

**SECOND AMENDMENT TO
AGREEMENT BETWEEN THE CITY OF SAN JOSE
AND INTERNATIONAL DISPOSAL CORPORATION
OF CALIFORNIA, INC. FOR MUNICIPAL SOLID
WASTE DISPOSAL AND WATER POLLUTION
CONTROL PLANT WASTE DISPOSAL AND REUSE**

THIS SECOND AMENDMENT TO AGREEMENT is made and entered into this ____ day of _____, 2009, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "City"), and INTERNATIONAL DISPOSAL CORPORATION OF CALIFORNIA, INC., a California corporation (hereinafter "Contractor").

WHEREAS, City and Contractor have entered into that certain AGREEMENT BETWEEN THE CITY OF SAN JOSE AND INTERNATIONAL DISPOSAL CORPORATION FOR DISPOSAL OF MUNICIPAL SOLID WASTE, dated August 9, 1985, as amended on December 5, 1995 (the "Agreement"); and

WHEREAS, the City desires to ensure that suitable sites will be available on a long-term basis for the disposal of Municipal Solid Waste (as hereinafter defined) generated within the City; and

WHEREAS, the City must provide for the disposal of grease, grit, and screening, and the beneficial reuse of biosolids from the Water Pollution Control Plant; and

WHEREAS, Contractor can provide these services to the Water Pollution Control Plant and has available for the disposal of waste a landfill site known as Newby Island; and

WHEREAS, City and Contractor desire to amend the Agreement to revise the compensation provisions, revise the disposal allocation provisions, provide for

City direction of certain waste to Newby Island, and make other revisions to update the Agreement;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS, AND CONDITIONS HEREIN CONTAINED, CITY AND CONTRACTOR DO HEREBY AGREE AS FOLLOWS:

Effective July 1, 2009, the Agreement is amended in its entirety to read as set forth in this Second Amendment.

ARTICLE 1. DEFINITIONS

Words beginning with lower case letters are being used with their common or ordinary meanings, not as defined terms. Otherwise, the following capitalized names and terms shall have the following respective meanings:

1.1 Allocation Quantity

"Allocation Quantity" means the quantity of Municipal Solid Waste (expressed in tons) which Contractor agrees to landfill each year as determined pursuant to Article 4 of this Agreement.

1.2 Base Rate

"Base Rate" means the price per ton, exclusive of any Disposal Surcharges and exclusive of any Regulatory Costs, which Contractor charges to City for the disposal of Municipal Solid Waste pursuant to this Agreement.

1.2.5 Biosolids

"Biosolids" means a product that results from a process used by the Water Pollution Control Plant whereby primary, secondary and nitrification biosolids is anaerobically digested, thickened in lagoons, and solar dried to at least 50%

solids. In addition to the dried biosolids, biosolids contains earth scraped from the drying beds during the mechanical mixing and stockpiling operations.

1.3 City

"City" means the City of San José, a municipal corporation organized under the laws of the State of California, its divisions, departments and agencies, and all of the geographic areas lying within the municipal boundaries of the City as presently existing, plus all geographic areas which may be added or annexed thereto during the term of this Agreement. Geographic areas detached during the term of this Agreement shall not be included in this definition after such time such geographic areas are detached.

1.4 City Council

"City Council" means the duly elected governing body of the City of San José.

1.5 City Representative

"City Representative" means City's Director of Environmental Services or the Director's designee. In the event the position of Director of Environmental Services is not continued or becomes vacant during the term of this Agreement, the City Representative shall be the person so designated by the City Manager.

1.6 City Waste

"City Waste" means all waste generated by or collected by the City of San José in the performance of all municipal services, including, but not limited to, debris from street and sewer repairs and construction, debris from public and private lot clean-up operations, tires from municipal vehicles, debris from street sweepings, grass clippings, leaves and tree trimmings from maintenance of City parks, streets, median strips and property, rock and concrete not exceeding a non-diagonal dimension of four feet, asphalt pavement as found in streets, tree

stumps and branches no more than eight feet long and no more than two feet in diameter, bulky waste such as large appliances and furniture found in clean-up operations of real property, parks or other public and private lands, and other similar waste generated by or collected by the City of San José. Except as provided in this Section 1.6, City Waste shall not include Residential or Commercial Garbage and Rubbish that is generated by private individuals or private businesses and is regularly collected by City from private property; and Grease, Grit and Screening, or Biosolids from the Water Pollution Control Plant.

1.7 Commercial

"Commercial" means pertaining to all Premises except Residential Premises.

1.7.5 Commercial Waste Stream

"Commercial Waste Stream" means any Garbage and Rubbish that is generated at Commercial Premises, and placed in the same container. Commercial Waste Stream also includes any Garbage and Rubbish that is generated at a Mixed Use Development that is collected by City's authorized exclusive commercial solid waste collector, provided the Garbage or Rubbish is generated from the commercial use or the Director of Environmental Services has authorized the commingling of the residential and commercial solid waste pursuant to Part 12 of Chapter 9.10, as may be amended.

The Commercial Waste Stream does not include any other Garbage placed for disposal in any other waste disposal/handling system such as, but not limited to, a Garbage disposal device; any Garbage or yard waste separated for Recycling or Composting; any grass clippings, leaves, or yard trimmings that have been left where cut to decompose; any Rubbish or debris from demolition, remodeling or clean-up projects, or from routine landscaping, cleaning, and maintenance work that is hauled by the generators or other authorized haulers; waste collected in any neighborhood clean-up project; nor any residue from

processing source-separated Recyclables at a materials recovery facility or recycling facility.

1.8 Composting

"Composting" means and includes any controlled biological process in which organic waste that is source separated or which is separated at a centralized facility decomposes.

1.9 Contract Year

"Contract Year" means a twelve (12) month period from July 1 to June 30.

1.10 Contractor

"Contractor" means International Disposal Corporation of California, Inc., a wholly owned subsidiary of Republic Services, Inc., and intermediate parent entities including Allied Waste Industries, Inc., Allied Waste Services North America, Inc., Browning-Ferris Industries, LLC.

1.11 Designated Hauler

"Designated Hauler" means the entity or entities named by City to deliver Municipal Solid Waste or City Waste to the Disposal Facility.

1.12 Disposal Facility

"Disposal Facility" means the site known as Newby Island Sanitary Landfill, Solid Waste Facility Permit Number 43-AN-003, located at 1601 Dixon Landing Road, in the City of San José, California, and currently authorized to receive solid waste for disposal, recycling, and composting under applicable laws and regulations of the State of California.

1.13 Disposal Surcharge

"Disposal Surcharge" means any tax, fee or charge imposed on disposal of waste at the Disposal Facility where such tax, fee or charge is determined or

assessed on the basis of the quantity of waste brought to the Disposal Facility. By way of illustration, Disposal Surcharge includes any fee assessed on a per ton or per cubic yard basis.

1.14 Garbage

"Garbage" means any and all dead animals of less than ten (10) pounds in weight, except those slaughtered for human consumption; every accumulation of waste animal, vegetable or other matter that results from the preparation, processing, consumption, dealing in, handling, packing, canning, storage, transportation, decay or decomposition of meats, fish, fowl, birds, fruits, grains, or other animal or vegetable matter, including without limitation, used tin cans and other food containers; and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract vermin or disease-bearing vectors, including without limitation birds, flies or rodents.

Any mixture of "Swill", "Rubbish", "Stable Matter" or other waste with a significant amount of "Garbage" as determined by the City health officer, shall be deemed to be "Garbage" in its entirety.

1.15 Grease

"Grease" means grease and other floatable material that is derived from sewage and that is generated at the Water Pollution Control Plant as a by product of the wastewater treatment process.

1.16 Grit and Screenings

"Grit and Screenings" means rags mixed with plastic and other small insoluble objects which enter the sewer system and grit (composed mainly of inorganic grit and sand, as well as small organic particles such as seeds, corn and coffee grounds), both of which are removed by the Water Pollution Control Plant from the wastewater stream prior to treatment.

1.17 Hazardous Waste

"Hazardous Waste" means (i) all waste defined or characterized as hazardous waste by the federal Solid Waste Disposal Act (42 USC 3251 *et seq.*), as amended, including the Resource Conservation and Recovery Act of 1976 (42 USC 6901 *et seq.*) and all future amendments thereto, or regulations promulgated thereunder and (ii) all waste defined or characterized as hazardous waste by the principal agencies of the State of California (including without limitation the Department of Health Services and the California Integrated Waste Management Board) having jurisdiction over hazardous waste generated by facilities within such state, provided that the term "Hazardous Waste":

- A. Is intended to mean and include those substances which are not normally expected to be disposed of by generally accepted sanitary landfill disposal methods;
- B. Shall include radioactive waste; and
- C. Shall be construed to have the broader, more encompassing definition where there exists a conflict in the definitions employed by two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste.

1.17.5 Mixed Use Development

"Mixed Use Development" means any permanent premises used for both residential and commercial purposes, and the Garbage and Rubbish generated on the premises is combined in the same container.

1.18 Multifamily Dwelling

"Multifamily Dwelling" means any permanent premises of at least two units used for residential purposes where the units do not receive separate or individual solid waste collection service, including, but not limited to, apartment buildings, attached single-family dwellings such as townhouses, condominiums, and mobilehome parks. Multifamily Dwelling does not include any hotel, motel,

guesthouse, residential care facility, extended care facility, sorority or fraternity house, school, dormitory, residential service facility, emergency residential shelter, hospital, convent or monastery.

1.19 Municipal Solid Waste

"Municipal Solid Waste" means waste directed by City to the Disposal Facility and may include (i) Commercial Garbage and Rubbish collected by City or by any person pursuant to an agreement with City which grants to such person exclusive collection authority in terms of the type of waste collected, the geographic area in which the collection occurs, or both; (ii) Residential Garbage and Rubbish; (iii) any residue from any Waste Reduction Program operated by City's agents or owned, operated, controlled or financed, in whole or in part, by the City or by any entity of which the City is a member; (iv) any City Waste in excess of the allocation reserved for City Waste under this Agreement; (v) construction/demolition debris from public works projects; (vi) waste generated in clean-up projects including clean-ups of streams or other waterways, and clean-ups of streets, railroad or other transportation routes; and (vii) waste generated in special projects of City or collected in connection with a public purpose of City.

1.20 Premises

"Premises" means any land, building and/or structure, or portion thereof, in the City where Garbage or Rubbish is produced, generated or accumulated.

1.21 Rate Adjustment Statement

"Rate Adjustment Statement" means a written statement of the proposed adjustment in the Base Rate pursuant to Section 5.3, showing the calculation used to determine the proposed adjustment.

1.21.5 The Recyclery

“The Recyclery” means the materials recovery facility with the Solid Waste Facility Permit Number 43-AN-014, and located at 1601 Dixon Landing Road, San José, California, and currently authorized to receive solid waste for recycling under the applicable laws and regulations of the State of California.

1.22 Recycling

"Recycling" means the process of collecting and turning used products such as, but not limited to, newspapers, cans, corrugated cardboard and bottles into new products by reprocessing or remanufacturing them.

1.23 Regulatory Costs

"Regulatory Costs" means operating costs and amortized capital costs of the Disposal Facility which are required by laws or regulations adopted on or after January 1, 2009; and by material changes in the enforcement or interpretation, adopted or occurring on or after January 1, 2009, of the laws or regulations. Regulatory Costs do not include carrying costs, return on investment, opportunity costs, or like costs associated with the capital costs of complying with regulatory changes; and costs required by the landfill gas recovery and control systems unless the costs are required by City law or regulation adopted on or after January 1, 2009. Regulatory Costs do not include the costs to demonstrate financial responsibility for closure and post closure unless the law or regulation adopted after January 1, 2009 requires that the exclusive method for demonstrating financial responsibility is the purchase of third party insurance and this requirement is not related to Contractor's inability to satisfy any financial means test. City would only then be responsible for its pro-rata share of that portion of the third party insurance cost which exceeds the Contractor's cost for insurance on January 1, 2009, and if the increase in cost is due to the adoption of laws or regulations on or after January 1, 2009.

1.24 Residential

"Residential" means pertaining to Single-unit Dwellings and Multifamily Dwellings.

1.25 Residential Waste Stream

"Residential Waste Stream" means any Garbage and Rubbish that is generated at Residential Premises, and placed in the same container. Residential Waste Stream also includes any Garbage or Rubbish that is generated at a Mixed Use Development, and collected by City's authorized multifamily dwelling solid waste collector, provided the Garbage or Rubbish is generated from the residential use or the Director of Environmental Services has authorized the commingling of the residential and commercial solid waste pursuant to Part 12 of Chapter 9.10, as may be amended.

Residential Waste Stream does not include any other Garbage that has been placed for disposal in any other waste disposal/handling system such as, but not limited to, a Garbage disposal device; any Garbage or yard waste that have been separated for Recycling or Composting; any grass clippings, leaves, or yard trimmings that have been left where cut to decompose; any Rubbish or debris from demolition, remodeling or clean-up projects that is hauled by the generators or other authorized haulers; waste collected in any neighborhood clean-up project; nor any residue from processing source-separated Recyclables at a materials recovery facility or recycling facility.

1.25.5 Residual Solids Management Area

"Residual Solids Management Area" (or "RSM") means that portion of the lands of the Water Pollution Control Plant generally lying between Zanker Road, Los Esteros Road, Zanker Road Landfill, San Francisco Bay, Newby Island Sanitary Landfill and The Recyclery, Coyote Creek, and California State Route 237, and more specifically identified on Exhibit x.

1.26 Rubbish

"Rubbish" means all waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, cardboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, earth, rock, used or demolished or discarded building materials, and other waste material not included in the definitions of Garbage, Swill, Stable Matter or Hazardous Waste.

1.27 Salvaging

"Salvaging" means the process of controlled removal of waste for the purpose of reuse without reprocessing or remanufacturing the materials or for the purpose of recycling.

1.28 Single-unit Dwelling

"Single-unit Dwelling" means premises used for housing by one or more persons and used for or designated as a single-family residential dwelling under the applicable local statutes or ordinances, including each part of a condominium project, duplex, townhouse project and mobile home park in which there is separate or individual garbage collection service.

1.29 Stable Matter

"Stable Matter" means all manure and other waste normally accumulated in or about a stable or any other animal, livestock or poultry enclosure, and resulting from the keeping of animals, poultry or livestock.

1.30 Swill

"Swill" means any animal or vegetable waste resulting from the handling, packing, canning, cooking, preparing or processing of food which (i) is fit for consumption by, and may lawfully be fed to, animals or which will be made fit by heat or other treatment for consumption by animals and may thereafter be lawfully fed to animals, (ii) has been segregated from other waste and kept and accumulated in separate containers by the producer thereof for the purposes of feeding it or having it fed to animals, and (iii) is actually and lawfully fed to animals.

1.31 Unit Price

"Unit Price" for any class or type of Municipal Solid Waste means the Base Rate plus Disposal Surcharges applicable to that class or type of Municipal Solid Waste which is charged by Contractor to City for waste disposal. Where the class or type of Municipal Solid Waste is exempt from Disposal Surcharges or Disposal Surcharges are otherwise inapplicable, the Unit Price for that class or type of Municipal Solid Waste is equivalent to the Base Rate.

1.32 Waste Reduction Program

"Waste Reduction Program" means any program that reduces the amount of Municipal Solid Waste that would otherwise be disposed of in a landfill, including without limitation, Recycling, Composting, Salvaging and Waste-to-energy Projects.

1.33 Waste-to-Energy Project

"Waste-to-Energy Project" means a process in which a portion of the total volume of waste is processed to produce liquid, gas, or solid fuel or is burned to produce steam for heat or electricity.

1.34 Water Pollution Control Plant

“Water Pollution Control Plant” (or “the Plant”) means the wastewater treatment facility operated by the City of San José, with administrative offices at 700 Los Esteros Road, San José California.

ARTICLE 2. CONTRACTOR'S RESPONSIBILITIES MUNICIPAL SOLID WASTE AND CITY WASTE SERVICES.

2.1 Operational Requirements

2.1.1 Hours

Contractor shall ensure that the Disposal Facility is open to receive Municipal Solid Waste from the Designated Hauler(s) at all times the Disposal Facility is open to receive solid waste from any other sources, and at least from 3:00 a.m. to 5:00 p.m. Monday through Friday and from 4:00 a.m. to 4:00 p.m. on Saturday, except that the Disposal Facility may be closed on December 25, the fourth Thursday of November and January 1.

2.1.2 Signs

At Contractor's sole expense, Contractor shall prominently post signs at the entrance to the Disposal Facility detailing the regulations which must be followed by vehicles entering the site, indicating the hours of operation, the types of waste or recyclable materials accepted, the fees for disposal and for recycling, and a local telephone number to call for information or in case of emergency.

2.1.3 Site Access

Contractor shall construct and maintain all roads running in and over the Disposal Facility as shall be reasonable under the circumstances, from the end of the public access road to the point designated for the dumping of materials. Contractor shall ensure a smooth surface within the dumping

area to assist vehicles in their dumping operations. Contractor shall designate an area immediately adjacent to an all-weather road for dumping during periods of inclement weather. Contractor shall operate and maintain such inclement weather site and shall construct and maintain an access road to such site.

Contractor shall be responsible for any expense or inconvenience incurred by City or Designated Hauler(s) due to the roads leading to the dumping area or the dumping area not being sufficiently wide and well maintained.

Contractor shall not be responsible for any expense or inconvenience incurred by Designated Hauler(s) as a result of construction along the public access road. If delay occurs, Contractor and Designated Hauler(s) shall attempt to arrange emergency scheduling.

2.1.4 Records

Contractor shall maintain records on a daily, cumulative weekly, cumulative monthly, and cumulative annual basis for each Designated Hauler. These records shall indicate the number of tons of Municipal Solid Waste arriving at the Disposal Facility as reported by each Designated Hauler and the number of tons of Municipal Solid Waste that is to comprise a portion of Contractor's Allocated Quantity. Contractor shall maintain similar records for all sources of City Waste as identified by the City Representative for acceptance by Contractor. Records concerning Grease, Grit, and Screenings, or Biosolids shall be maintained in accordance with the recordkeeping requirements of Articles 2A and 2B. The City Representative or any person designated by the City Representative shall have the right to inspect such records and the record keeping procedures at any time during normal business hours; provided that such person does not interfere with the work being performed.

2.1.5 Scales Required

Scales shall be installed and operated to weigh waste delivered to the Disposal Facility, including all Municipal Solid Waste, City Waste, Grease, Grit and Screenings, and Biosolids if the scales at the Water Pollution Control Plant are not used to weigh the Biosolids.

2.2 Designated Hauler(s)

2.2.1 Acceptance of Waste

Contractor shall accept for disposal at the Disposal Facility, and at the Unit Price specified herein, Municipal Solid Waste from City's Designated Haulers in an amount up to the Allocation Quantity. If Contractor accepts for disposal Municipal Solid Waste from City's Designated Haulers which are in excess of the Allocation Quantity, the disposal fees for such excess waste shall be those set and posted by Contractor for the general public, unless Contractor and the Designated Hauler have mutually agreed to another disposal fee.

If Contractor

- (a) has followed procedures approved by the City Representative to assure that Designated Haulers are provided with adequate notice that they have exceeded or are about to exceed the amount the City Representative has designated they may deliver to the Disposal Facility, or
- (b) has notified the employee(s) of a Designated Hauler that specific loads are in excess of the amount designated by the City Representative for that Designated Hauler or are not properly identified as Municipal Solid Waste or City Waste disposable under this Agreement,

then City shall assist Contractor in collecting the appropriate posted or agreed fees by advising such Designated Hauler of its responsibility for

such waste and by considering compliance with the requirement for payment for excess waste during any review of franchises or permits issued by City to the Designated Hauler for solid waste handling, during the review of any solid waste handling contract between City and the Designated Hauler for which City has an option to extend the term, or during the evaluation of bids or proposals subsequently submitted by the Designated Hauler to provide solid waste handling services for City.

2.2.2 City Designation

The City Representative shall have the right to designate those persons responsible for hauling the Allocation Quantity of Municipal Solid Waste to the Disposal Facility; provided that those so designated shall agree to observe all regulations at the Disposal Facility and to operate according to safe industry practices.

2.2.3 No Preference

Contractor shall give no preference or priority of treatment over Designated Haulers to any other persons bringing waste to the Disposal Facility with respect to disposal of solid waste at the Disposal Facility nor shall Contractor give any preference or priority among Designated Haulers unless and until such preference or priority is requested by Contractor or the City Representative and approved in writing by the other party, which approval shall not be withheld unreasonably.

2.3 Waste Reduction Program

Contractor agrees to cooperate with City in City-initiated efforts to institute Waste Reduction Program as follows:

2.3.1 Processing of Certain City Waste

Contractor shall accept for processing, City Waste such as rubbish and debris from City corporation yards and other City Waste that would

meet the criteria for processing at Contractor's Certified Recycling Processing Area, the certified CDDD Facility, or other permitted processing areas of the Disposal Facility used to process construction or demolition debris.

2.3.1.1 Diversion of Certain City Waste

Contractor shall divert at least 75% of the City Waste that meet the criteria for processing under Section 2.3.1. If the composition of City Waste changes such that the cost to the City to process the material is more than the cost of disposal, City reserves the right to redirect the material starting Fiscal Year 2010-2011.

2.3.2 City Waste for Use as Cover or Inert Construction Material

Residential street sweepings, City Waste, or any other waste delivered by City or its contractors to the Disposal Facility that are suitable as received for use as Cover Material or Inert Construction Materials, as defined by Chapter 4.78 of the San José Municipal Code, as may be amended, shall be accepted by Contractor and used only for those purposes.

2.3.3 Waste Reduction Center

During the term of this Agreement, Contractor shall make arrangements for the acceptance at The Recyclery, Municipal Solid Waste and City Waste not otherwise specified in Sections 2.3.1 and 2.3.2. Such arrangements shall be for materials which meet the normal acceptance criteria at The Recyclery. City shall reimburse Contractor for payments made by Contractor to The Recyclery at the following rates:

- i. For Municipal Solid Waste, the Base Rate specified in Section 5.3 of this Agreement plus Disposal Surcharges applicable to Municipal Solid Waste which are accepted at The Recyclery.

- ii. For City Waste, the Disposal Surcharges applicable to City Waste which are accepted at The Recyclery.

If processing of specific materials or loads at The Recyclery would result in a greater net cost to Contractor than landfill disposal of such materials or loads at the Disposal Facility, Contractor may notify the City Representative of such costs and specify the additional cost required to continue processing such materials. The City Representative (a) may direct the Designated Haulers to take such materials or loads to the Disposal Facility and notify Contractor of such direction, or (b) may notify Contractor that such materials or loads will continue to be delivered to The Recyclery and approve additional payment at the same time as the next Regulatory Cost adjustment.

2.3.4 Waste-to-Energy Project

The parties recognize that City may pursue a Waste-to-Energy Project as an alternative to landfilling for disposal of Municipal Solid Waste. The parties agree to discuss Waste-to-Energy alternatives and to negotiate in good faith to provide for such alternatives at the Disposal Facility.

2.3.5 Composition Analysis

Upon request by City, Contractor shall cooperate with a professional analysis of the composition of Municipal Solid Waste, City Waste, and other waste disposed of at the Disposal Facility. Cooperation includes, but is not limited to, Contractor providing City and City's professional engineer or other person qualified to perform such analysis access to the Disposal Facility; directing Municipal Solid Waste, City Waste, or other solid waste to appropriate sorting areas; and hauling the solid waste to the appropriate disposal or processing areas. Contractor shall obtain prior written approval from City if such cooperation would result in Contractor incurring labor

costs in excess of the labor costs usually attributed to the cost of disposal or processing of similar solid waste under this Agreement. Pursuant to the prior written approval, City shall compensate Contractor for the additional labor costs.

2.4 Hazardous Waste

In the event that Hazardous Waste is delivered to the Disposal Facility, Contractor shall return the Disposal Facility to a safe and environmentally sound operation including, but not limited to, handling and removing the Hazardous Waste in accordance with local, state, and federal regulations and applicable guidelines.

2.5 Compliance with Laws and Regulations

Contractor agrees that, in the operation of the Disposal Facility and the performance of services under this Agreement, Contractor will qualify under, and comply with, any and all federal, state and local laws and regulations now in force and which may hereafter, during the term of this Agreement, be enacted and become effective, which are applicable to Contractor, its employees, agents or subcontractors, if any, concerning the operation of the Disposal Facility; provided, however, Contractor shall have the right to contest in good faith the application of such law or regulation to Contractor's Disposal Facility and Contractor shall not be deemed in breach of this Agreement during such good faith contest for failure to comply, except as provided in Sections 2.6.1 and 8.15 hereof.

2.6 Permits, Licenses, Approvals

2.6.1 Contractor to Obtain

Contractor shall be responsible, at its sole expense, for obtaining and maintaining all necessary permits, licenses and approvals from any and all governmental entities having jurisdiction over the Disposal Facility in order that Contractor may operate the Disposal Facility in accordance

with the terms and conditions of this Agreement and any laws or regulations applicable to the Disposal Facility. Contractor shall file with City a true and correct copy, certified by the granting agency, of each permit, license or approval. A good faith contest of any requirement of a permit, license or approval necessary for the operation of the Disposal Facility shall not excuse Contractor's noncompliance with such requirement.

2.6.2 Closure Plan

Contractor shall demonstrate adequate financial responsibility sufficient to finance Contractor's closure plan as submitted to state and local permit enforcement agencies. The costs to demonstrate financial responsibility for closure and post closure are not Regulatory Costs except in the limited circumstance specified in Section 1.23, which may be amended.

ARTICLE 2A. BIOSOLIDS.

2A.1 Beneficial Reuse

2A.1.1 Summary of Beneficial Reuse Operations

Under this Agreement, Contractor shall haul, transport and beneficially reuse the Plant's annual production of Biosolids at the agreed upon price per wet ton. The City will load the Contractor haul trucks. To reduce the risk of odor generation, the Biosolids will be hauled directly from the drying beds soon after they are dried and have been tested for compliance with EPA 503 regulations. This will typically be between August and November of each year. The City will notify the Contractor in advance when the Biosolids will be ready for haul so the Contractor can prepare equipment and facilities for the material.

2A.1.2 Biosolids Location

The Biosolids are located at the San José/Santa Clara Water Pollution Control Plant (Plant) at 700 Los Esteros Road, San José, Santa Clara County, California. The Biosolids will be located in up to 20 drying beds spanning over 200 acres where they have been dried that year.

2A.1.3 Product Quantity

The average density of the Biosolids is roughly one (1) ton/cubic yard. The average percent solids are about 75%. Over the term of the Agreement, annual production should be in the range of 30,000 to 60,000 cubic yards with similar density and moisture. There may be more or less material and density will vary on an annual basis depending on prior year lagoon loading and harvesting. The City does not, and cannot, guarantee a minimum amount or density of Biosolids generated each year. The City will not be liable for more than actual amounts hauled under the Agreement.

2A.1.4 Product Quality

Biosolids referred to in this Agreement typically meet Class A Biosolids requirements for pathogens and metals concentrations (40 CFR 503 regulations), but at a minimum, all Biosolids will meet Class B requirements. The Biosolids also meet Options 1 Vector Reduction requirements: Option 1 – reduce the mass of volatile solids by a minimum of 38 percent. The City shall promptly furnish to Contractor any information regarding known or suspected changes in the composition of the Biosolids. In the event that City becomes aware that the Biosolids are not suitable for beneficial reuse, the City shall promptly notify Contractor in writing.

2A.1.5 Laboratory Tests

City will provide the results of any testing that it performs on the Biosolids to Contractor to demonstrate that the Biosolids are suitable for beneficial reuse as defined by 40 CFR 503 regulations. Any additional testing required shall be Contractor's responsibility and shall be performed at Contractor's sole expense. Contractor may obtain Biosolids material for additional tests upon written request. Contractor shall use a state-certified lab as agreed to by City and Contractor.

2A.1.6 Contractors Exclusive Right to Biosolids

City has the right to direct Biosolids from the drying beds to non-landfill applications (i.e., conversion technologies, land application) but not for landfill disposal or other landfill applications, unless Contractor cannot use all of the material for Alternative Daily Cover ("ADC"), beneficial uses or other landfill application at Newby Island that counts as diversion under state law. If Contractor can so use all of the Biosolids to be removed from the drying beds in each of the first five years of this provision, City's right to direct Biosolids for land disposal or other landfill applications shall be limited as follows: 0% in 2009-10; 10% of 2010-11; 20% in 2011-12; 20% in 2012-13; and 20% in 2013-14.

- (a) After the fifth year of the Agreement, should the City exercise the option to extend the term of the Agreement, City shall have no limitations on the amount of Biosolids it directs to other beneficial reuse options.
- (b) In the event that the City directs a portion of the Biosolids (based on the above limitations) to other beneficial uses, Contractor agrees to cooperate with the City in allowing access to Biosolids to all parties

with whom the City has an agreement. Contractor will not be compensated for any of Biosolids taken by the City or its designee within the above limitations. City shall not cause any slowdown in the Contractor's operation.

2A.1.7 Reuse as Alternate Daily Cover

The Contractor is authorized to use Biosolids as ADC at the Newby Island Landfill in Santa Clara County. Contractor has the sole responsibility to obtain all applicable permits, and to identify and comply with all relevant regulations with regard to the reuse of Biosolids as ADC. Contractor is responsible for beneficially using as ADC all the Biosolids produced during the term of the Agreement by the Plant whether at Newby Island or another approved landfill for the agreed upon price. If Biosolids cannot be reused at Newby as ADC due to a regulatory change or similar change beyond Contractor's control, Contractor agrees to work with City to propose a suitable alternative landfill location and to negotiate in good faith with City for a fair and appropriate compensation for such alternative disposal. Contractor reuse of Biosolids as ADC at landfill other than Newby or for any use other than as ADC shall be at City's sole discretion and City shall have no obligation to compensate Contractor except as may be expressly agreed upon in writing by City and Contractor. City Representative is authorized to approve any such change in disposal location and compensation.

2A.1.8 Groundwater Testing

It is assumed that the beneficial reuse of Biosolids will not require groundwater testing. If groundwater testing is required as part of any permits in which the City's Biosolids are reused, Contractor shall be solely responsible for the performance and cost of such testing.

2A.2 Contractor Provided Services

2A.2.1 Summary of Services

Contractor shall haul from the Plant's Biosolids drying beds, the Plant's annual production of Biosolids, and reuse the Biosolids as ADC at the Newby Island Landfill. CONTRACTOR shall provide all equipment, equipment operating personnel, and other required manpower and resources to perform the work per these specifications at its sole cost for the agreed upon rate per ton. The City is responsible for loading the Contractor's haul trucks.

2A.2.2 Regulatory Permits

Contractor, at its sole cost, shall obtain all applicable permits, licenses, and clearances. City shall cooperate fully with Contractor in its efforts. Regulatory permits shall include, but not be limited to, requirements of the California Integrated Waste Management Board, Regional Water Quality Control Board, and/or local departments of health services, environmental health approvals, local enforcement agencies, and other requirements for obtaining regulatory approval of the proposed program. Contractor will supply City with all permits and with Local Enforcement Agency ("LEA") personnel information. Biosolids will not be stockpiled at any reuse site unless it is approved by the LEA.

2A.2.3 Haul Road Use and Maintenance

Contractor is allowed to use the paved haul road through the Residual Solids Management (RSM) area. This route runs from the Plant, east through Gate Z-3 from Zanker Road, through the RSM area to the Newby Island Landfill exit gate. It is the responsibility of the Contractor to keep the haul road dust controlled, well maintained, and free of spilled Biosolids at all times during the Biosolids hauling season. Contractor's use

of the paved access road shall be coordinated so as not to interfere with Plant operation and use of the road.

2A.2.4 Record and Documentation

Contractor will keep track of where the Biosolids are placed in the landfill and make records available to City when requested.

2A.2.5 Hazardous Materials

All regulated material used by Contractor on the Plant work site, including batteries, fuels, lubricants etc. or any other materials, shall be handled and disposed of in accordance with local, state, and federal regulations and applicable guidelines. Contractor shall provide appropriate containment facilities for all regulated materials and shall provide means to prevent the release of said materials that could impact the soil or groundwater at the site. Contractor shall procure applicable permits for regulated materials used at the work site. Any regulated material that is spilled shall be cleaned up immediately following all regulations in effect. There shall be no disposal of any Hazardous Waste or regulated material on Plant grounds.

2A.3 City Furnished Services

2A.3.1 Use of Plant Site

Contractor's use of the Plant site will be limited to 1) Biosolids loading, hauling, and dust control and 2) use of recycled water for dust control, compaction and cleaning, 3) use of the Plant truck scales, and 4) use of a designated area (to be determined by RSM Supervisor) to park Contractor's haul trucks during the hauling operation, if needed. The designated parking area may also be used for servicing and fueling the trucks and light maintenance activities needed to keep equipment

functioning legally and properly, and for Contractor's employee parking during the daytime only. The Plant site may not be used for major equipment repairs, long term equipment or vehicle storage, or for product augmentation or other processing activities. Upon completion of the hauling operation, Contractor will return the site to its original condition prior to vacating the site.

2A.3.2 Entrance and Hours for Access

The entrances to the drying beds are through Gates Z-3, Z-6 and Dixon Landing Road gates. The Gate will be opened during the Project from 4:30 A.M. until 4:30 P.M. Monday through Friday. The Gate will be closed during City holidays. Any possible exceptions to this work schedule shall be requested in advance, and in writing. The Plant may, at its own discretion, change service hours.

2A.3.3 Reclaimed Water

City will make reclaimed water available for on-site use for dust control, road cleaning, and compaction purposes. The water is available free of charge at a location near the Residual Solids Management (RSM) Building. However, Contractor must supply trucking, and abide by all applicable City and State regulations.

2A.3.4 Use of City Scales

City shall provide and maintain its certified scale for Biosolids weight verification by Contractor. These scales will be available for Contractor's use during hauling operation five days per week from 5:00 A.M. to 4:30 P.M., Monday through Friday, and any mutually-agreed alternative hours. The scales will be closed on City holidays. City shall be responsible for all scale maintenance and certification. Contractor will be responsible for operation of the scales and will supply weight tickets that

will be used to confirm tonnage hauled. In the event of a scale failure, City will expedite scale repair. Contractor will either cease operations or will find an alternate certified scale that will be used to weigh Biosolids loads until City scale has been repaired. Should a scale, other than the scale owned by City, be used for weight verification by Contractor, City will receive from Contractor, verification of scale certification. City reserves the right to approve the use of the alternate scale should this option be taken by Contractor. City shall, at its own discretion, grant the change in scale service hours. These possible exceptions to the above stated work schedule shall be requested in advance, and in writing, by Contractor.

2A.4 Loading and Hauling

2A.4.1 Summary of Operations

City shall load Biosolids from the drying bed windrows or other stockpiles into Contractor's own trucks. City and Contractor shall coordinate on Biosolids loading and hauling in a way that minimizes dust, odor, mud, or other nuisances. Mitigation measures required to be performed by Contractor shall include, but not be limited to, tarping the truck load with tarps and watering the haul route as needed to reduce odor and dust where necessary. Tarping the truck load will not be necessary if Contractor's haul route is exclusively on the RSM haul road route directly to Newby Island's back gate at Dixon Landing Road. Contractor is responsible for immediate cleanup or road sweeping of the haul road or on Los Esteros or Zanker if Biosolids fall on the roads.

2A.4.2 Weather Conditions

Temperature inversions, wind or other conditions that create unfavorable downwind odors conditions may occur during the hauling season. The City reserves the right to halt the Biosolids removal should

this occur. The hauling will be restarted, on notification by the City, when the condition subsides. Mutually beneficial restructuring of hauling times and other odor control measures may be negotiated so that hauling can proceed efficiently without undue odor generation.

2A.4.3 Hauling Season

The hauling season will typically occur between August and November of each year. This is the time when drying of the Biosolids in the drying beds typically occurs. However, hauling during other months may be necessary and the Contractor will work with the City in those special cases.

- (a) No additional compensation will be due Contractor for hauling outside the normal hauling season on top of the agreed upon price per ton. Since the Agreement is based on payment of wet tons of Biosolids hauled, it is realized that wet/rainy weather will increase the City's cost of tonnage hauled. Therefore, the hauling of Biosolids will only occur during relatively dry periods. In the event of extremely inclement weather, the City may suspend hauling. In the event of extremely dry weather during the December through April timeframe, the City may allow hauling if needed.
- (b) Hauling should proceed as quickly as possible to avoid prolonging the risk of odor generation during the hauling process, and to avoid the rainy season.

2A.4.4 Hauling Priority

Contractor shall haul Biosolids from RSM areas per City instructions.

2A.5 Transportation

2A.5.1 General

Contractor shall transport Biosolids to the ultimate reuse site. All transportation shall be in full compliance with all applicable federal, state, and local laws, including, but not limited to, all environmental impact mitigation requirements to which the transportation becomes subject. Contractor shall be responsible for complying with all Public Utilities Commission regulations, permits, and tariffs.

2A.5.2 Haul Route Maintenance

Contractor is responsible for maintaining the haul route free of mud and dirt buildup by sweeping, washing, or grading the road as necessary and for performing final cleanup of Biosolids from haul route and roads outside of RSM area at the conclusion of hauling.

2A.5.3 Driver Management and Vehicle Operation

Contractor is responsible for informing the truck drivers of the nature of Biosolids and shall provide a sheet describing the material in each truck used. Contractor shall ensure safe vehicle operation. Zanker Road from Highway 237 to the entrances to Gates Z-3 and Z-6 has heavy traffic, and the speed limit must be adhered to. The RSM area haul road is also a commute road for Plant employees. The Contractor's trucks must comply with the posted speed limit in the RSM area. The City may stop hauling if there is unsafe truck operation or if there is speeding on this road. Contractor shall not allow trucks to park on Zanker Road while waiting for Gates Z-3 and Z-6 to be opened. The City may stop the hauling if this occurs.

2A.5.4 Road Damage

Contractor is responsible for any damage to City property while the Project is being performed. Any damage shall be immediately repaired or City will repair and charge Contractor for the cost.

2A.7 Compensation

2A.7.1 Invoices and Contractor's Documentation

Contractor will provide City with all documentation necessary to justify invoice payments, including number of loads hauled, date hauled, copy of each haul ticket, and certified scale ticket for each haul. Copies of the haul ticket shall be provided to City at the time the haul truck is loaded up for transport and before they haul the material to the landfill. All Biosolids loads will be weighed at a certified scale approved by the City. Payment will only be made for those loads showing proper documentation.

2A.7.2 Price

Contractor shall provide all equipment, equipment operating personnel, and other required manpower and resources to perform the work per these specifications, except as provided in Sections 2A.3 and 2A.4.1, at its sole cost for the agreed upon rate of \$22.75 per wet ton for the period July 1, 2009 to the period ending June 30, 2014, adjusted for any changes in applicable Disposal Surcharges after July 1, 2009. City has the sole option to extend at the end of the five year term in increments of one year each up to five years. Commencing on July 1, 2014, should City exercise the option to extend, the rate shall be adjusted annually for each optional term in accordance with the Annual Adjustment provisions in Section 5.3 of this Agreement.

ARTICLE 2B. GREASE, GRIT AND SCREENINGS

2B.1 Grease, Grit and Screenings Disposal

2B.1.1 Summary of Operations

Contractor shall provide, deliver, and transport containers to be used by the Plant to store Grease, Grit and Screenings, and provide all necessary services to haul and properly and legally dispose of these materials. City reserves the right to direct Grease, Grit and Screenings to other disposal locations. City shall only be liable to compensate Contractor for Grease, Grit and Screenings hauled and disposed of by Contractor under this Agreement.

2B.1.2 Product Quality

This scope of work includes hauling and disposal of wet and dry Grease, Grit and Screenings. Generated volumes of wet and dry screenings and grit vary with season, dewatering equipment availability, and storage time. Two categories of screenings and grit are generated based on solids content wet (>20% but <50% solids) and dry (>50% solids). The grease averages 50%; however, the water content of the grease occasionally rises above 65%, and varies greatly. Contractor shall be prepared to haul and dispose of either wet or dry grit or screenings and/or normal or below normal solids grease.

2B.1.3 Product Quantity

The volumes and characteristics of Grease, Grit and Screenings, and the current processing and handling practices of each type of material are described below. City will supply analytical data to Contractor if any analytical reports are prepared by or for the City.

- (a) Screenings - Approximately 700 tons are generated each year. Screenings are nearly always dewatered in a mechanical press to a solids content of 40 to 50% and placed in dedicated 20 or 30 cubic yard roll-off storage containers. In the container, pressed screenings typically air dry to >50% solids in approximately one week. The unit weight of dry screenings can range from 0.65 - 0.95 tons/cubic yard. Screenings which are not pressed typically cannot achieve >50% solids from air drying in the containers but can gravity drain to solid contents of >20% but <50%. The unit weight of these screenings can range from 1.0 - 1.4 tons/cubic yard. The target net weight for roll-off containers of screenings is 10 – 11 tons.
- (b) Grit - Approximately 400 tons of Grit is generated per year. Grit is placed in 30 cubic yard roll-off storage containers and allowed to gravity drain. The grit typically reaches >50% solids within one week from gravity drainage and air drying. The unit weight of grit from these processes can range from 1.4 to 2.3 tons/cubic yards.
- (c) Grease - Approximately 700 tons of grease is generated per year. Scum (grease) from the primary and secondary (BNR) clarifiers is skimmed off and concentrated in tanks in the grease room. From grease room tanks, grease is pumped into 25 - 30 cubic yard containers. As much water as possible is then dewatered from these roll-off containers. Contractor shall provide reconfigured containers so

that the sealed doors can swing open from the bottom, for dewatering.

2B.2 Contractor Provided Services

2B.2.1 Container Services

- (a) Contractor shall provide three 25 cubic-yard containers (size may vary) for storage and hauling of the grease. The containers shall have sealed doors that can swing open from the bottom, for dewatering. Two of the containers shall be located at the Plant; the third container may be located off site but must be available on the Plant within 24 hours if requested by the City. Containers shall allow drainage and decanting while at the Plant and must be watertight during hauling.
- (b) Contractor shall provide as many roll-off storage containers (similar to existing container type and at least 20 cubic yard capacity) as required by City for storage of both wet and dry screenings and wet and dry grit. Each container shall be individually numbered for identification. Typically, 7 containers are required on site under normal operations but as many as 8 to 10 containers have been required during emergencies. Request for additional containers must be fulfilled within 24 hours.
- (c) Contractor shall provide proper support system for their storage containers. The support systems shall be elevated and designed within the constraints of the current disposal system

2B.2.2 Container Maintenance

Contractor shall be responsible for maintenance and safety of all storage containers provided, including the assurance that the storage bins are maintained such that a safe work environment is maintained at the City. Contractor shall assist City with marking depths to which bins can be filled based on legal road weight limits. Storage containers shall be sited at locations directed by City. Contractor shall, during time of placing, elevate each container to allow for the most efficient drainage toward the exit gate. Contractor shall maintain the support systems for the containers and a functioning drainage system within the container.

2B.2.3 Container Placement

Contractor shall, at the request of the City, relocate or reposition empty or full containers previously sited to meet Plant operational needs. Contractor shall respond to the City within 24 hours or one full working day.

2B.2.4 Container Removal

Approximately 2 to 3 times per week (days to be set by City) or as requested by City, Contractor shall remove and dispose of collected screenings and grit, and approximately one to two times per week, Contractor shall remove and dispose of grease. Occasionally, the frequency for collection of all three materials may be required several times per week. No containers shall be removed by Contractor without authorization by City. Contractor shall respond to the City's request for disposal within 24 hours.

2B.2.5 Transportation

- (a) Contractor is allowed to use the haul road through the Residual Solids Management (RSM) area. This route

runs from the Water Pollution Control Plant, east through Gate Z-3 from Zanker Road, through the RSM area to the Newby Island Landfill exit gate.

- (b) Contractor shall ensure safe transport of all materials to the proper disposal facility, following all applicable regulations. Zanker Road from Highway 237 to the entrances to Gates Z-3 and Z-6 has heavy traffic, and the speed limit must be adhered to. The RSM area haul road is also a commute road for Plant employees. The City may stop the Project if there is unsafe truck operation or if there is speeding on this road.
- (c) With permission from City, Contractor may haul double containers with a single tractor.

2B.2.6 Disposal Services

Contractor shall dispose of all Grease, Grit and Screenings (wet or dry) at an active landfill permitted to accept the waste described in these specifications. Contractor must arrange approval of the materials with the landfills. Contractor is responsible for complying with all landfill requirements and must complete any forms required by the landfills prior to hauling materials to it.

2B.2.7 Landfill Fees

- (a) Contractor shall pay all landfill tipping fees and other landfill disposal charges.
- (b) Should the Contractor lose the ability to dispose of the Grease, Grit or Screenings at the Newby Island Landfill as a result of a regulatory change or other reason beyond Contractor's control, Contractor shall notify the City immediately and Contractor agrees to

work with City to propose a suitable alternative landfill location and to negotiate in good faith with City for a fair and appropriate compensation for such alternative disposal. Contractor's disposal of Grease, Grit and Screenings at any location other than Newby shall be at City's sole discretion and City shall have no obligation to compensate Contractor except as may be expressly agreed upon in writing by City and Contractor. City Representative is authorized to approve any such change in disposal location and compensation. .

- (c) Should the Contractor be required to change the disposal site, Contractor shall be required to establish credit and meet all other requirements of the alternate landfill within one week with the new facility.

2B.2.8 Training and Safety

Contractor is solely responsible for performing the terms of this Agreement in strict conformance with all applicable laws and safety standards of all local and state jurisdictions, and for formally training its personnel in the inspection, handling, transport, and proper disposal of screenings and grit, in light of its potential to be infectious. Personnel shall be fully trained in hazards associated with the material, the proper safety precautions to be taken, and the type of safety equipment to be worn. Contractor shall hold periodic training sessions, with records kept of the dates of the sessions, the subject matter, and attendees.

2B.3 Compensation, Billing and Payment

2B.3.1 Compensation

Container service, hauling and disposal charges for Grit, Grease and Screenings shall consist of a hauling fee per container of \$126.85. Each ton hauled and disposed shall be at a rate of \$36.94 per ton, which includes all Disposal Surcharges. For the year beginning July 1, 2010, the hauling fee shall remain unchanged, and the disposal rate shall increase to then applicable Unit Price for Municipal Solid Waste. Beginning July 1, 2011, the disposal rate shall be adjusted each year so that it is same as the Unit Price for Municipal Solid Waste, and the hauling fee shall be adjusted by the same percentage as the percentage adjustment that is applicable to the Base Rate for Municipal Solid Waste. The minimum charge for disposal shall be equal to the charge for two tons.

2B.3.2 Billing and Payment

- (a) Invoices shall be submitted at the end of each calendar month and shall include the following information for each container disposed:
- Date of disposal
 - Type of material disposed: grit, screenings or grease
 - Tonnage disposed
 - Disposal cost
 - Haul cost (including the amount based on the hauling charge, and any additional amounts charged due to loads less than the two-ton minimum)
- (b) City Representative may direct Contractor to allocate the Regulatory Costs provided for in Section 5.4 based

on the proportionate disposal of Grease, Grit and Screenings, and to have this allocation be reflected in the invoices.

- (c) Contractor shall submit, with the monthly invoice, all landfill receipts and weigh tickets as proof of quantities disposed and location of disposal. Payment will be based on tonnage hauled and disposed only, plus the agreed upon haul cost per container. No payments shall be made to Contractor unless landfill receipts are received.
- (d) Copies of the haul ticket shall be provided to City at the time containers are picked up for disposal.

ARTICLE 3. TERM OF AGREEMENT.

3.1 Initial Term

This Agreement shall become effective and the term shall commence on March 1, 1986 and shall continue in full force and effect until December 31, 2020, unless extended pursuant to Section 3.2 or unless amended pursuant to Section 8.9.

3.2 Extension of Term

In the event the Disposal Facility is permitted to accept Municipal Solid Waste for disposal after December 31, 2020, City may extend the term of this Agreement to continue for the period of time the Disposal Facility accepts Municipal Solid Waste from any source. The terms and conditions of this Agreement shall remain in full force and effect during any such extension of the term.

City's City Manager is authorized to extend the term of this Agreement pursuant to this Section on behalf of City.

ARTICLE 4. ALLOCATION QUANTITY DETERMINATION.

4.1 Allocation Effective July 1, 2009

Effective July 1, 2009, the Allocation Quantity shall be Three Hundred Twenty Thousand (320,000) tons per Contract Year. The Allocation Quantity shall be increased to Three Hundred Ninety-Five Thousand (395,000) tons per Contract Year beginning July 1, 2012, or when the exclusive franchisees for the collection of Commercial Solid Waste begin delivering the Commercial Solid Waste to the Disposal Facility, whichever is later. If this Agreement expires or is otherwise terminated other than at the end of a Contract Year, the Allocation Quantity for the portion of the final Contract Year from July 1 through the date of expiration or termination shall be prorated based on the number of days from July 1 to the date of expiration or termination.

4.1.1 City Waste Allocation

In addition to the Allocation Quantity, Contractor shall accept City Waste for disposal, at no charge to the City, except for applicable Disposal Surcharges as provided in Section 5.1 of this Agreement and approved Regulatory Costs as provided in Sections 5.1 and 5.4 of this Agreement. The City Waste referenced in this paragraph does not include City Waste which is delivered to Contractor for processing or diversion under Section 2.3, the Waste Reduction Program.

The allocation for City Waste may be equal to forty percent (40%) of the total waste (excluding City Waste) actually delivered to the Disposal Facility pursuant to this Agreement, and no more than Sixty Thousand (60,000) tons per Contract Year. Quantities may vary widely by season of the year.

4.2 Extension Allocation

During any extension of this Agreement pursuant to Section 3.2, the annual Allocation Quantity from January 1, 2021 through December 31, 2022 shall be the average of the total tonnage delivered by City during the Contract Years beginning July 1, 2017 through June 30, 2020, or 395,000 tons for each Contract Year, whichever is less.

During any extension of this Agreement pursuant to Section 3.2 on or after January 1, 2023, the Allocation Quantity for any Contract Year thereafter shall be the average annual tonnage used by City in the three immediate preceding Contract Years, or 395,000 tons, whichever is less.

4.2.5 Proration of Allocation During Extension

If the extended Agreement expires or is otherwise terminated other than at the end of a Contract Year, the Allocation Quantity for the portion of the final Contract Year from July 1 through the date of expiration or termination shall be prorated based on the number of days from July 1 to the date of expiration or termination.

4.3 Emergency Allocation

If, as a result of fire, flood, earthquake or other natural disaster declared by the State of California or the United States or any authorized officer of the State or federal government, City must dispose of debris from disaster clean-up or related demolition or construction projects in quantities such that City's disposal needs in a Contract Year would exceed the sum of the City Waste allocation and the Allocation Quantity for the Contract Year, the Allocation Quantity for that Contract Year shall be increased to 395,200. City shall not, however, deliver materials to the Disposal Facility which would exceed the amounts allowed to be disposed at the Disposal Facility under applicable permits unless the limitations on disposal are waived, suspended or otherwise removed by the appropriate permitting agency.

For any specific disaster, City may deliver no more than one hundred thousand (100,000) tons of disaster clean-up or related demolition/construction debris. For any specific disaster, the disaster clean-up or related demolition/construction debris must be delivered within eighteen (18) months of the date of the disaster as specified in the applicable disaster declaration issued by the State of California or the United States or any authorized officer of the State or federal government. No waste materials for which the State or federal government is directly responsible shall be directed to the Disposal Facility pursuant to this emergency allocation provision unless such waste was handled during emergency response efforts by City or one of its Designated Haulers at the request of City. Any debris delivered to the Disposal Facility in excess of the City Waste allocation shall be charged to City at the Unit Price in effect at the time of delivery.

ARTICLE 4A. CITY DIRECTION OF RESIDENTIAL WASTE STREAM.

Beginning December 5, 1995, and through December 31, 2020, City shall cause the Residential Waste Stream to be delivered to the Disposal Facility or The Recyclery where the following conditions are satisfied:

- i. The Residential Waste Stream is collected by City or by a person pursuant to an agreement with City, which grants to such person exclusive collection authority in terms of the type of waste collected, the geographic area in which collection occurs, or both;
- ii. The total tonnage to be delivered does not exceed the Allocation Quantity in any Contract Year; and
- iii. The total tonnage to be delivered does not cause the Disposal Facility to exceed the permitted capacity of the Disposal Facility.

Nothing in this provision shall be deemed to apply to City Waste, to materials which have been segregated from other waste materials for recycling or reuse, or to any materials collected by a person who does not have an exclusive agreement with City.

Regardless of the tonnage of Residential Waste Stream actually delivered to Contractor, City shall compensate Contractor as provided in this Agreement for the tonnage of the Residential Waste Stream that is documented to have been delivered for disposal to any permitted disposal site, and the residue which must be disposed following delivery to any transfer/processing station (excluding residue from processing source-separated Recyclables), by any hauler authorized by City to perform Residential Waste Stream collection services, subject to the following limitations:

- i. If City has caused delivery of the Allocation Quantity for a Contract Year, then for that Contract Year City shall have no obligation to compensate Contractor for any tonnage of the Residential Waste Stream that has been delivered to a disposal site other than the Disposal Facility or The Recyclery.
- ii. The compensation to Contractor for any tonnage not delivered to Contractor shall be the Base Rate set forth in Article 5 of this Agreement and shall not include any Disposal Surcharges, or Regulatory Costs.
- iii. Tonnages of Residential Waste Stream shall be deemed to have been delivered to Contractor in any case where the RWS was delivered to a disposal facility other than Contractor's Disposal Facility or The Recyclery at the request or direction of Contractor.

Within one hundred eighty (180) days of the end of each Contract Year, City will determine whether the Residential Waste Stream generated during the Contract Year exceeded the Residential Waste Stream delivered to Contractor during the Contract Year, and the City Representative shall notify Contractor of the determination. If the RWS generated during the Contract Year exceeded the RWS delivered during the Contract Year, City shall remit payment for the excess to Contractor within two hundred ten (210) days of the end of such Contract Year.

ARTICLE 4B. DISPOSAL OF COMMERCIAL WASTE STREAM.

The City shall cause the Commercial Waste Stream that is intended for disposal at a permitted disposal site, and any residue from processing the Commercial Waste Stream to be delivered to the Disposal Facility, if all of the following conditions are satisfied:

- i. The Commercial Waste Stream is collected by a franchisee pursuant to an agreement with the City that grants such franchisee the exclusive authority in terms of the type of waste collected, the geographic area in which collection occurs, or both; and the franchisee elected to deliver the waste to the Disposal Facility as a condition of the franchise agreement; and
- ii. The total tonnage to be delivered does not exceed the Allocation Quantity in any Contract Year;
- iii. The total tonnage to be delivered does not cause the Disposal Facility to exceed the permitted capacity of the Disposal Facility; and
- iv. The requirement to deliver the Commercial Waste Stream to the Disposal Facility is not prohibited under federal and state law.

Nothing in this provision shall be deemed to apply to any materials collected by a person who does not have an exclusive agreement with City.

City shall require any exclusive franchisee to directly compensate Contractor for the disposal of the Commercial Waste Stream at the same Unit Price, as set forth in Article 5, offered to City for disposal of the Residential Waste Stream.

ARTICLE 5. COMPENSATION FOR SOLID WASTE PROCESSING AND DISPOSAL SERVICES.

5.1 Monthly Payment

City shall pay Contractor, each month, for the disposal pursuant to this Agreement, of Municipal Solid Waste and City Waste at Contractor's Disposal Facility or The Recyclery.

5.1.1 Monthly Payment Breakdown

The amount paid monthly shall be the sum of the following:

- i. The product of (a) the tonnage of Municipal Solid Waste delivered during the month (up to a total not to exceed the Allocation Quantity for any Contract Year plus any Emergency Allocation, if applicable) and (b) the applicable Unit Price then in effect. Where different Unit Prices apply to different classes or types of Municipal Solid Waste because of differences in applicable Disposal Surcharges, Contractor shall report the tonnages of the different classes or types separately, shall apply the applicable Unit Price to each separately reported class or type, and shall report the total amount due.
- ii. The product of (a) the tonnage of City Waste that is disposed during the month; and (b) the Disposal Surcharges that are applicable to such City Waste that is disposed. Where different Disposal Surcharges apply to different classes or types of City Waste, Contractor shall report the tonnages of the different classes or types separately, shall apply the applicable Disposal Surcharges to each separately reported class or type, and shall report the total amount due.
- iii. The product of (a) the tonnage of City Waste delivered for processing, cover material, inert construction material, or other diversion as set forth in Sections 2.3.1, 2.3.2, and 2.3.3; and (b) the rate to accept this material.
- iv. The amount of any Disposal Surcharge adjustment required because a Disposal Surcharge not included in the Unit Price at the time of the most recent Base Rate adjustment was paid by Contractor during the month for waste delivered pursuant

to this Agreement or required because excess Disposal Surcharges were included in the Unit Price. This adjustment may result in an increase or a reduction in compensation to Contractor.

- v. One-twelfth (1/12) of the approved Regulatory Costs for operating expenses for the immediately preceding calendar year.
- vi. One-twelfth (1/12) of the approved annual amortization of Regulatory Costs for capital expenses for the immediately preceding calendar year.

5.1.2 Base Rate

The Base Rate shall be Sixteen Dollars and Sixty-Four Cents (\$16.64) per ton effective July 1, 2009. Beginning July 1, 2010, the Base Rate shall be Twenty-One Dollars and Eight-Nine Cents (\$21.89) per ton. Effective July 1, 2011 and each year thereafter, the Base Rate shall be adjusted consistent with Section 5.3 (Annual Adjustment of Unit Price).

5.1.3 Baled Residue

For the disposal of processing residue that is delivered baled and tied to the Disposal Facility, Contractor shall be compensated Four Dollars (\$4.00) per ton in addition to the effective Base Rate. Retroactive to July 1, 2008, City shall compensate Contractor for baled and tied processing residue from the Residential Waste Stream. Within 30 days of the execution of this Second Amendment, Contractor shall submit an invoice documenting the total monthly tonnage of the baled residue delivered to the Disposal Facility; and specify the monthly tonnage which have been billed to the City at the Unit Price, and the monthly tonnage which have not been billed to the City. Contractor shall also submit with the invoice a report documenting the individual loads that were the basis for the monthly

tonnage. Within 30 days of receiving the complete invoice and report, City shall complete review. Within 60 days of receiving the complete invoice and report, City shall pay Contractor for any monthly tonnage that have not been billed to the City and that is supported by adequate documentation. Effective July 1, 2009, City shall require, as a condition of the franchise agreement, any exclusive franchisee that is required by City pursuant to Article 4B to use the Disposal Facility to compensate the Contractor for the cost to dispose of baled and tied processing residue from the Commercial Waste Stream.

5.1.4 Processing City Waste

Contractor shall be compensated to process materials from City's corporation yards and similar materials as provided in Section 2.3.1 at the rate of Twenty-Six Dollars and Fifty Cents (\$26.50) per ton. Effective July 1, 2011 and each fiscal year thereafter, this rate shall be adjusted consistent with Section 5.3 (Annual Adjustment of Unit Price).

5.1.5 Acceptance of Cover Material and Inert Construction Material

Contractor shall be compensated to accept Residential street sweepings, and other cover material or inert construction material as provided in Section 2.3.2 at the rate of Five Dollars (\$5.00) per ton. Effective July 1, 2011 and each fiscal year thereafter, this rate shall be adjusted consistent with Section 5.3 (Annual Adjustment of Unit Price).

5.2 Payment Based On Weight

5.2.1 Weight Records

All payments for waste disposal pursuant to this Agreement shall be based on the weight of the waste delivered to the Disposal Facility or The Recyclery. Contractor shall perform all calculations of such payments

using weight records from the scales at the Disposal Facility which are required by Section 2.1.5 of this Agreement.

5.2.2 Gate Yard Conversion

In the event scales are temporarily out of service to weigh waste delivered to the Disposal Facility, Contractor shall use conversion factors based on the average weight per cubic yard or per load of each type of waste, as specified by the City Representative.

5.3 Annual Adjustment of Unit Price

The Base Rate shall be adjusted upward or downward on July 1 of each year, beginning as of July 1, 2011. The Base Rate shall be increased or decreased by the Adjustment Factor calculated as $0.80 \times (0.85\text{CPI} + 0.15\text{DF}) \times (\text{Base Rate})$ where:

- i. 0.85CPI means eighty-five percent (85%) of the net percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) for San Francisco-Oakland-San José Metropolitan Area; and
- ii. 0.15DF means fifteen percent (15%) of the net percentage change in the Producer Price Index for #2 Diesel Fuel Index (Commodity Code 0573 03).

The indices used shall be those first published by the U. S. Department of Labor, Bureau of Labor Statistics, for the specific year contemplated by this Agreement. Indices used in these calculations shall not be revised in the event an originally published index is adjusted by the Department of Labor. All net percentage changes shall be calculated by the following formula and shall be truncated at ten (10) decimal places:

$$\text{Net percentage change} = \frac{V(i) - V(i-1)}{V(i-1)}$$

Where: $V(i)$ = index value for the first year immediately preceding the effective date of the adjustment and

$V(i-1)$ = index value for the second year immediately preceding the effective date of the adjustment.

Example: For the July 2011 adjustment, $V(i)$ = the index for 2010 and $V(i-1)$ = the index for 2009.

The Base Rate adjustment for July 1, 2011, shall be calculated as shown in Exhibit A, entitled "2011 Base Rate Adjustment", which is attached to and incorporated in this Agreement.

The Unit Price for the next Contract Year of this Agreement shall be the Base Rate plus/minus the Adjustment Factor plus any Disposal Surcharges that are in effect for the new Contract Year.

As soon as possible after the indices for December are published, Contractor shall send to City a Rate Adjustment Statement setting out the following information:

- i. The index value for each month published for the adjustment year ($V(i)$) for both the Consumer Price Index and the Diesel Fuel Index;
- ii. The index value for each month published for the immediately preceding year ($V(i-1)$) for both the Consumer Price Index and the Diesel Fuel Index;
- iii. The net percentage change for each month published for each index as calculated by the net percentage change formula above;
- iv. The composite percentage change equal to eighty-five percent (85%) of the average net percentage change for each month published in the Consumer Price Index plus fifteen percent (15%) of the average net percentage change for each month published in the Diesel Fuel Index;

- v. The increase or decrease in the Base Rate which may be charged by Contractor (the Adjustment Factor);
- vi. The adjusted Base Rate resulting from the application of the Adjustment Factor;
- vii. The Disposal Surcharges which are to be included in the Unit Price;
- viii. The new Unit Price; and
- ix. The Disposal Surcharges that are not to be included in the Unit Price, the reason for their exclusion, the estimated amounts of such Disposal Surcharges, and the dates such Disposal Surcharges will be due and payable by Contractor.

On the next billing date after the receipt and approval of the Rate Adjustment Statement, City shall pay to Contractor or Contractor shall credit to City, as the case may be, a lump sum equal to any increase or decrease applicable to that portion of the term of this Agreement which has elapsed during which the new Unit Price is effective. Thereafter, the Base Rate charged by Contractor shall not be modified to reflect any change until a subsequent Rate Adjustment Statement is received and approved by City. The Unit Price will be adjusted (increased or decreased) on the first day of the month following any month in which there is a change in a Disposal Surcharge which has been included in the Unit Price to reflect the actual Disposal Surcharge payable by Contractor.

Adjustments to Unit Prices will only be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) will not be considered in making adjustments. In each of the five-year periods beginning July 1 of the years 2011, and 2016, (and in the case of any extension of the term of this Agreement pursuant to Section 3.2, beginning on each five-year anniversary of July 1, 2016) the Adjustment Factor shall not exceed thirty percent (30%) of the Base Price in effect at the beginning of the five-year period; and in any single Contract Year of this

Agreement the Adjustment Factor shall not exceed six percent (6%) of the prior Contract Year's Base Price.

Should the indices named in this section be discontinued, successor indices shall replace same. Successor indices shall be those indices which are most closely equivalent to the discontinued indices as recommended by the United States Department of Labor, Bureau of Labor Statistics.

5.4 Regulatory Rate Changes

Beginning July 1, 2010, the Regulatory Costs included in Contractor's monthly compensation shall be determined in accordance with this Section and shall not exceed City's pro rata share of the total cost increase which applies to the Disposal Facility. City's pro rata share shall be determined on the basis of:

- i. The percentage of the tonnage of waste disposed of at the Disposal Facility which is attributable to City, for those costs which are, according to generally accepted accounting principles, attributable to the daily operating costs of the Disposal Facility during the calendar year such costs were incurred. The percentage of tonnage attributable to City shall be the number of tons of Municipal Solid Waste, Grease, Grit and Screenings, and City Waste delivered to the Disposal Facility for disposal during the one-year period immediately preceding the request for a Regulatory Cost calculation pursuant to this Section divided by the total tonnage of waste received at the Disposal Facility, or up to twenty-five percent (25%), whichever is less. Any cover material or inert construction material as defined by Chapter 4.78 of the San José Municipal Code, as may be amended, which counts as diversion under the state law; or waste that is recycled and removed from the Disposal Facility shall not be considered waste delivered to or received by the Disposal Facility for the purposes of determining the City's pro rata share of Regulatory Costs.

- ii. For those costs which are, by generally accepted accounting principles, not attributable to the daily operating costs of the Disposal Facility, and which are properly amortized over two or more years, City's pro rata share for such costs shall be calculated as described in Section 5.4(i), above, and shall be paid by City based on the amount of such costs amortized on a straight-line basis.

If Regulatory Costs incurred by Contractor are amortized over several years, the compensation provided by this Section for those Regulatory Costs shall be repealed at the end of such amortization period. The repeal shall not affect other increases resulting from Regulatory Costs which were not amortized. A lawfully assessed fee, charge, or other assessment payable by users of the Disposal Facility and collected by Contractor shall not be considered a Regulatory Cost.

On or before February 28 of each year of the term of this Agreement, beginning in 2010, Contractor shall submit to City, written documentation showing the actual Regulatory Costs incurred during the immediately preceding calendar year, or estimated to be incurred in future years (for Regulatory Costs that are amortized over more than one year), demonstrating that the Regulatory Costs were incurred by reason of Contractor's compliance with changes in laws or regulations or changes in the enforcement or interpretation thereof, indicating the method of determining City's pro rata share of such Regulatory Costs, and showing the calculation of City's pro rata share. If Contractor bases the request for adjustment on a change in the enforcement or interpretation of a law or regulation affecting the Disposal Facility, then Contractor shall also provide to City supporting documentation demonstrating to City's satisfaction the existence of and the nature of the change in enforcement or interpretation. The submittal due February 28, 2010, shall include all Regulatory Costs incurred from January 1, 2009, through December 31, 2009.

City shall have the right, at reasonable times and upon reasonable notice to Contractor, to inspect all records or other information which supports Contractor's statement and the information contained therein. No Regulatory Cost determination shall be made pursuant to this Section unless and until Contractor has submitted the above-described written documentation to City.

Any increase or decrease in Contractor's compensation due to Regulatory Costs as provided for in this Section shall occur annually at the beginning of each Contract Year, effective July 1, 2010. Regulatory Costs attributable to City shall be paid in equal monthly installments and shall not be included in the Unit Price.

The Regulatory Costs attributable to City for July 1, 2009 through June 30, 2010, is Ninety-Eight Thousand and Ninety Dollars and Eight-Eight Cents (\$98,090.88) each month (\$52,311.35 operating costs and \$45,779.53 amortized or capital costs).

5.5 Resolution of Disputes Regarding Adjustments

In the event Contractor fails to submit an accurate and correctly calculated Rate Adjustment Statement, City shall determine the Base Rate adjustment and the applicable Disposal Surcharges to be included in the Unit Price. Upon the request of either party, any dispute regarding the adjustment or the adjustment rate calculation described in Section 5.3 hereof shall be submitted to arbitration as provided in Section 8.12.1 of this Agreement.

If, after not less than thirty (30) days of good faith effort to resolve a dispute arising under Section 5.4, City and Contractor fail to agree to terms respecting the determination of Regulatory Costs pursuant to said Section, then, upon the request of either party, the dispute shall be submitted to arbitration as provided in Section 8.12.1 of this Agreement.

During the resolution of any dispute regarding rate adjustments pursuant to Section 5.3 or Section 5.4, the Unit Price and the Regulatory Costs to be paid to Contractor by City shall be that Unit Price and those Regulatory Costs last agreed upon by the parties, provided, however, that Contractor's compensation shall

include any changes in the Base Rate, Disposal Surcharges or Regulatory Costs that are not in dispute.

If the arbitration panel determines that the Unit Price or the Regulatory Costs shall be increased, City shall pay to Contractor the difference between the Unit Price/Regulatory Costs set by the arbitration panel and the Unit Price/Regulatory Costs actually paid by City for the period during which the increased Unit Price/Regulatory Costs should have been paid. If the arbitration panel determines that the Unit Price or the Regulatory Costs shall be decreased, City may deduct overpayments, if any, from any future compensation due to Contractor.

Future rate adjustments under this Agreement shall be based upon the Unit Price and/or Regulatory Costs determined by the arbitration panel.

5.6 Payment Method for Residential Waste Stream

5.6.1 Payment for Disposal in Excess of Allocation Quantity

In the event a Designated Hauler delivers Municipal Solid Waste to the Disposal Facility in excess of the tonnage of Municipal Solid Waste allocated to that Designated Hauler by City, and Contractor accepts such waste for disposal, Contractor shall charge such Designated Hauler directly for disposal fees for the excess waste. Contractor may begin to charge such Designated Hauler at any time during a Contract Year of the term of this Agreement when the Designated Hauler exceeds the Designated Hauler's allocation for such Contract Year.

Contractor may utilize its normal billing and credit practices for billing of and collection of payment from Designated Haulers for waste delivered in excess of the annual Allocation Quantity. Contractor shall submit to City a copy of each invoice sent to each Designated Hauler for excess waste, or if Contractor requires payment at the time of delivery, a statement of charges for each Designated Hauler.

5.6.2 Monthly Invoice and Report

On or before the tenth day of each month, Contractor shall submit to City an invoice for the preceding month. Said invoice shall state the Unit Price then in effect, the tonnage of Municipal Solid Waste delivered during the month, the tonnage of City Waste delivered during the month, the Disposal Surcharges applicable to the City Waste, the amount of the Disposal Surcharges adjustment for the month, the Regulatory Costs payment due for the month, and the total amount due for the invoice month calculated in accordance with the provisions of Section 5.1. Where different Unit Prices apply to different classes or types of Municipal Solid Waste or where different Disposal Surcharges apply to different classes or types of City Waste, Contractor shall state the tonnages and costs separately as provided in Section 5.1.

At the time Contractor submits the monthly invoice, Contractor shall also submit to City a report for the preceding month. Said report shall be on a form supplied by City and shall state for each Designated Hauler the quantity of Municipal Solid Waste as reported by such Hauler delivered during the month, the quantity delivered year-to-date, the quantity attributable to the Allocation Quantity for the month and for the year-to-date, and the total quantity of waste delivered by all Designated Haulers in each of the above-described categories. A sample form is attached hereto as Exhibit B.

In the event City institutes a voucher system whereby City issues vouchers or coupons to Designated Haulers for delivery of Allocation Quantities, Contractor shall attach to the monthly report either copies of such vouchers received by Contractor during the month or a list of the voucher numbers printed on such vouchers and the name of the Designated Hauler submitting the voucher.

5.6.3 Withholding for Nonperformance

City may withhold not more than ten percent (10%) of any monthly payment for Contractor's nonperformance of any provision of this Agreement; provided, however, that no portion of Contractor's monthly payment shall be withheld unless and until Contractor has been given written notice of such nonperformance and has failed to cure such nonperformance within thirty (30) days of said notice. Any amount withheld shall be remitted to Contractor upon Contractor's cure of the nonperformance to the satisfaction of City.

A dispute over withholding of payment shall be submitted to arbitration pursuant to Section 8.12.1 of this Agreement at the request of either party.

Should City withhold payment solely for failure to maintain a performance bond or the guaranty provided for in Section 7.2, the only issue that may be disputed by Contractor and submitted to arbitration is the factual question of Contractor's failure to maintain the bond or guaranty. Should City prevail, the withheld payment shall not be remitted for any period where the Contractor failed to maintain the required bond or guaranty.

5.6.4 Time of City's Payment

City shall review the monthly invoice and the monthly report received from Contractor. City shall have ten (10) working days from receipt of the report or from the receipt of requested information to request additional information regarding the report. Such request shall be in writing and shall specify the information requested. Contractor shall have ten (10) working days from the date of the request to supply to City the requested additional information. Except as otherwise provided in this Agreement, City shall remit payment to Contractor within thirty (30) days after the first

Friday following receipt of the requested information, or, if no additional information is requested, within thirty (30) days after the first Friday following receipt of the invoice and report.

Beginning with the payment for services provided in July 2009, if Contractor so requests, City will remit payment to Contractor, within the thirty (30) days described above, by wire transfer to such financial institution as is designated in writing by Contractor; provided, however, that City may deduct from the monthly payment otherwise due to Contractor (a) any fee payable by City for the wire transfer and (b) interest for thirty (30) days calculated at the earned interest yield rate for City's pooled portfolio (excluding the retirement portfolios) as of the most recent month for which such rate is available on the date Contractor's invoice is paid. Wire transfer payments shall continue unless either Contractor or City provides written notice to the other not less than sixty (60) days prior to the termination or suspension of wire transfer payments.

5.6.5 Guarantee of Payment

City shall guarantee payment to Contractor of any fees due for the disposal of Municipal Solid Waste only to the extent that such amounts do not exceed the amount that would be due if the entire Allocation Quantity for a Contract Year were disposed of at the Disposal Facility. City shall not guarantee any payments due to Contractor for waste delivered in excess of the Allocation Quantity for any given Contract Year.

5.7 Full Payment for Residential Waste Stream

Contractor hereby agrees to accept payments from City as described above as full compensation for services rendered under this Agreement.

5.8 Payment Method for Commercial Waste Stream

5.8.1 Payment for Disposal of Commercial Waste Stream

City shall require, as a condition of the franchise agreement, that any exclusive franchisee required by City pursuant to Article 4B to deliver the Commercial Waste Stream to the Disposal Facility must first establish with Contractor a mutually agreeable payment method to compensate Contractor for the cost of disposal. City shall incorporate the payment method as a condition of the franchise agreement.

5.8.2 Guarantee of Payment

City shall require, as a condition of the franchise agreement, that any exclusive franchisee required by City pursuant to Article 4B to deliver the Commercial Waste Stream to the Disposal Facility must first guarantee payment to Contractor of any fees due for the disposal of Commercial Waste Stream only to the extent that such amounts do not exceed the amount that would be due if the entire Allocation Quantity for a Contract Year were disposed of at the Disposal Facility.

ARTICLE 6. INTEREST.

6.1 Payment of Interest

Except as provided in Section 6.3, in the event City or Contractor is required by the terms of this Agreement to remit payment to the other, but fails to remit such payment on the date specified in this Agreement or within the time period specified in this Agreement, whichever is applicable, the outstanding balance shall accrue interest at the rate specified in Section 6.2 from the due date to the date payment is made. In the event City has made an overpayment to Contractor, interest payable by Contractor on the overpaid amount shall accrue from the date the overpayment is made to the date Contractor reimburses City for

the overpaid amount. In the case where a Base Rate adjustment, Disposal Surcharge or Regulatory Cost adjustment is in dispute, interest shall accrue from the date the disputed amount would have been paid to Contractor or the date Contractor received any overpayment, whichever is applicable.

6.2 Rate of Interest

Interest on any outstanding balance shall be calculated at the earned interest yield rate for City's pooled portfolio (excluding the retirement portfolios) as of the most recent month for which such rate is available on the date the payment was due.

6.3 Payments Excluded

No interest shall accrue on any amounts withheld by City pursuant to Section 5.6.3.

ARTICLE 7. ASSURANCE OF PERFORMANCE.

7.1 Force Majeure

7.1.1 Events Resulting in Force Majeure

The obligations of City and Contractor are subject to riots, wars, civil disturbances, insurrections, acts of terrorism at the Disposal Facility, epidemics, landslides, hurricanes, earthquakes, lightning, floods, washouts, explosions, fires, acts of God, government orders and regulations, and other similar catastrophic events which are beyond the reasonable control of City or Contractor, as the case may be. It is specifically understood that "other similar catastrophic events" does not include, among other things, strikes, lockouts, other labor disturbances, or breakage or accidents to machinery, equipment or plants.

7.1.2 Suspension of Obligations

In the event either party is rendered unable, wholly or in part, by the occurrence of any event itemized in Section 7.1.1 to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such occurrence and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Any time that such a party intends to rely upon the occurrence of an event itemized in Section 7.1.1 to suspend obligations as provided in this Section 7, such party shall notify the other party as soon as reasonably possible, setting forth the particulars of the situation. Notice shall again be given when the effect of the occurrence of such event has ceased.

7.1.3 Alternative Disposal Arrangements

Notwithstanding the provisions of Section 7.1.2, in the event that Contractor fails or is unable to accept or dispose of any waste which it is obligated to accept or dispose of under the terms of this Agreement because of any event itemized in Section 7.1.1 whose occurrence materially and adversely affects Contractor's ability to accept or dispose of such waste, Contractor will use its reasonable business efforts to make available to City alternative disposal arrangements at another solid waste disposal site, at the prevailing solid waste disposal fee then in effect for the majority of waste disposed of at such site, for the period during which such event continues. Failure of Contractor to secure alternative disposal arrangements as provided in this Section shall not be deemed a breach of this Agreement, provided that Contractor has exercised good faith efforts to make such alternative arrangements.

7.2 Performance Bond

In the event that Contractor is unable to provide City with adequate financial assurance of performance through a corporate guaranty under Section 7.2.1, Contractor agrees to make, execute and deliver to City, 30 days prior to the event, a good and sufficient surety bond in a form approved by City to secure the faithful performance of the terms and conditions herein.

Such bond shall be in the penal amount of three million dollars (\$3,000,000.00). Such bond shall be signed by the President or General Officer of Contractor, together with signature of corporate secretary and corporate seal. The surety shall be a surety company duly authorized to do business in the State of California and acceptable to City. Contractor guarantees that it will provide to the City a bond issued by a mutually acceptable surety company meeting the requirements set forth above, and such bond shall be for a minimum period of three (3) years. Upon expiration of each bond, Contractor shall secure a replacement bond for a minimum period of three (3) years to guarantee performance during any remaining term of the Agreement. The City agrees that the Contractor's failure to replace the-bond shall not result in City having any right to make a claim on the expiring bond.

7.2.1 Corporate Guaranty

Prior to execution of this Agreement, Contractor shall provide City a corporate guaranty from Republic Services, Inc. and all intermediate parent companies to irrevocably and unconditionally guarantee to City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of this Agreement which Contractor is required to perform, satisfy or observe. Attached as Exhibit x is a copy of the corporate guaranty.

7.3 Insurance Requirements

Contractor shall obtain and shall maintain throughout the term of this Agreement at least the minimum insurance policies for at least the minimum

coverages as set forth in Exhibit D, entitled "INSURANCE", which is attached to and incorporated in this Agreement. The insurance requirements set forth in Exhibit D shall be reviewed for sufficiency by City at five year intervals and such requirements may be amended or modified by City as deemed necessary or prudent by City. Any dispute regarding the amendment or modification of such insurance requirements shall be submitted to arbitration pursuant to Section 8.12.1 upon the request of either party. Contractor shall submit proof of coverage annually in the form of Certificates of Insurance, with copies of all required endorsements attached thereto, to:

City of San Jose – Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor Wing
San Jose, CA 95113-1905

or to such other address as the Risk Manager may designate in writing.

7.4 Termination

This Agreement may be declared suspended or may be terminated by the City Council for any good and sufficient cause. The right to terminate or suspend shall apply separately to each of the specified services (City Waste processing; Biosolids reuse; and Municipal Solid Waste and Grease, Grit and Screenings disposal). For the purposes of this Section, "good and sufficient cause" shall exist whenever the City Council determines that Municipal Solid Waste can no longer be disposed of at the Disposal Facility in accordance with the terms and conditions of this Agreement and that the health, welfare and safety of the public is threatened by the continued delivery of Municipal Solid Waste to the Disposal Facility; that the health, welfare and safety of the public is threatened by the continued delivery of Biosolids to the Disposal Facility; that Grease, Grit and Screenings can no longer be disposed of at the Disposal Facility in accordance with the terms and conditions of this Agreement and that the health, welfare and safety of the public is threatened by the continued delivery of Grease, Grit and

Screenings to the Disposal Facility. The following, by way of example, but not of limitation, may be considered grounds for suspension or termination:

- A. Failure of Contractor to provide and maintain sufficient labor and equipment to properly execute the working operations.
- B. Evidence that Contractor has abandoned the work.
- C. Evidence that Contractor has become insolvent or bankrupt and is therefore financially unable to carry on the work satisfactorily.
- D. Evidence that the Guarantor(s) are financially unable to guarantee performance of this Agreement.
- E. Evidence that Contractor has made an unauthorized assignment of this Agreement.
- F. Failure to maintain permits, licenses or approvals necessary for the operation of the Disposal Facility, for reuse of Biosolids, or for the disposal of Grease, Grit and Screenings as contemplated by this Agreement.

City shall not suspend or terminate this Agreement unless and until Contractor has been given notice of the condition which would otherwise cause suspension or termination and Contractor has failed to cure such condition within a reasonable time after receipt of said notice; provided that no opportunity to cure shall be required if the City Council determines the health, welfare, or safety of the public is endangered by the continued performance of the services to be suspended or terminated.

A copy of the suspension order or action of the City Council shall be served on Contractor and on Contractor's Surety or Guarantor(s). When work is suspended for any cause or causes during the term of this Agreement, Contractor shall discontinue the work or such part thereof as City shall designate, whereupon the Surety or Guarantor(s) may, at its option, assume the Agreement or that portion thereof which City has ordered Contractor to discontinue, and may perform the same or may sublet the work or that portion of the work taken over to a contractor approved in writing by City's Solid Waste Program Manager or

Deputy Director of Water Pollution Control; provided however, that the Surety or Guarantor(s) shall exercise its option and begin performance of the work, if at all, within one (1) week after the written notice to discontinue the work has been served upon Contractor and upon the Surety, Guarantor(s), or authorized agent of the Surety or Guarantor(s). The Surety or Guarantor(s), in such event shall assume Contractor's place in all respects and shall be bound by all the terms and conditions of this Agreement. The Surety or Guarantor(s) shall be paid by City for all work performed by it in accordance with the terms of this Agreement.

In case the Surety or Guarantor(s) does not, within the above specified time, assume Contractor's responsibilities under this Agreement, or that portion thereof which City has ordered Contractor to discontinue, then City shall have the power and right to perform and complete, by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary, and Contractor agrees that City shall have the right to procure equipment, labor and materials necessary for the completion of the work. City shall not be required to obtain the lowest bid for the work of completing the services provided in this Agreement, but the expense to City for same shall be the actual cost to City of such work, plus any additional costs which City may incur in payment to its Designated Hauler(s) should the alternate disposal site be located at greater distance from the point of collection of Municipal Solid Waste than the site of Contractor.

In case such expenses shall exceed the amount which would have been payable under this Agreement if the same had been fully performed by Contractor, then Contractor and its Surety or Guarantor(s) shall pay the amount of such excess to City on notice from City of the excess due. When any particular part of the work is carried out by City by contract or otherwise under the provisions of this section, Contractor shall continue the remainder of the word in conformity with the terms of this Agreement.

In all instances, Contractor and its Surety or Guarantor(s) shall be liable for all costs incurred by City during the period after notice to discontinue the work has been served upon Contractor and the Surety or Guarantor(s).

In computing costs which City incurs under this section, additional costs of haulage of waste to a more distant site for waste disposal shall be included, as well as the actual fees charged for disposal. Such additional haulage costs shall be negotiated between City and its Designated Hauler(s), and shall be passed on to Surety or Guarantor(s) and Contractor without markup.

ARTICLE 8. GENERAL PROVISIONS.

8.1 Inspection of Operations

The City Representative shall have the right to observe and review Contractor's operations and enter Contractor's premises at the Disposal Facility for the purpose of such observation and review during normal operating hours, subject to reasonable notice. This provision shall not be construed as giving to City any right to exercise control over the business or operations of Contractor or to direct in any respect the manner in which the business and operations shall be conducted.

8.2 Labor Force

8.2.1 Employment

Contractor shall employ only such superintendents, mechanics, and other workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them. All workers shall have sufficient skill, ability and experience to properly perform the work assigned to them and to operate any equipment necessary for them to carry out their assigned duties properly.

8.2.2 Safety Provisions

Contractor shall operate the Disposal Facility in compliance with all applicable federal, state and local laws and regulations pertaining to safety.

8.2.3 Prevailing Wage

During the term of this Agreement, Contractor shall pay not less than the prevailing wage rates for all workers performing work contemplated by this Agreement.

California Labor Code, and/or Resolutions or Ordinances of the City of San Jose require the payment of not less than the prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing wages established by the California Department of Industrial Relations shall be the general prevailing wage determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The general prevailing wage rates may be adjusted throughout the term of this Agreement.

Prevailing wages established by the City shall mean the wages paid under a collective bargaining agreement between Contractor and a recognized union representing workers who perform services pursuant to this Agreement; or, if there is no collective bargaining agreement, not less than the prevailing rate of per diem wages for the employee craft classification as determined by the City of San Jose's Office of Equality Assurance.

The prevailing wage established by the City, if there is no collective bargaining agreement, will be subject to annual adjustment on the first day of each July during the term of this Agreement. Adjustments will be based

on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, for Urban Consumers [CPI-U] for San Francisco-Oakland-San Jose.

The craft classification and wages for these workers as of October 2009 are set forth in Exhibit F. Contractor shall keep or cause each subcontractor to keep accurate payroll records showing the name, address, social security number, work classification, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each employee performing work contemplated by this Agreement. Contractor shall cause to be provided or made available for inspection, as may be requested by City, a certified copy of each payroll records. Contractor acknowledges that the City may enforce any breach of the Prevailing Wage requirement as provided for in Exhibit E.

8.3 Discrimination Prohibited

In the performance of this Agreement, Contractor will comply with the provisions of the California Fair Employment and Housing Act, California Government Code Section 12900 *et seq.*, or its successor, and any regulations promulgated thereunder, prohibiting employment discrimination.

8.4 Indemnification

8.4.1 Indemnification and Hold Harmless

Contractor agrees to indemnify and hold harmless City, its officers and employees, from and against any and all loss, liability, penalties, claims, demands, actions or suits, of whatsoever character or kind, arising or resulting from, or in any way connected with: (1) the performance of this Agreement by Contractor, its agents, employees or subcontractors; (2) any of the operations of Contractor, its agents, employees or subcontractors, at the Disposal Facility; (3) any of the operations of The Recyclery in

connection with acceptance of Municipal Solid Waste or City Waste; or (4) the failure of Contractor, its agents, employees or subcontractors to comply in all respects with the provisions and requirements of all applicable permits, licenses, laws and regulations.

8.4.2 Defense

Contractor shall, upon demand of City, at Contractor's sole cost and expense, defend and provide attorneys to defend City, its officers and employees, against any and all claims, actions or suits brought against City, its officers or employees, arising or resulting from or in any way connected with the operations of Contractor, its agents, employees or subcontractors, at the Disposal Facility, or arising or resulting from or in any way connected with the failure of Contractor, its agents, employees or subcontractors, to comply with this Agreement or with any applicable permits, licenses, laws or regulations.

8.4.3 Exclusions

Contractor's obligation under Section 8.4.1 to indemnify and hold harmless City, its officers and employees, shall not extend to any loss, liability, penalty, claim, demand, action or suit arising or resulting from acts or omissions constituting sole active negligence or willful misconduct on the part of City, its officers, agents, or employees.

8.5 Independent Contractor

It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same; that Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees,

contractors and subcontractors, if any; and that nothing herein shall be construed as creating a partnership or joint venture between City and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of City, nor shall any such person be entitled to any benefits available or granted to employees of City.

8.6 Venue

The parties hereby agree that should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, venue for said action shall be in Santa Clara County, California.

8.7 Savings Clause

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

8.8 Section Headings

The section and paragraph headings contained herein and the Table of Contents attached hereto are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.9 Amendment

This Agreement may be amended only by written agreement duly authorized and executed by the parties hereto.

8.10 Assignability

This Agreement is assignable with the written consent of both parties and shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. Such consent shall not be withheld

unreasonably, nor shall such consent be required in the event of (i) an assignment by operation of law, (ii) an assignment to an affiliate or subsidiary of Contractor, or (iii) an assignment by City to the State of California or to any agency or subdivision of the State or of City if such entity undertakes responsibility for the disposal of Municipal Solid Waste. Consent would be required and may be withheld if any assignment results in the Guarantor(s) listed in Exhibit G not having adequate financial resources to guarantee performance of this Agreement.

8.11 Notices

Notices by either party to the other party shall be deemed given when personally served, by facsimile, or when deposited in the United States Mail, return receipt requested, postage prepaid, addressed to the other party as specified in this section. In the case of a notice or communication by facsimile, the facsimile shall be sent to the number specified below and a written copy shall be mailed or personally delivered within three (3) calendar days of the transmittal of the facsimile. Notice that a party intends to rely upon the occurrence of an event itemized in Section 7.1.1 hereof to suspend obligations under this Agreement may be given verbally; provided that written notice is provided immediately following such verbal notification.

To City:

City Manager
City of San José
City Hall
200 E Santa Clara Street,
17th Floor
San José, CA 95113
Facsimile:(408) 920-7007

Director of Environmental Services
City of San José
City Hall
200 E Santa Clara Street
10th Floor
San José, CA 95113
Facsimile: (408) 292-6212

To Contractor:

Area President
Allied Waste Services

General Manager
International Disposal Corporation

441 North Buchanan Circle
Pacheco, CA 94553
Facsimile: (925) 685-4145

1601 Dixon Landing Road
Milpitas, CA 95035
Facsimile: (408) 262-2871

Either party may designate a different mailing address or a different facsimile number by providing written notice to the other party as provided in this section.

8.12 Arbitration

8.12.1 Disputes Expressly Subject to Arbitration

Upon the request of either party, any and all disputes arising under this Agreement for which this Agreement provides for arbitration as the dispute resolution process shall be submitted to arbitration pursuant to this Section.

The dispute shall be heard by a three-member panel of arbitrators, one (1) member selected by City, one (1) member selected by Contractor and the neutral chairperson selected by the first two panel members. Within fifteen (15) working days of the date that either party has notified the other party that the dispute has been submitted to arbitration, each party shall select one (1) member of the arbitration panel. If either party fails or refuses to select a member of the panel, the other party shall be entitled to an order from a court of competent jurisdiction appointing such panel member, and shall be entitled to reasonable attorney's fees incurred for such action.

In the event the panel members selected by City and Contractor are unable to agree upon a third arbitrator within thirty (30) days after the selection of the second arbitrator, the parties shall request from the American Arbitration Association a list of five (5) arbitrators residing in California. The parties shall alternately strike names from the list until only

one name remains. The arbitrator whose name remains shall be the chairperson of the arbitration panel.

The arbitration hearing shall be held in accordance with the Commercial Arbitration rules of the American Arbitration Association.

The award of the arbitration panel, or of a majority of them, shall be in writing with reasons included, rendered within thirty (30) days of the arbitration hearing, and shall be final and binding on the parties; provided that nothing herein shall give the panel any authority to amend, modify, alter or delete any term, condition or provision of this Agreement.

Cost of arbitration incurred pursuant to this Section shall be borne equally by the parties.

8.12.2 Disputes Not Expressly Subject to Arbitration

Any and all disputes arising under this Agreement for which this Agreement does not expressly provide for arbitration as the dispute resolution process shall be subject to the following:

i. **Notice of Dispute**

Either party may initiate Dispute Resolution by providing written notice of its dispute (“Notice of Dispute”) to the other party. The Notice of Dispute shall state in detail all grounds and evidence for the noticing party’s dispute.

ii. **Response to Notice of Dispute**

If the party receiving a Notice of Dispute requests a meeting, within thirty (30) days of receipt of the Notice, with the party that initiated the Notice, the parties shall meet as soon as reasonably practicable after a request to meet is given. Each party shall designate appropriate personnel from within their respective organizations and work in good faith to resolve the dispute.

iii. **Executive Meetings**

If there is no resolution of the dispute after two (2) staff level meetings, the chief executive officer and counsel for each party shall have one meeting prior to the initiation of litigation by either party.

iv. Immediate Threat to Public Health, Safety, and Welfare

Nothing contained in this Section 8.12.2 shall require either party to refrain from or delay initiating litigation in the event of an immediate threat to public, health, safety, and welfare.

8.13 Waiver

A waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

8.14 Law to Govern

It is understood and agreed by the parties that the law of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

8.15 Collection of Fees

Contractor shall collect any governmental fees lawfully established or imposed by City on waste deposited at the Disposal Facility and shall remit such fees to City on a monthly basis. In the event Contractor, in good faith, contests the application of such fees to the Disposal Facility, Contractor shall not refuse to collect such fees during the good faith contest.

8.16 Attorney's Fees

In the event legal action, including arbitration, is instituted to enforce this Agreement, each party shall bear its own attorneys' fees and actual costs incurred in connection with such action.

8.17 Entirety

The parties agree that this Agreement represents the full and entire agreement between the parties hereto with respect to matters covered herein.

WITNESS THE EXECUTION HEREOF on the date written below each party's signature.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

By: _____

By: _____

ROSA TSONGTAATARII
Deputy City Attorney

DEBRA FIGONE
City Manager

Date: _____

Date: _____

“CONTRACTOR”

INTERNATIONAL DISPOSAL CORPORATION
OF CALIFORNIA, INC., a California corporation

By: _____

MICHAEL A. CAPRIO
Area President

Date: _____

EXHIBIT A
2011 BASE RATE ADJUSTMENT

The Base Rate adjustment for July 2011 shall be calculated as follows:

ADJUSTMENT COMPONENTS		
	CPI-W ¹	FUEL ²
1 Average of 2009 Index Value	144.700	51.7
2 Average of 2010 Index Value	147.400	54.3
3 Change in Average Index Value	2.700	2.6
4 Net Percentage Change	0.0186592950	0.0502901353
5 Component Weight	85%	15%
6 Component Adjustment	0.0158604007	0.0075435202

¹ Consumer Price Index Urban Wage & Clerical SF-O-SJ

² PPI - #2 Diesel Fuel (Code 0573-03)

(both estimated for purposes of providing the sample calculation only)

TOTALS

7	Composite Percentage Change	0.0234039209
8	Contractual Adjustment to Sum of Components	0.80
9	Adjustment Factor	0.0187231367
10	Approved Base Rate for July 1, 2010	\$ 21.89
11	Base Rate Adjustment (not to exceed 6% of Line 10)	\$ 0.40
12	Adjusted Base Rate Effective for FY 2011-2012	\$ 22.29

EXHIBIT B
SAMPLE MONTHLY REPORT

INTERNATIONAL DISPOSAL CORPORATION

INVOICE

City of San Jose
 Environmental Services Department
 200 E SANTA CALRA ST FL 10
 SAN JOSE CA 95113-1905

Invoice date: mm/dd/yy
 Invoice No. @@@@
 Invoice amount: \$XXX,XXX.XX

description	rate	tons	amount
charges for the period of <u>month year</u>			
I. Residential Municipal Solid Waste			
Landfilled at the regular Unit Price	\$XX.XX	XX,XXX.XX	\$XXX,XXX.XX
Baled Residue at Unit Price plus \$4.00	\$XX.XX	X,XXX.XX	XX,XXX.XX
Landfilled at alternate Unit Price	\$XX.XX	X,XXX.XX	XX,XXX.XX
Diversion Type 1	\$XX.XX	X,XXX.XX	XX,XXX.XX
Diversion Type 2	\$XX.XX	X,XXX.XX	XX,XXX.XX
Diversion Type n	\$XX.XX	X,XXX.XX	XX,XXX.XX
subtotal:		XX,XXX.XX	\$XXX,XXX.XX
II. City Waste disposed			
Landfilled at the regular price	\$XX.XX	X,XXX.XX	XX,XXX.XX
Landfilled at alternate price	\$XX.XX	X,XXX.XX	XX,XXX.XX
subtotal:		XX,XXX.XX	\$XXX,XXX.XX
III. City Waste diverted			
Processed City Waste (Sec. 2.3.1)	\$XX.XX	X,XXX.XX	XX,XXX.XX
City Waste Cover or Inerts (Sec. 2.3.2)	\$X.XX	X,XXX.XX	X,XXX.XX
Diversion Type 1 (Sec. 2.3.3)	\$XX.XX	X,XXX.XX	XX,XXX.XX
Diversion Type 2	\$XX.XX	X,XXX.XX	XX,XXX.XX
Diversion Type n	\$XX.XX	X,XXX.XX	XX,XXX.XX
subtotal:		XX,XXX.XX	\$XXX,XXX.XX
IV. Disposal Surcharge Adjustment (attach details of calculations)			\$XX,XXX.XX
V. Regulatory Costs – operating			\$XX,XXX.XX
VI. Regulatory Costs – capital			\$XX,XXX.XX

Total due for current month

\$XXX,XXX.XX

INTERNATIONAL DISPOSAL CORPORATION

CITY OF SAN JOSE – MONTHLY REPORT (TONS) FOR month year

Hauler / program	disposed		diverted				total	total Y-T-D
	regular	baled	processed	cover	inerts	Type n		
Residential MSW								
Hauler 1								
Hauler 2								
Hauler n								
MFD Processing Residue								
MFD Composting Residue								
Residue n								
Total Residential MSW								
Commercial MSW								
Hauler 1								
Hauler 2								
Hauler n								
Processing Residue								
Composting Residue								
Residue n								
Total Commercial MSW								
Total MSW								
City Wastes								
Hauler 1								
Hauler 2								
Hauler n								
City Program residue 1								
City Program residue 2								
City Program residue n								
City Corporation Yards								
City Program 2								
City Program n								
Total City Wastes								
Total Wastes Delivered								

copies attached: Water Pollution Control Plant invoice and report _____
Commercial Franchisee 1 invoice and report _____
Commercial Franchisee 2 invoice and report _____
Commercial Franchisee n invoice and report _____

EXHIBIT D

INSURANCE

Contractor, at Contractor's sole cost and expense and for the full term of this Agreement and any renewal or amendment thereof, shall obtain and maintain at least all of the following minimum insurance requirements. Such insurance requirements shall be obtained and proof of coverage thereof shall be provided to City prior to commencement of work or receipt of payment for work performed pursuant to this Agreement.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and
2. The coverage provided by Insurance Services Office form number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or 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 and contractors.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors 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 coverage provided to the City, its officials, employees, agents, or contractors.
 - 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.

- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.
- 2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state waiver of subrogation against the Agency, the City, their officials, employees, agents and contractors.

- 3. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Duration

- 1. Commercial General Liability, Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of work under this AGREEMENT.
- 2. If any of such coverages are written on a claims-made basis, the following requirements apply:
 - a. The policy retroactive date must precede the date work commenced under this AGREEMENT.
 - b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, CONTRACTOR must purchase an extended reporting period equal to or greater than five (5) years after completion of work under this AGREEMENT.

F. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

G. Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and

endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Human Resources
Risk Management
200 East Santa Clara St., 2nd Floor Wing
San Jose, CA 95113-1905

H. Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT E

REMEDIES FOR CONTRACTOR'S BREACH OF PREVAILING WAGE PROVISION

A. General. Contractor acknowledges that it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers a prevailing wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

1. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
2. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
3. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
4. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

B. Withholding of Payment. Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Provision and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Provision.

In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Provision, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Contract. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these provisions.

Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Contract or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

C. Liquidated Damages for Breach of Wage Provision.

Contractor agrees its breach of the Wage Provision would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid.

The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Provision would be impracticable and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

D. Audit Rights. All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to the City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

END OF EXHIBIT E

EXHIBIT F



Department of Public Works

**CRAFT CLASSIFICATIONS FOR
SECOND AMENDMENT TO AGREEMENT BETWEEN THE CITY OF SAN
JOSE AND INTERNATIONAL DISPOSAL CORPORATION OF CALIFORNIA,
INC. FOR MUNICIPAL SOLID WASTE DISPOSAL AND WATER POLLUTION
CONTROL PLANT WASTE DISPOSAL AND REUSE**

The following craft classifications are applicable to this contract. The prevailing wage rates for these classifications are contained in the General Wage Determination (Wage Index 2009-2 and Pre-Determined Increases) issued by the Director of the California Department of Industrial Relations (DIR). For any questions regarding craft classifications or prevailing wage rates, contact the Office of Equality Assurance at 408-535-8430.

TYPE OF WORK	DIR CRAFT CLASSIFICATION	WAGE INDEX PAGE NUMBERS
Equipment Operator	Operating Engineer	39 -40
Trucking	Teamster	55-56
Cleaning & Maintenance (Scale & Weigh House)	Laborer Group 3	49-50

Note: For the crafts of Operating Engineer and Teamsters, specific wage rates are determined by conforming the scope of work, vehicle or type of equipment used to the appropriate craft classification group (e.g. Skidsteer Loader, Bobcat 743 series or smaller and similar (without attachments) is Operating Engineer Group 8a).

10/8/09

**SECOND AMENDMENT TO
AGREEMENT BETWEEN THE CITY OF SAN JOSE
AND INTERNATIONAL DISPOSAL CORPORATION
OF CALIFORNIA, INC. FOR MUNICIPAL SOLID
WASTE DISPOSAL AND WATER POLLUTION
CONTROL PLANT WASTE DISPOSAL AND REUSE**

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