

**City Clerk's Office**  
1052 South Livermore Avenue  
Livermore, CA 94550-4899  
Phone: 925.960.4200 Fax: 925.960.4205

## DOCUMENT TRANSMITTAL FORM

Date: May 28, 2010

To: Rick King  
Republic Services Vasco Road LLC  
4001 North Vasco Road  
Livermore, CA 94550

cc: J. Erlandson  
L. Carpenter  
*A. Morrison*

### PLEASE READ THE FOLLOWING:

Original document and resolution copy enclosed for your records

<b>Date of Document:</b>	May 24, 2010
<b>Type of Document:</b>	Amended and Restated Agreement
<b>Parties:</b>	City of Livermore and Republic Services Vasco Road LLC

Susan Neer, City Clerk  
By: Roberta Mathews  
925.960.4200



IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING SIGNING OF THE  
AMENDED AND RESTATED AGREEMENT

(REPUBLIC SERVICES VASCO ROAD, LLC – DISPOSAL FOR SOLID WASTE)

On May 13, 2002, the City Council entered into an agreement for disposal of solid waste generated within City of Livermore at the Vasco Road Landfill: *Agreement Between the City of Livermore and Republic Services Vasco Road, LLC, for Disposal of Solid Waste.* (City Council Resolution No. 2002-111)

**BE IT RESOLVED** by the Livermore City Council that the City Manager is authorized to sign, on behalf of the City of Livermore, the Amended and Restated Agreement between the City of Livermore and Republic Services Vasco Road, LLC for disposal of Solid Waste to:

1. Institute a \$4.53 per ton Livermore Waste Equalization Charge for non-franchised, non-residential waste;
2. Remove the self-haul discount for City of Livermore residents;
3. Update terms, the conversion ratio table, and the government fee schedule.

A copy of the agreement is on file in the office of the City Clerk.

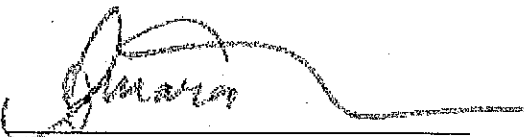
On the motion of Councilmember Marchand, seconded by Vice Mayor Horner, the foregoing resolution was passed and adopted on the 24<sup>h</sup> day of May, 2010, by the following vote:

AYES: Councilmembers Marchand, Williams, Vice Mayor Horner, Mayor Kamena  
NOES: None  
ABSENT: Councilmember Leider  
ABSTAIN: None

ATTEST & DATE:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY CLERK  
SUSAN NEER

  
\_\_\_\_\_  
SPECIAL COUNSEL  
AMARA MORRISON

DATE: May 25, 2010



**Amended and Restated Agreement Between  
The City of Livermore and  
Republic Services Vasco Road, LLC for  
Disposal of Solid Waste**

THIS AMENDED AND RESTATED AGREEMENT is made as of this 24 day of May, 2010, by and between the CITY OF LIVERMORE (City) and Republic Services Vasco Road, LLC, a wholly-owned subsidiary of Republic Services, Inc. (Contractor). City and Contractor shall be referred to collectively as "Parties."

**RECITALS**

A. The City previously entered into an Agreement with Contractor, pursuant to which Contractor disposes of Solid Waste generated within City of Livermore at the Vasco Road Landfill ("Landfill").

B. The City's current Agreement for Disposal of Solid Waste with Contractor terminates December 31, 2023.

C. The State of California, through enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et. seq.) also recognizes the important health and safety consideration to long-term planning for local government's adequate Disposal needs. The Act declares that the responsibility for management of Solid Waste is a shared responsibility between the State and local governments. The State requires local governments to make adequate provision for at least 15 years of Solid Waste Disposal capacity to preserve the health, safety and well-being of the public. The California Integrated Waste Management Act of 1989 also authorizes local governments to enter into exclusive franchise contracts to provide Solid Waste handling services for the health, safety and well-being of its citizens (California Public Resources Code Section 40059).

D. This Agreement also advances the objectives of the federal government to encourage environmentally sound solid waste management (Resource Conservation and Recovery Act of 1976 (RCRA), 42, U.S.C. Section 6941 et. seq.)

E. The Landfill continues to be the principal Disposal site for Solid Waste generated in the City.

F. In September 2009, a modification to the California Integrated Waste Management Act was enacted, commonly known as SB 1016. City staff has determined that compliance with SB 1016's new reporting requirements will cause Livermore to have significantly lower diversion rates compared to previous years. Livermore previously confirmed a 75% solid waste diversion rate goal by 2015.

G. Staff has also determined that Livermore's diversion rates may be artificially low because of inaccuracies in Landfill customer reporting of the jurisdictional origin of waste delivered to the Landfill. Landfill staff makes every effort to accurately report jurisdiction of origin based on customer information provided. Staff believes that a Waste Import Mitigation Fee gives debris haulers a financial incentive to bring solid waste from outside Alameda County and then falsely claim Livermore as the origin of the waste to avoid paying the Mitigation Fee. Staff also believes that the residential discount for Livermore residents is unnecessary and, in fact, contradicts the policy of environmental stewardship by providing a discount that favors disposal of materials over reuse and recycling of materials.

H. The parties agree that the imposition of a Livermore Waste Equalization Charge (hereinafter "LWEC") for non-franchised, non-residential waste originating from the City of Livermore in addition to the elimination of the residential discount for Livermore residents will assist the City in reaching its 2015 diversion goal of 75%.

I. The City Council confirms it is in the best interests of the City to continue its commitment from Contractor for the right to a portion of the Landfill's current Disposal capacity on the terms and subject to the conditions set out in this Agreement. The intent of this provision is, in part, for the City to contribute to preventing the substantial environmental, aesthetic, health, and safety problems that may be created from increasing volumes of Solid Waste in this country.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows.

## **ARTICLE 1. DEFINITIONS**

Defined terms in this Agreement and the Exhibits of this Agreement, which are identified by the capitalization of the first letter of each principal word thereof, shall have the following meanings:

### **1.01 Agreement**

"Agreement" means this Agreement between the City and Contractor for Disposal of Solid Waste, including all exhibits and attachments, and any amendments hereto.

### **1.02 Base Component**

"Base Component" means that portion of a Gate Fee which represents Contractor's charge for Disposal and includes all Contractor's expenses' (except the Government Fee Component) and profit.

### **1.03 Bulky Waste**

"Bulky Waste" means stoves, refrigerators, water tanks, washing machines, other white goods, furniture, and other similar waste materials which require special handling and Disposal methods due to their size and weight.

### **1.04 City**

"City" means the City of Livermore, California.

### **1.05 City-Hauled Solid Waste**

"City-Hauled Solid Waste" means Solid Waste hauled to the Landfill in City owned and operated vehicles.

### **1.06 Collection Company**

"Collection Company" means the company or companies, which collects Solid Waste in the City in accordance with an agreement between it and the City. The Collection Company shall not be deemed an agent of the City for purposes of Section 6.01.

### **1.07 Commencement Date**

"Commencement Date" means January 1, 2004, the date on which the Contractor begins provision of services required under this Agreement.

### **1.08 Construction and Demolition Debris**

"Construction and Demolition Debris" means used or discarded building materials resulting from construction, remodeling, repair or demolition operations.

### **1.09 Contractor**

"Contractor" means Republic Services Vasco Road, LLC a wholly-owned subsidiary of Republic Services, Inc., incorporated in the State of Delaware and headquartered in Ft. Lauderdale, Florida, which owns and operates the Landfill.

### **1.10 Contractor Default**

"Contractor Default" has the meaning provided in Section 7.01.

### **1.11 Cubic Yard**

One "Cubic Yard" equates to 27 cubic feet.

### **1.12 Designated Waste**

"Designated Waste" has the meaning provided in Section 8.08.020 of the Livermore Municipal Code.

### **1.13 Disposal**

"Disposal" means the final disposition of Solid Waste as provided hereunder at the Landfill.

### **1.14 Effective Date**

"Effective Date" means the date of execution of this Agreement by the latter of the two Parties.

### **1.15 Environmental Laws**

"Environmental Laws" means all federal and State statutes, City, and City ordinances concerning public health, safety and environmental issues including, by way of example and not limitation, the Comprehensive Environmental Response, compensation and Liability Act of 1980, 42 U.S. c. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S. c. Section 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. Section 1351 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S. C. Section 1101 et seq.; the Occupational Safety and Health Act, 29 U.S. C. Section 651 et seq.; the California Hazardous Waste Control Act California Health & Safety Code Section 25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & Safety Code Section 25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section 25249.5 et seq.; and the California Clean Air Act, Health and Safety Code Sections 39000 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated there under.

### **1.16 Franchised Solid Waste**

"Franchised Solid Waste" is any material collected by the Collection Company that is not recycled and is disposed of as solid waste.

### **1.17 Gate Fees**

"Gate Fees" means the amount charged the customers by Contractor for acceptance of Solid Waste under this Agreement including the Disposal Gate Fee, Self-Haul Solid Waste Gate Fee and City-Hauled Solid Waste Gate Fee where

A. "Disposal Gate Fee" means the amount, established under Article 5 of this Agreement, to be charged the Collection Company or Transfer Company by Contractor for Disposal of Solid Waste at the Landfill;



B. " Self-Haul Solid Waste Gate Fee" means the amount, established under Article 5 of the Agreement, to be charged the Self-Haul customers by Contractor for Disposal of Solid Waste at the Landfill; and

C. "City-Hauled Solid Waste Gate Fee" means the amount, established under Article 5 of this Agreement, to be charged the City by Contractor for Disposal of City-Hauled Solid Waste at the Landfill.

### **1.18 Generator**

"Generator" means any Person whose act or process initially produces Solid Waste, Designated Waste, Hazardous Materials, Medical Waste or any other product which becomes part of the overall waste stream.

### **1.19 Government Fee Component**

"Government Fee Component" means that portion of a Landfill Gate Fee which represents all federal, State and local fees applied to Solid Waste Disposal at the Landfill.

### **1.20 Hazardous Materials**

"Hazardous Materials" means "hazardous waste" as that term is defined in Section 8.08.020 of the Livermore Municipal Code.

### **1.21 Household Hazardous Waste**

"Household Hazardous Waste" means Hazardous Materials generated at residential premises.

### **1.22 Landfill**

"Landfill" means the site of the permitted Landfill Disposal operation which is commonly known as Vasco Road Sanitary' Landfill which is owned and operated by Contractor and located at 4001 North Vasco Road in unincorporated Alameda County, California.

### **1.23 Non-Franchised Solid Waste**

"Non-Franchised Solid Waste" is any material not collected by the Collection Company that is not recycled and is disposed of as solid waste including, but not limited to, self-haul solid waste from businesses or residents.

### **1.24 Operating Year**

"Operating Year" shall mean any 12-month period commencing January 1 during the Term of this Agreement including any extension periods.

### **1.25 Party or Parties**

"Party" or "Parties" refers to the City and Contractor, individually or together. "Person" includes an individual, firm, association, organization, partnership, corporation, limited liability company, joint venture, the United States, the State of California, the City, municipality, political subdivision, governmental agency, or any other entity whatsoever.

### **1.26 Person**

"Person" includes an individual, firm, association, organization, partnership, corporation, limited liability company, joint venture, the United States, the State of California, the City, municipality, political subdivision, governmental agency, or any other entity whatsoever.

### **1.27 Recyclable Material**

"Recyclable Material" has the meaning provided in Chapter 8.08 of the Livermore Municipal Code.

### **1.28 Residential Self-Haul**

"Residential Self-Haul" means Self-Haul Solid Waste delivered by City residents from single-family or multi-family dwellings, as these types of dwellings are defined in Section 8.08 of the Livermore Municipal Code.

### **1.29 Resource Recovery**

"Resource Recovery" means recycling, material reuse and recovery, mulching, composting, land application or transformation.

### **1.30 Self-Haul**

"Self-Haul" means the collection and transportation of Solid Waste by the owner or occupants of a residential or non-residential premises located in the City.

### **1.31 Solid Waste**

"Solid Waste" means all solid, semi-solid and associated liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes; dewatered, treated or chemically fixed sewage sludge (except as provided in Section 8.18 herein) which is not a Hazardous Material; or special waste. Solid waste does not include the following:

- (a) Hazardous Material,
- (b) Infectious waste as defined in Chapter 8.08 of the City's Municipal Code,

- (c) Automobiles,
- (d) Recyclable materials as defined in Chapter 8.08 of the City's Municipal Code,
- (e) Compostable materials as defined in Chapter 8.08 of the City's Municipal Code,
- (f) Construction and demolition debris as defined in Chapter 8.08 of the City's Municipal Code if the material is recycled,
- (g) Designated Waste, and
- (g) Other material deemed unacceptable by applicable law and/ or permits conditions.

Solid Waste also means the residue from a materials recovery facility.

### **1.32 State**

"State" means the State of California.

### **1.33 Term**

"Term" means the Term of this Agreement as described in Sections 2.03 and 2.04.

### **1.34 Ton**

"Ton" means a short Ton of 2,000 pounds where each pound includes 16 ounces.

### **1.35 Transfer Company**

"Transfer Company" means the company which operates a Transfer Station and Transfer Vehicles in accordance with an agreement with City. If the Transfer Company includes the City or a joint powers authority including the City, it shall not be deemed an agent of the City for purposes of Section 6.01.

### **1.36 Transfer Station**

"Transfer Station" means a permitted facility utilized to receive Solid Waste, to temporarily store, separate, recover, convert, or otherwise process the materials comprising the Solid Waste, and to load Solid Waste into Transfer Vehicles for transport to a Disposal facility.

### **1.37 Transfer Vehicle**

"Transfer Vehicle" means a tractor and trailer designed to haul Solid Waste from a Transfer Station to a Disposal facility.

### **1.38 Transformation Facility**

"Transformation Facility" means a permitted facility used for the incineration, pyrolysis, distillation, gasification, or biological conversion other than composting of Solid Waste.

## **ARTICLE 2. TERMS OF AGREEMENT; CONDITION TO EFFECTIVENESS**

### **2.01 Effective Date.**

The Effective Date of this Agreement shall be the date of execution of this Agreement by the latter of the two Parties.

### **2.02 Commencement Date.**

The Commencement Date of services under this Agreement shall be January 1, 2004.

### **2.03 Term.**

The Term of this Agreement is 20 years, beginning January 1, 2004, and 6 continuing to December 31, 2023, subject to the satisfaction of the conditions set forth in Section 2.05. This Agreement shall end, subject to the option to extend in Section 2.04, on December 31, 2023. Based on current conditions, it is estimated that the Landfill has the capacity to provide approximately 20 years of Disposal capacity for all Solid Waste generated in the City.

### **2.04 Options to Extend Term.**

Either the City or the Contractor may request an extension of the Term. The Term may be extended if both Parties agree on the terms and conditions for the additional period(s).

The City or Contractor may exercise this option by delivering to the other Party a written notice stating that it desires to extend the Term. Such notice shall be delivered no later than 180 calendar days before the initial termination date or any termination date of any extension period, if the option is exercised. If notice of election to exercise the option is not delivered at such time, the option will lapse. The option to extend the Term is subject to Contractor's ability to secure the permits and governmental approvals necessary for acceptance and Disposal of Solid Waste generated in the City during the extended Term; Contractor ability to demonstrate, at the City's request, that since the date hereof, there shall be not have occurred any material change, financial or otherwise, that would adversely affect the ability of the Contractor to perform its obligations hereunder; and Contractor states that representations and warranties of Contractor provided in Article 9 are correct.

## **2.05 Conditions to Effectiveness of Agreement.**

The obligation of the City and of the Contractor to perform under this Agreement is subject to the satisfaction, on or before the Effective Date, of each and every one of the conditions set forth below, each of which may be waived in whole or in part by the City:

A. Ownership. Contractor owns the Landfill and is not otherwise contractually restricted from performing its obligations hereunder.

B. Absence of Litigation. There shall be no claims filed with the City or any of its administrative agencies or any litigation pending in any court challenging the execution of this Agreement, or seeking to restrain or enjoin its performance.

C. Insurance. Contractor shall have furnished the evidence of the insurance policies required by Section 6.02.

D. Delivery of Guaranty of Contractor's Performance. Contractor shall have delivered to City a guaranty of Contractor's performance under the Agreement in substantially the form attached as Exhibit A.

E. Effectiveness of City's Approval. The approval of this Agreement by City shall have become effective, pursuant to local, State and federal law. If either Party wishes to assert that a condition for its benefit has not been satisfied and has not been waived on the Effective Date, it must deliver written notice to that effect to the other Party. If no such notice is received, the Agreement will become effective on the Effective Date and neither Party may thereafter assert that a condition has not been satisfied or waived and that the Agreement is not effective. This paragraph is not intended to prevent the City from seeking to employ other remedies in the event a representation or warranty by Contractor is later discovered not to be true and correct or to remedy a failure by Contractor to furnish insurance and bond, if required. Similarly, this paragraph is not intended to prevent the Contractor from seeking to employ other remedies in the event a representation or warranty by City is later discovered not to be true and correct.

## **ARTICLE 3. OBLIGATIONS OF CITY**

### **3.01 General.**

Solid Waste will be delivered to the Landfill by Collection Companies, Transfer Company, Self-Haulers and by the City in City-owned vehicles. The City contractually controls the delivery of Solid Waste collected or received by the Collection Company or Transfer Company and shall direct Collection Companies or Transfer Company to

deliver all Solid Waste collected in City to Landfill except sewage sludge as described in Section 8.18. The Contractor acknowledges that the City does not have the ability to direct Self-Haulers to use the Landfill.

The Parties acknowledge that Gate Fees will be paid by the Collection Companies, Transfer Companies, or Self-Haulers with the exception of City-Hauled Solid Waste Gate Fees paid by the City for Disposal of City-Hauled Solid Waste.

### **3.02 Hazardous Material Programs.**

City shall contractually require its Collection Company and Transfer Contractor to develop and implement a load inspection programs to detect and discover Hazardous Material and shall require such contractors to not knowingly deliver such material to the Landfill. City shall encourage residents to participate in the Alameda County Household Hazardous Waste Program that provides residents with a place for safe recycling, treatment and/or disposition of Household Hazardous Waste. The Parties recognize, however, that City cannot assure Contractor that such programs will prevent any amount of Hazardous Material or Household Hazardous Waste from being delivered to the Landfill.

## **ARTICLE 4. OBLIGATIONS OF CONTRACTOR**

### **4.01 Receipt of Solid Waste.**

Beginning the Commencement Date and continuing through the Term of this Agreement plus any extensions thereof, Contractor shall receive, accept and safely and lawfully Dispose of or otherwise process at the Landfill all Solid Waste generated in City and delivered to the Landfill by Collection Company, Transfer Company, Self-Hauler or City department.

### **4.02 Permits for Use of Landfill.**

A. Existing Permits. Throughout the Term, Contractor shall maintain the Landfill in full regulatory compliance with the terms of any and all existing permits and other approvals from government authorities required for receipt of Solid Waste at the Landfill.

Contractor shall keep the City fully informed, in a timely manner, of its progress in securing permits, or renewals of permits, which occur during the Term as the same pertains to the Disposal operations at the Landfill in accordance with this Agreement and the costs related thereto.

Throughout the Term, Contractor shall notify and consult with the City regarding any proposed amendment to or alteration to any existing permits, as well as notifying the City, in a timely manner, of its intent in seeking new permits.

B. Additional Permits. Contractor shall make its reasonable best efforts to secure additional permits necessary to provide, on each day of the Term, Disposal capacity at the Landfill for Solid Waste generated in City in the 15-year period commencing on such date in accordance with sound landfill engineering effect at such Landfill. Contractor has no obligation, however, to reduce the Disposal Gate Fee for additional transportation costs. City has no obligation to accept such offer and if City rejects such an offer City may terminate this Agreement, as provided in Section 7.02.

#### **4.03 Reservation of Disposal Capacity.**

Contractor shall guarantee its ability to accept and Dispose of all Solid Waste generated in the City over the Term of the Agreement, including all Solid Waste delivered to Landfill by the Collection Company, Transfer Company, Self-Haulers, and City departments. Contractor shall be solely responsible for estimating the quantity of capacity that shall be required to handle all Solid Waste generated in the City over the Term of the Agreement. The City makes no representations, and is under no obligation, regarding the quantity or composition of the Solid Waste delivered to the Landfill by the Collection Company, Transfer Company, Self-Haulers, and City departments.

#### **4.04 Alternative Disposal Facility.**

A. If Contractor becomes unable to accept Solid Waste generated in City for reasons under its control, then Contractor shall (a) accept and Dispose of such Solid Waste at another landfill owned by it (or by another company which is owned and controlled, directly or indirectly, by Republic Services, Inc., at the Landfill's then current Disposal Gate Fee in effect under this Agreement, including any additional transportation costs incurred in delivering the Solid Waste to the other landfill, or (b) shall arrange for all Solid Waste to be Disposed of at another landfill not owned by it or an affiliated company, in which case Contractor shall pay any difference in the Disposal Gate Fee charged at such Landfill plus any additional transportation costs incurred in delivering Solid Waste to the other landfill, and the Landfill's then current Disposal Gate Fee in effect under this Agreement.

B. If Contractor becomes unable to accept and Dispose of Solid Waste at Landfill as the result of causes which are beyond its control (i.e., force majeure events described in Section 8.12), then Contractor shall, to the extent it is legally able to do so, offer to accept and Dispose of Solid Waste at another landfill owned by it (or by another company which is owned and controlled, directly or indirectly, by Republic Services, Inc., at the lowest Disposal Gate Fee then in effect at such Landfill. Contractor has no obligation, however, to reduce the Disposal Gate Fee for additional transportation costs. City has no obligation to accept such offer and if City rejects such an offer City may terminate this Agreement, as provided in Section 7.02.

#### **4.05 Diversion.**

Contractor shall provide recycling programs as described in Exhibit C to divert materials from Landfill Disposal.

#### **4.06 Disposition of Unauthorized Waste.**

Contractor shall implement procedures to identify and reject discarded materials delivered to the Landfill which may not be legally accepted at the Landfill under the Landfill's permits and other Environmental Laws then in effect. Contractor shall implement such procedures in a uniform and non-discriminatory manner.

Contractor shall, in the course of implementing such procedures, refuse to accept discarded materials proposed to be deposited, if they constitute Hazardous Materials, Designated Waste or otherwise may not be legally accepted at the Landfill. If Contractor discovers such materials among material which it has accepted, it shall arrange for proper disposition of such materials. Contractor shall pursue all legal rights and remedies it may have against the Generator(s) of such waste if the Generators can be identified. In addition, Contractor may require Collection Companies to dispose of such materials and/ or remediate the same as well as any contamination resulting there from at their expense if the discarded materials are identified prior to or while such material is being deposited at the Landfill.

#### **4.07 Days and Hours of Operation.**

Contractor shall operate the Landfill for the receipt and Disposal of Solid Waste in accordance with the days and hours of operation as set forth in all permits. The current permitted hours of operation are seven days a week from 6 a.m. to 5 p.m. At a minimum, Contractor shall accept and Dispose of Solid Waste generated in the City at the Landfill Monday through Friday from 6 a.m. to 5 p.m. and Saturday from 6 a.m. to 4:30 p.m. Contractor may not reduce the hours or total number of hours for acceptance and Disposal required by the Agreement without the concurrence of the City, Collection Company, and Transfer Company except such changes mandated by a change in a Landfill permit.

#### **4.08 Weighing.**

A. Maintenance of Scale Systems. Contractor shall install, operate and maintain an adequate scale system at the Landfill to weigh vehicles delivering Solid Waste. All scale and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability specified in applicable regulations. All scales and weighing equipment shall be tested at least once per year and certified by the County Department of Weights and Measures. If a scale or weighing equipment is found to be measuring inaccurately and the errors are outside the tolerances allowed in applicable regulations, Contractor shall promptly repair or recalibrate such equipment so that it does operate accurately.



B. Weighing of Solid Waste. All Collection Company and Transfer Company Vehicles delivering Solid Waste to the Landfill shall be weighed, and their weights recorded, so as to accurately measure Tons of Solid Waste delivered. In addition, all Self-Haul vehicles, except automobiles, vans, and pickup trucks with eight cubic yards or less of capacity, shall be weighed and their weights recorded, so as to accurately measure the Tons of Self-Hauled Waste delivered. All employees performing weighing operations shall be properly trained and certified.

C. Establishing Weight of Solid Waste Delivered by Non-Weighed Vehicles. Contractor shall estimate the Tonnage of Solid Waste, concrete, asphalt, other construction debris, soil, dirt, and green waste delivered by Self-Haul automobiles, vans, and pickup trucks with beds eight cubic yards or less of capacity. The Tonnage of such materials delivered by each Self-Haul vehicle which is not weighed shall be calculated by multiplying the volume of materials delivered in each Self-Haul vehicle (as estimated or measured by the gatehouse attendant on a cubic-yard basis) by mutually agreed upon factors, to be reviewed on an annual basis. .

D. Scale Breakdown. If the scales and weighing equipment at the Landfill are out of service, Contractor shall estimate the Tonnage of Solid Waste Disposed of at the Landfill (a) in the case of vehicles operated by a Collection Company or Transfer Company, by utilizing the arithmetic average of that vehicle's recorded Tons of Solid Waste delivered on its immediately preceding three deliveries to that Landfill, and (b) in the case of roll-off containers, by multiplying the estimated number of cubic yards of Solid Waste delivered per roll-off container by the mutually agreed upon factor per section 4.08 C.

All information required by Sections 4.09 and 8.15 shall continue to be recorded for each delivery during any period the scales are out of service.

Contractor shall repair or replace inoperable scales as promptly as possible. In addition, if the scales are out of service for 48 hours, Contractor shall immediately supply temporary substitute scales, rather than continuing to use the volume to weight conversion factors.

#### **4.09 Monthly Reports.**

Contractor shall provide to the City the following reports:

A. Total Tonnage Report. The Contractor shall provide a Tonnage report that includes that total Tonnage of Solid Waste Disposed that was generated in the City and shall also list the Tonnage information separately for each of the following categories: Collection Company residential Solid Waste, Collection Company non-residential Solid Waste, Transfer Company Solid Waste, Residential Self-Haul Solid Waste, Non-Residential Self-Haul Solid Waste and City-Hauled Solid Waste. In addition, Contractor shall provide Tonnage information by material type for material accepted at the Landfill

that was used for purposes other than Disposal. The Self-Haul report shall be submitted to the City within 30 calendar days after the end of the reporting month.

B. City's Self-Haul Customer Report. The Contractor shall provide Self-Haul customer names and Tonnage information for those Self-Haul customers that deliver to the Landfill Solid Waste for Disposal loads greater than eight cubic yards or weighing greater than one Ton. In such case, Contractor does not have to report separately the Tonnage delivered in each load by each customer but the total monthly Tonnage delivered by such customer. The Self-Haul report shall be submitted to the City within 30 calendar days after the end of the reporting month.

C. Livermore Waste Equalization Charge ("LWEC") Quarterly Report. The Contractor shall provide the amount of the LWEC collected on a quarterly basis, the number of tons diverted by the Contractor's Construction and Demolition Debris Recycling Operation, and the number of tons of residue generated by the Construction and Demolition Debris Recycling Operation. The report will reflect the mutually agreed upon conversion as identified in Section 4.08 C.

Reports described in Section 4.09 shall be submitted to

Public Works Manager  
Public Works Department  
City of Livermore  
3500 Robertson Park Rd.  
Livermore, CA 94550

and shall be submitted to the City within 30 days following the end of each quarter (e.g., by May 1<sup>st</sup> for the January 1 through March 30 quarter).

#### **4.10 Annual Report of Landfill Activity.**

The City reserves the right to request an annual report of Landfill activity to the City. This report shall contain all items required by this Section which, at a minimum, include the following: an analysis of the changes to the airspace of the Landfill since the previous report; an analysis of the remaining capacity of the Landfill; a projection of the remaining life of the Landfill; and a list of parties that Contractor has guaranteed capacity to through written agreements provided that such list includes the annual estimated Tonnage to be Disposed by each party and the term of the Contractor's capacity commitment. In the event Contractor has agreements with private companies, the name of the party may be withheld from the list; however, the annual tonnage estimate and term of the commitment must be provided. Each analysis shall be based on data generated by an aerial topographic survey of the Landfill. As a minimum, the airspace and remaining capacity of the Landfill shall be expressed in the following or similar Terms: Gross remaining airspace (cubic yards of remaining airspace that includes final cover, refuse, daily cover and liner); effective remaining airspace (cubic yards of remaining airspace available for refuse and daily cover); and net remaining

airspace (cubic yards of remaining airspace available for refuse only). In addition, the annual report of Landfill activity submitted to the City shall contain the date of the aerial survey flight; the methodology employed in the analyses; and the calculations performed to determine the airspace and remaining capacity. All required material shall be submitted to the City no later than 90 days after the Contractor receives the written request for the report from the City.

#### **4.11 Closure of Landfill.**

The closure and post-closure maintenance plans required by Title 14 California Code of Regulations Section 18260 et seq. have been submitted to and approved by the State and local permit enforcement agencies having jurisdiction over the Landfill. Contractor has submitted evidence to the appropriate governing authorities of adequate provisions to finance the closure and post-closure maintenance of the Landfill as required by California Code of Regulations Section 18260 et seq. and these arrangements have also been approved by the State and local permit enforcement agencies having jurisdiction. The mechanism which Contractor currently utilizes to meet the State requirement of financial assurance for closure is a certificate of insurance in the approximate amount of \$7,725,589 and the mechanism Contractor currently utilizes to meet the State requirement of financial assurance for post-closure maintenance is a certificate of insurance in the approximate amount of \$5,023,443. Contractor may change either or both of these mechanisms to another legally authorized mechanism if the change is approved by the California Integrated Waste Management Board.

### **ARTICLE 5 COMPENSATION TO CONTRACTOR**

#### **5.01 General.**

Contractor shall perform all of its obligations, responsibilities and duties under this Agreement, including, but not limited to, paying the costs associated with obtaining and complying with all permits and approvals, operating the Landfill, conducting construction, closure, post-closure maintenance and remediation activities, environmental monitoring, as well as operating any diversion programs or Resource Recovery programs in consideration of the right to charge and collect from Collection Company, Transfer Company, Self-Hauler or City Gate Fees as determined in accordance with this Agreement. Contractor does not look to the City, but only to the Collection Company, Transfer Company, or Self-Haulers for payment of any and all sums due under this Agreement except for payments to be made by the City for City-Hauled Solid Waste.

#### **5.02 Gate Fees.**

A. Disposal Gate Fee. The Disposal Gate Fee shall be comprised of two components: a Base Component and a Government Fee Component. The Disposal

Gate Fee shall be the fee Contractor charges the Collection Company or Transfer Company for Disposal of Solid Waste generated in the City. In the event, the weight of the load delivered to the Landfill by a Collection Company or Transfer Company is less than one Ton, Contractor may charge the party delivering such load the Disposal Gate Fee applicable to a one-ton load. The Disposal Gate Fee for the Term of this Agreement shall be as presented below.

Disposal Gate Fee (per Ton)\*

Government Fee

	<u>Base Component</u>	<u>Component</u>	<u>Total Disposal Gate Fee</u>
2004	\$13.85	\$12.37	\$26.22
2005	\$14.10	\$12.37	\$26.47
2006	\$14.36	\$12.37	\$26.73
2007	\$14.63	\$12.37	\$27.00
2008	\$14.91	\$12.37	\$27.28
2009	\$15.20	\$12.37	\$27.57
2010	\$15.49	\$18.85	\$34.34
2011	\$15.80	\$18.85	\$34.65
2012	\$16.11	\$18.85	\$34.96
2013	\$16.43	\$18.85	\$35.28
2014	\$16.76	\$18.85	\$35.61
2015	\$17.11	\$18.85	\$35.96
2016	\$17.46	\$18.85	\$36.31
2017	\$17.82	\$18.85	\$36.67
2018	\$18.20	\$18.85	\$37.05
2019	\$18.58	\$18.85	\$37.43
2020	\$18.98	\$18.85	\$37.83
2021	\$19.39	\$18.85	\$38.24
2022	\$19.81	\$18.85	\$38.66
2023	\$20.24	\$18.85	\$39.09

*\*Regulatory costs and Government fees (as described in Sections 5.04 and 5.05, respectively) that are increased by a regulatory agency before January 1, 2004 shall be applied to the above stated rates.*

Notwithstanding the foregoing, at any time during the Term of this Agreement, the Disposal Gate Fee shall not exceed the lowest Solid Waste Disposal fee then being charged at Landfill to any other city service district, or private company that is delivering Solid Waste to the Landfill for Disposal that has been collected under a franchise agreement with a city, county or service district.

B. Self-Haul Solid Waste Gate Fees. Contractor shall be responsible for setting all Self-Haul Gate Fees for Self-Haul materials. Contractor shall be responsible for paying all applicable regulatory costs in Section 5.04B and Government fees in Section 5.05B, as these fees will be amended from time to time. Additionally, Contractor shall collect a Charge on Non-Residential Self-Haul Solid Waste originating from the City of Livermore, as established by Section 5.06 of this Agreement.

C. City-Hauled Solid Waste Gate Fee. During the Term of this Agreement, the fees charged to the City for City-Hauled Solid Waste shall be the City-Hauled Solid Waste Gate Fee. The City-Hauled Solid Waste Gate Fee shall consist only of the Government Fee Component and shall be equal to the Government Fee Component of the Disposal Gate Fee in Section 5.02A.

### **5.03 Adjustments to Components of the Gate Fees.**

Except as provided in Sections 5.02, 5.04 and 5.05, the Gate Fees shall not be adjusted. In the event of an adjustment to Gate Fees in accordance with Sections 5.04 and 5.05, Contractor shall provide City or its agent access to the Landfill and its financial and operations records in accordance with Sections 8.13 and 8.14. The City will consider adjusting the Gate Fees based on the results of the review conducted by the consultant contracted by the City. The adjustment (whether an increase or decrease in the otherwise applicable Gate Fees) will be entirely prospective in effect and operation. The City's goal will be to bring Contractor's revenues into alignment with the revenue stream needed to achieve a reasonable profit to the Contractor related to the effect of future regulations and/ or changes to Government Fees and not to adjust for surpluses or shortages of revenues related to the Base Component. It is not the intent of the Parties to, nor will an adjustment to the Gate Fees be made to compensate for "inadequate" or "excessive" revenues actually received during any prior period.

### **5.04 Effect of Future Regulations.**

A. General. The Gate Fees established under Section 5.02 already includes all costs associated with complying with all existing laws and governmental regulations (including, but not limited to, Environmental Laws) applicable to the Landfill as of the date of this Agreement as those laws are currently interpreted. The purpose of this Section is (a) to specify those laws and regulations for which the cost of compliance has already been included (as currently interpreted) and other costs which may not result in an increase in the Gate Fees, and (b) to identify those laws and governmental regulations which may be enacted in the future, or changes in the interpretation of current laws and regulations, the costs of which may be the basis for an increase in the Gate Fees.

B. Regulatory Costs Included in the Gate Fees. The Base Component of each Gate Fee already is included and will not be increased as a result of any of the following:

1. The current costs to comply with all laws and governmental regulations existing as of the Effective Date, including, but not limited to the following:

- (a) "Calderon Legislation" (former California Government Code, Sections 66796.53 and 66796.54, now California Public Resources Code Sections 45300-04, 45700, California Health & Safety Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273);
- (b) "Proposition 65" (California Health & Safety Code, Section 25249.5 et seq., and Health & Safety Code Section 25192);
- (c) Federal Clean Air Act (42 U.S.C. Section 7401-7642) and the California Clean Air Act (Health & Safety Code Sections 1251 et seq.);
- (d) Porter-Cologne Water Quality Act (California Water Code, Division 7, Section 13000 et seq.);
- (e) California Integrated Waste Management Act of 1989 (California Public Resources Code, Divisions 30 and 31, Section 40000 et seq.);
- (f) Federal Resource Conservation and Recovery Act (42 U.S.C., Section 6901 et seq.);
- (g) California Hazardous Waste Control Act (California Health & Safety Code, Division 20, Chapter 6.5, Section 25100 et seq.);
- (h) Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050);
- (i) California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Section 25500 et seq.);
- (j) California Underground Storage Tank Act (California Health & Safety Code, Division 20, Chapter 6.7, Section 25280 et seq.);
- (k) California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 et seq.);
- (l) Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), and the regulations adopted there under, including but not limited to the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257 and 258);
- (m) Bay Area Air Quality Management District Regulation 8, Rule 34;
- (n) Title 14 California Code of Regulations;
- (o) Title 22 California Code of Regulations; Title 27 California Code of Regulation; and,
- (p) "Subchapter 15" (Title 23 California Code of Regulations, Sections 2510-2610);

As above, such regulations (Items a. through p.) are interpreted and enforced on the date of this Agreement, including provisions, if any, which become effective on or which require compliance by a date after the date of this Agreement.

2. Costs incurred due to Contractor's negligence, or intentional misconduct.
3. Costs incurred due to permit changes that were not noticed by Contractor to City.
4. Any fines or penalties imposed on Contractor.

5. Cost of remediation, resulting from cost-recovery actions pursuant to 42 U.S.C. Section 9600 et. seq. (CERCLA), 42 U.S.C. Section 6900 et. seq. (RCRA) or other Environmental Laws.

6. Costs attributable to changing the classification of the Landfill, unless specifically requested by the City.

7. Expenses related to the Disposal of Hazardous Materials, Designated Waste and other material deemed unacceptable by applicable law and/or permit conditions.

**C. Process for Requesting an Increase in Gate Fees Resulting from Future Regulations.** If Contractor believes that complying with newly enacted or changed laws or governmental regulations will increase or decrease the costs of operating the Landfill, then it must follow the procedures in this subsection before the Gate Fees will be adjusted.

1. Contractor shall give the City prompt notice, in no case less than 90 calendar days before the effective date) of the regulations, specifically identifying them and describing what changes in operations at the Landfill are required, when compliance is required, and whether Contractor is eligible for any exemptions or variances.

2. Contractor shall thereafter submit to the City its proposed method for complying with the regulations, the estimated net cost of compliance, and the associated adjustment necessary in the Gate Fees. Company shall provide City with access to its operations and records in accordance with Section 8.13 and 8.14. City may comment on this proposal and Contractor shall consider such comments before submitting the proposal to any regulatory agency.

3. Contractor shall submit the proposed method of compliance (as may be amended by Section 5.03.C.2 above) to the appropriate regulatory agency. If the appropriate regulatory agency approves that method without conditions, the cost necessary to implement that method of compliance prorated to the Tonnage delivered by the Collection Company, Transfer Company, Self Haulers, or City departments of any offsetting cost reductions as determined in accordance with this Section will be the amount by which the Gate Fees may be adjusted subject to City review and approval.

4. If Contractor's proposed method is not approved by the appropriate regulatory agency, Contractor will implement the method of compliance which is approved by the regulatory agency. The costs necessary to implement that method of compliance will be used to calculate the amount prorated to the Tonnage delivered by the Collection Company, Transfer Company, Self-Haulers, or City departments, net of any offsetting cost reductions, as determined in accordance with this Section, by which the Gate Fees may be adjusted subject to City review and approval.

**D. Dispute Resolution.** All disputes arising under Subsections B and C of this Section 5.03 or 5.04 shall be resolved in accordance with Section 8.17. If a dispute exists the Gate Fees shall not be increased until the dispute has been resolved.

## **5.05 Effect of Changes to Government Fees.**

**A. General.** The Gate Fees established under Section 5.02 already includes costs associated with all existing Government Fees applicable to the Landfill as of the date of this Agreement. The purpose of this Section is (a) to specify those Government

Fees which have already been included, and (b) to describe how the imposition of new Government Fees will be requested in an adjustment to the Government Fee Component of the Gate Fees described in Section 5.02 above.

B. Government Fees Included in the Gate Fees. The Government Fee Component of the Disposal Gate Fee and Self-Haul Solid Waste Gate Fee already include the fees listed below. The Government Fee Component consists of the following:

1. California Integrated Waste Management Board Fee imposed under Assembly Bill 1220-\$1.40 per Ton
2. Local Enforcement Agency (Alameda County Environmental Health Department) Fee in accordance with Alameda County General Ordinance Code Section 6.76.040-\$0.22 per Ton.
3. Alameda County Business License Fee-\$0.95 per Ton
4. Alameda County "Measure D" Fee-\$8.17per Ton
5. Other Fees \$0.00-per Ton
6. Alameda County Household Hazardous Waste Fee -\$2.15 per Ton
7. Alameda County Waste Management Authority Fee-\$4.34 per Ton
8. Administrative Host Community Impact Fee-\$0.31 per Ton
9. Open Space & Recycling Fee-\$1.22 per Ton
10. Waste Management Program Fee-\$0.08 per Ton
11. Transportation Planning Management-\$0.01 per Ton

Total Governmental Fee Component \$18.85 per Ton

C. Process for Requesting an Increase in Gate Fees Resulting from Future Government Fees. If Current Government Fees are adjusted or new Government Fees are imposed, then either City or Contractor must follow the procedures in this subsection before the Gate Fees will be adjusted.

1. City or Contractor shall give the other Party prompt notice (in no case less than 60 calendar days before their effective date) of the adjustment to existing or implementation of new Government Fees.

2. City or Contractor shall thereafter submit to the other Party, the associated adjustment in the Government Fee Component and the Gate Fees.

3. Parties shall agree upon the adjustment or imposition of the new Fee. Either party may exercise an option to meet if one party determines a meeting is necessary. Disputes shall be resolved pursuant to Section 8.17. The adjustment or new Fee shall not be effective until the dispute has been resolved..

#### **5.06 City Fee on Non-Residential Non-Franchised Self-Haul Solid Waste ("Livermore Waste Equalization Charge ("LWEC")).**

Contractor shall collect a Charge of \$4.53 per Ton on Non-Residential Non-Franchised Self-Haul Solid Waste originating from the City of Livermore. This Charge shall be retained by the Contractor to partially fund the Contractor's Construction and Demolition Recycling operation. Quarterly reports shall be submitted to the City per



Section 4.09(C) of this Agreement. This Charge may be adjusted or eliminated according to the process set forth below.

1. The Charge on Non-Residential, Non-Franchised Self-Haul Solid Waste originating from the City of Livermore may be adjusted by mutual agreement of the Contractor and the City.

2. Before the City Charge on Non-Residential, Non-Franchised Self-Haul Solid Waste originating from the City of Livermore may be adjusted, City and Contractor shall meet and confer and Contractor shall be given a minimum of 60 days notice prior to the proposed effective date of the adjustment.

#### **5.07 Default Process for Requesting Adjustments to Existing Fees or Imposition of New Fees.**

All changes to Gate Fees, Regulatory Fees, and Government Fees not governed by Sections 5.02, 5.03, 5.04, 5.05 and 5.06 shall be governed by this Section. If Fees or Charges are adjusted, or if new Fees or Charges are imposed, the Parties must follow the procedures in this Section before the change will be effective.

1. City or Contractor shall give the other Party prompt notice (in no case less than 60 calendar days for their effective date) of the adjustment to existing implementation of new Fees.

2. City or Contractor shall thereafter submit to the other Party a written response explaining the consequences of the adjustment or new Fee, including any adjustment in the Base Component, Government Fee Component, and the Gate Fees.

3. Parties shall agree upon the adjustment or imposition of the new Fee. Either party may exercise an option to meet if one party determines a meeting is necessary. Disputes shall be resolved pursuant to Section 8.17. The adjustment or new Fee shall not be effective until the dispute has been resolved.

### **ARTICLE 6. INDEMNITY, INSURANCE, BOND**

#### **6.01 Indemnification.**

A. General Indemnification. Contractor shall indemnify, defend and hold harmless, at Contractor's sole cost and expense, the City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any Person and/ or damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under, this Agreement or Contractor's other operations at the Landfill, including, but not limited to, Contractor's failure to comply with applicable laws or the Contractor's breach of its representations and warranties in this Agreement. The foregoing indemnity shall also apply if the Claim is caused by the joint negligence of Contractor, but only to the

extent of Contractor's negligence, except that the Contractor is responsible for the defense of the City. This indemnification will not extend to Claims to the extent they are caused by the sole or joint negligence or intentional misconduct or omission of the City, its officers, employees or agents.

B. Hazardous Material Indemnification. Contractor shall indemnify, protect and hold harmless the City, its officers, employees and agents (collectively, "Indemnitees") from and against all claims, damages, injuries, costs (including and without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including reasonable attorneys' and expert witness fees, expenditures for investigation and remediation) and costs of any kind whatsoever, paid, imposed upon, incurred, or suffered by or asserted against any of the Indemnitees by reason of the presence, Disposal, escape, migration, leakage spillage, discharge, emission, release, handling or transportation of Hazardous Materials in, on, at, or under the Landfill (collectively, "Environmental Events"), any personal injury, death, or property damage, arising out of or related to any of the Environmental Events; any lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry, proceeding, or order relating to any Hazardous Material or any of the Environmental Events.

Such indemnification shall apply to all events arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, Persons for whom Contractor has direction or control, or subcontractors or arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, Persons for whom Contractor has direction or control, subcontractors or agents, whether or not negligent or otherwise culpable, in connection with or related to Contractor's performance of this Agreement, including without limit damages arising from or attributable to any operations, repair, clean-up 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 Materials at the Landfill. For the avoidance of doubt, the foregoing indemnity is intended to operate exclusively as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability there under. This provision is in addition to all other provisions in this Agreement and is intended to survive the end of the Term of this Agreement.

C. Environmental Indemnification. Contractor shall indemnify, defend and hold harmless, at Contractor's sole cost and expense, the City, its officers, employees and agents from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature (including reasonable attorneys' and expert witness fees and costs incurred in connection therewith) (collectively, the "Environmental Claims"), any lawsuit brought or threatened, settlement reached, or government hearing, investigation, inquiry, proceeding, or order relating to any

Hazardous Materials, arising out of or occasioned in any way by, directly or indirectly, Contractor's alleged failure or failure to comply with the Environmental Laws" and regulations reflected in Section S.07.B.1 above. This indemnification will not extend to Environmental Claims to the extent they are caused by the sole or joint negligence or intentional misconduct or omission of the City, its officers, employees or agents.

**D. Indemnification Procedure.**

1. *Notice and Cooperation.* With respect to any claim for indemnification, City shall: (1) give a minimum of 30 calendar days written notice to Contractor following knowledge of the claim or proceeding as to which the right indemnification may be asserted by City; and, (2) allow Contractor (including its employees, agents and counsel) reasonable access to any of City's employees, property and records for purpose of conducting an investigations and defense of such claims and taking such other steps as may be necessary to preserve evidence of the occurrence of which the claim is based; and (3) reasonably cooperate with Contractor in the defense of City.

2. *Contractor's Option to Assume Defense.* In any instance which City claims indemnification hereunder, Contractor may elect to defend with counsel selected by Contractor and reasonably acceptable to City and control the defense and settlement of any litigation arising out of the occurrence from which City claims that Contractor's indemnity obligation exists.

**6.02 Insurance.**

A. Types and Amounts of Coverage. Contractor shall procure from an insurance company or companies, which shall conform to the qualifications described in Section 6.02 B below, and maintain in force at all times during the Term, the following minimum types and amounts of insurance:

1. *Worker's Compensation and Employer's Liability.* Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts, or amounts acceptable to the City, and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance in an amount not less than one million dollars (\$1,000,000) per accident or disease.

2. *Comprehensive General Liability (Including Automobile Liability).* Contractor shall maintain comprehensive general liability insurance with a combined single limit of not less than ten million dollars (\$10,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement. The policy or policies may contain a deductible or self-insured "retention." Contractor declares that they maintain a self-insured retention of one million dollars (\$1,000,000).

The insurance required by this Subsection shall include:

- (a) Premises Operations;
- (b) Independent Contractor's Protective;
- (c) Products and Completed Operations;
- (d) Broad Form Blanket Contractual, including Contractor's Obligation under Section 6.01, with no exclusions for bodily injury, personal injury, or property damage;
- (e) Owned, Non-Owned, and Hired Motor Vehicles;
- (f) Broad Form Property Damage, including Completed Operations;
- (g) Excavation, Collapse, Underground Coverage (X.C.U.)

3. *Environmental Impairment Liability.* Contractor shall maintain environmental impairment liability insurance in the amount of Ten Million Dollars (\$10,000,000) covering liability arising from the release of pollution at the Landfill.

B. Acceptability of Insurers. The insurance policies required by this Section 6.02 shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

C. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage.

(a) The City, its officials, employees, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Contractor; completed operations of the Contractor; premises owned, leased or used by the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers.

(b) The Contractor's insurance coverage shall be primary insurance as respects: the City, its officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(c) Any failure to comply with reporting provisions of the policies shall not affect protection afforded the City, its officials, employees or volunteers.

(d) Coverage shall state that 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. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees and volunteers for losses arising from work performed by the Contractor for the City.

3. All Coverage. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after 30 calendar days prior

written notice by certified mail, return receipt requested, has been given to the City.

D. Required Coverage Terms. Without limiting the generality of Section 6.02.C, the policies shall state in substantially the following form:

1. Workers' Compensation Policy:

(a) "Thirty calendar days' prior written notice shall be given by certified mail, return receipt requested, to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager  
City of Livermore  
1052 South Livermore Avenue  
Livermore, California 94550

(b) "Insurer waives all right of subrogation against the City and its officials, employees and volunteers for losses arising from work performed by Contractor for the City."

2. Comprehensive General Liability:

(a) "Thirty calendar days' prior written notice by certified mail, return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager  
City of Livermore  
1052 South Livermore Avenue  
Livermore, California 94550

(b) "The City, its officers, employees, volunteers and agents are additional insureds on this policy."

(c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

(d) "Inclusion of City as an additional insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the insurance company's liability as set forth in the policy beyond the amount shown or to which the

insurance company would have been liable if only one Party had been named as an insured."

3. Environmental Impairment Liability: Endorsement (a) in Section 20 6.02.D.2, above is required

E. Delivery of Proof of Coverage: On or before the Effective Date, Contractor shall furnish the City with certificates of each policy of insurance required hereunder. Such certificates shall show the type and amount of coverage, Effective Dates, and dates of expiration of policies. The certificates for each policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. If at any time the City so requests, complete certified copies of each policy, together with all endorsements, shall also be promptly delivered to the City. Contractor shall periodically furnish renewal certificates to the City to demonstrate maintenance of the required coverage throughout the Term.

#### F. Other Insurance Requirements.

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 6.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 6.02.

2. Contractor shall comply with all requirements of the insurers' issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 6.01. If any claim is made by any' third party against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

3. If Contractor fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at Contractor's expense, such insurance as City may reasonably deem proper in accordance with the limits set forth herein, and Contractor shall reimburse the City for the cost of such insurance within 30 calendar days of being invoiced by City for such costs.

4. The Comprehensive General Liability insurance required by Section 6.02(A)(2) shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, if such coverage is obtainable. If it is not obtainable, Contractor shall notify City and arrange for "tail coverage" to protect the City from claims filed during the three years immediately following the expiration or termination of this Agreement relating to incidents which occurred prior to such expiration or termination.

#### **6.03 Faithful Performance Bond.**

Upon the date this Agreement is signed, Contractor shall file with the City a bond securing Contractor's faithful performance of its obligations under this Agreement and

shall maintain such bond on an annual basis and shall be annually renewed thereafter throughout the Term of this Agreement and evidenced by a continuation certificate. The form of the bond shall be as set out in Exhibit A. The principal sum of the bond shall be three million dollars (\$3,000,000). The performance bonds required by this Section shall be issued by a bonding company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

## **ARTICLE 7. DEFAULT BY CONTRACTOR**

### **7.01 Contractor Default.**

Each of the following shall constitute an event of default by Contractor ("Contractor Default") hereunder, unless it is excused under Section 8.12:

A. Contractor fails to perform its obligations under this Agreement and (1) if the failure consists of a failure to accept and Dispose of Solid Waste and is not cured within two business days after being given notice by certified mail by the City specifying the breach, or (2) if the breach is of any other Section of this Agreement and is not cured within 30 calendar days after receiving notice from the City specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than 30 calendar days to cure, Contractor shall not be in default so long as Contractor commences action required to cure the breach within 10 calendar days after receipt of such notice and continues such performance diligently until the cure is completed.

If Contractor, despite using its reasonable best efforts to resist changes, alterations and amendments to permits under Section 4.02, becomes unable to accept and Dispose of Solid Waste generated in City at Landfill, Contractor shall not be in breach of this Agreement.

B. There is a seizure or attachment of, or levy on, the operating equipment of Contractor used at the Landfill which prevents Contractor from performing the work unless timely cured under Section 7.01(A) above.

C. A material representation or warranty contained in Article 9 proves to be false or misleading in a material respect as of the date such representation or warranty is made unless timely cured under Section 7.01(A) above.

D. Contractor files a voluntary petition 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, sequestrator (or similar official) of Contractor for any substantial part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's debt as it becomes due.

E. A court having jurisdiction shall enter a decree or order for relief in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or 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 Contractor or for any substantial part of Contractor's operating equipment or assets, or order the winding up or liquidation of the affairs of Contractor.

If Contractor is unable to accept and Dispose of Solid Waste at the Landfill, but has complied with its obligations under Section 4.04, it shall not be in default of this Agreement.

### **7.02 Right to Suspend or Terminate Performance Upon Default.**

A. Upon any Contractor Default, the City shall have the right to suspend or terminate this Agreement unless cured within the prescribed period. Otherwise, such suspension or termination shall be effective 30 calendar days after the City has given notice by certified mail of suspension or termination to Contractor, except that such notice may be effective 2 business days after receiving notice by certified mail if the Contractor Default is one which results in the Contractor's failure to accept and Dispose of Solid Waste. Notice shall be in writing and delivered to the representative of Contractor designated in or under Section 8.09.

B. The City shall have the right to suspend or terminate this Agreement, upon the same notice provisions in 7.02(A), if Contractor's ability to perform is prevented or materially interfered with by a change in permit or law which, under Sections 4.02 and 8.02, Contractor must comply. Such suspension or termination may apply even if non-performance of the Contractor is neither a breach nor a default by Contractor. The City shall also have the right to terminate this Agreement under the circumstances described in this Section 4.04(B).

### **7.03 Right to Perform.**

If this Agreement is suspended and/ or terminated due to Contractor Default, the City shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and incur all expenses necessary for completion of the work, including, but not limited to, Disposal of Solid Waste at alternate Disposal sites, but not including any right to operate the Landfill. If such expenses (including, but not limited to, the costs of transportation to an alternative site and the actual fees charged for Disposal) exceed the amounts which would have been payable to Contractor under this Agreement, if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to the City within 30 calendar days of Contractor's receipt of a claim for reimbursement, and evidence of costs incurred, from the City.



#### **7.04 City's Remedies Cumulative; Specific Performance.**

The City's rights to suspend or terminate this Agreement under Section 7.02 or to perform under Section 7.03 are not mutually exclusive, and the City's exercise of one such right shall not constitute a selection of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

### **ARTICLE 8. OTHER AGREEMENTS OF THE PARTIES**

#### **8.01 Relationship of Parties.**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City nor as a partner of or joint venturer with the City. No employee or agent of Contractor shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste Disposal services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Neither Contractor nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

#### **8.02 Compliance with Law.**

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws (including but not limited to the "Environmental Laws") of the United States, the State of California, the City and with all applicable regulations promulgated by federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the Term, collectively, the "Laws"). In the event of any conflict between this Agreement and Laws, the requirements of the Laws shall govern, and Contractor shall not be in breach of this Agreement if Contractor complies with the Law in contravention of this Agreement, provided that nothing in this section is intended to limit or enlarge Contractor's obligation under Section 4.04 or diminish its right to satisfy its obligation to Dispose of Solid Waste by arranging for it to be accepted and Disposed of at another landfill under the circumstances described in, and in compliance with the requirements of, Section 4.04.

#### **8.03 Governing Law.**

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

#### **8.04 Jurisdiction.**

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in the County of Alameda.

#### **8.05 Assignment by Contractor.**

A. Permitted Assignments. Contractor shall have the right to assign the entirety of this Agreement to any other company which is owned and controlled by Contractor provided that (i) such company is qualified to do business and has a place of business in California, has a net worth at least equal to that of Contractor at the time of the assignment, and assumes in writing all of Contractor's obligations under this Agreement prior to or concurrently with such assignment, and (ii) the faithful performance bond described in Section 6.03 remains in full force and effect. Contractor shall not otherwise assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the City. Any such assignment made without the consent of the City under Section 8.05(C) below shall be void and the attempted assignment shall constitute a breach of this Agreement.

B. Assignment Defined. For the purpose of this Section, "Assign" or "Assignment" shall include, but not be limited to, (i) a sale, exchange or other transfer to either a related or a third party of substantially all of Contractor's assets dedicated to service under this Agreement; or (ii) the issuance of new stock to or the sale, exchange, or other transfer of 30 percent or more of the then outstanding common stock of Contractor to a Person other than the shareholder or an affiliate of shareholder owning said stock at the date of this Agreement (i.e., Contractor).

C. Consent Requirements. Except as provided in Section 8.05(A), this Agreement and the duties and obligations of Contractor hereunder may not be assigned. Provided, however, nothing herein is intended to prevent Contractor from requesting that the City consider waiving this restriction and consenting to an assignment. In connection with any such request, Contractor anticipates that it will undertake or furnish the following:

1. Contractor shall undertake to pay the City the reasonable expenses for attorneys and consultants fees and investigation costs necessary to investigate the suitability of any proposed assignee, and reasonable expenses incurred in reviewing and finalizing any documentation required for approving any such assignment proffered;

2. Contractor shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three Operating Years;

3. Contractor shall furnish the City with satisfactory proof that: (i) the proposed assignee has directly related Solid Waste management landfill experience; (ii) in the last five years, the proposed assignee has not suffered any material citations or other material censure from any federal, state, or local agency having jurisdiction over its landfill operations due to any significant failure to comply with federal, state or local

waste management laws and that the assignee has provided the City with a complete list of any citations and censures (whether material or not); (iii) the proposed assignee has at all times conducted its landfill operations in an environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid Waste landfill management practices in material compliance with all federal, state, and local laws regulating the collection and Disposal of Solid Waste, including, to the extent applicable, Hazardous Waste as identified in Title 22 of the California Code of Regulations; and, (v) any other information reasonably required by the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe, and effective manner.

#### **8.06 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.

#### **8.07 Parties in Interest.**

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

#### **8.08 Waiver.**

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing, concurrent or subsequent breach or violation by the other Party of any provision of this Agreement.

#### **8.09 Notices.**

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes or contemplates shall, except where specifically provided otherwise, be in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, (certified or registered mail, return receipt requested) addressed as follows:

#### **If to the City:**

City Manager  
City of Livermore  
1052 South Livermore Avenue  
Livermore, California 94550

#### **If to the Contractor:**

District Vice President  
Republic Services Vasco Road, LLC  
4001 North Vasco Road  
Livermore, California 94550

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section. Notices shall be deemed delivered only upon receipt.

### **8.10 Representatives of the Parties.**

A. Representative of the City. The City's representative for the purposes of this Agreement shall be the City Councilor its designee. Within five business days of the Effective Date, City shall deliver to Contractor a list of the City Council's designated representatives. Such list may be updated from time to time by the City and such updates shall be delivered to Contractor. Contractor may rely upon actions taken by such delegates with respect to City's respective rights and obligations under this Agreement.

B. Representatives of Contractor. Contractor shall, within five business days of the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind Contractor, Contractor shall promptly notify City in writing of any changes in the designee or his/her authority. The City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by the Contractor as communicated to the City.

### **8.11 Duty of Contractor Not to Discriminate.**

Contractor shall not discriminate in the employment of Persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, sex, physical handicap, or medical condition, in violation of any applicable federal or State law.

### **8.12 Force Majeure.**

Neither Party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake, or other catastrophic events), war, insurrection, riot, or other similar causes which are not the fault of, and beyond the reasonable control of, the Party claiming excuse from performance. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to accept and Dispose of Solid Waste, notwithstanding the occurrence of any or all of such events; provided, however, that labor unrest or job action directed at a third party over whom Contractor has no control, shall excuse performance. A Party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, including, in the case of impossibility of performance based on inability to obtain a governmental

permit, compliance with the "best efforts" requirement of Section 4.02, and (2) notify the other Party in writing within five calendar days after the occurrence of the event specifying the nature of the event, the expected length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform. The Party claiming excuse under this Section shall use its best efforts to remedy its inability to perform as quickly as possible. The interruption or discontinuance of Contractor's ability to accept and Dispose of Solid Waste caused by one or more of the events described in this section shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this section for a period of 30 calendar days or more, the

City shall have the right, in their sole discretion, to terminate this Agreement by giving ten calendar days notice.

### **8.13 Maintenance of Financial Records.**

A. General. In order to effectuate the adjustment to the Gate Fees contemplated by Section 5.04 and 5.05, it is necessary for Contractor to maintain accurate, detailed financial information in a consistent format and to make such information available to the City in a timely fashion. It is also necessary, in order to assure the public of the accuracy of the review process, for the Contractor's financial records to be confirmed by an audit conducted by an independent certified public accountant whose report thereon is forwarded to the City on a regular basis. This Section is intended to effectuate these requirements.

B. Contractor's Accounting Records. Contractor shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all costs associated with providing services under this Agreement. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) which shall be consistently applied.

C. Inspection of Records. In the event of a request for an adjustment to the Gate Fees, the City, its auditors and other agents selected by the City, shall have the right, during regular business hours, to conduct during normal business hours on-site inspections of the records and accounting systems of Contractor and to make copies of any documents relevant to this Agreement.

D. Retention of Records. At a minimum, Contractor shall retain all records and data required by Sections 4.09, 4.10, 8.13B, 8.13E, 8.13F, 8.14 and 8.15 at least until the termination of this Agreement.

Records and data that Contractor is specifically directed to retain shall be retrieved by Contractor and made available to the City within five business days of City's request.

Records and data required to be maintained that are not specifically directed to be retained that are, in the sole opinion of the City, material to the rate review or to a determination of the Contractor's performance under this Agreement, shall be retrieved by Contractor and made available to the City within five business days of the City's request.

Records and data that are not specifically directed to be retained and that are not material to a rate review and/ or not required for the determination of the Contractor's performance do not need to be retrieved by Contractor. In such a case, however, the City may make reasonable assumptions regarding what information is contained in such records and data, and such assumption shall be conclusive in whatever action the City takes.

**E. Delivery of Financial Statements, Auditors' Reports.** In the event of a request for an adjustment to the Gate Fees, Contractor shall, within 120 calendar days of City's request, deliver to the City one copy of the audited financial statements of Contractor's Landfill operations under this Agreement for the Contractor's preceding fiscal year. These statements shall have been examined by and shall be accompanied by the report of an independent certified public accountant containing such accountant's representation that it has examined the Contractor's financial statements in accordance with Generally Accepted Auditing Standards (GAAS) and the accountant's unqualified opinion that such statements have been prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applicable and fairly reflect the results of operations and Contractor's financial condition. The cost to the Contractor for the public accountant's audit shall be reimbursed to the Contractor through the adjustment of the Gate Fees.

**F. Landfill Profit and Loss Statements.** In the event of a request for adjustment to the Gate Fees, Contractor shall deliver to the City one copy of a profit and loss statement for its Landfill operations for the current fiscal year. Such financial statement will be reviewed or compiled by a CPA firm, if requested by the City.

#### **8.14 Right to Inspect Landfill as well as Financial and Operational Records.**

The City shall have the right, but not the obligation, to observe and inspect all of Contractor's operations under this Agreement. In connection therewith, the City shall have the right to enter the Landfill unannounced during operating hours, speak to any of Contractor's employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Contractor's operations, the City may review and copy, at its expense, any of Contractor's operational records related to this Agreement. If the City so requests, Contractor shall make specified personnel available to accompany the City representatives on inspections.

### **8.15 Compilation of Information for State Law Purposes.**

Contractor shall compile information on amounts of Solid Waste delivered to the Landfill and Disposed and other information, which the City may reasonably request in order to meet its obligations under the California Integrated Waste Management Act.

### **8.16 Right to Demand Assurances of Performance.**

If Contractor (1) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (2) appears in the reasonable judgment of the City to be unable to regularly pay its bills as they become due; or (3) is the subject of a civil or criminal proceeding brought by a federal, state, regional, or local agency for violation of an Environmental Law at the Landfill which the City reasonably believes has placed Contractor's ability to perform under this Agreement in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor written assurances of timely and proper performance of this Agreement within five business days after receiving demand by certified mail. "Assurances" for purposes of this Section may include an increase in financial guarantees beyond the bond provided for under Section 6.03.

### **8.17 Dispute Resolution.**

Disputes arising under this Agreement may be resolved by means of mediation (with the assistance of a mediator selected in the manner provided in Exhibit B) or by a decision of a Court of competent jurisdiction.

### **8.18 Acceptance of Sewage Sludge.**

The City is not obligated under the conditions of this Agreement to deliver sewage sludge generated in the City to the Landfill. The City may at some time during the Term of this Agreement want to deliver sewage sludge to the Landfill for Disposal, for use as alternative daily cover, or for other use, and in such case, Contractor shall agree to meet with the City to negotiate in good faith mutually acceptable contractual arrangements for acceptance and Disposal or alternate use of sewage sludge and the Gate Fee for such material. At a minimum, the City shall meet with Contractor, on or before the expiration or termination of the City's existing sludge handling agreement with a third party, to negotiate in good faith mutually acceptable contractual arrangements for acceptance and Disposal or alternate use of sewage sludge and the Gate Fee for such material.

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**ARTICLE 9.**  
**REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

**9.01 Corporate Status.**

Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. It is qualified to transact businesses in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

**9.02 Corporate Authorization.**

Contractor has the authority to enter into and perform its obligations under this Agreement. The managers of Contractor (or the members, if necessary) have taken all actions required by law, its articles of organization, its operating agreement, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor has authority to do so.

**9.03 Agreement Will Not Cause Breach.**

To the best of Contractor's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance of this Agreement by Contractor: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) 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 Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default there under.

**9.04 No Litigation.**

To the best of Contractor's knowledge, after reasonable investigation, 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 decided pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the City in writing.

**9.05 No Adverse Judicial Decisions.**

To the best of Contractors knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement and may this Agreement to legal challenge.



## **9.06 Ability to Perform.**

Contractor possesses the business, professional and technical capabilities to accept and Dispose of Solid Waste at the Landfill; Contractor possesses the permits to perform this Agreement; and Contractor possesses the equipment, facility, and employee resources required to perform this Agreement.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

### **10.01 Exhibits.**

Each of the Exhibits, identified as Exhibits" A," "B," and "C" is attached hereto and incorporated herein and made a part hereof by this reference.

### **10.02 Entire Agreement.**

This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

### **10.03 Section Headings.**

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

### **10.04 Interpretation.**

This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

### **10.05 Amendment.**

This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

### **10.06 Severability.**

If any non-material provision of this Agreement is for any reason deemed to be invalid, and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

**10.07 Attorneys' Fees.**

The prevailing Party in any action brought to enforce the Terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

**10.08 References to Laws.**

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing.

**10.09 Definitions.**

Capitalized terms used in this Agreement without definition have the meanings specified in Article 1, unless the context clearly requires otherwise.

**10.10 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

CITY OF LIVERMORE

CONTRACTOR

By: Linda M. Barton  
Name: Linda M. Barton  
Title: City Manager  
Date: May 24, 2010

By: RICK KING  
Name: RICK KING  
Title: GENERAL MANAGER  
Date: MAY 14, 2010

FOR: MIKE CAPRIO  
AREA PRESIDENT

ATTEST:

APPROVED AS TO FORM:

Susan Neer  
Susan Neer, City Clerk

Amara Morrison *BM*  
Amara Morrison, Special Counsel

**Exhibit A**  
**Contractor's Faithful Performance Bond**

KNOW ALL MEN BY THESE PRESENTS:

That Contractor, a \_\_\_\_\_ corporation, as PRINCIPAL, and, a corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the CITY OF LIVERMORE, municipal corporation of the State of California, hereinafter called OBLIGEE in the penal sum of Three Million Dollars (\$3,000,000.00) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

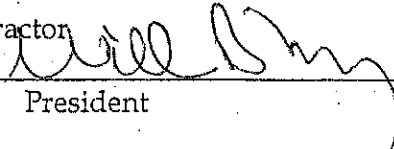
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounded PRINCIPAL has entered into an Agreement with the OBLIGEE dated as of \_\_\_\_\_ for the Disposal of Solid Waste ("Agreement").

NOW, THEREFORE, if the above bounded PRINCIPAL shall well and faithfully perform, or cause to be performed, each and all of the requirements and obligations of said Agreement to be performed by said PRINCIPAL, as in said Agreement set forth, then this BOND shall be null and void; otherwise it shall remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this bond, and it does hereby waive notice of any such change, alteration or addition to the work or to the specifications of the Agreement. This bond is issued for an initial Term commencing January 1, 2004 and ending December 31, 2004; provided that the same may be renewed for annual periods thereafter as evidence by a continuation certificate.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of 2002.

Contractor  
By:   
President

(Signatures of Principal and  
Surety must be acknowledged by  
a Notary Public)

\_\_\_\_\_  
(SURETY)  
By: \_\_\_\_\_  
(ATTORNEY IN FACT)

4/29/2002

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*City of Livermore*  
*Disposal Agreement*

**EXHIBIT B  
PROCEDURES FOR MEDIATION**

4/29/2002

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*City of Livermore  
Disposal Agreement*

## Exhibit B Procedures for Mediation

The mediation procedures provided in this Exhibit are provided to resolve disputes in accordance with Section 8.17.

### A. Request for Mediation

If a dispute should arise, the City or Contractor may request mediation proceedings by service of a written Request for Mediation setting forth the issues to be mediated and the general contentions relating to those issues of the Party serving the Request.

If a Request is made by Contractor, it shall be served by personal delivery or certified mail to the City at the addresses established pursuant to the Agreement with Contractor in effect at that time.

If a Request is made by the City, it shall be served by personal delivery or certified mail to Contractor.

If a Request is served by Contractor, the City may, within 45 calendar days after service of the Request, serve a Notice of Election to become a Party to mediation and a Response to the Request, setting forth its position and general contentions with respect to the issues set forth in the Request. If a timely Notice of Election and Response is not served by the City, the Contractor shall be entitled to seek resolution of its Request by filing a claim with the City in accordance with State Government Code Section 905.

If a Request is served by the City, Contractor shall, within 45 calendar days, serve a Notice of Election to become a Party to the mediation and a Response to the Request setting forth its position and general contentions with respect to the issues set forth in the Demand. If a timely Notice of Election and Response is not served by Contractor, the City shall be entitled to seek resolution of its Request from a Court of competent jurisdiction.

### B. Limitations Period

All Requests for Mediation under Section 8.17 shall be served within one year after the Contractor has incurred expenses relating to compliance with governmental regulations, the inclusion of the cost of which in the Fee is at issue. All Requests for Mediation under other Sections (i.e., Section 4.04) shall be served within one year after delivery of the bill as to which the dispute exists or, if the dispute does not relate to a bill, then within one year from the occurrence of the event which gave rise to the dispute.

### C. Appointment of Mediator

All mediation proceedings shall be conducted by a single mediator selected by Contractor and a designated representative of the City. The mediator shall be selected within 75 calendar days after the service of the Request for Mediation. If the Parties to the mediation cannot agree on a mediator within 75 calendar days, either Party may abandon the mediation process and seek resolution of the dispute in a court of competent jurisdiction.

**EXHIBIT C**  
**VASCO ROAD LANDFILL**  
**WASTE RECYCLING PROGRAMS**

## **Exhibit C**

### **Landfill Recycling Programs**

The recycling programs described in this Exhibit are recycling program operated by Contractor at the Landfill as of the execution date of this Agreement and shall be continued throughout the Term. The recycling programs are briefly described below.

#### **Wood Wastes**

Contractor has been recycling wood wastes at the Landfill since 1997. Wood that is selected for recycling must be free of contaminants such as green waste, metal, paper, painted or treated, sheetrock, etc. Clean wood is directed to the recycling area at the Landfill. When a sufficient amount of wood has accumulated, the wood is picked up by a third-party, processed, and shipped to secondary markets.

#### **White Goods and Other Metals**

At the Landfill, white goods (e.g., refrigerators, washers and dryers, and other metal appliances) and large metal pieces are collected at the Landfill working face or directly from the public and are placed at the Landfill recycling area. Periodically, a metal recycler picks up the metals. The recycler that picks up appliances from the Landfill requires certification from Contractor that Hazardous Materials have been removed from the units prior to transporting such materials off the Landfill property. Therefore, Contractor arranges for Hazardous Materials to be removed from appliances at the Landfill in the recycling area by an EPA-certified reclaimer. Hazardous Materials, which may be present in appliances, include freon, oil, polychlorinated biphenyls (PCBs), and mercury.

#### **Concrete Rubble**

The Landfill accepts concrete rubble that meets size requirements specified by Contractor. The concrete rubble is periodically processed by a third party with a concrete crusher. The crushed material is typically used as wet weather road base and tipping pads on-site.

#### **Asphalt Rubble**

The Landfill accepts asphalt rubble, which is periodically crushed by an on-site equipment. The crushed material is typically used as wet weather road base and tipping pads on-site. The asphalt rubble stockpile is located near the working face.

#### **Residential Recyclables**

The Landfill is a drop-off point for residential recyclable materials, including the following:

- Plastics (polyethylene [PET] and HDPE);

- Glass (clean and colored);
- Metal (aluminum and tin);
- Paper (mixed); and
- Cardboard (corrugated).

Contractor provides a minimum of six bins for storage of the recyclable materials. The bins are located at the Landfill recycling area which is easily accessed by Self-Haulers. When bins are full, the stored materials shall be picked up by a recycling company.

### **Scrap Tires**

Whole scrap tires, to be shredded and used as alternative daily cover materials, are delivered by Self-Haulers. The tires will be delivered to the VRSL during regular landfill operations hours (Section 1.C) and stored in accordance with requirements of Title 14 of the CCR at an approximate location shown on Figure 2. Once processed, tire shreds will be used as ADC material.

### **Drop-Off Center**

Contractor shall operate drop-off center at the Landfill that accepts Recyclable Materials from Self-Haulers. Materials accepted at the drop-off center shall include, but not be limited to, the following:

- Newspaper
- Cardboard
- Aluminum cans
- Metal cans
- Glass containers
- PET and HDPE plastic containers.

The Recyclable Materials accepted shall be delivered by Contractor to processors and recyclers, which return such materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products. Contractor shall report the quantities of materials accepted and recycled on a quarterly basis.