-year trial period of a fixed fee basis for reimbursement of operating and maintenance costs, effective from the date of the last signature until September 30, 2024, and may continue thereafter for the contract term, unless notice is given to terminate the fixed fee approach, and revert back to the original contract cost provisions for the remainder of the contract term.

(Presenter: Brendon Biggs, Director, 387-7906)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

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

FINANCIAL IMPACT

Approval of this Amendment will not result in the use of Discretionary General Funding (Net County Cost). The Department of Public Works – Solid Waste Management Division (SWMD) is financed by fees that are charged to the public and other agencies for utilization of the County's Waste Disposal System. Sufficient appropriation and revenue are included in the SWMD 2022-23 budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

On September 1, 2015 (Item No. 34), the Board of Supervisors (Board) approved the Four-Party Implementation Agreement (Four-Party Agreement), involving the Cities of Colton (Colton) and Rialto (Rialto), Emhart Industries, Inc. (Emhart) and San Bernardino County (County), collectively referred to as the Parties. The Four-Party Agreement arose from a series of federal lawsuits filed in 2004 and 2005 in which the County was named defendant amongst others and wherein Rialto and Colton alleged damages from perchlorate contaminated water in their drinking water wells. In 2006, the County began treating perchlorate contaminated water, allegedly emanating from and near the Mid-Valley Sanitary Landfill's Unit 5 Area (Unit 5 Area), through construction of an extraction and treatment system.

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In 2013, Emhart was required to perform, and partially fund, the remedial action required by the United States Environmental Protection Agency (USEPA) for the property located north and east of the Unit 5 Area. A technical analysis conducted by Emhart, to implement its remedy, concluded that it would be economical and beneficial to coordinate its treatment with the County by expanding the County's existing treatment plant to reach sufficient capacity for both the County's and Emhart's treatment obligations (Combined Remedies). As a result, the Four-Party Agreement was reached, providing for: 1) the use of Colton's water rights by Emhart and in exchange delivery of water to Colton's drinking water system; 2) use of Rialto's property for the expanded treatment plant and extraction wells in addition to the use of their water rights; 3) expansion of the County's treatment plant; and 4) continued cooperation between the County and Emhart for the construction and long-term operation of the Combined Remedies.

On December 15, 2020 (Item No. 57), the Board approved Amendment Nos. 1 and 2 to the Four-Party Agreement. Amendment No. 1 added provisions regarding the costs of construction, operation and maintenance of a liquid chlorinator. Amendment No. 2 added terms to set forth the procedures and process to minimize or eliminate any disruption of distribution of water to Colton.

Emhart recently completed construction of its portion of the Combined Remedies. On September 15, 2022, the State Department of Drinking Water (DDW) issued an amended permit to Rialto allowing for the inclusion of water from Emhart's extraction well, EW-1, as a groundwater source of potable water. The permit also allowed to add the expansion of Ion Exchange (IX) and Granular Activated Carbon (GAC) treatment units in the Combined Remedies as an approved treatment for EW-1 and Rialto's existing Rialto 3 and Miro 3 wells. Therefore, the Parties are in the process of bringing Emhart's extraction water well EW-1 online to the Combined Remedies to start treatment and water distribution in early 2023.

The Four-Party Agreement provides for Rialto, either directly or through a third-party contractor, to operate and maintain the Combined Remedies, subject to reimbursement by Emhart and the County for certain costs of operation and maintenance (O&M). Rialto's third-party contractor, currently Veolia Water West Operating Services, Inc. (Veolia), requested a fixed fee approach for the O&M of the Combined Remedies. Emhart and the County are open to evaluating, for a two-year trial period, whether a fixed fee arrangement is fair to all Parties.

Amendment No. 3 to the Four-Party Agreement is intended to more clearly define the implementation, budgeting and reimbursement procedures to Rialto with the fixed fee approach. It will be valid upon the date the last of the Parties executes this agreement, until September 30, 2024, and will continue in effect for the remainder of the contract period (i.e. until the County has satisfied treatment obligations), unless one or more of the Parties gives notice to the other Parties of their intent to terminate Amendment No. 3. If terminated, the Four-Party Agreement will revert back to the original contract provisions for O&M payments for the remainder of the contract period.

The original contract requires Rialto to prepare and submit to Emhart and the County by August 1st of each year an Annual O&M Budget based on estimated hours required for O&M of the Combined Remedies and operator rates. After payment of the amount, Rialto is required to allocate the funds for the O&M costs incurred in operating the Combined Remedies. By October 1st of the following year, Rialto, the County and Emhart are required to meet and confer to

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reconcile the variance between the actual costs of O&M of the Combined Remedies and the amounts paid by Emhart and the County based on the O&M Budget.

Under the requirements of this Amendment, Rialto will submit a fixed-fee budget by August 1st to Emhart and the County for routine O&M necessary, which are annual routine operational costs, to operate and maintain the Combined Remedies. After receipt of the O&M Budget from Rialto, the County and Emhart will have 10 business days to comment on the budget and submit joint comments. If necessary, Emhart, the County and Rialto will have another 10 business days from the date of joint comment submission to meet and confer to discuss the comments. Any disputes thereafter will be subject to the Dispute Resolution provisions, as set forth in the Four-Party Agreement.

Once the budget is finalized, Rialto will need to send an invoice to Emhart and the County for 50% of the total annual routine budget amount on or before October 1st; and a second invoice for 50% will need to be sent on February 1st of each year. For non-routine items, Rialto will invoice Emhart and the County at lump sum rates identified in the Annual Non-Routine O&M Budget and either invoice Emhart and the County at cost or coordinate for payment directly to third-party vendors. By the fifth business day of each month, Rialto (or its third-party contract operator), will send Emhart and the County copies of all documentation that tracks actual time spent and materials used operating and maintaining the Combined Remedies for the preceding month so that the Parties may evaluate the fairness of the fixed-fee approach during the trial period. A “water year” is defined as the twelve-month period from October 1 to September 30.

The initial amount due for the partial water year from December 2022 through September 2023 is attached as Exhibit A to Amendment No. 3 and is comprised of routine labor costs of \$172,757, non-routine labor costs of \$29,272, and maintenance costs of \$650,805 for a total amount of \$852,834. This amount would be allocated to the County and Emhart.

Colton advised, through its counsel, that it will execute the Amendment and is in the process of bringing it to its City Council. Emhart also advised, through its counsel, that Emhart agrees with the amendment and is in the process of signing. Working in cooperation with Colton, Rialto, and Emhart will meet the County and the Chief Executive Officer’s goals and objectives by providing clean water to the residents and doing so in a fiscally-responsible and business-like manner. Rialto approved Amendment No. 3 on December 13, 2022.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Maria Insixiengmay, Deputy County Counsel, 387-5455) on December 16, 2022; Finance (Carl Lofton, Administrative Analyst, 387-5404) on January 4, 2023; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on January 6, 2023.

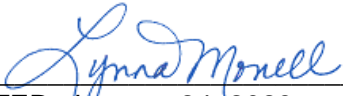
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: January 24, 2023



cc: PW/SWMD - Meeka w/agree for sign
Contractor - C/O PW/SWMD w/agree
File - w/agree

CCM 01/26/2023