



City Attorney's Office
3300 Capitol Avenue, P.O. Box 5006, Fremont, CA 94537-5006
510 284-4030 *ph* | 510 284-4031 *fax* | www.fremont.gov

December 19, 2003

John Lynn Smith, Esq.
Reed Smith Crosby Heafey
1999 Harrison Street, Suite 2400
Oakland, CA 94612-3572

Re: City of Fremont/Waste Management of Alameda County Disposal Contract

Dear Mr. Smith:

Per our telephone conversation today, I am forwarding a fully executed original of the subject contract.

If you have any questions, please call our office at 510-284-4030.

Very truly yours,

A handwritten signature in cursive script that reads "Rita Kerwin".

Rita Kerwin
Legal Secretary

Enclosure

Cc: Sandra Fox, Esq.
Rick Calderia

Bcc: Kathy Cote
Patricia Born

Note: Need to insure that insurance is in place before the delivery date estimated to be 9/1/2004.



WASTE MANAGEMENT

172 - 98th Avenue
Oakland, CA 94603-1004
(510) 430-8509
(510) 633-0106 Fax

December 5, 2003

Ms. Kathy Cote - Environmental Services Manager
City of Fremont
39550 Liberty St.
P.O. Box 5006
Fremont, CA 94537-5006

Dear Ms. Cote:

Pursuant to our discussions, the disposal agreement for the TCRDF is scheduled to conclude on August 31, 2004. We understand that the City of Fremont desires to ensure that the disposal rate that is scheduled to be in effect of \$36.33 will be made available to the City of Fremont from the date the contract expires and the time the City begins delivery to waste to the Altamont Landfill.

WMI is pleased to assure you that we will commit to the continuation of the aforementioned disposal rate per ton of \$36.33. This assurance is predicated upon the fact that that the TCRDF has permitted legal capacity. Additionally, the protection of this rate would not include any additional regulatory or environmental fees that could be implemented or imposed. If the need arose to accept waste after January 1, 2005, both parties agree to negotiate mutually agreed terms and conditions.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'James E. Devlin', is written over a horizontal line.

James E. Devlin
Vice President
Waste Management Inc.

dh/JD

AGREEMENT TO PROVIDE LONG-TERM LANDFILL DISPOSAL CAPACITY

This Agreement is entered into and Executed as of this 16 day of Dec, 2003, by and between the City of Fremont (**City**), a political subdivision of the State of California, and Waste Management of Alameda County, Inc., (**Contractor**), a California Corporation.

RECITALS

WHEREAS, the City needs a landfill facility to serve as the place of safe, legal, and permitted Disposal for Municipal Solid Waste generated within the City that is not otherwise Diverted, and for Residue resulting from the Operation of a Recyclables Diversion and Transfer Station; and

WHEREAS, the City reviewed the Contractor's Proposal to provide landfill Disposal services at its proposed landfill, (**Facility**); and

WHEREAS, the City determined that the Contractor has proposed to provide Disposal services at the Facility in a manner and on terms which are in the best interest of the City and its residents and businesses, taking into account the qualifications and experience of the Contractor, and the fees for providing such services; and

WHEREAS, the City wishes to engage the Contractor to provide the services specified within this Agreement, in accordance with the terms and conditions of this Agreement;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and conditions contained in this Agreement and for other good and valuable consideration, the City and the Contractor agree as follows:

ARTICLE 1. DEFINITIONS

Unless the term is otherwise defined in this Agreement, definitions of terms used in this Agreement will be the same as those found in Division 30, Part 1 Chapter 2 of the California Public Resources Code, the definitions in the Public Resources Code as presently defined, and as they may be amended in the future, and the Fremont Municipal Code shall apply. In the event of conflict between the definition of a term as found in the California Public Resources Code or in City ordinances and this Agreement, the definition in this Agreement shall supersede the definition found in the Public Resources Code or in City ordinances.

Accept (or Acceptance or variations thereof) is the transfer of ownership of the Delivered Residue to the Contractor, as provided in Sections 7.01.(a) and 7.05. Residue Delivered to the Facility will be deemed Accepted unless the Contractor rejects the materials within the same calendar day. Notwithstanding any other provisions in this Agreement, nothing in this

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Agreement shall prevent Contractor from pursuing all legal remedies available from the original generators of Hazardous Waste inadvertently Accepted by Contractor for matters related to proper handling, treatment, and Disposal of Hazardous Waste provided that the City and Transfer Contractor(s) shall in no case be considered the original generator.

Act means the California Integrated Waste Management Act of 1989 (Division 30, commencing with Section 40000, of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

Additional Users means third parties that deliver Municipal Solid Waste, Recyclable Materials or Yard Waste generated outside the City to the Recyclables Diversion and Transfer Station used by the City resulting in additional Waste and/or Residue that will be delivered to the Disposal Facility by the Transfer Contractor. Additional Users include Union City and Newark unless otherwise agreed to in writing by Contractor and City.

Adjusted Disposal Fee means the adjustment of the Disposal Fee biennially to reflect changes in the CPI and in Pass-Through Costs over the prior 24-month period, as provided in Article 8. Any change in the Disposal Fee to match a lower Comparative Disposal Fee as provided in Section 6.02 results in a new Adjusted Disposal Fee.

Agreement means this Agreement, including all Exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 15.05. Should there be any conflict in language between the Contractor's Proposal and this Agreement; the language in this Agreement will prevail.

Alternative Daily Cover (or ADC) means cover material other than at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each Operating day to control vectors, fires, odor, blowing litter, and scavenging as defined in Title 27, Section 20164 of the California Code of Regulations.

Alternative Disposal Facility means any landfill, processing facility, or transfer station other than the Facility, whether owned and/or operated by the Contractor or by a third party, as approved for use by the City in the event of a Contractor default in accordance with Article 11.

Applicable Law means all statutes, laws, ordinances, rules, regulations, resolutions, requirements, permits, orders, or other directives of the United States, State, County, City and local government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the site or the performance of the Parties' respective obligations hereunder in effect as of the date hereof and as amended and/or enacted hereinafter.

Base Term means the twenty (20) year period commencing on the Delivery Date.

Bulky Goods mean discarded materials such as, but not limited to, large household appliances (brown goods and white goods), furniture, tires, carpets, mattresses, tree trunks, and other similar discarded items produced as refuse excluding automobiles.

Capacity means the physical space available over time at the Facility that is permitted for the Disposal of Delivered Residue.

Change in Law means the occurrence of any event or change in Applicable Law that transpires after the Execution Date, which:

(1) increases costs due to additional environmental regulations; and

(2) are caused by regulations mandated by County, local, State, Federal statutes, laws, regulations, ordinances, rules, permits, resolutions, orders, or other directives.

Change in Scope means an activity or set of activities, Significantly different and separate than specified in this Agreement, undertaken by the Contractor, the City, and/or the Transfer Contractor(s) at the written direction of the City Manager, with mutual agreement for equitable compensation to the Contractor as provided in Section 9.04.

City means the City of Fremont, State of California.

City's Obligations means each and every obligation and liability of the City specified in this Agreement.

City Vehicles means City-owned and operated vehicles.

Closure means all activities and related costs involved in Closure of the Facility or portions of the Facility in accordance with all applicable Federal, State, County, or other local statutes, laws, regulations, ordinances, rules, permits, resolutions, orders, or other directives.

Collection Contractor(s) means the entity or entities that, separate from this Agreement, are contracted, licensed, permitted, or otherwise designated by the City, to collect Municipal Solid Waste in the City.

Comparative Disposal Fee means the per-Ton fee, or its equivalent if paid on a lump-sum basis or other basis, paid to the Contractor for Disposal of mixed residential and commercial Municipal Solid Waste at the Facility by party(ies) other than subsidiaries or affiliates of Contractor, Guarantor, and Transfer Contractor(s) for which the following conditions are met: (1) contract term between Contractor and said party is five (5) years or more, (2) said party provided a long-term Residue delivery commitment to Contractor, (3) said party's average monthly quantity of Residue Disposed at Contractor's Facility is similar (plus or minus 20 percent) to the City's average monthly quantity of Residue Disposed at the Facility, and (4) said party's contract term with Contractor commences on or after the Delivery Date. Comparative Disposal Fee, as provided in Section 6.02, shall not mean the per-Ton fee, or its equivalent if paid on a lump-sum basis or other basis, paid to the Contractor for Disposal or Acceptance of industrial or special waste at the Facility.

Construction and Demolition Waste, as included in Permitted Material, means building

materials including brick, mortar, concrete, plaster, scrap wood, scrap metal, sheet rock, and other such wastes together with packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings, and other structures.

Contractor means Waste Management of Alameda County, Inc.

Contractor's Proposal means the Proposal to provide Long-Term Landfill Disposal Capacity Services submitted to the City on August 1, 2003 by the Contractor including any additions, deletions and/or modifications agreed to by the Parties prior to the Execution Date of the Agreement.

Contractor's Obligations means each and every obligation and liability of the Contractor specified within this Agreement individually or in their entirety.

County means the County of Alameda, State of California.

CPI means the All Urban Consumers San Francisco - Oakland-San Jose Metropolitan Area Index (All Urban Consumers; where 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics. If such index is no longer published, such other index published by the Department of Labor, Bureau of Labor Statistics or its successor agency, for the geographic area corresponding to Alameda County generally or the City specifically, shall be the CPI subject to City approval.

Delivered Residue (or **Delivery of Residue** or other variations thereof) means arrival of Municipal Solid Waste and Residue at the Disposal Facility or at an Alternative Disposal Facility in Transfer Contractor(s)'s vehicles for purpose of Acceptance as provided in this Agreement.

Delivery Date means the date of first Delivery of Residue to the Facility, which may be any date on or after the Effective Date, and is anticipated to be September 1, 2004 but could be as late as September 1, 2005. .

Direct Costs means costs directly related to the implementation of this Agreement that include any or all of the following:

(1) payroll costs directly related to the performance, or management or supervision of any obligation pursuant to the provisions hereof, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Workers Compensation Insurance, federal and state unemployment taxes and all medical and health insurance benefits, plus

(2) the costs of materials, services, direct rental costs and supplies, plus

(3) travel and subsistence costs, plus

(4) the reasonable costs of any payments to subcontractors necessary to and in connection

with the performance hereunder.

(5) any other cost or expense which is directly or normally associated with the task performed; which Direct Costs are substantiated by:

(i) a certificate signed by the principal financial officer of the Contractor setting forth the amount of such cost and the reason why such cost is properly chargeable to the City, as the case may be, and stating that such cost is an arm's length and competitive price, if there are competitive prices, for the service or materials supplied; and

(ii) such additional back-up documentation if requested by the City as may be available to reasonably substantiate any such Direct Cost, including invoices from suppliers and subcontractors.

Disposal means the permanent management of Delivered Residue by the Contractor once it is Accepted at the Facility. With regard only to Section 7.09, Disposal is a broad concept that is inclusive of changes that may occur over the Base Term or any Extensions, including but not limited to changes in Standard Industry Practices or innovative but not necessarily fully proven techniques or technology that reduce Disposal volume, risk, or costs and/or are for other reasons deemed desirable by the City.

Disposal Facility (or Facility) means the Altamont Landfill and Resource Recovery Facility, located at 10840 Altamont Pass Road, Livermore, California, that is owned and operated by Contractor.

Disposal Fee is the per-Ton compensation due to the Contractor from Transfer Contractor(s) for Accepting materials for Disposal. The Disposal Fee is comprised in total of the Fixed Component, Variable Component, and Pass-Through Component. The Disposal Fee shall be equal to or lower than the lowest Comparative Disposal Fee, as provided in Section 6.02, received by the Contractor for other Agreements consummated after the Execution Date of this Agreement.

Divert (or Diversion) means to prevent Recyclable Materials from landfill or transformation facilities, (including incineration, pyrolysis, distillation, gasification or biological conversion) through source reduction, recycling and composting, as provided in Section 41780 of the California Integrated Waste Management Act of 1989, and as the Act may be hereafter amended or superseded. With regard to Section 7.10, Diversion is a broad concept that is inclusive of changes that may occur over the Base Term and any Extensions, including but not limited to: adding additional materials to the City's recycling programs, changes in Standard Industry Practices; or innovative but not necessarily fully proven techniques or technology that reduce Disposal volume risk, or costs and/or are for other reasons deemed desirable by the City.

Effective Date means September 1, 2004, the date on or after which Residue may be delivered.

Execution Date means the date the final authorizing signature is provided to this Agreement.

Exhibit(s) means any or all attachments to this Agreement as of the Execution Date or as amended or added at any time during the Base Term and any Extensions.

Extension(s) (or to **Extend**) means through an amendment of this Agreement, to cause the end date of this Agreement to be beyond the twentieth (20th) anniversary of the commencement of the Base Term as provided for in Section 4.02.

Extraordinary Review means a review of compensation for adjustment purposes conducted in accordance with the provisions of Article 9 of this Agreement.

Facility (or **Disposal Facility**) means the Altamont Landfill and Resource Recovery Facility, located at 10840 Altamont Pass Road, Livermore, California, that is owned and operated by Contractor.

Facility Operation (or **Operation** or **Operations**) means the lawful activities and Standard Industry Practices undertaken by the Contractor to conduct its business and discharge its Obligations to the City under this Agreement from Execution Date through Post-Closure.

Facility Receiving Days (or **Receiving Days**) are the days the Contractor is obligated to receive Delivered Residue from the City and Transfer Contractor(s) and includes every day Monday through Saturday excluding Holidays.

Facility Receiving Hours are the hours of Facility Operation when Contractor must receive Residue Delivered by Facility Users specified in Section 7.02.a.

Facility Users (or **Users**) means the City, Transfer Contractor(s) or other City agents Delivering Residue from the Recyclables Diversion and Transfer Station and may include Residue generated in the Tri-Cities.

Financial Guaranty Agreement is an Agreement attached as Exhibit 4 executed by a party other than the Contractor guaranteeing the timely and full performance of Contractor's Obligations.

Fixed Component means that portion of the Disposal Fee that is fixed over the Base Term and any Extensions, as provided in Article 8. Costs that may be contained in the Fixed Component may include, but are not necessarily limited to, debt service payments, long-term leases, depreciation, and interest expense.

Force Majeure events include and are limited to floods, earthquakes, other extraordinary acts of nature, war or insurrection, riots, or other similar catastrophic events, not caused or maintained by the Contractor, which event is not reasonably within the ability of the Contractor to intervene in or control, to the extent that such event has a material adverse effect on the ability of the Contractor to perform the Contractor's Obligations. No event shall constitute a Force Majeure unless it prevents the Delivery of Residue. No event, the effects of which could have been prevented by reasonable precautions, including compliance with Applicable Laws and Standard Industry Practices shall be a Force Majeure. No failure of performance by any subcontractor of

the Contractor shall be a Force Majeure and no event which merely increases the Contractor's cost of performance shall be a Force Majeure.

Guarantor means USA Waste of California, Inc., a Delaware Corporation.

Hazardous Waste means materials that are hazardous, including:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related Federal, State and local laws and regulations;

(3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and regulations promulgated thereunder; and

(5) materials regulated under any future additional or substitute Federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic substances or Hazardous Waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or Disposal, the broader, less restrictive definition shall be employed for purposes of this Agreement.

Holidays are defined as New Year's Day, Labor Day, Thanksgiving Day and Christmas Day.

Household Hazardous Waste are those wastes resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

Labor Action means labor unrest, including strike, work stoppage, slowdown, sick-out, picketing and any other concerted job action.

Liquidated Damages mean discreet payments owed to the City by the Contractor for failure to meet the Vehicle Turnaround Guarantee and other Operating requirements.

Local Charge means fees, taxes, or other surcharges which are imposed by Alameda County or other local agency after the Execution Date of this Agreement, excluding Pass-Through Costs required by new State or Federal mandates.

Local Charges Component is that portion of the Disposal Fee comprised of Local Charges which are applicable on or before the Execution Date, (specifically Open Space, Measure D, Planning Fee, Business Tax, LEA Inspection Fee) as well as new Local charges incurred during the Base Term or Extensions adjusted as provided in Article 8.

Marketing means marketing Recovered Materials, including market promotion, storage, insurance, packaging, transportation, sales, weighing and maintaining records with respect thereto.

Means and Methods (or Means or Methods) refers to the technologies and/or techniques used in all aspects of solid waste management. This term is used with relation to Sections 7.08, 7.09, and 7.10, in recognition of the fact that technologies and techniques may well change over the Base Term and any Extensions. This change in the Means and Methods may be the result of the availability of new technologies and/or techniques, or the availability to the Parties of new technologies and/or techniques that were not available to them as of the Execution Date. "Means and Methods" encompasses the full possible or potential range of changes in Standard Industry Practice for Transport, Disposal, materials Recovery, and Diversion, including the use of innovative but not necessarily fully proven technology and/or techniques. Changes in Means and Methods may include, but are not limited to, technologies and/or techniques that reduce Disposal volume, risk, or costs and/or are for other reasons deemed desirable by the City.

Municipal Solid Waste means all "solid waste" including putrescible and nonputrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, street sweepings and catch basin residue, Construction and Demolition Waste not classified as recyclable in accordance with the City's ordinance, discarded Bulky Goods, discarded brown goods, dewatered, treated or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and semisolid wastes, Residues from recycling, composting and similar processes, and other discarded wastes and any other materials defined in Section 40191 of the California Public Resources Code, as may be amended from time to time, which is generated within the City. Municipal Solid Waste does not include abandoned vehicles, Hazardous Waste, Household Hazardous Waste, other unacceptable waste, Source Separated Recyclables Materials, Source Separated Yard Waste, or material used as Alternative Daily Cover (ADC).

Notice (or Notify or other variation thereof) means written notice given by one Party to the other Party in relation to the execution of the various obligations of both Parties under this Agreement.

Party and Parties refers to the City and the Contractor, individually and together.

Pass-Through Component is that portion of the Disposal Fee, comprised of Pass-Through Costs which are applicable on or before the Execution Date as well as new costs incurred during the Base Term or any Extensions adjusted as provided in Article 8. The Pass-Through Component specifically excludes Local Charges.

Pass-Through Costs means governmental and regulatory fees, surcharges, and other costs, that are directly assessed against the Contractor by governmental entities, that are remitted to such entities. The Pass-Through Costs are limited to costs incurred by the Contractor as a direct result of mandatory Federal, State, regional and local governmental and/or regulatory fees, surcharges, assessments or other governmental payments related to provision of Disposal services. As of the Execution Date, Pass-Through Costs include the local enforcement agency fee and state AB1220 fee and voter approved initiatives.

Permits (or Permit or Permitting or variations thereof) means all Federal, State and local, statutory or regulatory approvals, or other measures or mechanisms necessary for the Contractor to be in full legal compliance in the performance of all Contractor's Obligations.

Person includes any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a County, a municipality or special purpose City or any other entity whatsoever.

Post-Closure pertains to all activities and related costs during the Post-Closure period of the Facility or portions of the Facility in accordance with all applicable Federal, State, County, or other local statutes, laws, regulations, ordinances, rules, resolutions, requirements, permits, orders, or other directives.

Proposed Disposal Fee means the Disposal Fee as proposed by the Contractor, and as modified through negotiation with the City prior to the Execution Date, as provided in Exhibit 1.

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation that such Person has undertaken to satisfy.

Recovered Materials means materials extracted from Municipal Solid Waste, which includes: Bulky Goods, Construction and Demolition Waste, Recyclable Materials, Self Haul Waste, Source Separated Yard Waste, and other materials as designated by the City.

Recovery (or Recover, Recovered or other variations thereof) means the picking, pulling, sorting, separating, classifying, processing and extraction of Recovered Materials from Municipal Solid Waste, which includes: Bulky Goods, Construction and Demolition Waste, Recyclable Materials, Self Haul Waste, Source Separated Yard Waste, or other materials designated by the City; whether by manual or mechanical means, at a Recyclables Diversion and Transfer Station or at the Facility.

Recyclable Materials means materials designated for Recovery, including Municipal Solid Waste, which includes: Bulky Goods, Construction and Demolition Waste, Recyclable Materials, Self Haul Waste, Source Separated Yard Waste, or any other materials designated as such by the City.

Recyclables Diversion and Transfer Station means a facility that accepts Municipal Solid Waste and/or Recyclable Materials on behalf of the City and its residents and businesses; from Transfer Contractor(s), City Collection Vehicles, Self Haulers, and Additional Users should such a facility be developed and operated by, or on behalf of the City at any point following the Execution Date. The purpose of a Recyclables Diversion and Transfer Station is to Divert Recyclable Materials and to consolidate Residue for Delivery to the Facility.

Residue (or Residual or a variation thereof) means material remaining (excluding Recovered Materials) after Recovery performed at a Recyclables Diversion and Transfer Station that requires Disposal. This term also includes Municipal Solid Waste delivered to the Recyclable Diversion and Transfer Station not processed for diversion but designated for Disposal.

Self Haul (or Self Haulers) means the transportation of Municipal Solid Waste, Recyclable Materials or Source Separated Yard Waste generated in the City, directly to a Recyclables Diversion and Transfer Station by any third party other than the City Collection Contractor or City Vehicles.

Significant (cost or event) means that the financial impact to the City or Contractor exceeds the amount specified in Exhibit 1 as Significant. Such amount shall be adjusted to reflect CPI changes over the Base Term and any Extensions in the same manner that Liquidated Damages are adjusted in accordance with Section 8.09.

Source Separated Recyclable Materials means materials designated for Recovery that are segregated from Municipal Solid Waste prior to collection and delivered separately to a Recyclables Diversion and Transfer Station, a Disposal Facility, or other facility by the City Collection Contractor(s), City Vehicles, and Self Haulers for purposes of Diversion.

Source Separated Yard Waste means material comprised primarily of fallen leaves, cut grass, tree trimmings or other organic debris that are segregated from Municipal Solid Waste prior to collection and delivered separately to a Recyclables Diversion and Transfer Station, the Disposal Facility, or other facility by the City Collection Contractor(s), City Vehicles, and Self Haulers.

Standard Industry Practice(s) means reasonable diligence and prudence on part of the Contractor in employing, at a minimum, the then-current standards of the California solid waste Disposal industry in meeting the Contractor's Obligations.

State means the State of California.

Ton means a unit of measure for weight equivalent to 2,000 standard pounds (where each pound contains 16 ounces).

Transfer Contractor(s) means the entity or entities that, separate from this Agreement, are contracted, licensed, permitted, or otherwise designated by the City, to Transport Municipal Solid Waste and/or Transport Residue from the Recyclables Diversion and Transfer Station.

Transport means Delivering Residue to the Facility or an Alternative Disposal Facility by any means including, but not limited to, truck, rail, and barge.

Uncontrollable Circumstances means any act, event or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility or either Party, which materially and adversely affects the ability of either Party to perform any of its Obligations hereunder and as further defined in Section 11.06.

Variable Component means that portion of the Disposal Fee that is biennially adjusted throughout the Base Term and any Extensions by CPI, as provided in Article 8. Costs that may be contained in the Variable Component may include, but are not necessarily limited to: labor; fuel; utilities; maintenance; and funding as necessary to meet regulatory requirements for environmental monitoring, Closure, and Post-Closure.

Vehicle Turnaround Guarantee is Contractor's commitment that Transfer Contractor(s)' vehicles will be capable of unloading and exiting the Facility in a specified amount of time as defined in Section 7.05.(c).

Waste means Municipal Solid Waste and for the purposes of this Agreement shall include Residue.

Working Days means a day during which City offices are open to do business with the public.

Yard Waste means material comprised primarily of leaves, cut grass, tree trimmings or other organic debris.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

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

a. Status. Contractor is a corporation duly organized, validly existing and in good standing under the laws of California, and is qualified to do business in the State.

b. Authority and Authorization. The Contractor has full legal right, power and authority to Execute and deliver this Agreement and perform its Obligations hereunder. This Agreement has been duly Executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

c. Verification of Statements and Information in Contractor's Proposal. Any written documents submitted to the City by the Contractor on which the City has relied upon in entering into this Agreement, do not contain any untrue statement of a material fact nor omit to state a

material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

d. No Conflicts. Neither the Execution or delivery by the Contractor of this Agreement, the performance by the Contractor of Contractor's Obligations, nor the fulfillment by the Contractor of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of any 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 any agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor, other than as specifically permitted hereunder.

e. No Approvals. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid Execution and delivery of this Agreement by the Contractor, except such as have been duly obtained from its Board of Directors or other authorized persons. Contractor has all licenses, Permits, City business license, qualifications and approvals of whatsoever nature which are legally required for Contractor to provide services hereunder and meet its Obligations, and Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Base Term and any Extensions all licenses, Permits and approvals which are legally required for Contractor to provide such services and meet its Obligations.

f. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the Contractor's knowledge, threatened, against the Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its Obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

g. Patents, Licenses, etc. To the best of the Contractor's knowledge, the use of any patent, patented article, machine or process, or a combination of any or all of the aforesaid with respect to Facility Operation in accordance with the terms and conditions of this Agreement shall not infringe upon any patent, trademark or copyright of any other third person.

h. Contractor Investigation. The Contractor has made an independent investigation to its satisfaction of matters, conditions and circumstances relating to its Execution and delivery of this Agreement and its Obligations hereunder, including its own determination of the composition and quantities of Delivered Residue over the Base Term and any Extensions.

i. Facility Capacity. Provide Facility Capacity over the Base Term and any Extensions

sufficient to ensure Disposal of all Delivered Residue from Facility Users, and Operate the Facility as necessary to provide permanent Disposal for all Delivered Residue from Facility Users. Contractor shall guarantee that Facility Capacity shall be adequate over the Base Term and any Extensions to Accept Delivered Residue and Residue from the Recyclables Diversion and Transfer Station resulting from Waste delivered by the City, Union City, and Newark, its Collection Contractors, and its self haulers and to Accept Residue from the recyclables processing operations at the Recyclables Diversion and Transfer Station resulting from source separated recyclables or recyclable rich loads of materials delivered by any user of the Recyclables Diversion and Transfer Station.

2.02 Of the City

The City represents and warrants as of the date hereof:

a. Status. The City is a political subdivision of the State, duly organized and validly existing under the Constitution and laws of the State.

b. Authority and Authorization. The City has full legal right, power and authority to Execute and deliver this Agreement, and perform its Obligations hereunder. This Agreement has been duly Executed and delivered by the City and upon Execution constitutes a legal, valid and binding Obligation of the City enforceable against the City in accordance with its terms. The City has complied with Applicable Law in entering into this Agreement.

c. Composition and Quantities of Delivered Residue. The City expressly disclaims any warranties, either expressed or implied, as to the composition and quantities of Delivered Residue.

d. No Conflicts. Neither the Execution or delivery by the City of this Agreement, the performance by the City of its Obligations hereunder, nor the fulfillment by the City of the terms and conditions hereof: (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 any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

e. No Approvals. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid Execution and delivery of this Agreement by the City, except such as have been duly obtained from the City Council.

f. Public Works. The services provided by the Contractor do not constitute a "public work" and are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of the regulations promulgated thereunder.

ARTICLE 3. THE PARTIES

3.01 Contractor Is Independent Contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee or partnership or joint venture between the Parties. The Contractor shall be deemed to be, at all times, an Independent Contractor and not an Agent of the City. The Contractor shall be wholly responsible for the manner in which it performs the service required of it by the terms of this Agreement and liable for any act or acts of its own, of its agents or employees. Neither the Contractor nor its officers, employees, agents, subagents contractors, or subcontractors shall be entitled to any retirement benefits, workers' compensation benefits, or any other benefits which accrue to any City employees, and the Contractor expressly waives any claim it may have or acquire to such benefits.

No agents, employees, contractors, subcontractors, consultants, licensees or invitees of Contractor shall be deemed to be an employee or agent of the City. Such Persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging or any other terms of employment or requirements of Applicable Law, shall be determined by Contractor. Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes for all such Persons.

It is further understood and agreed by the Parties that Contractor, in the performance of its Performance Obligations, is subject to the control or direction of City as to the Performance Obligations to be performed and the results to be accomplished by the services agreed to be rendered and performed hereunder, but not as to the means, methods or sequence of performing Performance Obligations results. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Contractor shall defend with counsel acceptable to the City, indemnify, and hold harmless the City against any and all acts of Contractor.

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligation whatsoever.

City is not required to make any deductions or withholdings from the compensation payable to Contractor hereunder. As an independent Contractor, Contractor agrees to defend with counsel acceptable to the City, indemnify, and hold City harmless for any and all claims that may be made against City based on any contention by any of Contractor's employees or by any third party, including any State or federal agency and employees making workers compensation claims, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Agreement or by reason of the nature and/or performance of Performance Obligations.

To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment or support services in the performance hereof, this use shall be at the Contractor's sole discretion based on Contractor's determination that such use will promote Contractor's

efficiency and effectiveness. The City does not require that Contractor use any City facilities, equipment or support services in the performance hereof.

3.02 Contractor Solely Responsible for Its Acts and Omissions. The Contractor shall have the exclusive control over, and sole responsibility for the manner and means of performing Facility Operations, and shall accordingly indemnify the City as provided in Section 10.02 and 10.03.

3.03 Contractor's Obligations Performed at Its Sole Expense. The Contractor shall perform the Contractor's Obligations at its sole cost or expense and shall not be entitled to any adjustment in compensation, or any other compensation, than expressly provided for herein.

3.04 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their representatives, successors and permitted assigns.

3.05 Binding on Successors. The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

3.06 Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

3.07 Actions of the City in Its Governmental Capacity. Nothing herein shall be interpreted as limiting the rights and Obligations of the City in its governmental or regulatory capacity.

3.08 Exercise of Options. The Parties' exercise of any approval, disapproval, option, discretion, election or choice hereunder shall be in each respective Party's independent, sole, exclusive and absolute control and judgment.

3.09 Compliance with Applicable Law. The Contractor shall perform all of the Contractor's Obligations hereunder in accordance with Applicable Law and Permits.

3.10 Confidentiality. The Contractor acknowledges and agrees that information submitted to the City pursuant to this Agreement may be subject to compulsory disclosure by the City upon request from a member of the public under the California Public Records Act, Government Code Section 6250 et seq. The City recognizes and agrees that certain information that may be disclosed by the Contractor or that the Contractor may be required to submit pursuant to the Agreement may be considered confidential and proprietary by the Contractor. The Contractor shall specifically and clearly designate as "CONFIDENTIAL" all materials that it wishes the City to treat in confidence and withhold from public disclosure. The City agrees not to voluntarily disclose any materials so designated to persons other than officers, attorneys, employees and consultants of the City involved in administering this Agreement.

If the City receives a request from a third party to review and/or copy material designated as

confidential, it will inform the Contractor and will permit the Contractor to present arguments and facts to the City in support of the position that the material is entitled to an exemption from disclosure under the Public Records Act and should not be released. If the City determines that the material is not entitled to an exemption and that it must be released, the City will advise the Contractor of such determination prior to releasing the material so that the Contractor may seek a court order enjoining its release. If the City determines that the material is entitled to an exemption, and the person who requested the information files a legal action seeking its release, the City will advise the Contractor and will not oppose a motion by the Contractor to intervene in the action. The Contractor must either intervene or agree to pay the City's legal expenses in defending the action; otherwise the City will have no obligation to affirmatively defend the action and may release the information sought without any liability whatsoever to the City.

Without intervening to limit the remedies available to each Party due to any breach of this provision, each Party agrees the damages at law for any such breach would be an insufficient remedy to the other and that the non-breaching Party shall be entitled to injunctive relief or other equitable remedies in the event of any such breach.

3.11 Cooperation. The Parties recognize and agree that unforeseen developments and circumstances may occur during the Base Term or any Extensions that materially modify or otherwise affect one or both Parties' respective Obligations. The Parties further agree that in such event each Party will cooperate in a professional manner and negotiate with the other in good faith to address and resolve such unforeseen developments.

ARTICLE 4. TERM OF AGREEMENT

4.01 Base Term. This Agreement shall become Effective on the Effective Date and the Base Term shall commence on the Delivery Date and continue in effect for twenty (20) years, unless terminated earlier in accordance with Article 12. The Delivery Date may occur on or after September 1, 2004 but no later than September 1, 2005.

4.02 Term Extensions

a. City Right of Renewal. Provided Capacity is available, the City and Contractor may, upon mutual agreement, decide to Extend the Base Term beyond twenty (20) years, for periods of up to five (5) years each such that the total Extension time does not exceed twenty (20) years. The City shall notify the Contractor of its request to Extend the Agreement no later than one (1) year prior to the end of the then-current Extension. Within thirty (30) calendar days of City's request, Contractor shall provide City with information necessary to verify that Capacity is physically available for term Extension and indicate its willingness to Extend the Agreement for the period requested by the City.

b. Agreement in Full Effect. All provisions of this Agreement shall remain in effect during any Extension, including the Contractor's Obligations and all provisions related to Contractor compensation.

4.03 Survival of Certain Provisions. All representations and warranties of the Parties herein, and all indemnifications, including all insurance requirements until the applicable claims periods have passed, provided for herein, and any other rights and Obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination.

ARTICLE 5. RIGHTS OF THE PARTIES

5.01 Rights and Responsibilities of the City. The City and/or its agents have the following rights and responsibilities under this Agreement:

- a. Expect Contractor to provide Capacity at the Facility over the Base Term and any Extensions sufficient for Disposal of all Delivered Residue from Facility Users.
- b. To Transport, or arrange for the Transport of, some or all of Transfer Contractor(s) Residue at any time on or after the Effective Date and before the Delivery Date, on a nonexclusive and possibly noncontinuous basis as provided in Article 6. The City is not obligated to Deliver any Residue during this period.
- c. Direct Transfer Contractor(s) to Deliver all Residue from the Recyclables Diversion and Transfer Station, on and after the Delivery Date, to the Facility without commitment regarding the quantity or composition of Delivered Residue, as provided in Article 6.
- d. Ability to add Additional Users for Delivery of Waste and/or Residue from the Recyclables Diversion and Transfer Station to the Disposal Facility under the provisions of this Agreement, including the provisions related to the Disposal Fee then available to the City, as provided in Section 6.07. Ability to add Additional Users other than Newark and Union City for Delivery of Waste and/or Residue from the Recyclables Diversion and Transfer Station to the Disposal Facility under the provisions of this Agreement are subject to Contractor's reasonable approval.
- e. Require the Contractor to verify that the current Disposal Fee is no greater than the lowest Comparative Disposal Fee, as provided in Section 6.02, paid by another user(s) of the Facility, and if not, to require the Contractor to reduce the then-current Disposal Fee to match the lowest Comparative Disposal Fee, as provided in Section 6.02.
- f. Adjust the Disposal Fee biennially to reflect change in the CPI and/or changes to Pass-Through Costs, as provided in Article 8.
- g. Arrange for Transfer Contractor(s), including the operator(s) of the Recyclables Diversion and Transfer Station to implement load checking programs to inspect for the presence of Hazardous Waste.
- h. Require the Contractor, with appropriate compensation, to implement a change in the Means and Methods as provided in Article 7.
- i. Terminate the Agreement for convenience at its sole discretion subject to the buy-out

provision of Section 12.04.

j. Terminate the Agreement without any additional compensation to the Contractor for cause due to Contractor default as provided in Articles 11 and 12.

k. Take no responsibility regarding Additional Users Delivery of Waste or Residue to the Facility and/or to the Recyclables Diversion and Transfer Station.

l. Direct the City Collection Contractor(s), under the provisions of the agreement(s) between the City and its Collection Contractor(s), to Deliver all Waste to the Recyclables Diversion and Transfer Station on or after the Delivery Date, without commitment regarding quantity or composition of such Waste.

5.02 Rights and Responsibilities of the Contractor. The Contractor has the following rights and responsibilities under this Agreement:

a. Accept Delivered Residue at any time after the Effective Date as provided in Article 6.

b. Accept Delivered Residue without any commitment from the City or the Transfer Contractor(s) to provide any specific minimum quantity or composition of Delivered Residue, as provided in Article 6.

c. Accept Residue or Residue Transported to the Facility on behalf of Additional User(s) for Disposal under the provisions of this Agreement at the Disposal Fee charged to the City, as provided in Section 6.07.

d. Provide verification to the City as requested that the current Disposal Fee is no greater than the lowest Comparative Disposal Fee paid by another user(s) of the Facility, and, if not reduce the current Disposal Fee to match the lowest Comparative Disposal Fee, as provided in Section 6.02.

e. Receive changes in compensation based solely on the adjustment of the Disposal Fee as provided in Articles 8 and 9.

f. Obtain, maintain, and comply with all State, Federal, and local Permits necessary to meet applicable state, federal, and local laws and regulations during the Base Term and any Extensions and through the completion of the Contractor's Closure and Post-Closure period(s).

g. Indemnify the City as provided in Article 10.

h. Accept Termination of the Agreement with reasonable Notice from the City for cause as provided in Section 12.03, or for convenience subject to the buy-out provision of Sections 12.02 and 12.04.

i. Provide emergency services at the City's request in the event of major accidents, disruption, or

natural calamities as provided in 7.01 (c).

ARTICLE 6. DELIVERY OF RESIDUE

The process for commencement of Delivery of Residue to the Facility is as follows:

6.01 Notice to Deliver. At any time on or after the Effective Date, the City will give the Contractor Notice of its intention to commence Delivery of Residue on the Delivery Date which is the date thirty (30) calendar days following the date of Notice. The Contractor shall Accept Delivered Residue for Disposal on any date on or after the Delivery Date.

6.02 Comparative Disposal Fee. By December 1 of each year beginning with December 1, 2004, Contractor shall provide the City written verification that the then-current Disposal Fee is the lowest of the ~~comparative service fees~~ ^{Disposal Fee 767} that the Contractor is then providing to all other parties that use the Disposal Facility. In addition, the City may request, and the Contractor shall within five (5) Working Days provide data to verify whether the then-current Disposal Fee is the lowest of the Comparative Disposal Fees, that the Contractor is then providing to all other parties that use the Disposal Facility, provided terms and conditions for such parties meet conditions listed in the definition of Comparative Disposal Fee provided in Article 1. If any Comparative Disposal Fee is lower than the then-current Disposal Fee, the Contractor shall reduce the City's Disposal Fee to match the lowest Comparative Disposal Fee. The failure of the Contractor to match the lowest Comparative Disposal Fee, may, at the City's sole discretion, be cause for termination subject to the provisions of Section 12.03.

6.03 Vehicle Tare Weights. No more than fifteen (15) calendar days before the Delivery Date, the Contractor shall weigh the Transfer Contractor(s) Transport vehicles to determine their unloaded ("tare") weights, as provided in Section 7.02.b.

6.04 No City Obligation Prior to Delivery Date The City is under no obligation prior to the Delivery Date to: (1) Deliver any Residue or (2) Deliver Residue on a continuous basis.

6.05 City Obligation on the Delivery Date. The City is obligated, beginning on or after the Delivery Date and through the Base Term and any Extensions, to direct the Transfer Contractor(s) to Deliver all Residue from the Recyclables Diversion and Transfer Station to the Disposal Facility for purposes of Disposal. On or after the Delivery Date, City shall direct City Collection Contractor(s) to Deliver all Waste to the Recyclables Diversion and Transfer Station.

6.06 No Representation. The City makes no representation, and is under no obligation regarding the quantity and/or composition of the Delivered Waste, Residue, or Self Haul Waste, including providing any minimum Tonnage of, or minimum proportion of, the Municipal Solid Waste.

6.07 Additional Users. Should the Recyclables Diversion and Transfer Station process Municipal Solid Waste from a party(ies) other than the City, the party(ies) shall be an Additional User of the Facility. If the City wants to dispose of Waste or Residue from any Additional Users

to Altamont Landfill, City has the right but not the obligation to include Additional Users, subject to Contractor's approval with the exception of Union City and Newark which may be included at any time as Additional Users. Additionally, the City is obligated to deliver Residue from Newark and Union City to the Facility if City consents to Union City and Newark becoming Additional Users of the Transfer Facility. City and Contractor shall negotiate in good faith to include Additional Users when requested by the City.

ARTICLE 7. FACILITY OPERATIONS

7.01 Responsibilities of the Contractor. During Facility Operation, the Contractor is responsible for the following:

- a. Accept Residue.** Accepting Delivered Residue from Transfer Contractor(s), and weighing all Delivery vehicles at the time of entry at the Facility using Contractor's scales.
- b. Operations.** Operating the Facility including operation, management, and maintenance of the refuse fill areas, leachate and landfill gas management systems, groundwater monitoring and management systems, treatment facilities, buildings, on-site roadways, utilities, and any other required Facility elements.
- c. Personnel.** Employing trained personnel to effectively Operate the Facility and providing on-going safety and professional training.
- d. Equipment and Supplies.** Providing all rolling stock, stationary equipment, transfer truck tippers, material storage containers, spare parts, maintenance supplies, and other consumables necessary to perform Operations.
- e. Traffic Direction.** Providing necessary signs and personnel to assist drivers to proper unloading areas.
- f. Hazardous Waste.** Maintaining an effective monitoring system to prevent the Hazardous Waste from being Accepted at the Facility as provided in the load checking program included in Exhibit 3, and ensuring the capability to manage Hazardous Waste following inappropriate Acceptance of Hazardous Waste.
- g. Permits.** Meeting all Permit conditions and regulatory requirements.
- h. Invoicing.** Invoicing the Transfer Contractor(s) on a monthly basis requesting payment of the Disposal Fee corresponding to the Tonnages of Waste and Residue Delivered by each Transfer Contractor(s) during the previous month.
- i. Closure and Post-Closure.** Safely managing the Facility and the Facility property in full legal compliance during Closure and Post-Closure period(s) including fulfillment of State funding requirements.

j. Standard Industry Practices. Employing Standard Industry Practices in conducting all of the activities specified in this Article 7.

k. Emergency Services. Contractor shall be capable of providing emergency services and/or make available for City use and at City's direction Contractor's personnel and equipment within twenty-four (24) hours of notification by the City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services which exceed the scope of work under this Agreement shall be compensated through Extraordinary Rate Review in accordance with Article 9 of this Agreement.

7.02 Operational Requirements

a. Receiving and Operating Hours. Receiving and operating hours of the Facility are as follows:

(1) **Disposal Facility.** The Altamont Landfill hours of operations are currently Sunday 7:00 PM through Friday 6:00 PM except Holidays, on Saturday, open as necessary. The list of excepted Holidays is subject to modification by the City upon ninety (90) calendar days Notice to the Contractor. WMI agrees to meet in good faith with the City of Fremont and Transfer Station Contractor to design a schedule of operations that allows for economic efficiency and conforms to reasonable hours of operations for the transfer operation operator. Upon mutual agreement, the hours of operations will not result in additional costs to the City of Fremont or Transfer Station Contractor. Saturday hours will resemble normal hours of operations on holiday trash collection schedule.

(2) **Continuous Operations.** Beginning on the Delivery Date, the Contractor shall keep open and Operate the Facility continuously and uninterruptedly during Facility Receiving Hours for the Base Term and any Extensions, except when the Contractor is prevented from doing so by an Uncontrollable Circumstance.

(3) **Mode of Delivery.** The Facility must be able to Accept Delivered Residue regardless of mode of Transport upon completion of Extraordinary Review of Compensation, as specified in Article 9.

b. Scale Operation

(1) **Installation, Maintenance and Operation.** Contractor shall maintain and operate at least three (3) scales which shall be available to the Transfer Contractor(s) and City Collection Vehicles during Facility Receiving Hours. The scales shall be State certified motor vehicle scales in accordance with Applicable Law. All scales shall be linked to a centralized computer recording and billing system.

(2) **Establishment of Vehicle Tare Weights.** No more than fifteen (15) calendar days before the Delivery Date, as provided in Article 6, and immediately upon the addition of any new vehicles at any time during the Base Term and any Extensions, the Contractor shall weigh the Transfer Contractor(s)' vehicles to determine their unloaded ("tare") weights. In all cases,

record of vehicle tare weights shall be recorded by vehicle number and separately provided to the Transfer Contractor(s) and the City within fourteen (14) calendar days of weighing or re-weighing.

(3) **Additional or Replacement Vehicles.** When additional or replacement vehicles are placed into service by the City or by the Transfer Contractor(s), the Contractor shall promptly weigh such vehicles and provide the tare weight(s) to the City and Transfer Contractor(s) using the same method as provided in (2) above.

(4) **Periodic Testing.** The Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least once every twelve (12) months. Upon City request, the Contractor shall within five (5) Working Days provide the City with copies of test results.

(5) **Testing at City Request.** The Contractor shall further test and calibrate any or all scales upon written request therefore by the City, within three (3) Working Days of such request. If such test results indicate that the scale or scales complied with Applicable Law, the City will reimburse the Contractor the reasonable and documented costs of such tests. If such test results indicate that the scale or scales did not comply with Applicable Law, then all weight measurements recorded and Disposal Fees calculated, charged and paid, as the case may be, from the date of such request, shall be adjusted and corrected consistent with the results of such test.

(6) **Substitute Scales.** However, to the extent practicable, if any scales are inoperable, being tested or otherwise unavailable, all such vehicles shall be weighed on the remaining operating scales. To the extent that all the scales are inoperable, being tested, or otherwise unavailable, Contractor shall substitute portable scales until the permanent scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be repaired as soon as possible, and in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. Contractor shall arrange to immediately obtain a temporary substitute scale(s) should the repair of the permanent scale require more than twelve (12) hours.

(7) **Estimates.** Pending substitution of portable scales or during power outages, Contractor shall estimate the quantity of Residue Delivered to the Facility, on the basis of Delivery vehicle and transfer trailer volumes, tare weight, and data obtained through historical information from the Facility. These estimates shall take the place of actual weighing and shall be the basis for records while scales are inoperable. If the City and Contractor cannot agree on the estimated quantities, the Parties shall handle the matter in accordance with the dispute resolution procedures in Article 13.

(8) **Weighing Requirements.** Contractor shall weigh and record inbound weights of all Transfer Contractor vehicles and Contractor shall weigh and record outbound weights of vehicles for which Contractor does not maintain tare weight information.

(9) **Records.** In accordance with Sections 7.01 and 7.02, Contractor shall maintain scale records that provide information such as, but not limited to, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of Residue Received, type of

Waste, hauler identification and/or classification, type, weight, and destination of any outbound materials.

c. Disposal Operations. Contractor shall be responsible for all Operations, maintenance, monitoring, and reporting requirements associated with the Disposal Facility Operations, including but not limited to the following:

- (1) directing on-site traffic to appropriate unloading areas and providing a safe working environment for Facility Users, visitors, and employees,
- (2) providing and operating tippers for the purposes of unloading Transport Vehicle trailers,
- (3) stockpiling, placing, burying, and compacting Residues in the fill area,
- (4) placing and compacting (if necessary) daily cover, intermediate cover, and final cover,
- (5) managing fill operations including management of fill sequencing, side slopes, working face location and configuration,
- (6) providing, operating, and maintaining all equipment and supplies necessary for Operations, Closure, Post-Closure, and environmental monitoring,
- (7) properly managing dust, odors, litter, vectors, and other potential nuisances
- (8) managing and maintaining control systems for landfill gas, leachate, and site drainage
- (9) complying with all Permits and all federal, state and local laws and regulations.

d. Alternative Daily Cover. City and/or its Transfer Contractor(s) may Deliver materials to the Disposal Facility that are suitable for use as Alternative Daily Cover. Contractor shall use, track, and report to the City in its monthly reports the material type and Tonnage used for Alternative Daily Cover. All Class II materials originating in the City and Accepted by the Facility will, to the extent possible and in compliance with all Facility permits, be used as Alternative Daily Cover.

e. Right to Enter and Inspect Facility. The City and its designated representative(s) shall have the right, but not the obligation, to enter, observe and inspect the Facility at any time during Facility Receiving Hours; and meet with the Facility manager or his or her representative at any time during Facility Receiving Hours upon twenty four (24) hours notice. Upon City request, the Contractor shall make personnel available to accompany City employees on inspections. The Contractor shall ensure that its employees cooperate with the City and respond to the City's reasonable inquiries. The Contractor shall promptly make Operational and business records

available to the City during Facility Receiving Hours upon City request, and shall provide the

City copies of such records at the City's request.

f. Personnel. The Contractor shall engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and Operating personnel, in numbers necessary and sufficient for Facility operation and to perform Contractor's Obligations.

g. Safety. The Contractor shall conduct Facility Operations in a safe manner, in accordance with Applicable Law, requirements of insurance carried pursuant to Article 10, and Standard Industry Practices.

h. Record Keeping. The Contractor shall keep daily accurate and complete records of Residue Delivered by Transfer Contractor and materials used for Alternative Daily Cover using paper, electronic, magnetic or other media, sufficient for the City to determine any Liquidated Damages or other damages levied under this Agreement, and to determine compliance with all provisions of this Agreement. At a minimum, such record keeping shall consist of the date, time of weighing, and weight for each incoming vehicle; invoices submitted by the Contractor to the Transfer Contractor(s) or any other party Delivering Waste or Residue, including all background data used in generating the invoices. The Contractor shall at the City's reasonable request, and with no additional compensation, develop and provide the City with information or records as necessary to characterize Recovered Materials. The Contractor shall maintain records so as to be available to the City during Facility Receiving Hours and upon City request, and shall within five (5) Working Days provide the City copies of such records at the City's request. All such records shall be preserved and retained for a period no less than seven (7) years including retention of records beyond the expiration date of the Base Term or seven (7) years beyond expiration date of the final Extension period should there be one or more Extensions to the Agreement in order to comply with the seven (7) year record holding requirement.

i. Reporting Requirements

(1) **Quarterly Reports.** By the fifteenth (15th) calendar day of each quarter, Contractor shall submit to the City reports summarizing the daily Tonnage of Delivered Residue Accepted and materials Accepted and used for Alternative Daily Cover listed separately for each Transfer Contractor for the previous quarter. The reports shall also include any relevant data on the Diversion of Recovered Materials from Delivered Residue, including types and amounts of materials Diverted. Unless otherwise specified by the City, this portion of the requirement may be met by providing the City copies of each monthly invoice submitted to the Transfer Contractor(s) during the quarter, as provided in Section 8.02.b. In addition, the Contractor shall provide a cover letter specifying any Operational problems at the Facility, or any material changes in the financial or legal situation of the Contractor that in any way may or could affect the ability of the Contractor to fully meet its Obligations under this Agreement. All quarterly reports shall also include calendar year-to-date monthly totals listed separately for the Transfer Contractor, Diverted Materials, Alternative Daily Cover, and other relevant categories. Reports shall be provided by Contractor to City in hard copy and electronic format compatible with the City's software systems.

(2) Annual Reports

(i) No later than March 1st of each year, the Contractor shall submit an annual report for the previous calendar year that aggregates and summarizes the quarterly reports submitted in accordance with subsections (1) above. If the Contractor has at any time during the previous year failed to comply with Contractor Obligations resulting in Liquidated Damages, the annual report shall also include the amount of any damage calculated pursuant to Section 8.09 and previously paid to the City, or owed by the Contractor to the City.

(ii) Contractor shall by December 1 of each year provide the City written verification that the then-current Disposal Fee is the lowest of the Comparative Disposal Fees, as provided in Section 6.02.

(iii) No later than May 1st of each year, Contractor shall submit audited financial statements of Guarantor for the previous calendar year, and an accompanying letter from the chief financial officer indicating any material change, or lack thereof, in the financial condition of the Contractor.

(3) Other Reporting Requirement. The City reserves the right to request an independent audit of Contractor's financial records provided that City or its agents make best efforts to hold information obtained or reviewed confidential pursuant to Section 3.10. The City reserves the right to modify or delete any of the reporting requirements outlined above, or to require that the Contractor supply other data and reports as are reasonably requested by the City.

j. Meetings. Upon five (5) Working Days Notice of a request by given by either Party to meet with the other Party, the Parties shall meet to discuss Facility Operation and any related matters raised by either Party.

7.03 Nondiscrimination. Contractor hereby certifies that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, marital status, physical or mental disability or national origin. Contractor agrees to insure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, marital status, physical or mental disability or national origin. This shall include, but not limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; designated representatives. In addition, Contractor shall not exclude from participation in, deny the benefits of, or subject to discrimination under this Agreement any employee or applicant for employment on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified disabled individual as provided in Section 504 of the Rehabilitation Act of 1973 and/or the Americans with Disabilities Act; or religion except that any exemption for such prohibition against discrimination on the basis of religion as provided in the Civil Rights Act of 1964, or Title VIII of April 11, 1968 as amended shall also apply. Contractor agrees to comply with the City's nondiscriminatory employment practices and the Contractor agrees to indemnify and hold harmless the City and its employees from any claims of discrimination based on race, color,

national origin, sex, sexual orientation, age, religion, or physical or mental disability, arising

from the acts or omissions of the Contractor.

7.04 Treatment of Customers. In performing this Agreement, the Contractor shall be attentive to customer needs including Transfer Contractor(s) needs, and shall not discriminate against customers or potential customers because of race, color, religion, sex, sexual orientation, marital status, physical or mental disability or national origin.

7.05 Acceptance of Delivered Residue

a. Acceptance. The Contractor shall Accept all Delivered Residue during Facility Receiving Hours. If the Contractor refuses or is unable to accept such Delivered Residue during any portion of the Base Term or any Extensions, the Contractor shall be liable to the City for any damages payable and remedies available under Article 11. Notwithstanding any other provisions in this Agreement, nothing in this Agreement shall prevent Contractor from pursuing all legal remedies available from original generators of Hazardous Waste inadvertently Acceptable by Contractor for matters related to proper handling, treatment, and Disposal of Hazardous Waste provided that the City, Transfer Contractor(s), and Collection Contractor(s) shall in no case be considered the original generator.

b. Load Checking Program. Contractor shall conduct the Load Checking Program provided as Exhibit 3 to inspect and monitor incoming loads of Residue and to identify Hazardous Waste and prevent Disposal of such materials.

c. Rejection of Hazardous Waste. Should the Contractor not Accept any Delivered Residue due to the presence, or strong suspicion of Hazardous Wastes, the Contractor shall immediately inform by telephone (followed by written Notice) the City and the Transfer Contractor(s) of its inability or unwillingness to Accept the vehicle and its reasonable reasons for doing so. The Contractor is solely responsible for handling and arranging the transport and disposition of any Hazardous Waste that is contained in or with Delivered Residue Accepted by the Contractor, and for all related costs, however Contractor has the right to pursue all legal remedies from original generators of Hazardous Waste as provided in Section 7.05.(a) above.

d. Turnaround Time of Residue Transport Vehicles

(1) **Vehicle Turnaround Guarantee.** Contractor guarantees (the "**Vehicle Turnaround Guarantee**") that the average time required for a vehicle Delivering Residue on behalf of a Facility User, including vehicles of the City's Transfer Contractor(s) to unload and exit the Facility is twenty (20) minutes commencing from the time the vehicle arrives at the entrance to the receiving weigh scales absent vehicle breakdown, driver negligence, lack of cooperation, or driver parking to use restrooms or telephone or other delays not caused by or under the control of the Contractor where the average time shall be calculated on a thirty (30) calendar day basis as the sum of the vehicle turnaround time for each load of Residue Delivered by a Facility User during the month divided by the number of loads received during the thirty (30) calendar day period. City agrees to work cooperatively with Contractor and Transfer Station Contractor to install transponders on disposal vehicles to ensure efficient ingress and egress to the Landfill sufficient to comply with the turnaround time requirements. Within thirty (30) Working Days of

the City's request, Contractor shall gather the necessary data and provide documentation of the average vehicle turnaround time for one or more thirty (30) calendar day periods identified by the City. Contractor shall manage the Residue receiving and unloading area in order to facilitate the access and unloading of Facility Users. Contractor shall use Reasonable Business Efforts to ensure that time spent queuing up to the scales is minimized in order to ensure a timely vehicle turnaround.

(2) **Liquidated Damages.** The Parties acknowledge that consistent, efficient Facility Operation is of utmost importance to the Transfer Contractor(s) and the City; delays in Vehicles unloading at the Facility increase the Transfer Contractor(s)' hauling costs; and the City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if the Contractor fails to meet the Vehicle Turnaround Guarantee, the City and its residents and businesses will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties agree that the following Liquidated Damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the Transfer Contractor(s), that reasonably could be anticipated and that proof of actual damages would be costly or inconvenient. The Contractor agrees to pay (as Liquidated Damages and not as a penalty) as provided in Exhibit 5 for each Vehicle that cannot unload and depart in accordance with the Vehicle Turnaround Guarantee due to the Contractor's fault. The entire above amount will be adjusted to reflect the change in the CPI each time Disposal Fees are adjusted as provided in Article 8.

(3) **Vehicle Turnaround Guarantee Liquidated Damages.** In signing this Agreement, the Contractor specifically confirms the accuracy of the statements made in Section 7.05.(d) with respect to Liquidated Damages for the Vehicle Turnaround Guarantee and the fact that it had ample opportunity to consult with legal counsel and obtain an explanation of such Liquidated Damage provisions at the time that this Agreement was made.

7.06 Professionalism. Contractor, its employees, subcontractors, or other agents shall act in a professional and courteous manner at all times including times when such Persons are interacting with the Transfer Contractor, its employees, subcontractors, or other agents. Contractor, its employees, subcontractors, or other agents shall follow all operating procedures established by the Facility including those related to health and safety, traffic, gate house, Residue unloading, and load checking operations.

7.07 Cooperation and Disputes. Contractor shall fully comply with its Obligations and cooperate to its fullest extent with the Transfer Contractor. In the event of disputes between Contractor and Transfer Contractor, Contractor shall attempt to resolve the dispute directly with the Transfer Contractor. As a last resort, Contractor may request assistance from the City in resolving the dispute. In the event of a dispute, Contractor shall continue performance of

Contractor's Obligations under this Agreement and shall attempt to continue to resolve such

dispute in a cooperative manner, including but not limited to negotiating in good faith.

7.08 Means and Methods of Residue Delivery

a. Initial Method of Delivery. The initial Means and Methods of Delivery will be one or more of the following: collection vehicles (including pod-type vehicles), large-volume highway transfer vehicles, and/or City Collection Vehicles, providing it is consistent with the Contractor's Conditional Use Permit.

b. Alternative Means and Methods of Delivery. The Parties recognize that one or more of the following may occur during the Base Term and any Extensions:

(1) The City may wish to Deliver Waste or Residue to the Facility by a method(s) other than, or in addition to, those specified in Section 7.08.(a), including, but not limited to rail.

(2) The Contractor may develop the infrastructure necessary and sufficient to Accept Delivered Waste and Residue using a method(s) other than, or in addition to, those specified in 7.08.(a), including, but not limited to rail, and the City may wish to use this newly available method of Transport to Deliver Waste or Residue.

Either Party may request that the other Party consider use of an alternative Means or Method of Delivery. Should either Party do so, the terms and conditions governing use of an alternative mode of transport shall be determined under the Extraordinary Review provisions of Article 9.

7.09 Means and Methods of Disposal

a. Initial Means and Methods of Disposal. The initial Means and Methods of Disposal are as specified throughout this Agreement.

b. Alternative Means and Methods of Disposal. The Parties recognize that the Means and Methods of Disposal may change over the Base Term and any Extensions. Either Party may request that the other Party consider use of an alternative Means or Method(s) of Disposal. However, if the Contractor's request is approved by City, or if such request is initiated by City, the terms and conditions governing use of an alternative Means and Methods of Disposal shall be determined under the Extraordinary Review provisions of Article 9. If such alternative means or methods are proposed by Contractor, City shall have the right to approve or disapprove such proposal in City's sole discretion.

7.10 Means and Methods of Recovery and Diversion

a. Initial Means and Methods of Recovery and Diversion. The initial Means and Methods of Recovery and Diversion include all activities related to Recovery and Diversion employed by the Parties, the City's refuse and recyclables Collection Contractor(s), City's Transfer Contractor(s), Self Haulers, or any other parties as of the Effective Date.

b. Alternative Means and Methods of Recovery and Diversion. The Parties recognize that

the Means and Methods of Recovery and/or Diversion may change over the Base Term and any Extensions. Either Party may request that the other Party consider use of an alternative Means or Method(s) of Recovery and or Diversion. However, if the Contractor's request is approved by City, or if such request is initiated by City, the terms and conditions governing use of an alternative Means and Methods of Recovery and/or Diversion shall be determined under the Extraordinary Review provisions of Article 9. If such alternative means or methods are proposed by Contractor, City shall have the right to approve or disapprove such proposal in City's sole discretion.

ARTICLE 8. COMPENSATION

8.01 Disposal Fee. Contractor shall be compensated for performing its Obligations in the form of a per-Ton Disposal Fee for each Ton of Residue Delivered by Contractor from City and/or Transfer Contractor. Exhibit 1 provides the Disposal Fee in effect as of the Execution Date. The Disposal Fee presented in Exhibit 1 will be adjusted biennially over the Base Term and any Extensions as specified in this Article. The first adjustment period shall be for the two year period beginning January 1, 2006. The Disposal Fee collected from the Transfer Contractor(s) is the only compensation due the Contractor for service provided under this Agreement with the exception of compensation for extended Facility Receiving Hours provided in Section 8.11. The Disposal Fee is expressed in terms of dollars of compensation to the Contractor per Ton of Delivered Residue. The Disposal Fee has four components described below.

a. Fixed Component. The Fixed Component is that portion of the Disposal Fee comprised of the Contractor's fixed costs. The Fixed Component, as specified in the Contractor's Proposal or as subsequently modified during negotiations with the City prior to the Execution Date, is provided in Exhibit 1. The Fixed Component is not subject to the periodic adjustment process specified in this Article, and may be adjusted only as the result of an Extraordinary Review as provided in Article 9.

b. Variable Component. The Variable Component is that portion of the Disposal Fee comprised of the Contractor's variable costs. The Variable Component, as specified in the Contractor's Proposal or as subsequently modified during negotiations with the City prior to the Execution Date, is provided in Exhibit 1. The Variable Component will be adjusted over the Base Term and any Extensions to reflect the change in the CPI, as specified in Section 8.03, but will not otherwise be adjusted except as the result of an Extraordinary Review as provided in Article 9.

c. Pass-Through Component. The Pass-Through Component is that portion of the Disposal Fee comprised of the Contractor's Pass-Through Costs. The Pass-Through Component, as specified in the Contractor's Proposal or as subsequently modified during negotiations with the City prior to the Execution Date, is provided in Exhibit 1. The Pass-Through Component is subject to adjustment only as necessary to reflect changes in Pass-Through Costs required by third parties as provided in Section 8.03, or as the result of a Change in Law as provided in Article 9.

d. Local Charges Component. The Local Charges Component is that portion of the Disposal

Fee comprised of the Contractor's Local Charges. The Local Charges Component, as agreed upon during negotiations with the City prior to the Execution Date, is provided in Exhibit 1. The Local Charges Component is subject to adjustment only as necessary to reflect changes in Local Charges required by third parties as provided in Section 8.03.

8.02 Responsibilities of the Parties

a. City Responsibilities. The City is responsible for setting, maintaining, and regulating rates for the services provided by the City's Transfer Contractor(s) handling Municipal Solid Waste and Residue. The City will incorporate into the rates set for Transfer Contractor(s) the per-Ton Disposal Fee provided in this Article for the Tonnage of Delivered Residue Accepted for Disposal by the Contractor. In the event Transfer Contractor fails to pay Contractor for Disposal Services in accordance with the payment terms and conditions defined in Section 8.02.(b)(1) below City will be responsible for paying Contractor all such fees until such time the Transfer Contractor resumes payment of Disposal Fees. However, Contractor must give City written notice of Transfer Contractor's failure to pay, and allow the City forty five (45) calendar days to pay or cause to be paid Transfer Contractor's outstanding Obligations. Nothing in this paragraph shall limit rights of Contractor or City to pursue all legal, financial and equitable remedies available under Applicable Law.

b. Contractor's Responsibilities

(1) Invoice Transfer Contractor(s). The Contractor is responsible for submitting monthly invoices to the Transfer Contractor(s) requesting payment for Disposal Fees due on Tonnage of Residue Delivered to the Facility following procedures described below.

On or before the fifteen (15th) day of each month, and beginning with the month immediately following the month in which the Residue is first Delivered, the Contractor shall invoice the Transfer Contractor(s) for the total monthly compensation it is due for Residue Delivered or materials Delivered that are used as Alternative Daily Cover during the previous month. Total compensation due to Contractor from the Transfer Contractor(s) shall be product of the number of Tons of Residue Delivered as measured by scales at Contractors Facility times the then-current Disposal Fee plus the number of Tons of material Delivered as measured by scales at Contractor's Facility that are used for Alternative Daily Cover times Alternative Daily Cover per-Ton fee, which shall be equal to eighty (80) percent of the then-current Disposal Fee. Such invoice shall indicate that the invoiced party shall pay within thirty (30) calendar days of receipt of the invoice and shall make payment via wire transfer. A copy of each invoice shall be sent to the City. The Contractor shall provide the invoice in a format that is reasonably requested by the Transfer Contractor(s) or the City. The invoice shall be accompanied by a monthly report specified in summarizing the daily Tonnage of Residue or Alternative Daily Cover Delivered by Transfer Contractor for the invoice period.

(2) Collection of Disposal Fees. Contractor is responsible for collecting Disposal Fees from Transfer Contractor and Noticing the City of the Transfer Contractor's failure to remit

Disposal Fee payments in accordance with payment terms and conditions defined in Section

8.02.(b).

c. Transfer Contractor(s) Responsibilities. Unless and until the City decides to bill customers of solid waste collection and Disposal services, the Transfer Contractor(s) shall bill such customers according to City-approved collection and Disposal rates, collect payment from customers, and shall upon receipt of appropriate Contractor invoices, compensate the Contractor for Residue Disposed at the Facility at Disposal Fees defined in this Article.

8.03 Allowable Adjustments of Disposal Fee

a. General. Contractor acknowledges that Contractor waived its rights to any adjustment to discuss Disposal Fee for CPI changes prior to January 1, 2006 and further recognizes that changes to the Variable Component of the Disposal Fee during the Base Term and any Extensions will reflect eighty (80) percent of the changes in CPI for the given period of adjustment. Any adjustments to the Disposal Fee shall be rounded to the nearest cent per Ton.

b. Biennial Adjustment. The intent of this Agreement is to provide for a biennial adjustment to the Disposal Fee every other year effective January 1 of every even numbered year. The first biennial increase will be effective January 1, 2006. The Proposed Disposal Fee will be adjusted as follows. Biennial adjustments will reflect CPI changes, changes in Pass-Through costs, and changes in Local Charges occurring during the preceding twenty-four (24) months. The biennial change to the Variable Component will be calculated using the most recently published CPI (most recent CPI) and the CPI for the month which is twenty-four (24) months prior to the most recently published CPI (previous 24-month CPI). The biennial adjustment shall be made as follows:

Adjusted Disposal Fee =
Fixed Component as proposed +
Then-current Variable Component x [0.80 x ((most recent CPI/previous 24 month CPI) /
previous 24-month CPI)-1) + 1] +
Then-current Pass-Through Component +
Then-current Local Charges Component
where the then-current Pass-Through and Local Charges Components must be verified in
accordance with procedures described in Sections 8.05 and 8.08.

For example, assume:

1. Date of biennial adjustment is January 1, 2006
2. Fixed Component as proposed = \$2.25
3. Then-current Variable Component = \$9.625
4. Then-current Pass-Through Component \$1.62
5. Then-current Local Charges Component \$9.335
6. Most Current CPI (October 2005) = 129.9
7. Previous 24-month CPI (October 2003) = 126.1

The Adjusted Disposal Fee is calculated as follows:

Adjusted Disposal Fee == \$2.25 + \$9.625 x [0.80 x ((129.9- 126.1)/126.1)+1] + \$1.62 + \$9.335

Adjusted Disposal Fee = \$23.06

c. Comparative Disposal Fee. If at any time during the Base Term and any Extensions, the City's then-current Disposal Fee is adjusted to match a lower Comparative Disposal Fee(s), as provided in Section 6.02, the City shall reduce the Variable and Fixed Components of the Disposal Fee on a proportionate basis. The Pass-Through Component shall not be adjusted, except for Change in Law as provided in Section 9.02.(a). Thus the following formulas shall be used to adjust the Variable and Fixed Components of the Disposal Fee to match a lower Comparative Disposal Fee, resulting in an Adjusted Disposal Fee.

1. Adjusted Fixed Component = (Comparative Disposal Fee - current Pass-Through Component - current Local Charges Component) x [current Fixed Component / (current Variable Component + current Fixed Component)]
2. Adjusted Variable Component = (Comparative Disposal Fee - current Pass-Through Component - current Local Charges Component) x [current Variable Component / (current Variable Component + current Fixed Component)]
3. Adjusted Disposal Fee = adjusted Fixed Component+ adjusted Variable Component + current Pass-Through Component + current Local Charges Component

If an adjustment to the Disposal Fee is made to reflect Comparative Disposal Fees on a date other than January 1st of a regularly scheduled biennial adjustment, the adjustment to the Variable Component of the Disposal Fee in the following biennial adjustment period shall reflect the change in CPI that occurred between the date the Disposal Fee was adjusted to reflect the Comparative Disposal Fee and the date of the following biennial adjustment.

d. Significant Changes to Pass-Through or Local Charges Component. Contractor may petition the City to adjust the Pass-Through Component or Local Charges Component at a time other than during a biennial adjustment period if the adjustment to the Pass-Through Component or Local Charges Component would result in an adjustment to the Disposal Fee Pass-Through Component or the Local Charges Component of more than a Significant amount of compensation to the Contractor annually where compensation shall be calculated as the City's previous twelve (12) month disposal tonnage times the incremental cost change to the Pass-Through Component or Local Charges Component. City may not unreasonably withhold such request. If adjustments are made to Pass-Through Component or Local Charges Component at times other than the biennial adjustment time, the City reserves the right to pay Contractor for compensation due for the incremental change in the Pass-Through Component or Local Charges Component by adjusting the Disposal Fees or through an alternative compensation mechanism, such as a direct quarterly payment to Contractor. Contractor may petition the City to adjust the Pass-Through Cost or the Local Charges Component at a time other than the biennial period, if such adjustment is greater than ten (10) cents per ton. Further, if the total existing Pass Through or Local Charges Components increase by more than \$9.00 per ton over the Term and

Extension(s) of this Agreement, net of any increases attributable to CPI adjustments, and net of any fees imposed by City, the City shall have the right, but not the obligation to terminate the Agreement in accordance with Section 12.02. Notwithstanding the foregoing, Contractor and City agree to meet and confer for a period not to exceed sixty (60) business days in an effort to reach an equitable resolution to the Pass Through and Local Charges Components increases set forth herein, and in no event shall City have the right to terminate this Agreement if Contractor agrees to pay all net increases in existing Pass Through or Local Charges in excess of \$9.00 per ton.

e. Other Adjustments. Other allowable adjustments to the Disposal Fee over the Base Term and Extension(s) are adjustments resulting from an Extraordinary Review as provided in Article 9.

8.04 Verification of Pass-Through Costs. The following steps shall be used to determine if an adjustment in the Disposal Fee, as provided in Section 8.03 should include any adjustment in the Pass-Through Component:

- a.** In the case of the biennial Disposal Fee adjustments, Contractor shall submit, no later than September 1 prior to the January in which such changes are to be effective, written verification of the specific costs (listed separately) comprising the then-current Pass-Through Component, and indicate if they have increased, decreased, or remained the same.
- b.** Within thirty (30) calendar days of City's receipt of Contractor's information, City shall deem the Contractor's submittal as complete or shall request additional information.
- c.** Based on the information submitted by the Contractor or separately collected by the City or its agents for its independent verification, the City shall determine the allowable adjustment to the Pass-Through Component to reflect any verified increases or decreases in Pass-Through Costs.
- d.** The initial or biennial adjustment provided for in Sections 8.03.(a) and 8.03.(b) shall not occur until the City has to its satisfaction verified current Pass-Through Costs, except that the City shall not unreasonably delay an adjustment of the Disposal Fee.

8.05 Verification of Local Charges. The following steps shall be used to determine if an adjustment in the Disposal Fee, as provided in Section 8.03 should include any adjustment in the Local Charges Component:

- a.** Within twenty (20) calendar days of City request, the Contractor shall provide written verification of the specific costs (listed separately) comprising the then-current Local Charges Component, and indicate if the charges have increased, decreased, or remained the same.
- b.** Based on the information submitted by the Contractor, and any additional information the City may reasonably request and/or separately collect for its independent verification, the City shall adjust the Local Charges Component to reflect any verified increases or decreases in Local Charges, as provided in Section 8.03.
- c.** The adjustments provided for in Section 8.03 shall not occur until the City has to its

satisfaction verified current Local Charges, except that the City shall not unreasonably delay an adjustment of the Disposal Fee.

d. Beginning on the execution the date of the disposal agreement between Contractor and the City for the Altamont Landfill, Contractor agrees at its expense to accrue one dollar per ton of Fremont franchised waste disposed of at the TCRDF until such time as the City begins disposal at the Altamont under the new long-term contract, currently scheduled for December 31, 2004. The entire accrued amount of money would then be remitted to the City to pay the open space fees at Altamont.

e. The City disagrees about the disposition of the open space fees required to be paid at the Altamont Landfill because 80% of the fees collected are designated for the eastern county planning area (Livermore area) instead of the western area, which includes the Vargas Plateau. The City is pursuing an agreement with the parties to the Altamont Landfill Expansion Settlement Agreement to allow for a greater percentage of funds collected from Fremont to be spent in the western planning area. Therefore the City will be paying the open space fees shown (identified) in Exhibit 1 under protest and the City reserves the right to challenge the obligation to pay these fees in a court of competent jurisdiction. Notwithstanding the foregoing, Contractor shall not be required to accept City's residue for disposal at the Altamont Landfill if doing so would be in violation of its Conditional Use Permit 5512, including any violation arising from or relating to the City's position regarding payment of open space fees.

8.06 CPI Adjustment Limitation. If during any biennial adjustment period, the CPI change for the biennial period exceeds twelve (12) percent, the City will adjust the Variable Component of the Disposal Fee in excess of twelve (12) percent only to the extent that the Contractor provides documentation demonstrating that the Contractor's actual Direct Costs for the period being adjusted increased in excess of twelve (12) percent. If during any adjustment period other than a biennial adjustment period, the average monthly CPI change during the adjustment period exceeds one half (0.5) percent, the City will adjust the Variable Component of the Disposal Fee in excess of an average of one half (0.5) percent only to the extent that the Contractor provides documentation demonstrating that the Contractor's actual Direct Costs for the adjustment period being adjusted increased in excess of one half (0.5) percent per month. The City may, at its sole discretion, review and approve some, all or none of the Direct Costs submitted by the Contractor. In making a determination with regard to this subsection, the City may request that the Contractor develop and provide, at its own cost, any reasonably necessary financial, cost or technical data, or other documentation needed in reaching a decision.

8.07 Notice of New Disposal Fee. The City shall give Notice to the Contractor and to the Transfer Contractor(s) of any change in the Disposal Fee no later than thirty (30) calendar days prior to the Effective Date of the new Disposal Fee.

8.08 New or Local Charges

a. General. If New fees, taxes, other surcharges or New Pass Through costs which are imposed by Alameda County or other local agencies or by the voters, after the Execution Date of this Agreement total in the aggregate more than \$9.00 per ton, the City shall have the right, but not

the obligation, to propose a cost sharing with Company of said New Fees or Pass-Through Costs, and City and Company thereafter shall meet and confer for no more than sixty (60) business days in an effort to reach an equitable resolution to the City's sharing proposal. In the event the Parties fail to agree to a fee sharing, the City shall have the right but not the obligation under Section 12.02 to terminate the Agreement. Such "New Pass Through or Local Charges" shall not include the fees specified in Exhibit 1, or any City-imposed fees or charges or new Pass-Through Costs required by State or Federal mandates.

8.09 Liquidated Damages

a. Initial Amounts. The initial amount for events in which Contractor is charged Liquidated Damages for failure to meet guarantees or Obligations are provided in Exhibit 5.

b. Biennial Adjustment to Liquidated Damages. The amount of Liquidated Damages specified in subsection (a) above for specific events of Contractor nonperformance shall be adjusted at the same time the Disposal Fee is adjusted commencing with an adjustment effective January 1, 2006. The adjustment shall be rounded to the nearest cent. Liquidated Damage Amounts will be adjusted biennially to reflect changes in CPI using the method presented below:

$$\text{Adjusted Liquidated Damage Amount} = \text{Then-current Liquidated Damage Amount} \times [0.80 \times (\text{most current CPI} / \text{previous 24-month CPI} - 1) + 1]$$

For example, assume:

1. Date of biennial adjustment is January 1, 2006
2. Then-current Liquidated Damage Amount = \$50.00
3. Most Current CPI (October 2005) = 126.1
4. Previous CPI (October 2003) = 124.2

The Adjusted Liquidated Damage Amount is calculated as follows:

$$\text{Adjusted Liquidated Damage Amount} = \$50.00 \times [0.80 \times (126.1 / 124.2 - 1) + 1]$$

$$\text{Adjusted Liquidated Damage Amount} = \$50.61$$

c. Payment of Liquidated Damages. On or before the fifteenth (15th) day of each month, and beginning with the month immediately following the month in which the Contractor receives Notice of demand of payment of Liquidated Damages from the City, the Contractor shall submit payment to the City for any Liquidated Damages assessed pursuant to the provisions of Section 7.05 regarding Vehicle Turnaround Guarantee, this Section, and Exhibit 5 regarding Facility Operations. Such payments shall be made to the City via wire transfer.

8.10 Revenues from Diverted Materials. In the event the Contractor shall cause materials to

be Diverted from Disposal and shall generate revenues from the sale of such Diverted materials, Contractor shall retain all revenues derived from such sales transactions.

8.11 Payment of Pass-Through Charges. Contractor is solely responsible for paying all Pass-Through Costs to the appropriate Federal, State, regional, and/or local governmental entities which levied the assessment.

8.12 Payment of Taxes. Contractor shall pay, when and as due, any and all Federal, State, and local fees, assessments, or taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments promptly upon request. Contractor agrees to indemnify City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this tax payment obligation.

ARTICLE 9. EXTRAORDINARY REVIEW OF COMPENSATION

9.01 Limitation. Other than as provided in Article 8, the Disposal Fee will be adjusted only on the basis of the conditions enumerated in this Article 9.

9.02 Conditions for an Extraordinary Review. The following are the only conditions under which the Disposal Fee will be modified other than as provided in Article 8, and are collectively referred to as Changes in Scope.

a. Change in Law. The City will meet in good faith to make reasonable adjustments to the Contractor's compensation for changes demonstrated to be directly resulting from a Change in Law occurring after the Execution Date of this Agreement. In addition to the biennial verification of Pass-Through costs as provided in Section 8.03, either Party may request that the Disposal Fee be adjusted to reflect a direct change in the cost to provide Disposal service due to a specific Change in Law. In the case of a request by the City, the Contractor shall provide the requested documentation within fifteen (15) Working Days of the receipt of Notice for Extraordinary Review. Whether requested by the Contractor or the City, the City will make such adjustment, if any, based on its independent review of the information provided by the Contractor. A Change in Law may affect the Disposal Fee as follows:

(1) A Significant change in third-party Pass-Through fees or surcharges will result in a Significant prorated increase or decrease in the Pass-Through Component.

(2) A Significant increase or decrease in Operating and/or capital costs that may result in changes to the Variable and/or Fixed Components, as appropriate, based on Direct Cost impacts.

b. Change in the Mode of Transport. A change in the mode of Transport, as initiated by the City and as agreed to by the Parties pursuant to Section 7.08 resulting in a Significant increase or decrease to Contractor's Operating and/or capital costs.

c. Change in the Mode of Disposal. A change in the mode of Disposal as agreed to by the

Parties pursuant to Section 7.09 resulting in a Significant increase or decrease to Contractor's Operating and/or capital costs.

d. Change in the Mode of Recovery or Diversion. A change in the mode of Recovery or Diversion as agreed to by the Parties pursuant to Section 7.10 resulting in a Significant increase or decrease to Contractor's Operating and/or capital costs.

e. Certain Uncontrollable Circumstances. An Uncontrollable Circumstances resulting from failure of any appropriate Federal, State, City, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, roadways, water, sewer or power transmission lines to the Facility which are required for Facility Operation, provided that such Uncontrollable Circumstances result in a Significant increase or decrease in costs.

f. Change in Contractor's Obligations. Significant increased or decreased cost that results from a specific change in Contractor's Obligations as directed by, or approved by the City, including but not limited to changes in Facility Receiving Hours and provision of emergency services in the event of major accidents, disruptions, or natural calamities.

9.03 Ineligible Items. Items that are not eligible for an Extraordinary Review include, but are not limited to:

a. Additional User(s). A change in Tonnage due to the addition of an Additional User(s), as provided in Section 6.07.

b. Variations in Delivered Residue. Variations or fluctuations in the weight, volume or composition of Delivered Residue.

c. Force Majeure. Force Majeure events experienced by or directly affecting the Contractor.

d. Labor Action. Labor Actions events experienced by or directly affecting the Contractor.

e. Errors and Omissions. Errors and omissions on the part of the Contractor in preparing its Proposal or this Agreement.

f. Contractor Error. Equipment failure or failure to Accept Residue due to Contractor error(s) in planning, failure to maintain proper permits, regulatory actions for compliance-related or enforcement-related matters against Contractor that prohibit or curtail Facility Operations, underestimation of Facility capital and Operating costs, other operating problems, and/or problems related to internal company operations of the Contractor, its subcontractors, vendors, or its agents.

g. Contractor's Costs. Costs incurred by the Contractor in fulfillment of Contractor's Obligations including fines, judgments, and settlements levied against Contractor by third parties.

h. Loss(es) Covered by Insurance. Costs incurred by Contractor which Contractor can obtain compensation for through insurance.

9.04 Extraordinary Review Process. A request for an Extraordinary Review shall be conducted as provided in this Section.

a. Notice of Extraordinary Review. The Party initiating an Extraordinary Review shall Notice the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the Extraordinary Review, and its impact on Contractor's Obligations, and the Disposal Fee.

b. City's Request for Proposal. If an Extraordinary Review is initiated by the City or Contractor, City may request a Proposal from the Contractor in accordance with the Proposal format specified in Section 9.04.(d). The City may withdraw such request for Proposal at any time, for any reason, including receipt of a Proposal from the Contractor unsatisfactory to the City. As soon as possible, but in any event within twenty (20) Working Days of receiving the City's request for Proposal, the Contractor shall submit the Proposal. Such Proposal shall be deemed the Contractor's offer with regard to changes in Contractor's compensation, Contractor's Obligations, and/or Change in Scope pertaining to the extraordinary circumstances under review, as appropriate, in accordance with the terms of such Proposal, and shall be binding for one hundred and eighty (180) calendar days.

c. Form of Compensation. The City may, at its sole discretion, require that the Contractor propose a change in compensation under this Article in the form of an adjustment to the Disposal Fee including specific changes to the various components of the Disposal Fee. As an alternative the City may require that the Contractor propose compensation in a form of a lump-sum fixed price; a reimbursement of documented Direct Costs; a form that provides the City the option to lease-purchase changes in physical plant related to the change in compensation; or other form(s) of compensation to be determined.

d. Proposal Format. For any Proposal submitted under this Section Contractor shall:

(1) Describe the circumstance warranting an Extraordinary Review.

(2) Describe the impact of the circumstance under Extraordinary Review on Contractor's compensation, Contractor's Obligations, or the need for a Change in Scope.

(3) Submit work plan for implementing a change in Contractor's Obligations or a Change of Scope if applicable, identifying physical changes to the Facility and Site, changes in Operating methods and labor needs, and implementation schedule.

(4) Identify the capital and/or Operating cost of modifying the Contractor's Obligations and/or implementing any Change in Scope if applicable to support any requested change in Contractor compensation. The Contractor shall include detailed documentation supporting its cost Proposal, including cost substantiation required with respect to Direct Costs. Contractor covenants that it will not propose a cost in excess of the fair market price for such change in

Contractor's Obligations or Change of Scope, whether it implements such changes itself or through a subcontractor.

(5) Propose a change in compensation, as necessary, as a change in per-ton Disposal Fee, or in an alternate form as directed by the City pursuant to Section 9.04.(c).

(6) Provide draft language changes to the provisions of this Agreement, as Contractor deems appropriate and necessary to affect any change in Contractor's compensation, Contractor's Obligations, and/or Change in Scope.

e. City's Review. Within ninety (90) Working Days of receiving the Contractor's Proposal, the City shall review and comment on, and approve or disapprove such Extraordinary Review request. For a Contractor-initiated Proposal, if the City does not respond within such time, its approval shall be deemed denied unless the City, at its sole discretion, extends the time periods for review due to complexity of the specific Extraordinary Review request, the time needed for review or approval, or for other reasonable reasons.

The City may request the assistance of an independent third party to review the Proposal. The reasonable costs of such review shall be paid by the Contractor if the Extraordinary Review is initiated by the Contractor or by the City if the Extraordinary Review is initiated by the City. The cost of such review shall be estimated in advance of the work, and provided to the Contractor for comment and agreement to pay. Contractor refusal to pay the reasonable cost of review of a Contractor-initiated Proposal shall be grounds for City rejection of such Proposal and, at the City's sole discretion, the Contractor shall be deemed in breach of Agreement.

The City may request operating and business records from the Contractor to verify the reasonableness and accuracy of the impacts associated with an Extraordinary Review. Contractor shall fully cooperate with the City's request and provide City and its agent(s) copies of or access to Contractor's records.

f. Approval of Extraordinary Review. Upon City approval or determination, City will issue a Notice approving the Extraordinary Review and documenting any change to the Disposal Fee, an approved change in Contractor's Obligations, or an approved Change in Scope. The Notice, with appropriate language will become an amendment to the Agreement. No adjustment in Contractor compensation, change in Contractor's Obligations, or Change in Scope shall become effective absent such City approval or determination.

g. Resolution of Disputes. Any dispute regarding compliance with this Section will be resolved according to provisions of Article 13.

h. Changes in Means or Methods of Transfer, Disposal and Recovery. The Parties agree that as of the Execution Date, it is not possible to specify the Means or Methods by which an alternative method of Transfer, Disposal or Recovery may be developed. The means of development depends

on the roles of the City, the Contractor, and the Transfer Contractor(s). Thus, the Contractor

agrees:

(1) **Good Faith Participation.** To be a willing and active participant in assisting the City in determining whether an alternative Mean or Method is advantageous to the City.

(2) **Resolution of Disputes.** Any dispute regarding compliance with this Section will be resolved according to the provisions of Article 13.

9.05 Contractor's Implementation of Change in Scope. Upon approval of an Extraordinary Review pursuant to Section 9.04, the Contractor shall diligently perform such work in accordance with the approved work plan, schedule and cost Proposal. If the City has agreed to pay for such work, the Contractor shall submit invoices for such implementation in accordance with the schedule contained in the Proposal, and shall provide full documentation of Direct Costs incurred.

9.06 Insurance and Other Third Party Payments. To the extent that any Change in Scope costs that are incurred pursuant to this Article can be recovered by the Contractor or the City from any insurance or from another third party, the Contractor and the City shall exercise with due diligence such rights as either Party may have to effect such recovery.

9.07 No Compensation. The Contractor shall not be entitled to any compensation for implementing Changes in Scope occasioned by its failure to perform Contractor's Obligations.

ARTICLE 10. INSURANCE, INDEMNITY, BONDS, FURTHER ASSURANCES

10.01 Insurance. The Contractor shall secure and maintain in full force and effect during the Base Term and any Extensions the types and amounts of insurance coverage listed in Exhibit 2. The Contractor shall be responsible for payment of all premiums for its policy and shall pay such deductibles upon occurrence of an insured loss under its policy. The Contractor shall supply a certificate of insurance and additional insured endorsement to the City showing compliance with this section and Exhibit 2 or at the City's request, the Contractor shall supply a certified copy of the insurance policies to the City.

10.02 Indemnification and Defense. The Contractor shall defend, with counsel acceptable to City, save, indemnify and hold harmless the City, its officers, agents, employees and volunteers and the Transfer Contractor(s), as their respective interests may appear, from and against any and all liabilities, attorneys' fees and expenses at trial and on appeal, including damages, claims, demands, judgments, losses, costs, expenses and actions, arising out of, or resulting from any act, error or omission of Contractor, its officers, employees, agents or subcontractors in connection with the performance of this Agreement, excepting only the active and sole negligence of the City or the Transfer Contractor(s), and which may cause but is not limited to the following:

a. personal injuries including, but not limited to wrongful death, and property damage of any kind, nature or sort resulting from Facility Operations,

- b. penalties, fines, and charges arising from Contractor's violation of Applicable Law(s) in connection with Facility Operations,
- c. any condition of the Facility relating to the presence of Hazardous Waste, petroleum or petroleum products from the first Notice to Deliver Residue through the Base Term, any Extensions, and subsequent migration off-site or on-site remediation thereof,
- d. any allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with Facility Operation,
- e. any claims or liability related to vector caused damages or illness, biohazard, damage to the environment or health of the community in the vicinity of the Facility,
- f. any claims or other liabilities directly or indirectly related to Facility Operations,
- g. any claims or other liabilities directly or indirectly related to Contractor actions or inactions during Facility Closure or Post-Closure,
- h. any claims or other liabilities directly or indirectly related to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq., Section 107(c), during or subsequent to the period in which this Agreement is in effect.

If there is an event which may result in potential claim, litigation, damage or liability, Contractor agrees to immediately notify the City in order for the City to retain the ability to participate and/or direct the defense.

The Contractor shall make good and reimburse the City for any expenditures, including, attorneys fees and costs, that the City may incur by reason of such claim or litigation and if requested by City, the Contractor shall defend any such suits at the sole cost and expense of the Contractor.

All of the terms and Obligations of this Article 10 shall survive termination of this Agreement.

10.03 Hazardous Substances Indemnification. The Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, its officers, officials, employees, agents, assigns and any successor or successors to the City's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or its officers, officials, employees, agents, assigns, or contractors arising from or attributable to acts or omissions including but not limited to any repair, cleanup, Disposal or detoxification, or preparation and implementation of any removal,

remedial, response, Closure, Post-Closure, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Wastes at any place where the Contractor transports, stores or Disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is also intended to operate as an agreement pursuant to CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the City from liability.

10.04 Bonds and Surety Instrument. The Contractor shall carry, and keep in force a performance bond, and surety instruments. All bonds shall be executed by a corporation admitted to issue surety bonds in the State, subject to regulation by the California Insurance Commissioner, rated not less than "(A.VII)" by A.M. Best Company, Inc. as applicable, and having a financial condition and record of service reasonably satisfactory to the City. The corporation(s) executing such bonds shall be financially and organizationally independent of Contractor, and shall be in no manner an affiliate of the Contractor. The Contractor shall carry, and keep in force such performance bond, or surety instrument. Within ten (10) Working Days of City's issuance of its Notice specifying the Delivery Date on which Residue Delivery to the Facility shall commence, Contractor shall furnish a bond, (in a form reasonably acceptable to the City and commercially available), and/or comparable instrument(s) approved by the City, or any combination thereof, (the "**Surety Instruments**"). The principal sum shall be Five Million Dollars (\$5,000,000). The term of each Surety Instrument shall be issued for a three (3) year period if commercially available to Contractor, but not less than one (1) year or the remaining period in the Base Term or any Extension, whichever is less. Not less than ninety (90) calendar days before the expiration of each such Surety Instrument, the Contractor shall either extend such Surety Instrument as evidenced by a continuation certificate in a form reasonably acceptable to the City, or furnish a replacement Surety Instrument in the principal sum equal to Five Million Dollars (\$5,000,000).

10.05 Self Insurance. In lieu of meeting the requirements for obtaining insurance coverage contained in this Article 10, the City may approve a Contractor Proposal to provide self insurance that ensures a level of protection and risk minimization equivalent to or greater than that required in this Article 10. City approval shall be at its sole discretion.

10.06 Financial Guaranty Agreement. Guarantor shall execute a legally valid, binding and enforceable Financial Guaranty Agreement attached hereto as Exhibit 4 and provide with the Financial Guaranty Agreement an opinion of counsel in a form satisfactory to the City Attorney that the Financial Guaranty Agreement has been duly executed and delivered by the Guarantor and constitutes a legal, valid, and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms.

10.07 Inability to Accept Delivered Residue. Except in the case of Residue identified as Hazardous Waste; in the event that the Contractor will not Accept some or all Delivered Residue regardless of the reason for such failure, the following shall occur:

- (i) immediately upon the Contractor's temporary inability to Accept Delivered Residue, Contractor shall make whatever arrangements are necessary for the use of an Alternative Disposal Facility and shall direct the City and the Transfer Contractor(s) to use its preferred

Alternative Disposal Facility. For the purposes of this Agreement, Kirby Canyon Landfill in Santa Clara County is designated as the preferred Alternative Disposal Facility and Guadalupe Rubbish Disposal Company, Inc. in Santa Clara County is designated as the backup Alternative Disposal Facility.

(ii) during the period of time commencing immediately upon the Contractor's inability to Accept Delivered Residue and in the event the Alternative Disposal Facilities identified in this Agreement are not immediately available, Contractor agrees the City and/or the Transfer Contractor(s) shall make whatever arrangements are necessary for use of an Alternative Disposal Facility that may be a site not otherwise preferred by the Contractor.

(iii) the Contractor shall be responsible for paying all documented additional costs resulting from the use of the Alternative Disposal Facility(ies) under (i) and (ii) above, including any increase in costs for Disposal services, whether paid on a per-Ton, lump-sum or other basis, and any increase in Transport expenses due to increased Transport time, distance, or method incurred by the Transfer Contractor(s). In the event Contractor is unable to secure substitute services for an Alternative Disposal Facility within forty-eight (48) hours, the City may at its sole discretion elect to secure substitute services, in which case the Contractor will be liable for all incremental costs as is the case for Contractor's selection of an Alternative Disposal Facility.

(iv) Contractor is responsible for securing all necessary regulatory approvals needed for Transfer Contractor and City to use the Alternative Disposal Facility(ies). All other terms of this Agreement, including indemnification provisions and insurance requirements will remain in full force and effect during the time of the Alternative Disposal Facility use.

ARTICLE 11. BREACHES AND DEFAULTS

11.01 Contractor Breaches

a. Definition. In the event that Contractor fails to perform fully any of Contractor's Obligations in accordance with the provisions of this Agreement, it shall be in breach of the Agreement as specified in this Article 11. In addition, the following events shall constitute a material breach by the Contractor:

(1) Failure to Secure Alternative Disposal Facility or fulfill any of the Obligations in 10.07.

(2) Failure to Match Lowest Comparative Disposal Fee. The Contractor fails to match a lowest Comparative Disposal Fee as provided in Section 6.02.

(3) Misrepresentation. A misrepresentation in any representation or disclosure made to the City by the Contractor in connection with or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement which proves to be false or misleading in any

material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

(4) Seizure or Attachment of Equipment. Any equipment owned or leased by Contractor essential in Facility Operations is lawfully seized, attached or levied upon resulting in Contractor's failure to meet Contractor's Obligations.

(5) Labor or Legal Difficulties. If Contractor is:

(i) the subject of any Labor Action (including work stoppage or slowdown, sick-out, picketing, lock-out or other concerted job action) in excess of thirty (30) calendar days; or

(ii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an environmental or tax law, which judgment is in excess of two hundred fifty thousand dollars (\$250,000), and the City believes in good faith that Contractor's ability to timely and fully perform Contractor's Obligations has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and full performance hereunder. If Contractor fails or refuses to provide such reasonable assurances by the date required by the City such failure or refusal shall constitute a Contractor breach.

(6) Bankruptcy, Insolvency, Liquidation.

(i) Voluntary Proceeding. Contractor or Guarantor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Contractor or Guarantor for any part of Contractor's or Guarantor's operating assets or any substantial part of Contractor's or Guarantor's property, or shall make any general assignment for the benefit of Contractor's or Guarantor's creditors, or shall fail generally to pay Contractor's or Guarantor's debts as they become due or shall take any action in furtherance of any of the foregoing; provided that Contractor may propose to City that City substitute Guarantor as provided in Exhibit 4, in which event the City may, at its sole discretion, effect such substitution, in which event it shall not terminate this Agreement in accordance with this paragraph, or

(ii) Involuntary Proceeding. With respect to Contractor, a court having jurisdiction, with Contractor's consent or where Contractor fails to oppose the proceeding: (a) enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief or similar law, now or hereinafter in effect, or (b) any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor, or for any part of Contractor's operating equipment or assets, or (c) orders the winding up or liquidation of the affairs of the Contractor, and the City believes in good faith that Contractor's ability to timely and fully perform Contractor's Obligations has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor

reasonable assurances of timely and full performance hereunder. If Collector fails or refuses to provide such reasonable assurances by the date required by the City such failure or refusal shall constitute a Contractor breach.

(7) **Court Order or Decree.** Any court having jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or the Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any

part of the Contractor's Operating equipment or assets, or order the winding up or liquidation of the affairs of the Contractor.

(8) **Failure to Maintain Performance Bond or Surety Instrument.** The Contractor fails to maintain the Performance Bond, insurance, or indemnifications as specified in Article 10 and Exhibit 2.

(9) **Failure to Notify City.** The Contractor fails to notify the City in a timely manner of any receipt of notice of violation or official communication from any regulatory body having jurisdiction over the Contractor's performance which significantly affects the Contractor's ability to perform Contractor's Obligations.

(10) **Lapse of Financial Guaranty.** Lapse of any Financial Guaranty required under this Agreement.

(11) **Regulatory Violation.** The Contractor violates any Permits, orders, or filings of any regulatory body having jurisdiction over the Contractor relative to this Agreement in such a manner as to materially interfere with Contractor's present or future ability to perform Contractor's Obligations under this Agreement, provided the Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

(12) **Cessation of Services.** The Contractor ceases to provide Disposal services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor, including labor disputes or regulatory agency actions or order or court-ordered injunction to cease Operation.

(13) **Failure to Meet Payment or Reporting Requirements.** The Contractor fails to make any payment required under this Agreement and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.

(14) **Unremedied Acts or Omissions.** Any act or omission by the Contractor which violates the terms, conditions, or requirements of this Agreement, or any other Applicable Law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Contractor cannot

reasonably correct or remedy the breach within the time set forth in such notice, if the Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

b. Notice of Breach. Either Party shall promptly Notice the other Party regarding the occurrence of a breach as soon as such breach becomes known to the Noticing Party. Such Notice shall be given verbally followed immediately by written Notice.

c. Cure of Breach. Time is of the essence in the remedy of any breach related to the performance of any Contractor Obligations; therefore, Contractor shall begin cure of any breach as soon as it becomes aware of the breach, whether discovered by the Contractor or through Notice from the City.

Upon giving or receiving verbal Notice of a breach, Contractor shall proceed to cure such breach as follows:

(1) Immediately, if the breach is such that in the sole determination of the City, the health, welfare or safety of the public is endangered thereby; or

(2) Within thirty (30) calendar days of Notice of the breach, Contractor shall not be in default so long as Contractor promptly commences to cure such breach. However, if the nature of the breach is such that it will reasonably require more than thirty (30) calendar days to cure Contractor shall request agreement from the City to extend the thirty (30) day cure period and City shall not unreasonably withhold such approval, so long as Contractor is able to substantially perform Contractor's Obligations, Contractor shall provide the City, no less than weekly, written status of the progress reports in curing such breach, and must diligently proceed to complete same.

d. Remedy of Breach, Specified Monetary Damages. Upon delivery of Notice thereof to Contractor, the City may exercise any one or more of the following remedies, or the remedies provided in Section 11.01.(e) to which it may be entitled, according to proof, and including but not limited to:

(1) **Compensatory Damages.** Any applicable damages to the City or the City's Transfer Contractor(s) directly resulting from breach resulting after commencement of Facility Operations, including but not limited to the following:

(i) Incremental Haul Costs: The incrementally greater Direct Costs for hauling and Transporting Residue to an Alternative Disposal Facility, as compared to the City and/or its Transfer Contractor's then-current haul costs to the Facility.

(ii) Incremental Facility Operations Costs: The incrementally greater Direct Costs of replacing one or more aspects of Facility Operations, including, but not limited to Acceptance, Transfer, Recovery, Processing, Disposal, Diversion, Marketing, transport of Recovered materials to market, and procuring and maintaining insurance and bonds, as compared in aggregate to the then-current Disposal Fee.

(iii) Incremental Disposal Costs: The incrementally greater Direct Costs for

Disposal of Residue at an Alternative Disposal Facility, as compared to the then-current Disposal Fee at the Disposal Facility.

(iv) **Consequential Fines:** Any consequential fines and penalties assessed on the City, including by the California Integrated Waste Management board, directly resulting from Contractor's failure to meet all Contractor's Obligations. In any administrative proceeding before the California Integrated Waste Management Board, the City will Notice the Contractor of the date and time of such proceeding, and provide Contractor the opportunity to attend and make a presentation.

(2) **Liquidated Damages.** Exhibit 5 contains specific circumstances that constitute a breach of contract. The purpose of the payments contained in Exhibit 5 is to provide a clear and expeditious means for remedying the specified breaches without incurring the time and cost necessary to determine proof of actual damage. The breaches contained in Exhibit 5 are not intended to be inclusive of all events of breach, but rather are circumstances for which a specific payment has been assessed with the agreement of the Parties. Therefore the Parties agree that the liquidated damages specified in Exhibit 5 constitute a reasonable estimate of the damages incurred in each instance, considering all circumstances existing on the Effective Date, including the relationship of the payments to the range of harm that reasonably could be anticipated. The liquidated damages specified herein, where applicable, shall be the sole and exclusive damage remedy for those breaches described in Exhibit 5. In signing this Agreement, each Party specifically confirms the accuracy of this Section and of Exhibit 5, and the fact that each Party had ample opportunity to consult with legal counsel and to obtain an explanation of these provisions.

e. Remedy of Breach, Other City Remedies. In addition to the monetary damages specified in Section 11.01.(d), Contractor acknowledges that the City's remedy of damages of a breach hereof by Contractor may be inadequate for reasons including:

(1) The urgency of timely, continuous and high quality waste management service hereunder, including Disposal of Residue that constitute a threat to public health.

(2) The long term and significant investment of money and personnel (both City staff, Transfer Contractor staff, and private consultants, including engineers, financial advisors, procurement counsel, bond counsel and investment bankers) required to request and evaluate Proposals for alternative service comparable to the service provided hereunder for the price provided hereunder, and to negotiate new agreements therefor.

(3) The City's reliance on Contractor's technical waste management expertise. Consequently, City shall be entitled to all available equitable remedies, including specific performance and injunctive relief.

11.02 Events of Default

a. Contractor Default. Each of the following shall constitute an event of default by Contractor:

(1) **Uncured Material Breach of Agreement.** The Contractor fails to cure any material breach,

(i) within ten (10) Working Days of receiving Notice from the City specifying the material breach; unless the nature of the breach is such that it will reasonably require up to thirty (30) calendar days to cure, in which case the Contractor shall not be in default so long as the Contractor promptly commences to cure such breach and diligently proceeds to complete same; or

(ii) immediately, if the material breach is such that the health, welfare or safety of the public is endangered thereby.

(2) **Repeated Pattern of Material Breaches.** Contractor has, in the sole but reasonable determination of the City, incurred a pattern of successive material breaches, or related events of material breach, that cumulatively indicate Contractor unwillingness or inability to consistently perform all Contractor Obligations throughout the Base Term and any Extensions.

(3) **Failure to Notify City of Material Breach.** Contractor fails to Notify City of a material breach known to the Contractor as specified in Section 11.01.(b).

(4) **Failure to Remedy Effects of Uncontrollable Circumstance.** The Contractor fails to remedy effects of an Uncontrollable Circumstance within ten (10) Working Days of the event or within the time period approved by the City in accordance with Section 11.06.(c).

b. Remedies in the Event of Contractor Default. Upon the occurrence of a Contractor default, the City shall have the right to exercise any or all of the following rights:

(1) **Termination.** Terminate the Agreement City shall give the Contractor Notice of Termination: such Notice shall be effective ten (10) working days thereafter, or immediately if the public health or welfare is threatened.

(2) **All Other Available Remedies.** To exercise all of its remedies in accordance with this Article 11 and any other remedies at law and in equity, to which the City shall be entitled, according to proof.

(3) **Other City Rights.** The City shall also have the right to:

(i) seek performance by the surety under any performance bond, and/or

(ii) make a claim on any insurance policy or policies or self insurance instrument.

11.03 Dispute Resolution Procedures. Neither Party shall have any right to invoke or avail itself of any remedy set forth in this Article 11, including the instituting of any court

proceedings, without first complying with the dispute resolution procedures set forth in Article

13.

11.04 Waiver. The City reserves the right to waive any and all breaches or defaults of this Agreement, and any such waiver shall not be deemed a waiver of all previous or subsequent breaches or defaults. In the event the City chooses to waive a particular breach or default of this Agreement, it may condition same on payment by the Contractor of actual damages occasioned by such breach or default of Agreement and shall make every effort to resolve the same quickly and amicably.

11.05 Criminal Activity of Contractor. Should the Contractor or any of its officers or directors be "found guilty" of felonious conduct relating to the Contractor's Obligations, or other felonious conduct at any of the Contractor's Operations involving, but not limited to: (i) a price fixing, (ii) illegal transport or Disposal of hazardous or toxic materials, (iii) bribery of public officials, or (iv) fraud or tampering, the Contractor shall be in default and City reserves the right:

- a. To unilaterally terminate this Agreement in accordance with Article 12.
- b. Exercise all other remedies available to City as if a Contractor default had occurred, in accordance with Section 11.02.(b).
- c. To impose sanctions which may include financial sanctions or any other condition deemed appropriate short of termination.

Such action shall be taken after the Contractor has been given Notice and an opportunity to present evidence in mitigation.

The term "found guilty" shall be deemed to include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of Contractor's officers, directors or employees including, but not limited to, the pleas of "guilty", "nolo contendere", "no contest" or "guilty to a lesser felony" entered as part of any plea bargain.

If the City does not terminate this Agreement, the Contractor shall dismiss or remove such officers, directors or employees and take all action necessary and appropriate to remedy any breach of Contractor's Obligations.

11.06 Uncontrollable Circumstances

a. Uncontrollable Circumstance(s). "Uncontrollable Circumstance(s)" means any act, event or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility or either Party, which materially and adversely affects the ability of either Party to perform any of its Obligations hereunder, including:

- (1) The failure of any appropriate Federal, State, City, or local public agency or private

utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Operation;

(2) A Change in Law other than Changes in Law excluded in Section 11.06.(b).2;

(3) The suspension or interruption of Facility Operations as a result of any release, spill, contamination, migration or presence of any Hazardous Waste, petroleum and petroleum products at the Facility or the Facility site;

(4) A Force Majeure event that temporarily or permanently interrupts Facility Operations;

b. Exclusions. The following are excluded from Uncontrollable Circumstances, without limitation, unless caused by an Uncontrolled Circumstance listed above:

(1) Either Party's breach hereunder;

(2) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any business, payroll, franchise or employment taxes other than New Local Charges; (3) The consequences of errors in Facility Operation on the part of Contractor, its employees, agents, subcontractor or affiliates or failure to comply with Standard Industry Practices, standard Operating procedures, Permit requirements, and Applicable Law;

(4) The failure of Contractor to secure patents, technical licenses, trademarks, and the like necessary for Facility Operation;

(5) The lack of fitness of the Facility for use;

(6) Labor Actions including but not limited to strikes, lockouts, and industrial disturbances.

c. Performance Excused. Neither Party shall be in breach of its Obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such Obligations due to an Uncontrollable Circumstance if such Party exerted Reasonable Business Efforts to prevent such Uncontrollable Circumstance, and such Party expeditiously takes all actions within its control to end, or to ameliorate the effects of such Uncontrollable Circumstance as soon as possible and in no circumstances shall the remedy of the effects of such Uncontrollable Circumstances not be accomplished within ten (10) Working Days of the event unless a longer period to remedy the effects of the Uncontrollable Circumstance is approved by the City. If Contractor fails to remedy the effects of the Uncontrollable Circumstance within ten (10) Working Days or such period approved by the City, the Contractor shall be in default of the Agreement as discussed in Article 11.

Contractor shall, as specified in Article 10, carry and keep in force such insurance as is needed to

mitigate the financial effects of Uncontrollable Circumstances to which the Facility and/or Contractor may subject. Insurance proceeds from policies covering any Uncontrollable Circumstance act or event shall be used to mitigate any damages caused by insurable events, including prompt reimbursement in full of any Disposal Fee or Direct Cost payments made by the City to the Contractor during an Uncontrollable Circumstances affecting the Facility and/or Contractor.

d. Notice. The Party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate Notice thereof to the other Party, including describing performance hereunder for which it seeks to be excused.

ARTICLE 12. TERMINATION

12.01 City's Right to Suspend. City shall have the right to suspend this Agreement, in whole in or in part, upon the occurrence of a Contractor default under Section 11.02.a(4) regarding a failure to perform Contractor's Obligations and such occurrence that endangers public health, welfare or safety; provided such suspension is for no longer than forty-five (45) calendar days, during which period the Contractor shall have the opportunity to demonstrate to the reasonable satisfaction of the City the Contractor can once again fully perform Contractor Obligations in which case City may waive such default and Contractor shall continue to perform Contractor's Obligations. If City is not so satisfied, it may exercise any or all remedies, including those under Section 12.02. In the event of Contractor suspension, City shall have the right to use the Facility and designate a replacement operator to perform some or all Facility Operations.

12.02 City's Right to Terminate. In addition to any other remedy available to the City in law or under the terms of this Agreement, the City shall have the right to terminate this Agreement in the following events:

a. Contractor Default. The occurrence of a Contractor default as provided in Section 11.02.

b. Criminal Activity of Contractor. The Contractor is found guilty of felonious conduct in accordance with Section 11.05; or

c. City's Convenience. The City may for convenience, and at its sole discretion terminate the Agreement as provided in Section 12.04.

d. New or Existing Local Charges Increase by more than \$9.00/ton. If at any time during the Base Term or Extension(s) the total increases in New Local or Pass Through Charges exceed nine dollars (\$9) per Ton, or the total increases in Existing Local Charges exceed more than nine (\$9.00) per ton, net of any increases attributable to current adjustment mechanisms, including but not limited to CPI adjustments and net of any fees imposed by the City, the City may, at its sole discretion terminate the Agreement with no penalty or payment to

Contractor unless Contractor agrees to pay all New and Existing Local Charges in excess of nine dollars (\$9) per Ton.

12.03 Termination for Contractor Default. In addition to any other remedy, and in the event the City exercises its right to terminate the Agreement under Sections 12.02.(a) or 12.02.(b), as of the effective date of such termination the City shall have the right to:

- a. seek performance by the surety under any performance bond; and/or
- b. make a claim on any insurance policy or policies or self-insurance instrument.

12.04 Convenience Termination. In the event the City exercises its termination rights under Subsection 12.02.(c), and provided the Contractor is not in default under this Agreement, the City agrees to pay the Contractor a Termination payment in annual installments over a five (5) year period with interest at current prime rate, commencing ninety (90) calendar days after the final date that Residue is Delivered. However, City and Contractor agree that prior to the City delivering a Notice of Termination for the time period from the Execution Date to the Delivery Date, City and Contractor will meet and discuss in good faith reasonable alternatives to termination of this Agreement. City shall give the Contractor Notice of termination. Such Notice shall be effective ten (10) Working Days thereafter, or immediately if the public health or welfare is threatened. The Termination payment will be as follows:

<u>Contract Year of Termination</u>	<u>Total Payment</u>
Execution Date to Delivery Date	No payment to the Contractor
Delivery Date to December 31, 2011	City waives right to terminate Agreement for convenience
January 1, 2012 to December 31, 2016	Payment shall be equivalent to the previous 12 months of Average Monthly Contractor Revenues (less Pass Through and Local Charges)
January 1, 2017 to December 31, 2020	Payment shall be equivalent to the previous 8 months of Average Monthly Contractor Revenues (less Pass Through and Local Charges)
January 1, 2021 to December 31, 2025	Payment shall be equivalent to the previous 4 months of Average Monthly Contractor Revenues (less Pass Through and Local Charges)
Contract years 2025 and thereafter	No payment to the Contractor

Where Average Monthly Contract Revenues shall equal monthly Disposal Fee revenues received

by Contractor for Acceptance of Residue Delivered by the City or its Transfer Contractor(s) less the monthly Pass-Through Costs and Local Charges (i.e., Pass-Through Component of Service Fees) based on the average monthly revenues for the previous thirty-six (36) months.

ARTICLE 13. DISPUTE RESOLUTION

13.01 Dispute Resolution Procedures

a. General. In the event that any dispute arises between the Parties concerning the interpretation, enforcement or any other matter related to or in connection with this Agreement, the Parties shall comply with the procedures provided in this Article 13, in an attempt to resolve such dispute and shall exert Reasonable Business Efforts to comply with their respective Obligations pending resolution.

b. Initial Procedures. The dispute resolution procedure may be initiated by either Party upon providing Notice to the other specifying the matter in dispute. Upon receipt of such Notice, both Parties shall within five (5) Working Days of receipt of such Notice, meet and confer in good faith to resolve such dispute. Each Party shall, in good faith and in writing, promptly provide to the other Party any and all information and documentation reasonably related to the dispute requested by the other Party. If the Parties are unable to resolve the dispute within thirty (30) calendar days, then mediation procedures described in subsection (c) below shall be employed to resolve the dispute.

c. Mediation. In the event that disputes arising under this Agreement cannot be resolved satisfactorily between the Parties, after the initial procedures specified in subsection (b) above, the City and the Contractor agree that such disputes shall first be submitted to non-binding mediation prior to any court action.

13.02 Continue Performance. Except for an event of default, in the event of any dispute arising under this Agreement, the City and the Contractor shall continue performance of their respective Obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to negotiating in good faith.

ARTICLE 14. ASSIGNMENT

14.01 Definition. For purposes of this Article, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of thirty (30) percent or more of the outstanding common stock of the Contractor; (iii) any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which the Contractor or any of its shareholders is a party which results in a change of ownership or control of thirty (30) percent or more of the value or voting rights in the stock of the Contractor; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which

has the effect of any such transfer or change of ownership. If the Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. If the Contractor is a subsidiary of another corporation or business entity, any "assignment," as defined above, by the parent company or corporation shall be considered an assignment by the Contractor.

14.02 City Assignment. The City may assign its rights and responsibilities under this Agreement to any other Person as long as any such proposed assignee under this Section shall (i) have the legal authority and financial capacity sufficient to assume and perform all of the City's Obligations, and (ii) shall agree in writing to do so.

14.03 Contractor Assignment

a. Limitations. The Contractor acknowledges that this Agreement involves rendering a vital service to the City, and its residents and businesses, and that the City has relied upon the Contractor's representation of its experience and financial resources in qualifying the Contractor to perform the services under this Agreement. Except as provided in this Article 14, the Contractor shall not assign its rights or delegate, subcontract, or otherwise transfer its Obligations hereunder to any other Person without the prior consent of the City. Any such assignment made without the consent of the City shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall the City be required to consider any proposed assignment if the Contractor is in default at any time during the period of consideration.

b. Determination. The Contractor shall submit its request for City consent to the City together with documentation and information concerning the financial capability and solid waste management experience of the proposed assignee. Any such proposed assignee under this Section shall have the legal authority sufficient to assume and perform all Contractor's Obligations, and shall agree in writing to do so.

In making its determination to consent to the assignment the City may require and consider, and the Contractor shall cause to be provided such items as the following:

(1) audited financial statement for the immediately preceding five (5) operating years, indicating that the proposed assignee's financial status is sufficient to perform all Contractor's Obligations.

(2) satisfactory proof that the proposed assignee has at least ten (10) years of Municipal Solid Waste Disposal experience on a scale equal to or exceeding the scale of Operations conducted by the Contractor;

(3) satisfactory proof that in the last five (5) years, the proposed assignee has not suffered any citation or other censure from any Federal, State or local agency having jurisdiction over its waste management operations due to any Significant failure to

comply with state, Federal or local waste management law, which citation or censure has not been timely cured to the satisfaction of such agency, or is not now in the process of a cure; and if it has suffered any citation or other censure, that the assignee has provided the City with a complete list thereof;

(4) the proposed assignee has at all time conducted its operations in an environmentally safe and conscientious fashion;

(5) the proposed assignee conducts its Operations in accordance with Standard Industry Practices and in full compliance with all Federal, State and local laws regulating the Disposal of Municipal Solid Waste including Hazardous Waste and hazardous substances;

(6) letters of credit, lines of credit, or other financial assurances that confirm the assignee's financial ability to perform the Agreement; and

(7) any other information reasonably required by the City to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

c. Application and Transfer Fee. Any application for an assignment/transfer of this Agreement shall be governed by the following conditions:

(1) Any application for an assignment/transfer shall be made in a manner prescribed by the City representative identified in Section 15.02. The application shall include a transfer fee in an amount to be set by resolution of the City Council to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse the City for all direct and indirect expenses.

(2) The Contractor shall reimburse the City for any and all additional costs related to the assignment requested and not covered by the assignment/transfer fee, including attorney's fees and investigation costs related to investigation of the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. Bills shall be supported with evidence of the expense or cost incurred. The Contractor shall be responsible for ensuring the payment of such bills within thirty (30) calendar days of receipt.

d. Transition. If the City consents to an assignment/transfer, at the point of transition the Contractor shall cooperate with the City and subsequent Contractor(s) or subcontractor(s) to assist in an orderly transition which shall include, but not be limited to, the Contractor's provision of vehicle tare weights and billing information.

ARTICLE 15. OTHER PROVISIONS

15.01 Notices. All demands, orders, requests, proposals, comments, acknowledgments, approvals, consents, certifications and other communications made hereunder and shall be in writing and shall either be, delivered personally or delivered by courier, to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to City:

Jan Perkins
City Manager
City of Fremont
P.O. Box 5006
3300 Capitol Avenue
Fremont, California 94537-5006
Telephone: (510)284-4002 Fax Telephone: (510) 284-4001
cc: Fremont City Clerk and Environmental Services Manager

If to Contractor:

Waste Management of Alameda County, Inc.
172 98th Avenue
Oakland, CA
Attn: James Devlin, Northern California District Manager
Telephone: (510) 613-2815 Fax Telephone: (510) 613-2839

The address to which communications may be delivered may be changed from time to time by a Notice given in accordance with this Section. Any Notice of other communication hereunder shall be effective as of the date received, or, if earlier, as of the date upon which such Notice or communication is first sent by facsimile transmission, and confirmed in writing by the receiving Party.

15.02 Authorized Representatives

- a. City.** For purposes of this Agreement, the City's authorized representative shall be the City Manager of the City or her designee, who shall have the authority to make operational decisions and financial decisions in accordance with Applicable Law and City policy with respect to this Agreement which are binding on the City.
- b. Contractor.** For purposes of this Agreement, the Contractor's authorized representative shall be Mr. James Devlin, who shall have the authority to make decisions in accordance with Applicable Law and Contractor's articles of incorporation, bylaws and policy.

15.03 Conflicting Provisions. In the event the provisions of the Articles herein conflict with those of the Exhibits hereto, the Articles shall prevail.

15.04 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State.

15.05 Amendments. The Parties may change, modify, supplement or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties.

15.06 Venue. The venue for any legal proceedings initiated by Contractor related to this Agreement shall be exclusively the County of Alameda or, in case of Federal jurisdiction, Federal District Court, Northern Division.

ARTICLE 16. SEVERABILITY

If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

ARTICLE 17. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby. All Exhibits 1 through 5 are hereby incorporated into this Agreement by reference. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions. However, nothing in this paragraph shall supercede or diminish the representations and warranties as contained in Article 2.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement on the date first above written.

City of Fremont

[Signature]
City Manager, Jan Perkins

Date 12/19/03

[Signature]
Contractor (signature)

James E. Devlin
Contractor (printed name)

Date 12/05/03

ATTEST:

(Notarized) Attach Corporate Resolutions

[Signature]
for City Clerk, Lynn Macy
RICK CADEIRA
DEPUTY CITY CLERK

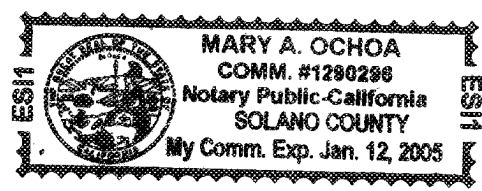
County: Alameda

[Signature]

Date 12/19/03

Commission Expires 12/05

[Signature]
Dave Millican, Deputy City Manager



Date 12/19/03

APPROVED AS TO FORM:

[Signature]
Assistant City Attorney, Sandra Fox

[Signature]
Counsel to Contractor (signature)

[Signature]
Counsel to Contractor (printed name)

Date 12-16-03

Date 12/5/03

EXHIBITS

**EXHIBIT 1
DISPOSAL FEE AND OTHER FEES
(SEE WMAC's PROPOSAL)**

Other

**EXHIBIT 1
DISPOSAL AND OTHER FEES**

Waste Management of Alameda Count guarantees disposal fees for waste delivered to Altamont Landfill by the City of Fremont from September 1, 2004 through the term of contract that is adjusted bi-annually to reflect inflation according to the escalation methodology described in the long-term landfill disposal capacity agreement.

Disposal Fee Components	Disposal Fees (January 1, 2004 dollars) valid from September 1, 2004 to December 31, 2005			
	Ton of Waste per City(ies) Contractor(s)			
	Fremont only	Fremont + Newark	Fremont + Union City	Fremont + Newark + Union City
Fixed component	\$2.25	\$2.22	\$2.22	\$2.18
Variable component	\$9.63	\$9.63	\$9.63	\$9.63
Pass-through component (list each pass-through cost separately):				
1. CA AB 939	\$1.40	\$1.40	\$1.40	\$1.40
2. Open Space	\$1.25	\$1.25	\$1.25	\$1.25
3. Measure D	\$7.06	\$7.06	\$7.06	\$7.06
4. Planning Fee	\$.075	\$.075	\$.075	\$.075
5. Business Tax	\$.95	\$.95	\$.95	\$.95
6. Lea Inspection Fee	\$.22	\$.22	\$.22	\$.22
Total pass-through component	\$10.96	\$10.96	\$10.96	\$10.96
Total Disposal Fee (Fixed + Variable + Pass-Through components)	\$22.83	\$22.80	\$22.80	\$22.76
Discount to disposal fee for materials used as alternative daily cover	60 % of total disposal fee			

Amount regarded as significant

\$15,000

EXHIBIT 2
INSURANCE REQUIREMENTS

The Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. With respect to General Liability, and Pollution and/or Environmental Impairment Liability coverage should be maintained through Post-Closure. The maintenance of claims made against any insurance required of the Contractor shall not be considered a waiver by City of any claim or liabilities it may have against the Contractor.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile Liability, code 1 (any auto) and endorsement CA 0025.
3. Workers’ Compensation Insurance as required by the State of California and Employer’s Liability Insurance.
4. Pollution and/or Environmental Impairment Liability .

B. Minimum Limits of Insurance. The Contractor shall maintain limits no less than:

1. General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers’ Compensation and Employer’s Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.
4. Pollution and/or Environmental Impairment Liability : \$3,000,000 each occurrence/\$10,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the City, automatically broaden in its

form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by the City will be called upon to contribute to a loss suffered by the Contractor hereunder and waive subrogation against the City and other additional insureds.

D. Other Insurance Provisions.

1. The policies are to contain, or be endorsed to contain, the following provisions:
 - a. The City, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.
 - b. The Contractor's insurance coverage shall be primary insurance with regard to the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. Each insurance policy required by this Agreement shall be occurrence-based, or an alternate form as approved by the City and shall be endorsed to state that the insurer(s) must provide the Contractor and City with thirty (30) calendar days notice prior to any cancellation, change or other modification by certified mail, return receipt requested, has been given to the City and name the City its officers, officials, agents, employees and volunteers as additional insureds.
 - d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or State authorities.
3. Workers' Compensation and Employers Liability Coverage. The Insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the City.
 - e. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverages are not available from an "Admitted"

Insurer, the coverage may be written with the City's permission, by a Non-admitted insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or higher.

f. Verification of Coverage. The Contractor shall furnish the City with endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City, unless the Insurer will not use the City's form. All endorsements are to be received and approved by the City's Risk Manager before work commences. As an alternative to the City's forms, the Contractor's Insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

g. Other Provisions

1. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, agents, employees and volunteers.

**EXHIBIT 3
LOAD CHECKING PROGRAM**

To be provided by Contractor



ALTAMONT LANDFILL
AND RESOURCE RECOVERY FACILITY

HAZARDOUS WASTE EXCLUSION PROGRAM

Last Revised: June 24, 2002

Ken Lewis, District Manager

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I. INTRODUCTION

Altamont Landfill and Resource Recovery Facility (ALRRF) developed this hazardous Waste Exclusion Program which meets and exceeds the requirements of both state and federal regulations. This program has been developed to also incorporate site-specific permit requirements as well as comply with Waste Management, Inc. (WMI) policies.

II. REGULATIONS

The Hazardous Waste Exclusion Program has been developed to meet the following regulatory requirements.

A. 40 CFR Part 258. Subpart C - Operating Criteria; Section 258.20 - Procedures for Excluding the Receipt of Hazardous Waste

As required by Federal regulations, the owner or operator of a municipal solid waste landfill unit must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in Part 261 of this title and polychlorinated biphenyls (PCB) wastes as defined in part 761 of this title. This program must include at a minimum:

1. Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes.
2. Records of any inspections.
3. Training of facility personnel to recognize regulated hazardous wastes and PCB wastes.
4. Notification of the EPA State Director of a regulated hazardous waste or PCB waste is discovered at the facility.

Additional requirements associated with this regulation are located in the site specific Solid Waste Facilities Permit.

B. Title 14 CCR Section 17258.20 - Procedures for Excluding the Receipt of Hazardous Waste

State of California regulations in Title 14 CCR Section 17258.20, Procedures for Excluding the Receipt of Hazardous Waste, are identical to the requirements of 40 CFR Part 258 described above. Additional requirements associated with this regulation are located in the site specific Solid Waste Facilities Permit.

C. Title 23 CCR Article 3, Waste Management Unit Classification and Siting

Title 23 CCR Article 3, Waste Management Unit Classification and Siting includes regulations established by the State Water Resource Control Board (SWRCB) and implemented by the Regional Water Quality Control Boards (RWQCB) pertaining to the hazardous waste exclusion program.

The only specific reference is located in 23 CCR Section 2523.b which requires that a periodic load checking program approved by the Department of Toxic Substances Control (DTSC) and RWQCB shall be implemented to ensure that hazardous materials are not discharged into Class III landfills.

Title 23 CCR Article 3, Waste Management Unit Classification and Siting also references requirements to ensure proper waste classification and management in Class II and Class III landfill cells. This section also describes landfill disposal restrictions which are also located in site specific Waste Discharge Requirements.

D. Conditional Use Permit No. C-5512 Item 58

The Conditional Use Permit (CUP) No. C-5512, item 58 requires a site Hazardous Waste Exclusion Plan for all wastes received into the Class II unit. The program, at a minimum requires personnel training to recognize regulated hazardous wastes, random inspection of incoming loads, inspection of all suspicious loads, procedures for handling unauthorized wastes, proper notification procedures, and provisions for documentation of inspections and record keeping.

III. ALRRF OPERATIONS

ALRRF currently operates a Class II landfill cell, a Class III area landfill cell and a monofill area for asbestos containing wastes that is located in the Class III landfill cell area.

A. Class III Landfill Cell

The Class III landfill cell is designed with a clay liner and leachate collection system. This cell is permitted to receive Class III materials. Class III materials are defined as non-designated per the RWQCB. This cell is used predominantly for the management of municipal solid waste. All materials managed in the Class III landfill cell must meet the site specific permit requirements in the Waste Discharge Requirements and Solid Waste Facilities Permit.

B. Class II Landfill Cell

The Class II landfill cell is a fully permitted Subtitle D cell designed with a composite liner and leachate collection system. This cell is permitted to receive Class II and Class III materials. Class II materials are defined as designated wastes per the RWQCB and nonhazardous per DTSC. Materials that have received a hazardous waste variance from

DTSC are also considered designated. All materials managed in the Class II landfill cell must meet the site-specific permit requirements in the Waste Discharge Requirements and Solid Waste Facility Permit.

C. Asbestos Monofill

The asbestos monofill is a fully permitted Class III cell designed for the management of friable asbestos containing wastes. Although friable asbestos containing wastes are considered hazardous in California, DTSC has allowed for this material to be disposed in permitted Class III landfill cells.

IV. ALRRF's HAZARDOUS WASTE EXCLUSION PROGRAM

The purpose of the load inspection program is to detect prohibited wastes, educate our customers as to what materials are acceptable, and discourage attempts to dispose of hazardous materials at this landfill. ALRRF's Hazardous Waste Exclusion Program consists of the following four major components: 1) periodic random load checks, 2) load checks for suspicious loads, 3) general inspections of loads being disposed of and 4) load checks at the transfer stations.

A. Waste Management Inc. Special Waste Program

WMI developed the Special Waste Program to supplement the regulatory requirements for the hazardous waste exclusion program with an internal control program. This program requires that all industrial and commercial waste streams are reviewed prior to acceptance to ensure proper management.

The special waste program is a mandatory program for all WMI landfills. The program requires tracking of all special waste materials through the waste profile process, onsite signage which describes unacceptable wastes, and an employee training program (see Attachment 9 for training record) for the identification of special wastes. Waste streams managed solely by WMI companies often receive special waste scrutiny not only through the landfill operation but the collection and transfer station operations, as applicable.

ALRRF's special waste program incorporates federal, state, local and company requirements as well as ALRRF's site specific permit requirements. The profile process for special waste acts as a pre-screening process that prevents unacceptable waste from ever being received at ALRRF. The profile process includes obtaining a completed copy of the Generator's Waste Profile Sheet (Attachment 1). The Profile then undergoes scrutiny as to the process generating the waste and (if required) analytical, maps, and all supporting documentation.

ALRRF has posted signage at the front gate, guard shack, and scale house which describes unacceptable wastes (See Attachment 2). ALRRF's employee training program is described in Section B below.

B. Employee Training Program for the Identification of Hazardous, PCB, Radioactive, and Designated Wastes

ALRRF provides various special waste training to all employees depending upon their responsibilities in the hazardous waste exclusion program. All employees are given special waste training to assist in the recognition, identification and handling of hazardous waste, PCB waste, radioactive waste, and designated waste. Training includes proper use of personal protective equipment and emergency response procedures. This training also familiarizes all employees with the necessary notification and record keeping requirements associated with the hazardous waste exclusion program. Training records are maintained on site.

C. Identifying Prohibited Wastes

The load inspector will use a variety of methods to detect prohibited wastes including:

- Questioning the driver about the source of the load and the nature of generators on the route.
- Examining product labels, especially warning labels.
- Liquids in containers are rejected.
- Inspecting containers to ensure that they are empty or do not contain prohibited wastes.
- Evaluating the load for odors that are not characteristic of municipal solid waste.
- Inspectors should never deliberately inhale vapors from suspicious materials or containers because this may lead to injury.
- Searching for specific items that are prohibited wastes, such as:
 - Aerosols
 - Anti-freeze
 - Appliances Containing Freon Units
 - Batteries
 - Biohazards
 - Car Batteries
 - Chemicals
 - Computers
 - Computer Monitors
 - Fluorescent Light Tubes
 - Free Liquids (without solidification)
 - Oil
 - Oil Filters, used
 - Paints
 - PCB's (often in transformers)
 - Pesticides
 - Radioactives
 - Septage
 - Solvents
 - Televisions
 - Thermostats
 - Thinners

- Large Animal Carcasses
 - Light Ballasts
 - Manures (untreated)
 - Microwaves
- Waste Oil
 - Undrained Water Heaters
 - Untreated Medical Wastes (often in red bags)

D. Load Check Program

ALRRF maintains an on-going inspection program designed to monitor and document solid waste that enters the landfill site.

ALRRF Landfill employees will follow these guidelines when performing load checks:

- Be aware of your surroundings and watch for customer traffic as well as heavy equipment.
- Do not walk through loose trash at the landfill face. Walking on loose trash could cause a falling injury.
- Any suspicious material or substance found at the landfill face that is not readily identifiable will be considered hazardous material. **DO NOT HANDLE-CALL YOUR SUPERVISOR.**
- Report any and all injuries or exposure to hazardous material to your supervisor immediately.

1) Periodic Random Load Checks

ALRRF conducts at least four random load checks per week. Random load checks are conducted on all types of wastes managed at ALRRF, which includes Class III materials, Class II materials, and asbestos containing wastes. The periodic random load check program does not include materials from the transfer stations, which have their own load check program, as described in item 4, below.

The load check is performed at the landfill face by the trained staff to do so. A set procedure is used for each inspection, as listed below.

1. Loads to be inspected will be selected at random.
2. Do not handle any material found at the landfill or in a customer's load without wearing the necessary PPE.
3. The driver will be given a brief explanation of the solid waste load-check program and instructed to park his vehicle in a traffic clear area.
4. Material will be spread if necessary to adequately inspect the load.
5. The load will then be inspected to ensure it meets the specifications of acceptance.
6. If the load meets specification, it will be managed appropriately.
7. If unacceptable material is identified (or material unable to be identified) in the load or the entire load does not meet specification, then the procedures in item 5 below will be followed.

8. Information from the load check will be documented on the appropriate Load Check Form (See Attachment 3).

2) Load Checks for Suspicious Loads

Once a waste stream has been approved through the profiling process, each load associated with a profile must carry a Waste Acceptance Form (Attachment 4) to be presented to the scale house. The scale house staff will proceed to process the paperwork and give the driver a specific colored ribbon to be placed on their mirror. This flag identifies the waste stream and tells the traffic director where to send the load for off loading and proper management. Throughout this process, ALRRF conducts load checks on any suspicious loads that are identified. Suspicious loads include but are not limited to the following:

1. Vehicles that do not appear to contain materials as described in the approved profile (i.e. odor, consistency, color, physical characteristics).
2. Vehicles that previously have contained questionable materials.
3. Notification from any regulatory agency of concern over vehicle or customer waste.

3) General Inspections of Loads during Disposal Procedures

All employees are given special waste training to assist in the recognition, identification, and handling of hazardous waste, PCB waste, radioactive waste, and designated waste. All trained load check personnel are responsible for viewing loads during operations to ensure unacceptable wastes are not managed at ALRRF.

If questionable wastes are identified, the standard procedures are as follows:

1. Segregate or cordon off the area where questionable waste is located.
2. Notify landfill supervisor or designee.
3. Supervisor will make determination whether waste is unacceptable or contact ALRRF's Environmental Compliance staff to make a determination.
4. If it is determined that unacceptable waste has been discovered, then the procedures in Section D will be followed.
5. Unacceptable wastes identified during general inspection of loads will be recorded on a Special Occurrence Log Form (See Attachment 5).
6. Copies of Special Occurrence Log Forms pertaining to unacceptable wastes must be forwarded to Environmental Coordinator.

4) Transfer Station

A significant portion of the municipal solid waste which is managed at ALRRF comes through transfer stations. Due to the disposal procedures for the transfer trucks which are unloaded on tippers, a random loadcheck cannot be conducted on these materials. These materials though are subject to the hazardous waste exclusion programs at the transfer stations. ALRRF maintains copies of the transfer station waste acceptance procedures. Davis Street Transfer Station has a random load check program at Davis St. Facilities.

ALRRF's equipment operators, as described in Section 3 above, are trained to identify, recognize, and handle unacceptable wastes from all loads including the transfer truck loads. If an unacceptable waste is identified from any of these loads, the procedures described in Section D.5, below, will be followed.

5) Procedures for Discovery of Unacceptable Wastes / Notifications

If an unacceptable waste material is identified, the procedures are as follows:

1. If material has not been unloaded, reject load and notify the generator of unacceptable waste identified in load.
2. If material has been unloaded, segregate or cordon off material, if not already done so.
3. Determine and notify generator of receipt of unacceptable material and have generator confirm if unacceptable waste. Make arrangements with generator to have material retrieved or managed as described below.
4. Determine if material can be handled onsite as follows:
 - a) If material is a Class II waste, determine if it can be managed in the Class II cell.
 - b) If the material is an asbestos containing waste, determine if it can be managed in the asbestos monofill.
5. If material cannot be disposed onsite, transfer material to hazardous waste storage bins (Only 40-hour trained employees may handle material if it is determined to be a hazardous waste).
6. Label material properly and place material in compatible storage bin. All materials will be entered on the Hazardous Waste Storage Area Inventory Log (See Attachment 6).
7. Schedule proper disposal of material (within 90 days if hazardous waste). Storage sheds must be inspected weekly (See Attachment 7).
8. Determine if material requires agency notification (if a hazardous waste or a PCB waste) and send out applicable notification letters (See Attachment 8). Maintain all documentation pertaining to unacceptable waste handling.

NOTE: If at any time during this procedure, it is determined that identified materials pose an emergency situation, a Waste Management approved vendor (i.e., Evergreen oil, Onyx) will be contacted immediately for emergency response service as described in ALRRF's Emergency Management and Contingency Plan.

V. SAFETY

Load inspectors should be provided with the following Protective Personal Equipment (PPE):

- Safety glasses or goggles
- Safety boots
- Safety vest
- Hard hat

VI. RECORDKEEPING

All information pertaining to the Hazardous Waste Exclusion Program will be either directly maintained in the Subtitle D operating records or available at all times for review. This information includes the following:

1. Load Check Forms
2. Special Occurrence Log Forms pertaining to the Hazardous Waste Exclusion Program
3. Hazardous Waste Weekly Inspection Forms
4. Hazardous Waste Storage Area Inventory Log
5. Shipping papers associated with Load Check Materials
6. Transfer Station Random Load checks (Davis St. Facility)
7. Agency Notification Forms
8. Customer Special Waste Profiles
9. Employee Training Records pertaining to the Hazardous Waste Exclusion Program
10. Agency Correspondence pertaining to the Hazardous Waste Exclusion Program
11. Customer Correspondence pertaining to the Hazardous Waste Exclusion Program

ATTACHMENT 1

Generator Waste Profile Sheet

ATTACHMENT 2

Front Gate Signage

No Hazardous Waste or Chemical Waste accepted except materials exempted for Class III Disposal and having written approval exempted for Class III Disposal.

Non-hazardous special waste (contaminated soils, drums, sludges, and liquids) will also be refused or returned at hauler's expense unless previously approved by management in writing.

Altamont Landfill Public Hours Monday – Thursday 6:00 AM to 7:00 PM; Friday 6:00 AM to 6:00 PM; Saturday 5:00 AM to 12:30 PM

Guard Shack and Scale House Signage

Notice! Random screening is practiced here. We reserve the right to inspect any load or portion of a load arriving at our facility. We will reject hazardous waste, PCB'S, liquids, or any unacceptable waste. As determined by our management. Your participation in this program is NOT OPTIONAL. We apologize for any delay or inconvenience.

ATTACHMENT 3

Load Check Forms

ATTACHMENT 4

Waste Acceptance Form

ATTACHMENT 5

Special Occurrence Log Form

ATTACHMENT 6

Hazardous Waste Storage Locker Area Inventory Log

ATTACHMENT 7

Hazardous Waste Storage Locker Inspection Report

ATTACHMENT 8

Notification Letter

Date: ___ / ___ / ___

Mr. Jess Huff, Director
California Department of
Toxic Substances Control
400 P. Street, 4th Floor
P.O. Box 806
Sacramento, CA 95182-806

REPORT OF HAZARDOUS WASTE FOUND DURING SOLID WASTE LOAD CHECKING

Dear Mr. Director

Pursuant to 14 CCR Section 17258.20 (a) (4). This is to notify you that regulated hazardous waste or PCB waste was found on this day as a result of our Load Checking Program at the Altamont Landfill and Resource Recovery Facility. The waste material was managed appropriately.

We hereby request your concurrence that reporting under this provision be made in conformance with our Load Check Program, which was reviewed and approved by the Department pursuant to 23 CCR 2523 (b) (2).

Sincerely,

Ken Lewis
District Manager
Altamont Landfill

Cc: Reinhold Wilhem
California Integrated
Waste Management Board
8800 Cal Center Drive
Sacramento Ca 95826

Karen Moroz
Alameda County Health Agency
1131 Harbor Bay Parkway, Suite 200
Alameda, CA 94502

File: Subtitle D Operating Record

ATTACHMENT 9

**HAZARDOUS WASTE EXCLUSION PROGRAM
Training Record**

DATE: _____

The ALRRF employee identified below has been trained in the identification of potential regulated materials and other requirements of the Hazardous Waste Exclusion Program. Training included the following topics:

- Laws and definitions
- Identification of hazardous waste
- Random load procedures
- Hazardous waste handling procedures
- Emergency situations
- Additional exclusion procedures
- Safety precautions
- Record keeping requirements

Emphasize the methods to identify containers and labels typical of hazardous waste and PCB waste including:

- Hazardous waste labels
- Containers
- Businesses that generate hazardous waste

I have been instructed on the Hazardous Waste Exclusion/Load Check Program and I understand the procedures and agree to comply with the Plan.

Employee Signature

Print Name

Trainer Signature

EXHIBIT 4
FINANCIAL GUARANTY AGREEMENT

This Guaranty, made as of the date of the Agreement (as defined below) by USA Waste of California Inc. duly organized and existing in good standing under the laws of the State of Delaware and having its principal place of business in Scottsdale, Arizona, ("**Guarantor**"), to and for the benefit of the City of Fremont ("**City**"), a municipal corporation of the State of California (the "**State**").

WITNESSETH

Alameda County

JLS  *LOF*

WHEREAS, Waste Management of California, Inc., a California corporation (the "**Contractor**"), an affiliate of the Guarantor, and the City have negotiated a Service Agreement for Long Term Disposal Capacity dated as of the later of the date of execution thereof by the City or the Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof ("**Agreement**"), which Agreement is incorporated herein by reference and hereby made part hereof;

WHEREAS, it is in the interest of Guarantor that the Contractor enter into the Agreement with the City;

WHEREAS, the City is willing to enter into the Agreement only upon the condition that the Guarantor execute this Guaranty;

WHEREAS, it is a condition precedent to the City to enter into the Agreement, the Guarantor agrees as follows:

Capitalized terms used herein and not otherwise defined herein, shall have the meaning assigned to them in the Agreement.

(1) Guaranty of Contractor's Obligations to City. Guarantor hereby directly, unconditionally, irrevocably, and absolutely guarantees the timely and full performance of Contractor's Obligations under the Agreement in accordance with the terms and conditions contained therein, or as they may be hereafter amended or modified by agreement of Contractor and the City. Notwithstanding the unconditional nature of the Guarantor's payment Obligations set forth herein, the Guarantor shall have the right to assert the defenses provided in the paragraph entitled "Defenses" under Section 8 hereof, against claims made hereunder.

(2) Governing law; consent to jurisdiction; service of process. This Guaranty shall be governed by the laws of the State. The Guarantor hereby agrees to the service of process in the State for any claim or controversy arising out of this Guaranty or relating to any breach. The

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Guarantor hereby agrees that the courts of the State, and to the extent permitted by law, courts of the County in the State shall have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the City may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach hereof, waives any objections that it might otherwise have to the venue of any such Court for the trial of any such suit, action, or proceeding by prepaid registered mail, return receipt requested.

(3) Enforceability; no assignment. This Guaranty shall be binding upon and enforceable against Guarantor, its successors, assigns, and legal representatives. It is for the benefit of the City, its successors and assigns. The Guarantor may not assign or delegate the performance of this Guaranty without prior written consent of the City, which shall not be unreasonably withheld. Any such assignment made without the consent of City shall be void. Guarantor shall submit its request for City consent to the City together with the following documentation and any other documentation the City may reasonably request:

- (i) audited financial statements for the immediately preceding three (3) operating years; indicating that the proposed assignee's financial status is equal to or greater than Guarantor's; and
- (ii) any other information reasonably required by City to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

Guarantor shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.

"Assign." For the purpose of this Section, "assign" includes to sell, exchange or otherwise transfer to a third party all or substantially all of Guarantor's assets.

(4) Guaranty absolute and unconditional. The undertakings of Guarantor set forth herein are absolute and unconditional, except as provided herein, and the City shall be entitled to enforce any or all of said undertakings against Guarantor as provided in this Guaranty. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its Obligations hereunder shall not be affected, limited, modified or impaired by (a) the default or failure of the Guarantor to fully perform any of its Obligations set forth in this Guaranty, or (b) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor, or any order or decree of a court, trustee or receiver in any such proceeding; provided that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary obligation of Contractor to City from which Contractor would be discharged, released or otherwise excused under the provisions of the Agreement.

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(5) Waivers. Guarantor hereby waives:

- (a) notice of Acceptance of this Guaranty and of the creation, renewal, Extension and accrual of the Obligations Guaranteed hereunder; and
- (b) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the Contractor.

(6) Agreements between City and Contractor; Waivers by City. The Guarantor agrees that, without the necessity for any additional endorsement or Guaranty by or any reservation of rights against Guarantor and without any further assent by Guarantor, by mutual agreement between the City and Contractor, the City and Contractor may, from time to time

- (a) renew, modify or compromise the liability of the Contractor for or upon any of the obligation hereby Guaranteed; *JCS JME*
- (b) consent to any amendment or change of any terms of the Agreement;
- (c) accept, release, or surrender any security (including, without limitation, any performance bond); or
- (d) grant any Extensions or renewal of the Obligations of the Contractor under the Agreement, and any other indulgence with respect thereto, and to effect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor hereunder.

Notwithstanding the foregoing, nothing in this Guaranty shall be construed to create a greater obligation on the part of the Guarantor that the Contractor would have under the Agreement, or as it may be amended or modified by the Contractor and the City.

(7) Continuing Guaranty. This Guaranty is a continuing Guaranty and shall continue to be effective or be reinstated, as applicable, if at any time any payment of any of the Obligations hereby Guaranteed is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the Contractor or Guarantor or otherwise, all as though such payment had not been made.

(8) Defenses. The Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Agreement or Applicable Law which the Contractor could assert against any party seeking to enforce the Agreement against the Contractor, and nothing in this Guaranty shall constitute a waiver thereof by the Guarantor.

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(9) Payment of costs of enforcing Guaranty. Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the City in enforcing this Guaranty following the default on the part of the Guarantor hereunder whether the same shall be enforced by suit or otherwise.

(10) Enforcement. The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.

(11) Remedies cumulative. No remedy herein conferred upon or reserved to the City hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty and the Agreement or hereinafter existing at law or in equity or by statute.

(12) Severability. The invalidity or unenforceability of any one or more phrases, sentences or clauses in this Guaranty contained shall not effect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

(13) Amendments. No amendment, change, modification or termination of this Guaranty shall be made except upon the written consent of Guarantor and the City.

(14) Term. The Obligations of the Guarantor under this Guaranty shall remain in full force and effect until (i) all monetary Obligations of the Contractor under the Agreement shall have been fully performed or provided for in accordance with the Agreement, or (ii) the discharge, release or other excuse of said Obligations in accordance with the terms of the Agreement.

(15) No set-offs, etc. The obligation of Guarantor under this Guaranty shall be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert pursuant to the Agreement, if any, but the obligation of Guarantor under this Guaranty shall not be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert independently of and outside the Agreement.

(16) Warranties and representations. The Guarantor warrants and represents that as of date of execution of the Guaranty:

- (a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its Obligations and undertakings hereunder, and the execution, delivery and performance of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder action of the part of the Guarantor, (ii) have the requisite approval of all Federal, State and local governing bodies having jurisdiction or authority with respect thereto, if any (iii) do not violate any judgment, order, law or regulation applicable to the Guarantor; (iv) do not conflict with or constitute a default under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its assets may be

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bound or affected; and (v) do not violate any provision of the Guarantor's articles or certificate of incorporation or by-laws.

- (b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms; and
- (c) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceeding before any court or administrative agency which would have a material adverse effect on the financial condition of the Guarantor, or the ability of the Guarantor to perform its Obligations or undertakings under this Guaranty.

Guarantor acknowledges and agrees that such representations and warranties are material.

(17) Counterparts. This Guaranty may be executed in any number of counterparts, some of which may not bear the signatures of all parties hereto. Each such counterpart, when so executed and delivered, shall be deemed to be an original and all of such counterparts, taken together, shall constitute one and the same instrument; provided, however, that in pleading or proving this Guaranty, it shall not be necessary to produce more than one copy (or sets of copies) bearing the signature of the Guarantor.

(18) Notices. All notices, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing, and shall be given in the manner and to the addresses provided in the Agreement.

(19) Separate suits. Each and every payment default by Contractor under the Agreement shall give rise to a separate cause of action under this Guaranty, and separate suits may be brought hereunder by the City or its assigns as each cause of action arises.

(20) Headings. The Section headings appearing herein are for convenience only and shall not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.

(21) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights of remedies under or by reason of this Guaranty.

(22) Personal Liability. It is understood and agreed to by the City that nothing contained herein shall create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any Obligations

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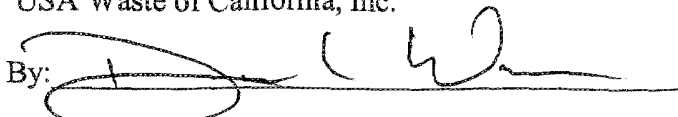
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hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

USA Waste of California, Inc.

By:



Duane C. Woods, Vice President

12/5/03

Date

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EXHIBIT 5
LIQUIDATED DAMAGES

The following Liquidated Damages shall be levied for Contractor's failure to meet specific Contractor's Obligations due to Contractor's fault during Facility Operations. Payment of Liquidated Damages in no way limits City's ability to seek other damages; and does not excuse Contractor from conducting appropriate cure of breach or default as provided in Article 11, or such other remedies as may be provided in this Agreement. The amounts for Liquidated Damages will be adjusted biennially to reflect changes in CPI in the manner described in Article 8.

The Parties acknowledge that timely and consistent, efficient Facility Operation is of utmost importance to the Transfer Contractor(s) and the City; failure to Operate the Facility in accordance with Obligations in the Agreement, failure to allow for Vehicles efficiently unload at the Facility increase the City's and/or its Transfer Contractor(s)' costs; and the City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if the Contractor fails in its Obligations, the City and its residents and businesses will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties agree that the following Liquidated Damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the City, Transfer Contractor, and Collection Contractor(s), that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. The Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts listed in the table below for failure to perform the specified events of failure listed in the table due to the Contractor's fault.

In signing this Agreement, the Contractor specifically confirms the accuracy of the statements made in this Exhibit with respect to Liquidated Damages for all events of failure listed below and the fact that it had ample opportunity to consult with legal counsel and obtain an explanation of such Liquidated Damage provisions at the time that this Agreement was made.

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Event	Liquidated Damage (\$)
Failure to meet Vehicle Turnaround Guarantee	\$1.00 for each minute the average vehicle turnaround time exceeds twenty (20) minutes multiplied by the number of loads of Residue Delivered by Facility Users during the thirty (30) calendar day period under review
Failure to submit reports and/or failure to submit information as requested by City consistent with Section 3.10 Confidentiality	\$500 per report per incident

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