THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Environmental Resources **BOARD AGENDA #** *B-7

Urgent ☐ **Routine** ☒ **AGENDA DATE** June 30, 2015

CEO Concurs with Recommendation YES ☒ **NO** ☐ **4/5 Vote Required YES** ☐ **NO** ☒
(Information Attached)

SUBJECT:

Approval to Enter into a Memorandum of Understanding Between the County and the City of Modesto for a Reduction in the Fink Road Landfill Tipping Fee and Approval to Amend Assembly Bill 939 Memorandum of Understanding Between the County and City of Modesto

STAFF RECOMMENDATIONS:

1. Approve the Memorandum of Understanding between the County and the City of Modesto to reduce the Fink Road Landfill tipping fee retroactive to June 1, 2015.

2. Approve an amendment to the Assembly Bill 939, the Integrated Waste Management Act of 1989, Memorandum of Understanding between the County and the City of Modesto to remain in effect until such time as the parties agree to terminate the agreement.

3. Authorize the Chairman of the Board of Supervisors to sign the Memorandum of Understanding with the City of Modesto reducing the Fink Road Landfill tipping fee.

(Continued on next page)

FISCAL IMPACT:

A reduction in the landfill tipping fee, from $33 per ton to $26 per ton for the City of Modesto, will mirror the Regional Solid Waste Disposal Plan Memorandums of Understanding approved by the Board of Supervisors on May 12, 2015. The reduction in the tipping fee is anticipated to be off-set by the increase in waste received from tonnage that is currently being exported out-of-county.

(Continued on next page)

BOARD ACTION AS FOLLOWS:

No. 2015-301

On motion of Supervisor Chiesa, **Seconded by Supervisor** O'Brien
and approved by the following vote,
Ayes: Supervisors: O'Brien, Chiesa, De Martini, and Chairman Withrow
Noes: Supervisors: None
Excused or Absent: Supervisors: Monteith
Abstaining: Supervisor: None
1) X **Approved as recommended**
2) ____ **Denied**
3) ____ **Approved as amended**
4) ____ **Other:**
MOTION:

ATTEST: Christine Ferraro Tallman
CHRISTINE FERRARO TALLMAN, Clerk

File No. C-6-K-1

STAFF RECOMMENTATIONS (CONTINUED):

4. Authorize the Director of Environmental Resources, or designee, to sign the amendment.

FISCAL IMPACT (CONTINUED):

There is no fiscal impact to the Department of Environmental Resources' budget associated with the recommendation to extend the existing Assembly Bill 939 (AB 939) Memorandum of Understanding (MOU) with the City of Modesto. The $3.00 per ton surcharge currently collected from the Waste to Energy tipping fee will cover AB 939 services provided for the City of Modesto.

DISCUSSION:

In July 2009, the Fink Road Landfill tipping fees were raised by $3 per ton to its current level of $33 per ton. The fee adjustments were needed to cover higher Landfill operational costs, and provide for future ash cell development as well as assist in the funding of the Geer Road Landfill post closure expenses. After the implementation of the increased fee, a decline in tonnage and revenue were observed. This decline in the amount of tonnage received was due in part to the troubled economy and to competitive pricing being offered to local haulers by the privately held Forward Landfill in San Joaquin County. In an attempt to counter the decline in revenue, the Department of Environmental Resources (DER), requested and received approval at the April 24, 2012, Board meeting, to reduce the Landfill tipping fee by $3 per ton back to $30 per ton, for a 90 day trial period. Staff monitored deliveries to the Landfill during the trial period and determined the tipping fee reduction was not resulting in increased tonnage deliveries and was allowed to expire.

In 2013, County staff began working on a Regional Solid Waste Plan (Plan) to retain in-county waste and to guarantee adequate volumes of waste. The Plan included a waste disposal flow strategy to the waste-to-energy (WTE) facility and the Fink Road Landfill. The Contracting Communities (Stanislaus County and the City of Modesto) have a contractual obligation with Covanta, Inc., to provide 243,300 tons of waste annually to the WTE Facility. The new Plan was a regional approach to meet that contractual obligation, and to provide sufficient waste to the Fink Road Landfill to cover operations and maintenance costs. The Plan required a guaranteed percentage of each Regional Agency city's franchise waste annually, with 62% of that waste directed to the WTE facility and 38% to the Fink Road Landfill. The Plan also provides for Fink Road Landfill fixed assets and capital improvements such as cell development, heavy equipment, etc., AB 939 program services, Household Hazardous Waste program services, and Geer Road Landfill clean-up costs. To assist in offsetting costs associated with the Plan, the Plan uses the County's share of rate stabilization funds of $2.3 million over the 10-year agreement to reduce the WTE tipping fee.

The Plan also incentivizes the Regional Agency cities at the Fink Road Landfill because the increased volume of waste received allows the County to decrease the tipping fee, which makes the cost of disposal competitive with out-of-County disposal facilities. Staff learned

from the 90 day fee reduction, that a substantial reduction needed to be made to the Landfill tipping fee in order to compete with the out-of-county disposal facilities. After meeting and conferring with the Franchise haulers, a competitive tipping fee was determined to be approximately $26 per ton to produce the volume of tonnage needed. This tipping fee was incorporated into the recently approved 10 year Regional Solid Waste Disposal Plan MOUs between the Regional Agency Cities and the County.

The City of Modesto is not a member of the Regional Agency, and therefore not included in the tipping fee reduction within the Regional Solid Waste Disposal Plan MOU. In order to reach the volume of waste needed to offer the $26 per ton reduction, County staff negotiated a new MOU agreement (Attachment 1) with the City of Modesto to include the city's waste into the total waste delivered to the Landfill. In addition to the City of Modesto's waste, staff is negotiating with the solid waste transfer station owners for their non-franchised waste and will bring back those agreements in a separate staff report.

During the negotiating process for the new disposal MOU with the city, it was discovered that the AB 939 MOU expired in December 2000. After the City was informed of the expiration, by mutual agreement it was decided to extend the AB 939 MOU term. The AB 939 MOU Amendment (Attachment 2) removes the expiration date allowing the MOU to remain in effect until such time as the parties agree to terminate the agreement.

POLICY ISSUES:

The recommended actions support the Board's priorities of Effective Partnerships, A Well-Planned Infrastructure System, and the Efficient Delivery of Public Services by working together with local jurisdictions for the benefit of all residents of Stanislaus County.

STAFFING IMPACTS:

There are no staffing impacts associated with this item.

CONTACT PERSON:

Jami Aggers, Director of Environmental Resources Telephone: 209-525-6770

ATTACHMENTS:

1. City of Modesto MOU For Solid Waste Disposal at Fink Road Landfill, Pages 1-6
2. AB 939 MOU Amendment with City of Modesto

DEPARTMENT OF ENVIRONMENTAL RESOURCES
3800 Cornucopia Way, Suite C,
Modesto, Ca 95358-9492
Phone: (209) 525-6700
Fax: (209) 525-6774

MEMORANDUM OF UNDERSTANDING BETWEEN STANISLAUS COUNTY AND THE CITY OF MODESTO FOR SOLID WASTE DISPOSAL AT THE FINK ROAD LANDFILL

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is made and entered into by and between the County of Stanislaus, (hereinafter referred to as "County") and the City of Modesto (hereinafter referred to as "City"), on June 30, 2015.

RECITALS

WHEREAS, under California Integrated Waste Management Act of 1989 (the "Act"; Pub. Resources Code § 4000 et seq.), each of the parties is required to develop plans and implement programs for solid waste disposal and diversion within their respective jurisdictions; and

WHEREAS, the County and City have entered into a Service Agreement with Covanta Stanislaus, Inc. to supply acceptable solid waste to the Waste to Energy Facility, which Service Agreement guarantees the flow of a minimum of 243,300 tons of acceptable waste to the Waste to Energy Facility, and provides for disposal capacity for bypass waste from the Facility at the Fink Road Landfill, and for the disposal of combustion ash in a designated Class II monofill at the Fink Road Landfill; and

WHEREAS, the County and City have entered into an "Agreement Relating to the Administration of the Service Agreement for Supply and Acceptance of Solid Waste", which Agreement establishes the proportional responsibilities of County and City for deliveries of acceptable waste to the Waste to Energy Facility; and

WHEREAS, the Countywide Siting Element, Summary Plan, and the City of Modesto's Source Reduction and Recycling Element identify waste disposal capacity which is located in the unincorporated area of the County as the method of meeting the state's 15-year minimum disposal capacity requirement; and,

WHEREAS, to ensure that each party has sufficient long term disposal capacity to meet the requirements of state law and the contractual commitments of the Service Agreement with Covanta, the County and City now desire to enter into an MOU for Disposal to ensure that the Fink Road Landfill (hereinafter referred to as "Landfill") both remains in operation and is operated as economically as possible.

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

AGREEMENT

1. Scope of Agreement

1.1 County and City acknowledge that it is beneficial to ensure optimum deliveries of acceptable solid waste to the Fink Road Landfill to maintain the financial viability of the Landfill and to ensure ongoing capacity to meet regulatory and contractual obligations.

1.2 County shall provide City, and City's contracted Haulers ("Haulers") on behalf of City, the right to deposit for disposal in a lawful manner, acceptable solid waste and nonhazardous solid waste generated within the limits of City, as such may now exist and as such limits may exist at any time during the term of this contract.

1.3 The City, in cooperation with its Haulers, agrees to direct its Haulers to transport no less than 12,000 tons and up to 18,000 tons annually of its acceptable solid waste disposal tonnage, to the Landfill in conformance with the provisions of the City's adopted AB 939 Plans.

2. Consideration

2.1 In consideration for entering into this MOU, wastes from the City delivered by its Haulers, will be charged a discounted tipping fee beginning at $26 per ton, at the Landfill, as set by the Stanislaus County Board of Supervisors (hereinafter referred to as the "Board"), and adjusted periodically as set forth in Schedule 1 of this MOU.

2.2 The Hauler shall pay the County the Schedule 1 discounted per ton tipping fee for each ton of municipal solid waste directed by the City to be delivered to the Landfill per this MOU.

3. Payment Terms

3.1 County shall calculate the fees owed by each Hauler based on the scale-house reports.

4. Term

4.1 The term of this MOU shall be from June 1, 2015, and end June 30, 2025, unless sooner terminated as provided below or unless some other method or time of termination is listed herein.

4.2 Should either party default in the performance of this MOU or materially breach any of its provisions, the other party, at that party's option, may terminate this MOU by giving written notification to the other party.

5. MOU Extension

5.1 This MOU may be extended, for a five (5) year term extension with the same terms and conditions with the exception of the tipping fee, a written notice of renewal or nonrenewal shall be served by either party 60 days prior to the end of initial term. If the notice of nonrenewal is served by either party then the MOU shall terminate on June 30, 2025.

6. Miscellaneous Provisions

6.1 Amendment. This MOU may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed by the City and by the County.

6.2 Notices. All notices permitted or required by this MOU or by law to be served on or given to either party hereto by the other party, shall be in writing and shall be effective when personally delivered to the party to whom it is directed, or in lieu of personal service, when deposited in the United States mail addressed as follows, or any other address designated by the party:

To: **County of Stanislaus:**
Department of Environmental Resources
3800 Cornucopia Way, Suite C
Modesto, CA 95358
Attn: Susan M. Garcia, C.P.M

To: **City of Modesto:**
Solid Waste Manager
Public Works Department
P.O. Box 642
Modesto, Ca. 95353

6.3 Disposal Site. The Waste to Energy Facility and Fink Road Landfill are served by a scale house which is operated by County staff and which weighs materials delivered to the two facilities. The parties agree that for the tonnages of waste the City commits to delivering to the County in this MOU the City will direct its Hauler to take the waste to the Landfill and County staff will ensure that the waste is directed to the correct facility. County staff will notify the City of any failure of City's Hauler to deliver waste to the designated facility.

6.4 Nonhazardous Solid Waste. "Nonhazardous Solid Waste" means, for the purpose of this MOU waste which may be disposed of in a Class III sanitary landfill in accordance with local, State and Federal regulations.

6.5 Collection and Transportation Within the City. Notwithstanding the provisions of this MOU, the City retains the right to regulate all aspects of the collection, transportation, and disposition of all solid waste originating within the boundaries of City.

7. Force Majeure. Except as otherwise expressly provided in this MOU, if the performance of any act required to be performed by either County or City is prevented or delayed or made impracticable by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, Change in Law or regulations, or any other cause (except financial inability) not the fault of the Party required to perform the act, the time for performance of the act will either be extended for a period equivalent to the period of delay or performance of the act will be excused.

7.1 "Change in Law" as used herein means the enactment, promulgation, amendment or official interpretation or reinterpretation by any order, decision or judgment of any federal, state or local court, administrative agency or governmental body after the Effective Date of (i) any federal statute or regulation not enacted, promulgated, amended, interpreted or reinterpreted on or before the Effective Date, as applicable, or (ii) any state, County or City statute, ordinance, or regulation that was not so enacted, promulgated, amended, interpreted or reinterpreted on or before the Effective Date, as applicable, or establishes requirements making the ownership, operation or maintenance of the Landfill more burdensome than the most stringent requirements (x) in effect as of the Effective Date, (y) agreed to in any applications of the County for official permits, licenses, or approvals, or (z) contained in any official permits, licenses, or approvals with respect to the Landfill obtained as of the Effective Date; provided that a lawful change in federal, State, County, City, or any other tax law shall not be a Change in Law.

a. If there is a Change in Law that materially affects operations of the Fink Road Landfill, the Parties hereto agree to act in good faith to amend or renegotiate this MOU to effectuate the purpose of this MOU as stated herein above.

b. If there is a Change in Law that materially affects the requirements for the City regarding the reuse, recycling, composting or any other form of diversion of solid waste from disposal, including, but not limited to an increase in the percentage of solid waste required to be diverted, as well as changes to applicable diversion credits, the Parties hereto agree to act in good faith to amend or renegotiate this MOU.

c. The Party whose performance of this MOU is affected pursuant to this Section shall give notice of the conditions affecting performance to the other Party within thirty (30) calendar days that the Party becomes aware that any Change in Law will materially affect performance of this MOU.

d. Upon receiving notice pursuant to this Section, the Parties will have one hundred eighty (180) days to renegotiate this MOU If the Parties do not agree that a Change in Law materially affects performance of this MOU pursuant to this Section, then either Party may request binding mediation, to be paid equally by both Parties, to determine whether the Change in Law is material. Either Party may terminate the MOU upon three days written notice if it is determined that a material Change in Law has occurred, and the Parties do not renegotiate the Agreement within one hundred eighty (180) days.

IN WITNESS WHEREOF, the parties have executed this MOU on June 30, 2015.

COUNTY OF STANISLAUS

By: _____
Terrance Withrow
Chair of the Board of Supervisors

"County"

ATTEST: Christine Ferraro Tallman
Clerk of the Board of Supervisors or the
County of Stanislaus, State of California

By: Christine Ferraro Tallman

APPROVED AS TO CONTENT:
Department of Environmental Resources

By: _____
Jami Aggers
Director

APPROVED AS TO FORM:
John P. Doering
County Counsel

By: _____
Thomas Boze
Assistant County Counsel

(City Signatures on the next page)

IN WITNESS WHEREOF, City of Modesto, a municipal corporation, has authorized the execution of this Agreement in triplicate by its City Manager, and attestation by its City Clerk under authority of Resolution No. 2015-211, adopted by the Council of the City of Modesto on the 23 day of June, 2015.

CITY OF MODESTO,

a California municipal corporation

By _____

JAMES N. HOLGERSSON

City Manager

ATTEST:

By _____

STEPHANIE LOPEZ, City Clerk

APPROVED AS TO FORM:

By _____

ADAM U. LINDGREN, City Attorney

SCHEDULE 1 - DISPOSAL RATES (per ton):

Fiscal Year	Fink Road Landfill
2015/2016	$26.00
2016/2017	$26.00
2017/2018	$26.00
2018/2019	$27.00
2019/2020	$27.00
2020/2021	$27.00
2021/2022	$28.00
2022/2023	$28.00
2023/2024	$29.00
2024/2025	$29.00

AMENDMENT NO. 2
to
MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF MODESTO AND STANISLAUS COUNTY

WHEREAS, pursuant to Public Resources Code section 40976, the COUNTY OF STANISLAUS ("County") and The City of Modesto ("City") entered into a Memorandum of Understanding dated August of 1994 and Amended on April 30, 1997, regarding the use and distribution of funds from the AB-939, Source Reduction and Recycling Account (the "Account"), hereafter the "AB-939 MOU"; and

WHEREAS, the City and the County desire to amend the AB-939 MOU retroactive from the date of expiration to provide for the continuance of the existing MOU.

NOW, THEREFORE, the County and the City hereby amend the AB-939 MOU as follows:

Paragraph B of Section IV of AB-939 MOU is amended to read as follows:

"This MOU will remain in effect until such time as the parties agree to terminate the MOU, effective upon 30 days written notice to the other party."

IN WITNESS WHEREOF, the parties have executed this Agreement of the AB-939 MOU in duplicate on this ___ day of _____, 2015

COUNTY OF STANISLAUS

By _____
Jami Aggers, Director
Department of Environmental Resources

"County"

APPROVED AS TO FORM:
JOHN P. DOERING
COUNTY COUNSEL

By _____
Thomas Boze
Deputy County Counsel

CITY OF MODESTO

By _____
James N. Holgersson
City Manager

"City"

ATTEST:
Stephanie Lopez
CITY CLERK

_____
Stephanie Lopez
City Clerk

APPROVED AS TO FORM:
Adam U. Lindgren
CITY ATTORNEY

_____
Roland R. Stevens
City Attorney