WASTE DISPOSAL, YARD WASTE AND CONSTRUCTION AND DEMOLITION DEBRIS PROCESSING AGREEMENT

BETWEEN

GUADALUPE RUBBISH DISPOSAL COMPANY, INC.

AND

THE WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

JANUARY 1, 2006 THROUGH DECEMBER 31, 2021

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This Agreement may be amended or modified only by written agreement duly authorized by CONTRACTOR and Board of Directors and executed by their authorized representatives.

WASTE DISPOSAL, YARD WASTE AND CONSTRUCTION AND DEMOLITION DEBRIS PROCESSING AGREEMENT

This Agreement ("Agreement") is made and entered into as of December 14, 2005, by and between The West Valley Solid Waste Management Authority, a joint powers authority organized under the laws of the State of California (hereinafter "AUTHORITY") and GUADALUPE RUBBISH DISPOSAL COMPANY, INC., a California corporation (hereinafter "CONTRACTOR"). AUTHORITY and CONTRACTOR shall be referred to collectively as the "Parties." Other defined terms used herein are defined in the **Section I**, Definitions section of this Agreement or upon the first appearance of said term.

Recitals

WHEREAS, AUTHORITY desires to make adequate provision for the final disposition of Solid Waste and the diversion from landfill Disposal of Yard Waste and Construction and Demolition Debris collected within its incorporated limits to protect the public health, safety and well-being;

WHEREAS, AUTHORITY was established by the cities of Campbell, Los Gatos, Monte Sereno, and Saratoga pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article1, Section 6500 et seq. of the California Government Code) to arrange for and manage the waste reduction, collection, reuse, Disposal, recycling and diversion from landfill Disposal of Solid Waste originating in the participating municipalities

WHEREAS, AUTHORITY is acting under clearly articulated and affirmatively expressed policies of the State of California empowering cities to regulate the final disposition of Solid Wastes under powers expressly granted to cities in Article XI, Section 7, of the California Constitution, and pursuant to Sections 40057, 40059, and 49200 of the California Public Resources Code; and

WHEREAS, CONTRACTOR owns and operates a waste Disposal Facility known as the Guadalupe Landfill located in the City of San Jose, California;

WHEREAS, the Board of Directors of the AUTHORITY has found and determined that the public health, safety and well-being of the AUTHORITY will be preserved and protected by the execution of this Agreement, by ensuring the availability of a suitable site for the Disposal of Solid Waste on a long-term basis.

WHEREAS, AUTHORITY AND CONTRACTOR have negotiated the following terms and conditions;

Agreement

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises, covenants and conditions herein, the Parties agree as follows:

I. DEFINITIONS

A. Adjustment Date.

"Adjustment Date" shall have the meaning set forth in **Section VI.C.1**.

B. Agreement.

"Agreement" means this agreement between the West Valley Solid Waste Management Authority and the Guadalupe Rubbish Disposal Company, Inc.

C. Analysis Period.

"Analysis Period" shall have the meaning set forth in **Section VI.C.2**.

D. Applicable Laws.

"Applicable Laws" means all existing laws and governmental regulations applicable to the Guadalupe Landfill as of the Effective Date, including existing provisions, if any, which become effective on or which require compliance by a date after the Effective Date, and also including existing written interpretive rulings or guidance by public agencies.

E. Ash.

"Ash" means the material remaining after incineration of Solid Waste, including bottom ash and fly ash. "Ash" does not include ashes from residential burning, such as fireplaces, barbecues, etc.

F. Assignment.

"Assignment" shall include, but not be limited to: (i) a sale, exchange, or other transfer of substantially all of CONTRACTOR'S assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange, or other transfer of outstanding common stock of CONTRACTOR to a third party provided said sale, exchange, or transfer may result in a change of control of CONTRACTOR, excluding stock transfers among the existing shareholders; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization,

stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which results in a change of ownership or control of CONTRACTOR; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of CONTRACTOR'S property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of CONTRACTOR.

G. Authority.

"AUTHORITY" means the West Valley Solid Waste Management Authority and the geographic area of the Cities.

H. Authority Franchise Area.

"AUTHORITY Franchise Area" means and includes all the territory lying within the boundaries of the Cities as it is presently constituted and as may be added later by annexation.

I. Authority Representative.

"AUTHORITY Representative" means the Executive Director of the Authority or his designee.

J. Beneficial Use.

"Beneficial Use" means the processing of Yard Waste for top dressing, weed suppression, irrigation and erosion control, soil amendment, mulch, fuel, etc. (in a manner that is not classified as Disposal by the California Integrated Waste Management Board and is not otherwise subject to the City of San Jose's Disposal Facility Tax or implementing Ordinance No. 27512) but does not include composting or landfill disposal.

K. Biomedical Waste.

"Biomedical Waste" means waste which may be reasonably considered infectious, pathological or biohazardous, originating from hospitals, public or private medical clinics, dental offices, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes equipment, instruments, utensils, fomites, laboratory waste (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto) sharps (hypodermic

needles, syringes, etc.), dialysis unit waste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, including all wastes which constitute "Infectious Waste" as defined Health and Safety Code Section 25117.5, and "Medical Waste" as defined in California Health and Safety Code Section 25023.2, or the regulations promulgated thereunder, as amended from time to time.

L. Board of Directors.

"Board of Directors" means the Board of Directors of the Authority.

M. Change in Legal Requirements.

"Change in Legal Requirements" means changes to Legal Requirements, or with new laws and new governmental regulations (including new written interpretive guidelines by public agencies interpreting existing Applicable Laws) enacted or promulgated after the Effective Date.

N. Cities.

"Cities" means the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos collectively and includes all of the territory lying within their boundaries as presently existing or as such boundaries may be modified during the Term of this Agreement.

O. City.

"City" means the City of Campbell, Monte Sereno, Saratoga, or the Town of Los Gatos, which is organized under the laws of the State of California and includes all of the territory lying within its boundaries as presently existing or as such boundaries may be modified during the Term of this Agreement.

P. Composting.

"Composting" means a controlled biological decomposition of organic materials yielding a safe and nuisance free compost product which shall be used in a manner that qualifies for diversion under the rules and regulations of the California Integrated Waste Management Board.

Q. Contract Rate.

"Contract Gate Rate" shall have the meaning set forth in **Section VI.B** for Solid Waste, **Section VI.G** for Yard Waste, and **Section VI.L** for Construction and Demolition Debris.

R. Contractor.

"Contractor" means Guadalupe Rubbish Disposal Company, Inc., a wholly owned subsidiary of Waste Management, Inc.

S. Construction and Demolition Debris.

"Construction and Demolition Debris" means construction material resulting from construction Remodeling repair, or demolition operations as part of a total service operated by a duly-licensed demolition contractor or town/City, including rocks, soil, tree remains and other yard debris, which normally results from land clearing or land development operations for a construction project. Construction and Demolition Debris shall be source separated from Solid Waste at the site of generation and contain no more than thirty (30%) by volume of residue.

T. Construction and Demolition Debris Processing Facility.

"Construction and Demolition Debris Processing Facility" means that plant owned and operated by CONTRACTOR and located at the Guadalupe Landfill for the temporary storage, separation, recovery, conversion or processing of Construction and Demolition Debris and the transfer of the remaining residue for Disposal at the Disposal Facility.

U. Debris Box.

"Debris Box" means a roll-off container with a capacity of 6 to 50 cubic yards used to collect and transport Construction and Demolition Debris and similar materials.

V. Designated Hauler.

"Designated Hauler" means an entity operating under a franchise agreement or contract with AUTHORITY to collect and transport Solid Waste, Yard Waste and Construction and Demolition Debris generated within the AUTHORITY or by AUTHORITY.

W. Designated Yard Waste Composter.

"Designated Yard Waste Composter" means a company designated by the Authority to Compost Franchise Yard Waste.

X. Designated Yard Waste Processor.

"Designated Yard Waste Processor" means, a company designated by the Authority to process Franchise Yard Waste for Beneficial Use. As of the Effective Date, the "Designated Yard Waste Processor" is the Guadalupe Landfill, which is currently authorized to receive Yard Waste and process it for beneficial use under applicable laws and regulations of the State of

California.

Y. Disposal.

"Disposal" means the final disposition of Solid Waste as provided hereunder at the Landfill. Disposal does not include the use of Yard Waste as alternative daily cover (ADC) so long as City and State regulations consider ADC use of Yard Waste as Diversion under the Act.

Z. Disposal Facility.

"Disposal Facility" means the site known as the Guadalupe Landfill, San Jose, California, Solid Waste Facility Permit Number 43-AN-0015, located at 15999 Guadalupe Mines Road, in the City of San Jose, California, and currently authorized to receive Solid Waste for Disposal under applicable laws and regulations of the State of California. "Disposal Facility" may also refer to whichever alternate facility is designated by CONTRACTOR and approved by AUTHORITY as the Disposal Facility under this Agreement pursuant to **Section V.A.1**.

AA. Effective Date.

"Effective Date" means the commencement date of the Term of this Agreement, as set forth in **Section II** below.

BB. Franchise Construction and Demolition Debris.

"Franchise Construction and Demolition Debris" means Construction and Demolition Debris generated within the AUTHORITY Franchise Area and delivered to the Guadalupe Landfill by the AUTHORITY'S Designated Hauler.

CC. Franchise Yard Waste.

"Franchise Yard Waste" means Yard Waste generated within the AUTHORITY Franchise Area and delivered to the Guadalupe Landfill by the AUTHORITY'S Designated Hauler.

DD. Franchise Solid Waste.

"Franchise Solid Waste" shall mean all Solid Waste produced, generated, or accumulated in the AUTHORITY Franchise Area, other than: (1) Self-Hauled Solid Waste, and (2) Solid Waste collected by a person or entity and hauled directly to a transfer site or Disposal site where such collection is incidental to the principal business of such person or entity (i.e., by means of trucks, drop boxes or roll-off containers owned or operated by self-haulers such as landscapers, tree services, bulky item haulers, and construction debris self-haulers).

"Franchise Solid Waste" also means all substances or materials that are discarded or rejected as being spent, useless, worthless or in excess of the owner's needs at the time of discard or rejection including, without limitation, all putrescible and non-putrescible solid and semi-Solid Waste including garbage, Rubbish, Yard Waste, bulky wastes, industrial wastes, demolition and construction wastes, and other activities which are not otherwise restricted in Class III landfills by state or federal regulations for the Disposal site.

"Franchise Solid Waste" does not include: (1) Hazardous Substances, Hazardous Waste; (2) Biomedical Waste; (3) Ash; (4) materials which are not set out or otherwise offered for collection by waste generators; (5) Recyclable Materials which are source separated by the waste generator or segregated for recycling, including Yard Waste; or (6) Construction and Demolition Debris which are source separated.

EE. Guadalupe Landfill.

"Guadalupe Landfill" means the site known as the Guadalupe Landfill, San Jose, California, Solid Waste Facility Permit Number 43-AN-0015, located at 15999 Guadalupe Mines Road, in the City of San Jose, California, and currently authorized to receive Solid Waste for Disposal, receive and process Construction and Demolition Debris, and receive and process Yard Waste for beneficial use under applicable laws and regulations of the State of California.

FF. Hazardous Substance.

"Hazardous Substance" or "Hazardous Substances" means all substances defined as hazardous substances under Title 42 of the United States Code, Section 9601(14), Section 25316 of the California Health and Safety Code, or the regulations promulgated under such statutes, as amended from time to time.

GG. Hazardous Waste.

"Hazardous Waste" or "Hazardous Wastes" means all substances defined as hazardous waste under Title 42 of the United States Code, Section 6903(5), Section 25117 of the California Health and Safety Code, or the regulations promulgated under such statutes, as amended from time to time.

HH. Legal Requirements.

"Legal Requirements" means Applicable Laws, permits and approvals pertaining to CONTRACTOR'S performance under this Agreement,

including but not limited to environmental laws, permits and approvals as they may be enacted, issued, or amended during the Term.

II. Organic Waste.

"Organic Waste" means Yard Waste plus fruit, meat, or other food waste.

JJ. Party or Parties.

"Party" or "Parties" refers to the AUTHORITY and CONTRACTOR individually or together.

KK. Recyclable Materials.

"Recyclable Materials" means any material source separated by generator or pulled out of the Solid Waste stream by CONTRACTOR, prior to placement in the Disposal Facility, including domestic, commercial or industrial by-products of some potential value which are set aside, handled, packaged or offered for collection in a manner different from Garbage, Rubbish or other forms of Solid Waste. "Recyclable Materials" shall mean to include those items so defined in Cities' Municipal Codes, as they may be amended from time to time.

LL. Recycling.

"Recycling" means the process of collecting, sorting, cleaning, treating or reconstituting Solid Waste materials prior to placement in a landfill, and recovering them so that they may be used in the form of raw material for new, reused or reconstituted products.

MM. Rubbish.

"Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes from residential burning, floor sweepings, glass, and other Waste materials not included in the definition of garbage, Hazardous Waste, or Yard Waste, and Construction and Demolition Debris. "Rubbish" shall also include those items so defined in Cities' Municipal codes, as that definition may from time to time be amended.

NN. Self-Hauled Solid Waste.

"Self-Hauled Solid Waste" means Solid Waste hauled directly to a transfer site or a Disposal site by the person or entity generating the waste.

OO. Solid Waste.

"Solid Waste" or "Solid Wastes" means solid waste as defined in California Public Resources Code Section 40191 and regulations promulgated thereunder, as amended from time to time, with the exception of: (1) Hazardous Waste, low-level radioactive waste, Biomedical Waste, wastewater treatment byproducts such as sewage sludge, and special wastes

requiring special handling which CONTRACTOR or Disposal Facility is not permitted to accept, and (2) any materials collected by curbside residential and commercial Recycling and Yard Waste collection programs where such materials are not Disposed of but are actually Recycled. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of Hazardous Substances (as that term is defined in 42 U.S.C. Section 9601(14)) of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and Disposal of household Hazardous Waste in compliance with Sections 41500 and 41802 of the California Public Resources Code.

PP. Term.

"Term" means the term of this Agreement including, but not limited to, extensions provisions if granted in accordance with **Section II.**

QQ. Ton.

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

RR. Yard Waste.

"Yard Waste" means grass cuttings, weeds, leaves, prunings, branches, dead plants, bush, tree trimmings, dead trees (not more that six (6) inches in diameter) and four (4) feet in length, and similar materials generated at premises within AUTHORITY Franchise Area.

SS. Yard Waste Processing Facility.

"Yard Waste Processing Facility" means the site known as the Guadalupe Landfill, San Jose, California, Solid Waste Facility Permit Number 43-AN-0015, located at 15999 Guadalupe Mines Road, in the City of San Jose, California, and currently authorized to receive Solid Waste for Disposal, receive and process Construction and Demolition Debris, and receive and process Yard Waste for beneficial use under applicable laws and regulations of the State of California.

II. EFFECTIVE DATE, TERM OF AGREEMENT, EARLY TERMINATION AND OPTION TO EXTEND

A. Effective Date.

This Agreement is made as of January 1, 2006 (the "Effective Date").

B. Term.

Subject to the early termination provisions set forth in this Agreement and to the satisfaction of the conditions set forth in **Section III**, the term of this Agreement (the "Term") shall be fifteen (15) years, commencing at 12:00 a.m. on January 1, 2006, (the "Effective Date") and expiring at midnight December 31, 2021

C. Extension.

AUTHORITY and CONTRACTOR may elect to extend the terms of this Agreement on mutually agreed to terms and conditions.

III. CONDITIONS TO EFFECTIVENESS OF AGREEMENT

A. Conditions to Authority's Obligation to Perform.

The obligation of AUTHORITY to perform under this Agreement is subject to the satisfaction of each and every one of the conditions set forth below, each of which may be waived in whole or in part by AUTHORITY. Waivers are limited to those expressed in writing, and are in the sole and exclusive discretion of AUTHORITY.

1. Accuracy of Representations.

   The representations and warranties made by CONTRACTOR in **Section XIV** of this Agreement shall be true and correct as of the Effective Date and shall remain true and correct through the Termination Date.

2. Furnishing of Insurance.

   CONTRACTOR shall have delivered to AUTHORITY the insurance policies and endorsements required by **Section XI** and described in detail in Exhibit A.

3. Furnishing of Evidence of Closure and Post-Closure Financial Assurance.

   CONTRACTOR shall deliver to AUTHORITY evidence of financial assurance for landfill closure and post-closure responsibility required by **Section XIV.C.**

4. Financial Guaranty Agreement.

   CONTRACTOR shall have delivered to AUTHORITY the fully executed Financial Guaranty Agreement presented in Exhibit J.

5. Effectiveness of Resolution.

AUTHORITY'S resolution approving this Agreement shall have become effective pursuant to California law prior to the Effective Date.

This **Section III.A** is not intended to prevent AUTHORITY from seeking to employ other remedies in the event a representation or warranty by CONTRACTOR is later discovered not to be true and correct or to waive any rights stemming from failure by CONTRACTOR to perform any obligation under this Agreement.

B. Conditions to Contractor's Obligation to Perform.

The obligation of CONTRACTOR to perform under this Agreement is subject to the AUTHORITY'S satisfaction of each and every one of the conditions set forth below, which may be waived in whole or in part by CONTRACTOR. Waivers are limited to those expressed in writing, and are in the sole and exclusive discretion of CONTRACTOR.

1. Accuracy of Representations.

The representations and warranties made by AUTHORITY in **Section XV** of this Agreement shall be true and correct as of the Effective Date and shall remain true and correct through the Termination Date.

This **Section III.B** is not intended to prevent CONTRACTOR from seeking to employ other remedies in the event a representation or warranty by AUTHORITY is later discovered not to be true and correct or to waive any rights stemming from the failure by AUTHORITY to perform any obligation under this Agreement.

IV. OBLIGATIONS OF AUTHORITY

Subject to the terms and conditions of this Agreement, AUTHORITY shall have the following obligations:

A. Household Hazardous Waste Programs.

AUTHORITY shall ensure and so certifies that there is in effect a program for the safe collection, Recycling, treatment and/or Disposal of Hazardous Wastes generated in households, in accordance with law. AUTHORITY has adopted programs and policies designed to exclude the introduction of Hazardous Waste into the Solid Waste stream. These programs and policies are described in Exhibit B of this Agreement. AUTHORITY shall maintain and modify, revise or update these programs and policies as specified by

state and federal requirements. AUTHORITY shall maintain these programs and policies in effect and will use good faith efforts to implement them, to enforce their use by the Designated Hauler, and to encourage their use by City residents.

The Parties recognize, however, that AUTHORITY cannot assure CONTRACTOR that such a program will prevent any amount of Hazardous Waste from being delivered to the Disposal Facility. The CONTRACTOR'S disposition of unauthorized Hazardous Waste is described in **Section V.F.**

B. Obligation to Direct Solid Waste, Yard Waste, and Construction and Demolition Debris to the Guadalupe Landfill.

AUTHORITY shall deliver (or delegate to its Designated Hauler the obligation to deliver) all Franchise Solid Wastes, Franchise Yard Waste, and Franchise Construction and Demolition Debris to the Disposal Facility, except as provided for in this Agreement.

C. No Limit on Source Reduction.

AUTHORITY anticipates that it and Cities will continue to develop and participate in source-reduction, resource recovery and Recycling programs (including without limitation Yard Waste and Construction and Demolition Debris diversion programs) within the Cities, which are likely, over time, to reduce the amount of Franchise Solid Waste, Franchise Yard Waste, and Franchise Construction and Demolition Debris. Nothing in this Agreement shall restrict AUTHORITY from any such activities.

The AUTHORITY or Cities may establish ordinances for Construction and Demolition Debris (C&D) Diversion. These ordinances may include but are not limited to: 1) submission of a waste reduction and recycling plan; 2) submission of a performance security bond; 3) requiring the material to be source separated (e.g. not more than 30% residue by volume) and requiring solid waste collection service at the site; 4) C&D material to be delivered to a certified processing facility; and 5) withholding of occupancy permits until submission and acceptance of final summary report.

Should AUTHORITY or Cities implement a Construction and Demolition Debris diversion program that would reduce the delivery of Construction and Demolition Debris to Disposal Facility, the terms of this Agreement solely related to the future delivery of Construction and Demolition Debris, shall be terminated.

D. Enforcement of Franchise Agreement Against Designated Hauler.

AUTHORITY shall take all reasonable steps to enforce its franchise or license agreements with its Designated Hauler to ensure that the Designated Hauler complies with requirements imposed by AUTHORITY pursuant to this Agreement to deliver Franchise Solid Waste, Franchise Yard Waste, and Franchise Construction and Demolition Debris to CONTRACTOR.

E. Authority Assistance in Resolving Payment Disputes.

The AUTHORITY shall include in its Solid Waste, Yard Waste and Construction and Demolition Debris agreement with any third party Designated Hauler an obligation for it to enter an agreement with CONTRACTOR in substantially the form presented as Exhibit L.

CONTRACTOR shall give AUTHORITY notice of any receivable outstanding more than 30 days. AUTHORITY shall assist the CONTRACTOR and Designated Hauler with the resolution of disputes regarding such billings and payments. However, any such dispute may not constitute grounds for the CONTRACTOR to not perform its obligations under this Agreement.

V. OBLIGATIONS OF CONTRACTOR

Commencing on the Effective Date and continuing for the remainder of the Term, subject to the terms and conditions of this Agreement, CONTRACTOR shall have the following obligations:

A. Receipt of Franchise Solid Waste.

CONTRACTOR shall receive, accept, and safely and lawfully Dispose of, at the Disposal Facility, any or all Franchise Solid Waste delivered by AUTHORITY, or its Designated Hauler, to the Disposal Facility. CONTRACTOR covenants that no Franchise Solid Waste delivered by AUTHORITY or its Designated Hauler shall be landfilled anywhere except at the Guadalupe Landfill unless agreed to in writing by AUTHORITY prior to such Disposal or as provided in **Section V.A.1** below.

1. Unavailability of Disposal Facilities.

If the Guadalupe Landfill (or any alternative Disposal Facility) is unavailable for Disposal of Franchise Solid Waste, for reasons which do not constitute a Force Majeure event pursuant to **Section XXIV**, CONTRACTOR shall provide for Disposal of Franchise Solid Waste at an alternate Disposal Facility at a total cost equal to the Disposal Proprietary Rate plus the Disposal Fee Component as described below. The Disposal Proprietary Rate shall be the lesser of 1) the rate currently in effect as

described in **Section VI.B**, which would have been charged in accordance with the terms of this Agreement for Disposal at the Guadalupe Landfill; or 2) the actual corresponding rate charged at the alternative Disposal Facility plus the reasonable transportation costs incurred by CONTRACTOR. The amount of the Disposal Fee Component shall be the lesser of 1) the Disposal Fee currently in effect as described in **Section VI.B**, which would have been charged in accordance with the terms of this Agreement for Disposal at the Guadalupe Landfill; or, 2) the actual corresponding fee charged at the alternative Disposal Facility. The provisions of this Agreement shall continue in full force and effect notwithstanding such event. CONTRACTOR shall reimburse Designated Hauler for any additional transportation cost incurred by the Designated Hauler in delivering Franchise Solid Waste to such alternate Disposal Facility.

In the event the Disposal Facility in use at the time becomes unavailable and CONTRACTOR fails to provide for Disposal of Franchise Solid Waste in accordance with this Section, AUTHORITY reserves the right to direct Franchise Solid Waste, or any portion thereof, elsewhere.

2. <u>Weigh Tags Issued for All Vehicles</u>.
CONTRACTOR shall generate information using CONTRACTOR'S computerized scale prior to Disposal for each and all vehicles delivering Franchise Solid Waste for Disposal by Designated Hauler. All information shall contain specific information for each vehicle load including: date, time entered scale, weigh ticket number, vehicle number, if available, vehicle type, (compacted, roll-off, or compacted roll-off), vehicle capacity, vehicle number, Debris Box number if available, and capacity (based on current computerized entry, and net weights). CONTRACTOR shall provide AUTHORITY gross and tare weights upon request.

3. <u>Debris Box Storage Area at Guadalupe Landfill</u>.
CONTRACTOR agrees to provide a sufficient storage area for twelve (12) Debris Boxes at Guadalupe Landfill, which is conveniently located for the Designated Hauler to drop off and pick up empty Debris Boxes at the discretion of the Designated Hauler. The purpose of the storage area is to optimize efficient Debris Box services for the Designated Hauler by exchanging a Debris Box after it is emptied for another. CONTRACTOR shall ensure that the storage area is sited on an all-weather pad/access, which is developed and maintained year-round by CONTRACTOR. The Debris Boxes placed at the designated storage site shall only be for

accounts located in AUTHORITY. AUTHORITY acknowledges that the storage of Debris Boxes is subject to environmental compliance, safety, and operational requirements at Guadalupe Landfill. CONTRACTOR agrees to allow the Designated Hauler two (2) hours to empty a Debris Box which was not emptied prior to placement at the storage site and may charge a fee of $200 per Debris Box to empty and return it to the storage site.

4. Service Standards: Liquidated Damages for Failure to Meet Standards. CONTRACTOR and AUTHORITY acknowledge that consistent, reliable Disposal services is of utmost importance to AUTHORITY and that AUTHORITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding this Agreement to it. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, AUTHORITY and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages which AUTHORITY will suffer. Therefore, without prejudice to AUTHORITY'S right to treat such non-performance as an event of default, CONTRACTOR and AUTHORITY agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to AUTHORITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

CONTRACTOR Initial Here: _____ AUTHORITY Initial Here: _____

CONTRACTOR agrees to pay (as liquidated damages and not as a penalty) the amount set forth below. CONTRACTOR agrees that the reports required to be submitted to AUTHORITY by this Agreement (as shown in Exhibit E) may be used as self-monitoring for purposes of calculating liquidated damages, subject to AUTHORITY review and

adjustment, and that such reports shall be prepared to the best of CONTRACTOR'S ability and shall be submitted under penalty of perjury, signed by CONTRACTOR'S executive officer or other person authorized to sign on behalf of CONTRACTOR by the executive officer.

Timeliness of Submissions to AUTHORITY

For each failure to submit reports and their related requisite documents on the date required:	$100.00 for each day the report is late.

Completeness of Submissions to AUTHORITY

For each failure to submit a substantially complete report:	$100.00 for each day after notification by the AUTHORITY that the report is incomplete.

B. Receipt and Processing of Franchise Yard Waste.

CONTRACTOR shall receive, accept, and safely and lawfully process, at the Yard Waste Processing Facility, any or all Franchise Yard Waste delivered by AUTHORITY, or it's Designated Hauler, to the Guadalupe Landfill. CONTRACTOR covenants that no Franchise Yard Waste delivered by AUTHORITY or its Designated Hauler shall be disposed of at a landfill unless agreed to in writing by AUTHORITY prior to such Disposal. Further, CONTRACTOR shall process Franchise Yard Waste delivered by the AUTHORITY'S Designated Hauler for uses that qualify for diversion under the rules and regulations of the California Integrated Waste Management Board. At such time as the California Integrated Waste Management Board rules and regulations no longer allow such uses for diversion, then the AUTHORITY and CONTRACTOR shall meet and confer and the AUTHORITY may direct its Yard Waste to its Designated Yard Waste Composter and terminate its obligations to Contractor under this Agreement with regard to Franchise Yard Waste.

1. Yard Waste Processing Operations Plan.

Yard Waste Processor shall operate the Yard Waste Processing Facility and process the Franchise Yard Waste pursuant to this Agreement and in accordance with the Yard Waste Processing Operations Plan included as Exhibit F, which describes the processing of Yard Waste for Beneficial Use.. If Yard Waste Processor proposes to change any significant provision of the Yard Waste Processing Operations Plan, CONTRACTOR

shall notify AUTHORITY Representative in writing, not less than 10 days prior to the proposed effective date of the change.

Neither the Yard Waste Processing Operations Plan nor any change in the Yard Waste Processing Operations Plan shall be deemed to allow Yard Waste Processor to operate the Yard Waste Processing Facility in any manner that is contrary to or in violation of any permit applicable to the facility including, without limitation, any land use permit, Solid Waste Facilities Permit, nor any manner that is contrary to, or violation of any order issued by a regulatory agency having jurisdiction over the Yard Waste Processing Facility.

2. Other Yard Waste Processing Requirements.
In addition to CONTRACTOR'S compliance with all conditions in all permits in effect from time to time and the Yard Waste Processing Operations Plan provisions, Yard Waste Processor shall comply with the following minimum requirements:

   a. Pre-processing activities shall include the inspection for and removal of Hazardous Waste and glass.
   b. Processed material shall be deemed for Beneficial Use (not compost).
   c. Ensure that there is sufficient capacity at its facility to process and store, until marketed, all Franchise Yard Waste. Nothing in this Agreement shall be deemed to require or allow storage of any materials at the Yard Waste Processing Facility contrary to or in violation of any order by a regulatory agency having jurisdiction over the Yard Waste Processing Facility.
   d. Provide the necessary labor and equipment for the processing of all Franchise Yard Waste accepted by CONTRACTOR into finished products.
   e. Operate the Yard Waste Processing Facility to ensure smooth, continuous operation for the Term of this Agreement.
   f. Properly Dispose of any and all residue remaining from the processing of Franchise Yard Waste.

In addition, CONTRACTOR shall maintain procedures, recording and internal controls to ensure complete, accurate and timely recording and reporting of Yard Waste Processing at its designated Yard Waste Processing Facility.

3. Marketing of Yard Waste Materials.
CONTRACTOR has submitted a Marketing Plan included as Exhibit G

that includes:

a. Description and specification of each material to be produced and marketed;
b. Markets or end uses for each product by category of markets and end uses (e.g., agricultural, landscaping); and,
c. A detailed contingency plan for each product;

CONTRACTOR shall maintain the Marketing plan at CONTRACTOR'S local office and shall make the Marketing Plan available to AUTHORITY Representative or designee at all times during CONTRACTOR'S office hours.

CONTRACTOR shall notify AUTHORITY Representative of any significant change in the Marketing Plan and shall submit to AUTHORITY Representative a copy of any change to the Marketing Plan within fifteen (15) days of the effective date of change. For the purposes of this Article, "significant change" means any change that affects more than fifteen percent (15%) by weight of the finished products for a period in excess of ninety (90) days. CONTRACTOR shall update the Marketing Plan when changes occur in marketing and submit an updated copy to AUTHORITY Representative.

4. Unavailability of Yard Waste Processing Facility.

a. It is anticipated that from time to time the Yard Waste Processing Facility may not be available for processing of Franchise Yard Waste due to: i) Unscheduled maintenance or unanticipated downtime of plants which use the processed Yard Waste as fuel; or, ii) Seasonal increases in the volume of Yard Waste delivered to the Yard Waste Processing Facility and the ability of the Designated Yard Waste Processor to process and otherwise make use of the processed Franchise Yard Waste for Beneficial Use at the Facility. In such cases, The Designated Yard Waste Processor shall contact the Authority Representative in writing (or by telephone and confirmed in writing) describing the conditions causing the lack of availability of the Yard Waste Processing Facility or end use opportunities, the period of time the Yard Waste Processing Facility or end use opportunities will not be available, and the volume of material that will not be processed for Beneficial Use at the Yard Waste Processing Facility. The Authority Representative shall: i) Direct the Designated Yard Waste Processor to process for Beneficial Use the Franchise Yard Waste at the Kirby Canyon Recycling and Dispsoal Facility and agree to

pay the related transfer and transport cost incurred; or, ii) Direct the Designated Yard Waste Processor to dispose of the material at the Designated Disposal Site at the rates established in this Agreement for Disposal of Solid Waste. Should the amount of Franchise Yard Waste not processed for Beneficial Use at the Designated Yard Waste Processing Facility for the reasons described in i and ii above exceed 15% of the Franchise Yard Waste delivered to the Designated Yard Waste Processing Facility on an annual average, over any three consecutive years, Authority Representative may direct Franchise Yard Waste to an additional Yard Waste Processing Facility in an amount that will allow the Designated Yard Waste Processor to provide reliable Beneficial Use processing service at the Designated Yard Waste Processing Facility consistent with the terms of this Agreement (e.g., if the Yard Waste Processed for Beneficial Use, on an average annual basis over three consecutive years, was 80% of Yard Waste delivered, then the Authority Representative could direct as much as 20% of the Franchised Yard Waste to an additional Yard Waste Processing Facility), CONTRACTOR further agrees that in the event it exceeds processing capacity at the Facility for the reason(s) stated in 4(a)(i) or (ii) above, any like-kind of Yard Waste (e.g., Yard Waste with a mixed content of materials as opposed to a load of primarily wood waste) processed by the Facility for Beneficial Use that day will be credited ton for ton against deliveries of Franchised Yard Waste.

b. If the Yard Waste Processing Facility (or any alternative Yard Waste processing facility) is unavailable for processing of Franchise Yard Waste, for reasons which are not addressed in **Section** "4a" immediately above and do not constitute a Force Majeure event pursuant to **Section XXIV**, CONTRACTOR shall provide for processing of Franchise Yard Waste at an alternate Yard Waste processing facility at a total cost equal to the Yard Waste Proprietary Rate plus the Yard Waste Fee Component as described below. The Yard Waste Proprietary Rate shall be the lesser of: 1) that rate currently in effect as described in **Section VI.G**, which would have been charged in accordance with the terms of this Agreement for processing at the Yard Waste Processing Facility; or 2) the actual corresponding rate charged at the alternative Yard Waste Processing Facility plus any reasonable additional transportation costs incurred by CONTRACTOR. The amount of the Yard Waste Fee Component shall be the lesser of 1) the Yard Waste Fee currently in effect as described in **Section VI.G**, which would have been charged in accordance with the terms of this Agreement for processing at the Yard Waste Processing Facility; or, 2) the actual corresponding fee charged at the alternative

Yard Waste Processing Facility. The provisions of this Agreement shall continue in full force and effect notwithstanding such event. CONTRACTOR shall reimburse Designated Hauler for any additional transportation cost incurred by the Designated Hauler in delivering AUTHORITY'S Franchise Yard Waste to such alternate Yard Waste processing facility.

In the event the Yard Waste Processing Facility in use at the time becomes unavailable and CONTRACTOR fails to provide for processing of Franchise Yard Waste in accordance with this Section, AUTHORITY reserves the right to direct Franchise Yard Waste, or any portion thereof, elsewhere.

5. Weigh Tags Issued for All Vehicles.
CONTRACTOR shall generate information using CONTRACTOR'S computerized scale prior to processing for each and all vehicles delivering Franchise Yard Waste for processing by Designated Hauler. All information shall contain specific information for each vehicle load including: date, time entered scale, weigh ticket number, vehicle number, if available, vehicle type, (compacted, roll-off, or compacted roll-off), vehicle capacity, Debris Box number if available, and capacity (based on current computerized entry, and net weights). CONTRACTOR shall provide AUTHORITY gross and tare weights upon request.

6. Tonnage Allocations and Waste Sorts.
CONTRACTOR shall accurately calculate tonnages of Franchise Yard Waste to be allocated to AUTHORITY base on the total number of setouts for AUTHORITY.

If the Yard Waste Processing Facility accepts any Yard Waste for processing that is not processed pursuant to the Agreement, CONTRACTOR shall conduct periodic waste sorts to ensure that the tonnage allocations for AUTHORITY are complete and accurate. The first such waste sort shall be conducted between eight and nine months after Franchise Yard Waste services has begun. Subsequent waste sorts shall be conducted immediately after material change of the process or tonnages collected. The waste sorts shall be conducted more frequently if circumstances warrant; determining the circumstance that warrant more frequent waste sorts shall be at the sole discretion of the AUTHORITY. CONTRACTOR shall comply with all applicable state legislation, including the California Integrated Waste Management Act of 1989, and amendments thereto, which shall be the minimum standard of

performance.

CONTRACTOR shall perform, or shall cause to be performed, all of the following for each such waste sort:

a. All truck weights (gross and tare) and related delivery information (including date, time, material type, route and truck number) shall be recorded.
b. All processed Yard Waste shall be weighed and the weights shall be recorded.
c. The weights of all materials received, the weights of all materials processed, and the weights of all materials Disposed of as residue shall be reconciled on a weekly basis.
d. All scales shall be weigh master certified and shall be regularly maintained to ensue their reliability and continued functionality.

The protocol for each waste sort, including the proposed format of the report forms, shall be fully described by CONTRACTOR and submitted in writing to AUTHORITY for approval at lease twenty (20) working days in advance of the start date for the waste sort. Data compiled as a result of the waste sorts shall be compared to the daily information routinely compiled by the Designated Haulers' drivers and maintained in a database to ensure accuracy and appropriateness.

7. Service Standards: Liquidated Damages for Failure to Meet Standards. CONTRACTOR and AUTHORITY acknowledge that consistent, reliable Yard Waste processing services is of utmost importance to AUTHORITY and that AUTHORITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding this Agreement to it. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required documents in a timely manner, AUTHORITY and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages which AUTHORITY will suffer. Therefore, without prejudice to AUTHORITY'S right to treat such non-performance as an event of default, CONTRACTOR and AUTHORITY agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to

AUTHORITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

CONTRACTOR
Initial Here: _____

AUTHORITY
Initial Here: _____

Unless otherwise excused from said performance for reasons set forth in this Agreement, CONTRACTOR agrees to pay (as liquidated damages and not as a penalty) the amount set forth below. CONTRACTOR agrees that the reports required to be submitted to AUTHORITY by this Agreement (as shown in Exhibit E) may be used as self-monitoring for purposes of calculating liquidated damages, subject to AUTHORITY review and adjustment, and that such reports shall be prepared to the best of CONTRACTOR'S ability and shall be submitted under penalty of perjury, signed by CONTRACTOR'S executive officer or other person authorized to sign on behalf of CONTRACTOR by the executive officer.

<u>End Use of Franchise Yard Waste by CONTRACTOR:</u>

For each Ton of Yard Waste landfilled and/or used for other non-Beneficial Use:	$50 for each Ton greater than 10% of the total Tons of Franchise Yard Waste delivered to Guadalupe Landfill.

<u>Timeliness of Submissions to AUTHORITY:</u>

For each failure to submit reports and other related requisite documents on the date required:	$100.00 for each day the report is late after notification by the AUTHORITY.

1094 Completeness of Submissions to AUTHORITY:
1095

For each failure to submit a substantially complete report:	$100.00 for each day after notification by the AUTHORITY that the report is incomplete.

1096
1097 C. Receipt and Processing of Franchise Construction and Demolition Debris.
1098 CONTRACTOR shall receive, accept, and safely and lawfully process, at the
1099 Construction and Demolition Debris Processing Facility, any or all Franchise
1100 Construction and Demolition Debris delivered by AUTHORITY, or its
1101 Designated Hauler, to the Guadalupe Landfill, except for residue from
1102 processing Construction and Demolition Debris which shall be no greater
1103 than thirty percent (30%) by volume. CONTRACTOR covenants that no
1104 Franchise Construction and Demolition Debris delivered by AUTHORITY
1105 or its Designated Hauler shall be landfilled or used in other non-Beneficial
1106 Uses (except residue) unless agreed to in writing by AUTHORITY prior to
1107 such Disposal. Further, subject to the limits set forth herein, CONTRACTOR
1108 shall process Franchise Construction and Demolition Debris delivered by
1109 the AUTHORITY'S Designated Hauler for uses that qualify for diversion
1110 under the rules and regulations of the California Integrated Waste
1111 Management Board. At such time as the California Integrated Waste
1112 Management Board rules and regulations no longer allow such uses for
1113 diversion, then the AUTHORITY and CONTRACTOR shall meet and confer
1114 and the AUTHORITY may direct CONTRACTOR to process its Franchise
1115 Construction and Demolition Debris as Municipal Solid Waste at the rates
1116 for disposal of Municipal Solid Waste described herein.
1117
1118 1. Construction and Demolition Debris Recycling Plan.
1119 CONTRACTOR shall operate the Construction and Demolition Debris
1120 Processing Facility and process the Construction and Demolition Debris
1121 pursuant to this Agreement and in accordance with the Construction and
1122 Demolition Debris Recycling Plan included as Exhibit H. If
1123 CONTRACTOR proposes to change any significant provision of the
1124 Construction and Demolition Debris Recycling Plan, CONTRACTOR
1125 shall notify AUTHORITY Representative in writing, not less than 10 days
1126 prior to the proposed effective date of the change.
1127
1128 Neither the Construction and Demolition Debris Recycling Plan nor any
1129 change in the Construction and Demolition Debris Recycling Plan shall
1130 be deemed to allow CONTRACTOR to operate the Construction and
1131 Demolition Debris Processing Facility in any manner that is contrary to or

in violation of any permit applicable to the Construction and Demolition Debris Processing Facility including, without limitation, any land use permit, Solid Waste Facilities Permit, nor any manner that is contrary to, or in violation of any order issued by a regulatory agency having jurisdiction over the Construction and Demolition Debris Processing Facility.

2. Other Construction and Demolition Debris Recycling Requirements.
In addition to CONTRACTOR'S compliance with all conditions in all permits in effect from time to time and the Construction and Demolition Debris Recycling Plan provisions, CONTRACTOR shall comply with the following minimum requirements:

   a. Pre-processing activities shall include the inspection for and removal of Hazardous Waste.
   b. Ensure that there is sufficient capacity at its facility to process and store, until marketed, all Franchise Construction and Demolition Debris. Nothing in this Agreement shall be deemed to require or allow storage of any materials at the Construction and Demolition Debris Processing Facility contrary to or in violation of any permit applicable to the Construction and Demolition Debris Processing Facility or in violation of any order by a regulatory agency having jurisdiction over the Construction and Demolition Debris Processing Facility.
   c. Provide the necessary labor and equipment for the processing of all Franchise Construction and Demolition Debris accepted by CONTRACTOR into finished products.
   d. Operate the facility to ensure smooth, continuous operation for the term of this Agreement.
   e. Properly dispose of any and all residue remaining from the processing of Construction and Demolition Debris.

   In addition, CONTRACTOR shall maintain procedures, records and internal controls to ensure complete, accurate and timely recording and reporting of Construction and Demolition Debris Processing at its Construction and Demolition Debris Processing Facility.

3. Marketing of Construction and Demolition Debris.
CONTRACTOR has submitted a Construction and Demolition Debris Marketing Plan included as Exhibit I that includes:

   a. Description and specification of each material to be produced and

marketed;

b. Markets or end uses for each product by category of markets and end uses (e.g., agricultural, landscaping); and,

c. A detailed contingency plan for each product.

CONTRACTOR'S Construction and Demolition Debris Marketing Plan shall not include Construction and Demolition Debris to be used as Alternative Daily Cover (ADC) or other non-Beneficial Uses.

CONTRACTOR shall maintain the Construction and Demolition Debris Marketing Plan at CONTRACTOR'S local office and shall make the Construction and Demolition Debris Marketing Plan available to AUTHORITY Representative or designee at all times during CONTRACTOR'S office hours.

CONTRACTOR shall notify AUTHORITY Representative of any significant change in the Construction and Demolition Debris Marketing Plan and shall submit to AUTHORITY Representative a copy of any change to the marketing plan within fifteen (15) days of the effective date of change. For the purposes of this Article, "significant change" means any change that affects more than fifteen percent (15%) by weight of the finished products for a period of ninety (90) days, or more. CONTRACTOR shall update the Construction and Demolition Debris Marketing Plan when changes occur in marketing and submit an updated copy to AUTHORITY Representative.

4. Unavailability of Construction and Demolition Debris Processing Facility. If the Construction and Demolition Debris Processing Facility (or any alternative Construction and Demolition Debris Processing Facility) is unavailable for processing of Franchise Construction and Demolition Debris, for reasons which do not constitute a Force Majeure event pursuant to **Section XXIV** below, CONTRACTOR shall provide for processing of Franchise Construction and Demolition Debris at an alternate Construction and Demolition Debris Processing Facility at a total cost equal to the Construction and Demolition Debris Proprietary Rate plus the Construction and Demolition Debris Fee Component as described below. The Construction and Demolition Debris Base Rate shall be the lesser of: 1) that Construction and Demolition Proprietary rate currently in effect as described in **Section VI.L**, which would have been charged in accordance with the terms of this Agreement for processing at the Construction and Demolition Debris Processing Facility; or, 2) the corresponding rate at the alternative Construction and Demolition Debris

Processing Facility plus any reasonable additional transportation costs incurred by CONTRACTOR. The amount of the Construction and Demolition Debris Fee Component shall be the lesser of the fee which would have been charged in Accordance with the terms of this Agreement for processing at the Construction and Demolition Debris Processing Facility; or, 2) the corresponding fee as the alternative Construction and Demolition Debris Processing Facility. The provisions of this Agreement shall continue in full force and effect notwithstanding such event. CONTRACTOR shall reimburse Designated Hauler for any additional transportation cost incurred by the Designated Hauler in delivering Franchise Construction and Demolition Debris to such alternate Construction and Demolition Debris Processing Facility.

In the event the Construction and Demolition Debris Processing Facility in use at the time becomes unavailable and CONTRACTOR fails to provide for processing of Franchise Construction and Demolition Debris in accordance with this Section, AUTHORITY reserves the right to direct Franchise Construction and Demolition Debris, or any portion thereof, elsewhere.

5. Weigh Tags Issued for All Vehicles.
CONTRACTOR shall generate information using CONTRACTOR'S computerized scale prior to processing for each and all vehicles delivering Franchise Construction and Demolition Debris for processing by CONTRACTOR. All information shall contain specific information for each vehicle load including: date, time entered scale, weigh ticket number, vehicle number, if available, vehicle type, (compacted, roll-off, or compacted roll-off), vehicle capacity, Debris Box number if available, and capacity (based on current computerized entry, and net weights). CONTRACTOR shall provide AUTHORITY gross and tare weights upon request.

6. Tonnage Allocations and Waste Sorts.
CONTRACTOR shall accurately calculate tonnages of Franchise Construction and Demolition Debris to be allocated to AUTHORITY based on the total number of Tons delivered.

If Construction and Demolition Debris Processing Facility accepts any Construction and Demolition Debris for processing that is not processed pursuant to the Agreement, CONTRACTOR shall conduct periodic waste sorts to ensure that the tonnage allocations for AUTHORITY are complete and accurate. The first such waste sort shall be conducted between eight

and nine months after Franchise Construction and Demolition Debris processing services has begun. Subsequent waste sorts shall be conducted immediately after a material change of the processing method or Tonnages collected. The waste sorts shall be conducted more frequently if circumstances warrant; determining the circumstance that warrant more frequent waste sorts shall be at the sole discretion of the AUTHORITY. CONTRACTOR shall comply with all applicable State legislation, including the California Integrated Waste Management Act of 1989, and amendments thereto, which shall be the minimum standard of performance.

CONTRACTOR shall perform, or shall cause to be performed, all of the following for each such waste sort:

a. All truck weights (gross and tare) and related delivery information (including date, time, material type, route and truck number) shall be recorded.
b. All processed Construction and Demolition Debris shall be weighed and the weights shall be recorded.
c. The weights of all materials received, the weights of all materials processed, and the weights of all materials Disposed of as residue shall be reconciled on a weekly basis.
d. All scales shall be weigh master certified and shall be regularly maintained to ensue their reliability and continued functioning.

The protocol for each waste sort, including the proposed format of the report forms, shall be fully described by CONTRACTOR and submitted in writing to AUTHORITY for approval at lease twenty (20) working days in advance of the start date for the waste sort. Data compiled as a result of the waste sorts shall be compared to the daily information routinely compiled by the Designated Haulers' drivers and maintained in a database to ensure accuracy and appropriateness.

7. <u>Service Standards: Liquidated Damages for Failure to Meet Standards</u>. CONTRACTOR and AUTHORITY acknowledge that consistent, reliable organic processing services is of utmost importance to AUTHORITY and that AUTHORITY has considered and relied on CONTRACTOR'S representations as to its quality of service commitment in awarding this Agreement to it. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if CONTRACTOR fails to achieve the performance standards, or fails to submit required

documents in a timely manner, AUTHORITY and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages which AUTHORITY will suffer. Therefore, without prejudice to AUTHORITY'S right to treat such non-performance as an event of default, CONTRACTOR and AUTHORITY agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to AUTHORITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

CONTRACTOR Initial Here: _____	AUTHORITY Initial Here: _____

CONTRACTOR agrees to pay (as liquidated damages and not as a penalty) the amount set forth below. CONTRACTOR agrees that the reports required to be submitted to AUTHORITY by this Agreement (as shown in Exhibit E) may be used as self-monitoring for purposes of calculating liquidated damages, subject to AUTHORITY review and adjustment, and that such reports shall be prepared to the best of CONTRACTOR'S ability and shall be submitted under penalty of perjury, signed by CONTRACTOR'S executive officer or other person authorized to sign on behalf of CONTRACTOR by the executive officer.

<u>End Use of Construction and Demolition Debris by CONTRACTOR:</u>

For each Ton of waste landfilled and/or non-Beneficial Use:	$50 for each Ton greater than ten percent (10%) of the total Tons of Franchise Construction and Demolition Debris delivered to Guadalupe Landfill

Timeliness of Submissions to AUTHORITY:

For each failure to submit reports and other related requisite documents on the date required:	$100.00 for each day the report is late.

Completeness of Submissions to AUTHORITY:

For each failure to submit a substantially complete report	$100.00 for each day after notification by the AUTHORITY that the report is incomplete.

D. Permits for Use of Disposal, Yard Waste and Construction and Demolition Debris Processing Facilities.

Exhibit K contains the permits for the Guadalupe Landfill to perform the services described in this Agreement. Throughout the Term, CONTRACTOR shall, at its sole expense keep in force all existing permits and approvals from governmental authorities necessary for CONTRACTOR'S performance under this Agreement and any laws or regulations applicable to the Disposal Facility, Yard Waste Processing Facility and Construction and Demolition Debris Processing Facility. CONTRACTOR shall file with AUTHORITY Representative a true and correct copy of each permit, license or approval for operation of the landfill.

E. Notice of Claims.

CONTRACTOR covenants that it shall provide reasonably prompt notice to AUTHORITY, but in no event later than sixty (60) days after CONTRACTOR is put on notice of such claim, if at any time a claim is asserted or threatened to be asserted which CONTRACTOR reasonably believes is likely to impair its ability to perform its obligations under this Agreement.

F. Disposition of Unauthorized Wastes.

1. Procedures for Identification.

CONTRACTOR shall implement reasonable procedures consistent with industry practices at the time to identify and reject waste materials delivered to the Disposal, Yard Waste Processing Facility and Construction and Demolition Debris Processing Facility which are Hazardous Wastes, or which otherwise may not be legally accepted at the Disposal Facility, Yard Waste Processing Facility and Construction and

Demolition Debris Processing Facility under their permits and other applicable governmental regulations then in effect. CONTRACTOR shall implement such procedures in a uniform and non-discriminatory manner as applied to waste materials delivered to the Disposal Facility, Yard Waste Processing Facility and Construction and Demolition Debris Processing Facility from AUTHORITY and from all other sources.

2. Disposition of Hazardous Waste.

CONTRACTOR may refuse to accept wastes either in part or whole load delivered by Designated Hauler if such load constitutes Hazardous Waste or otherwise may not be legally accepted at the Disposal Facility. In such event, CONTRACTOR shall have no further responsibility for disposition of such unaccepted wastes. CONTRACTOR shall lawfully Dispose of any Hazardous Wastes discovered after acceptance at the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility. In no event shall AUTHORITY have responsibility for the cost of disposition of any Hazardous Wastes that may be delivered to the Disposal Facility, Yard Waste Processing Facility and Construction and Demolition Debris Processing Facilities, except that: (a) if AUTHORITY itself knowingly hauls or causes to be delivered Hazardous Waste generated by AUTHORITY to the Disposal Facility, Yard Waste Processing Facility and Construction and Demolition Debris Processing Facility, it shall be responsible for the costs of Disposing of any such Hazardous Waste; and (b) if AUTHORITY fails to substantially comply with the obligation set forth in **Section IV.A**, AUTHORITY shall be responsible for the cost of Disposing of any unauthorized Hazardous Waste collected within the AUTHORITY and delivered to the Disposal Facility, Yard Waste Processing Facility and Construction and Demolition Debris Processing Facilities during the time of such noncompliance. CONTRACTOR does not waive any right to seek reimbursement of costs and any other applicable damages from the generator or transporter of unauthorized hazardous waste.

G. Days and Hours of Operation.

CONTRACTOR shall comply with all conditions in all permits in effect from time to time regarding days and hours of operation.

CONTRACTOR'S Solid Waste Facilities Permit (issued November 21, 1991), currently specifies that the Guadalupe Landfill is open 7 days per week, opening at 6:00 a.m. through closing at 4:45 p.m. Monday through Friday, and opening at 8:00 a.m. through closing at 4:45 p.m. Saturday and Sunday, and is closed on Christmas, New Year's Day, Easter, Thanksgiving, and one-

half day on Christmas Eve and New Year's Eve. If any of these terms change, CONTRACTOR shall notify AUTHORITY and Designated Hauler in writing as soon as possible, and a minimum of 90 days in advance of any proposed change. A copy of CONTRACTOR'S operating permit is attached and is made a part of this contract.

H. Weighing.

1. Maintenance of Scale Systems.
CONTRACTOR shall comply with all conditions in all permits in effect from time to time regarding weighing and operation of scales. CONTRACTOR shall maintain scale certification with the California Department of Food and Agriculture, Division of Measurement Standards.

2. Establishment and Maintenance of Vehicles' Tare Weights.
CONTRACTOR shall promptly weigh each vehicle driven to Guadalupe Landfill (or, as necessary, the alternative Disposal Facility) by the Designated Hauler, as they become available at the Disposal Facility to determine its loaded and unloaded ("tare") weight. The tare weight of each vehicle and each Debris Box shall be recorded by CONTRACTOR along with the corresponding vehicle or box number. CONTRACTOR shall provide AUTHORITY with such information within ten (10) days after request.

When additional or replacement vehicles or Debris Boxes are placed into service by Designated Hauler, CONTRACTOR shall promptly weigh such vehicles or Debris Boxes as they become available at the Disposal Facility.

All weighing shall be conducted in accordance with CONTRACTOR'S standard procedures, a copy of which shall be supplied to AUTHORITY Representative.

3. Scale Operations.
A scale at the tollgate entrance shall be operational at all times, regardless of emergency circumstances. The first contingency back-up is a second electronic scale and the second is a mechanical scale. If neither contingency is available, CONTRACTOR shall base net weight on the average of the last three (3) recorded weights for each vehicle. CONTRACTOR agrees to a 48-hour time limit per incident to employ either contingency.

I. Signs.

At CONTRACTOR'S sole expense, CONTRACTOR shall prominently post signs at the scale house to the Guadalupe Landfill detailing the regulations which must be followed by vehicles entering the site, indicating the hours of operation, the types of Solid Waste or Recyclable Materials accepted, the fees for Disposal and for Recycling, and a local telephone number to call for information in case of emergency.

J. Site Access.

CONTRACTOR shall construct and maintain all roads running in and on the Guadalupe Landfill as shall be reasonable under the circumstances, from the end of the public access road to the point designated for the dumping of materials. A smooth surface within the dumping area shall be maintained properly 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 maintain such inclement weather site and shall construct and maintain an all-weather access road to such site.

K. Records.

CONTRACTOR shall maintain records on a daily and cumulative monthly basis for each and all loads delivered by the Designated Hauler. Upon twenty-four (24) hours notice, AUTHORITY Representative shall have the right to inspect such records and the record keeping procedures at any time during normal business hours, provided that such review does not interfere with the work being performed.

L. Inspection of Operations.

AUTHORITY Representative shall have the right but not the obligation to observe and review CONTRACTOR'S operations and enter CONTRACTOR'S premises at the Disposal Facility and Yard Waste Processing Facility and Construction and Demolition Debris Processing Facility for the purpose of such observation and review during normal operating hours, subject to reasonable notice of not less than twenty-four hours. Upon entering CONTRACTOR'S premises AUTHORITY representative shall first attempt to contact the site manager but in all events must abide by all safety rules and regulations applicable to the site. This provision does not give AUTHORITY 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. Further, the AUTHORITY representative assumes all risks associated with any

unsupervised visit, except for injuries attributable to the negligence of CONTRACTOR.

M. Labor Force.

CONTRACTOR shall employ only such 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 in a safe manner, consistent with all applicable federal, state and local laws and regulations.

N. No Preference.

CONTRACTOR shall give no preference or priority of treatment over Designated Hauler to any other persons bringing materials to the Disposal Facility, Yard Waste Processing Facility, or Construction and Demolition Debris Processing Facility that has an adverse effect on the Designated Hauler's operations. Observing a "first-come, first-served" policy does not constitute preferential treatment under this Section.

VI. AUTHORIZED DISPOSAL AND PROCESSING FEES

A. General.

In consideration of the right to charge and collect Disposal Fees and Yard Waste and Construction and Demolition Debris processing fees in the amounts and on the terms set forth in this Agreement, CONTRACTOR shall perform all of its responsibilities and duties under this Agreement, including but not limited to paying the costs associated with: (1) complying with all Applicable Laws, (2) complying with all Legal Requirements, except to the extent such costs are attributable to a Change in Legal Requirements pursuant to **Section VI.E.2** below, (3) operations at the Disposal Facility , Yard Waste Processing Facility and Construction and Demolition Debris Processing Facility, and (4) closure, post-closure maintenance, and remediation at the Disposal Facility. During the Term, these Disposal Fees will be in the form of a Contract Gate Rate charged on each Ton of Franchise Solid Waste, Franchise Yard Waste and Franchise Construction and Demolition Debris received at the Disposal Facility.

The payments provided for in this **Section VI**, are the full, entire, and complete compensation due to CONTRACTOR for furnishing all labor, equipment, materials and supplies and other things necessary to perform the services required by this Agreement in the manner and at the time

prescribed, and fulfilling all of its obligations under this Agreement. Such payments shall include all costs for the items mentioned above and also for all taxes, insurance, overhead, profit and all other costs necessary to perform the services in accordance with this Agreement.

At no time during the first five years of the initial Term of this Agreement, shall the Solid Waste Rate exceed the lowest rate then being charged at the Guadalupe Landfill to any other comparable city, service district or private company (not including a Contractor, an affiliate or a related company) that is delivering quantities of Solid waste, to the Guadalupe Landfill that has been collected under a franchise agreement or contract with a city, county or service district. For the purpose of this Section, a comparable city, service district or private company shall meet the following criteria:

1. The city, service district, or private company hauls Solid Waste to the Guadalupe Landfill in vehicles used to collect the material from the generator.
2. The annual Tonnage that has been collected under a franchise agreement or contract with a city, service district, or private company and delivered to the Guadalupe Landfill is within twenty percent (20%) of that of the AUTHORITY; and,
3. The initial duration (term) of the agreement between the city, service district, or private company and the CONTRACTOR is from ten (10) to fifteen (15) years.

As described in this **Section VI**, Contractor may charge lesser amounts for the disposal of Industrial Wastes (limited to sewage sludge, contaminated and clean soil, treated auto shredder waste, water treatment and other industrial based sludge, grit and screenings from waste water treatment plants) and Special Handling Waste containing an immaterial amount by weight of Solid Waste (not including Industrial or Special Handling waste, as defined above). The parties may agree on modifications to the materials included in the definition of Industrial and/or Special Handling Waste in the future. Such lesser rates shall also apply to the same materials generated in the Cities jurisdictions and delivered to the Landfill by employees of the Cities or their agents during the same calendar year. This **Section VI** is in no way applicable to Yard Waste or Construction and Demolition Debris rates.

B. <u>Contract Disposal Rate.</u>

The Contract Disposal Rate will consist of two components: (1) the proprietary rate for Disposal of Franchise Solid Waste at the Guadalupe Landfill (the "Disposal Proprietary Rate"); and (2) the total of taxes and fees

assessed to the Guadalupe Landfill solely for Disposal purposes related to the waste operation at the Guadalupe Landfill (the "Disposal Fee Component"). The initial Contract Disposal Rate will be $39.45 per Ton, which rate is effective from January 1, 2006, through June 30, 2007 as presented in Exhibit C.

The Contract Disposal Rate may not be increased during the Term, except under the following circumstances: the Disposal Proprietary Rate may be adjusted for CPI Increases as authorized under **Section VI.D** below, for Allowable Cost Increases as provided in **Section VI.E** below, and for additional services requested by AUTHORITY, as provided in **Section VI.Q** below; and the Disposal Fee Component shall be adjusted to reflect changes in taxes and fees assessed at the Guadalupe Landfill, as provided in **Section VI.B.2** below.

1. Disposal Proprietary Rate.
   The initial Disposal Proprietary Rate shall be $20.40 per Ton, which fee is effective from January 1, 2006, through June 30, 2007 for Franchise Solid Waste received at the Disposal Facility. Following any adjustment authorized pursuant to **Sections VI.D, E** or **Q**, the new Disposal Proprietary Rate shall become the Disposal Proprietary Rate for all Franchise Solid Waste received at the Disposal Facility on and after the Adjustment Date until the next subsequent Adjustment Date, as provided in **Section VI.C** below.

2. Disposal Fee Component.
   The Fee Component shall be a per-Ton charge consisting of the total of: (a) all per Ton franchise fees, regulatory fees, mitigation fees, surcharges and taxes assessed by any governmental entity on Solid Wastes received at the Guadalupe Landfill; and (b) a per-Ton dollar amount per Ton calculated by taking the total of all of the surcharges and taxes not assessed on a per-Ton basis (except for ad valorem real property taxes) which are assessed on the Guadalupe Landfill (including fees on gross receipts and license fees) and dividing that amount by the number of Disposed Tons of Solid Waste received at the Guadalupe Landfill during the Analysis Period, as defined in **Section VI.C.2**.

   The Disposal Fee Component, which shall be in effect from January 1, 2006, through June 30, 2007, will be $19.05 per Ton. Fees and taxes that will make up the Disposal Fee Component as of the Effective Date are listed in Exhibit C hereto. CONTRACTOR may immediately adjust the Disposal Fee Component whenever any franchise fees, regulatory fees,

mitigation fees, surcharges and taxes relating to the Guadalupe Landfill are imposed or increased. CONTRACTOR shall immediately adjust the Disposal Fee Component whenever such fees are decreased or eliminated. CONTRACTOR shall notify AUTHORITY in writing at least thirty (30) days in advance of any increase or decrease in the Disposal Fee Component due to changes in fees, surcharges or taxes. Such Notification of Adjustment shall detail the existing amount of the Disposal Fee Component, the basis for the pro rated share and the additional or reduced per-Ton fee due CONTRACTOR. The AUTHORITY shall have the right, but not the obligation, to terminate the Agreement if the City of San Jose's Disposal Facility Tax (DFT) now set at $13 per Ton, increases by more than (i) $5.00 per Ton in any single year; or (ii) more than $15.00 per Ton in total over the Term and Extension(s) of this Agreement. The AUTHORITY must exercise its right to terminate hereunder within ninety (90) calendar days of implementation of any increase in the DFT and must provide 180 days written notice of termination. The AUTHORITY'S rights to terminate the Agreement shall be void if CONTRACTOR agrees to pay all net increases in the existing DFT in excess of $5.00 per Ton in a given year or $15.00 per Ton over the term of the Agreement. Before and during the required notification and termination period the AUTHORITY shall be obligated to pay the entire DFT, plus all increases.

C. Notification of Adjustment to Contract Disposal Rate.

1. Adjustment Dates.
The first Adjustment Date ("Adjustment Date") shall be on July 1, 2007, and each subsequent Adjustment Date shall be on July 1 of each succeeding year. Changes in the Disposal Proprietary Rate due to changes in CPI and Allowable Costs shall become effective on each Adjustment Date.

2. Analysis Period.
This term shall mean to include the time frame since the last rate adjustment was calculated, as provided for in **Section VI.D**.

3. Notices of Adjustments.
On or before March 1 of each year of this Agreement, beginning in 2007, in which an annual adjustment is to be made, CONTRACTOR shall submit to AUTHORITY Representative a Disposal Rate Adjustment Statement setting forth the existing Disposal Proprietary Rate, the applicable index values, the percentage change in the applicable indices,

the calculation of the annual adjustment, the new Proprietary Rate, the Disposal Fee Component, and the resulting Contract Disposal Rate. Within forty-five (45) days of CONTRACTOR'S submittal of the Rate Adjustment Statement to AUTHORITY, AUTHORITY Representative shall notify CONTRACTOR of any exceptions to the Contract Disposal Rate Adjustment Statement. If AUTHORITY does not submit written exceptions to the Contract Disposal Rate Adjustment Statement within said forty-five (45) days, AUTHORITY shall be deemed to have accepted the Contract Disposal Rate Adjustment Statement submitted by CONTRACTOR.

Unless a later date is justified by exceptional circumstances, if CONTRACTOR does not submit its complete rate adjustment request by March 1, then no consideration of a rate adjustment shall be made, and no rate adjustment shall be instituted for the forthcoming fiscal year.

D. Disposal CPI Changes.

The Disposal Proprietary Rate in effect on the date preceding any Adjustment Date may be adjusted upward or downward on each Adjustment Date. The annual adjustment shall be a percentage of the compensation payable based on ninety percent (90%) of the annual December-to-December percentage change up to a 4.0% change and eighty five percent (85%) of that amount between a 4.0% change and 5% in the Consumer Price Index for All Urban Consumers (CPI-U), not to exceed 5%, total CPI adjustment.

By way of example, if the CPI is 5% in a given year, the formula would be 90% of 4% multiplied by the existing rate, plus 85% of that amount between 4% and 5%, multiplied by the existing rate, with the new rate being the sum of the two amounts added to the existing rate.

The index used shall be the All Urban Consumers Price Index (CPI-U), for all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982-1984 = 100, not seasonally adjusted, compiled and published by the United States Department of Labor, Bureau of Labor Statistics. Should any such index be discontinued, a successor index shall be used. 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. Should any such index not be published for December, the adjustment shall be calculated using the index values of the Novembers immediately preceding the Decembers contemplated by this Agreement.

Annual Disposal Proprietary Rate adjustments shall be made only in units of one cent ($0.01). Fractions less than one cent ($0.01) shall not be considered in making adjustments. The indices and rates shall be truncated at four (4) decimal places for the adjustment calculations.

No annual increase or decrease in the Disposal Proprietary Rate shall exceed five percent (5%) of the Disposal Proprietary Rate compensation in effect as of the Effective Date, after the first Adjustment Date has occurred, or as of the most recent Adjustment Date.

E. Allowable Disposal Cost Changes.

Certain costs which increase or decrease CONTRACTOR'S cost of providing Disposal service under this Agreement shall be allowed as adjustments to the Disposal Proprietary Rate, but only to the extent provided in **Section VI.E.2** below.

1. Costs Not Allowable.
The Disposal Proprietary Rate to be in effect as of the Effective Date includes costs associated with complying with all Legal Requirements.

CONTRACTOR shall be responsible for any Disposal Fee increase as a result of the costs of compliance enumerated in Exhibit D, attached, except for any Change in Legal Requirements enumerated in Exhibit D, which is enacted or promulgated after the Effective Date of this Agreement.

2. Allowable Costs.
If and only to the extent the following costs are necessary to comply with a Change in Legal Requirements, they shall be Allowable Costs justifying a proportionate increase or decrease in the Disposal Proprietary Rate as specified in **Section VI.E.4** below:

a. Incremental operating, maintenance, monitoring, reporting and capital costs, including but not limited to the costs of making improvements (including, but not limited to future landfill cells) or modifications, at the Disposal Facility necessary to perform under this Agreement, but only to the extent brought about by a Change in Legal Requirements.

b. Incremental costs of performing closure and post-closure and closure and post-closure monitoring at the Disposal Facility, but only to the extent brought about by a Change in Legal Requirements.

3. Mandatory Procedure for Allowable Costs.
CONTRACTOR must follow the procedure in this **Section VI.E.3** before the Disposal Proprietary Rate will be increased to reflect Allowable Costs.

a. Notice to AUTHORITY. CONTRACTOR shall give AUTHORITY prompt notice of the Change in Legal Requirements, specifically identifying such Change in Legal Requirements (and providing a copy of the official text of such Change in Legal Requirements) and describing what changes or modifications to operations at the Disposal Facility are required, when compliance is required, and whether CONTRACTOR or the Disposal Facility is eligible for any exemptions or variances.

b. Proposed Method to AUTHORITY. CONTRACTOR shall thereafter submit to AUTHORITY its proposed method for complying with the

regulations, the estimated cost of compliance, and the associated increase in the Disposal Proprietary Rate for AUTHORITY as its proportionate share.

c. Proposed Method to Regulatory Agency. CONTRACTOR shall submit its proposed method of compliance to the appropriate regulatory agency. If the agency approves that method without conditions, the proportionate share of the cost of that method of compliance will be the amount by which the Disposal Proprietary Rate may be increased.

d. Implement Compliance Method. If CONTRACTOR'S method is not approved, CONTRACTOR will implement the method of compliance which is approved by the regulatory agency. The proportionate share of the cost of that method of compliance will be the amount by which the Disposal Proprietary Rate may be increased.

4. Method of Allocating Allowable Costs.

a. Use of GAAP. Allowance of Interest on Capital Costs. Allowable Costs shall be classified as expenses or capital expenditures as determined using generally accepted accounting principles. If the costs are determined to be allocated as capital expenditures, such costs shall be amortized or depreciated over a number of years in accordance with generally accepted accounting principles.

b. Calculation of Per-Ton Costs. The per-Ton increase due to Allowable Costs shall be determined as follows:

(1) Estimates of Increases. As of the beginning of each Adjustment Date, CONTRACTOR shall estimate the per-Ton increase, if any, in all Allowable Costs which would pertain at such Date, including in such estimate both: (a) those Allowable Costs which are to be imposed or incurred on a per-Ton basis; and (b) those Allowable Costs which are to be imposed on or incurred by the Disposal Facility as a whole which must be computed by dividing such Allowable Costs by the total number of Tons of Solid Waste received at the Disposal Facility from all sources during the preceding Analysis Period. The resulting dollar amount per Ton shall be added to the Disposal Proprietary Rate in effect during the prior Analysis Period. The sum of these two amounts together with any applicable CPI Increase shall

become the new Disposal Proprietary Rate effective on the upcoming Adjustment Date.

(2) Post-Adjustment Audits by AUTHORITY. AUTHORITY shall select a consultant to verify the accuracy of the Allowable Cost increases. Consultant shall have the right to inspect the books and records of CONTRACTOR at any time following any Adjustment Date to determine whether CONTRACTOR has actually incurred the amounts of Allowable Costs previously estimated.

(3) Adjustments of Estimated Costs. If the estimated amounts are determined, as a result of an audit or otherwise, to be greater than or less than costs actually incurred during a given period, then CONTRACTOR shall make an appropriate adjustment in the Disposal Proprietary Rate.

c. Amortization/Depreciation of Allowable Costs. If Allowable Costs incurred by CONTRACTOR are amortized or depreciated over more than one year, the increase resulting therefrom in the Disposal Proprietary Rate shall be repealed at the end of such amortization/depreciation period. The repeal shall not affect other increases resulting from Allowable Costs which were not so amortized or depreciated.

d. Interest on Actual Past Costs. To compensate CONTRACTOR for any increases applicable under this **Section VI.E.4** for those years or portions thereof which have elapsed prior to the Adjustment Date when the new Disposal Proprietary Rate becomes effective, but after the Effective Date, the new Disposal Proprietary Rate shall also include a component for such prior Allowable Costs, plus simple interest, commencing on the first day following the day on which Allowable Costs were paid and ending on the Adjustment Date, at CONTRACTOR'S actual cost of funds, not to exceed the prime rate, as posted daily in the "Money Markets" section of the Wall Street Journal. In the event that this prime rate is discontinued, the contingent rate that shall be used will be the prime rate (base), as published in the Barron's Money Market column of Barron's Weekly. In the event the aforementioned index is no longer in existence, the reference rate from another primary dealer of the Federal Reserve System shall be used as agreed upon by the Parties. The prime rate shall be determined by calculating an average annualized prime rate

using each Friday's rate over a fiscal year period.

F. Regulatory Disposal Cost Changes.

Any existing costs directly incurred because of compliance with Legal Requirements that are increased, reduced or eliminated in the future will result in a proportionate increase or decrease of the Disposal Proprietary Rate.

1. Notice to AUTHORITY.

CONTRACTOR shall notify AUTHORITY promptly, in writing, of any such change, identifying the change (and providing a copy of the official text of such change), describing what changes or modifications to operations at the Disposal Facility are required and when the change is effective.

2. Proposed Method to AUTHORITY.

CONTRACTOR shall thereafter submit to AUTHORITY its proposed method for complying with the regulations, the estimated cost of compliance, and the associated increase, or decrease in the Disposal Fee for AUTHORITY as its proportionate share.

3. Proposed Method to Regulatory Agency.

CONTRACTOR shall submit its proposed method of compliance to the appropriate regulatory agency. If the agency approves that method without conditions, the proportionate share of the cost of that method of compliance will be the amount by which the Disposal Proprietary Rate may be increased or decreased.

4. Implement Compliance Method.

CONTRACTOR will implement the method of compliance which is approved by the regulatory agency. The proportionate share of the cost of that method of compliance will be the amount by which the Disposal Proprietary Rate may be increased or decreased.

G. Contract Yard Waste Processing Rate.

As shown on Exhibit C, the Contract Yard Waste Processing Rate will consist of three major components: (1) the proprietary rate for processing Franchise Yard Waste at the Yard Waste Processing Facility (the "Yard Waste Proprietary Rate"); (2) the total of taxes and fees assessed solely for Yard Waste processing purposes (the "Yard Waste Fee Component"); and, (3) in the case of Kirby Canyon Recycling and Dispsoal Facility, the transportation component. The initial Contract Yard Waste Processing Rate

will be $19.38 per Ton for Yard Waste that is processed for Beneficial Use by and at the Designated Processing Facility. For processing at the Kirby Canyon Recycling and Disposal Facility the initial rate shall be $27.28. The rate is effective from January 1, 2006 through June 30, 2007, as presented in Exhibit C.

The Contract Yard Waste Processing Rate may not be increased during the Term, except under the following circumstances: the Yard Waste Proprietary Rate may be adjusted for CPI Increases as authorized under **Section VI.I** below, for Allowable Cost Increases as provided in **Section VI.J** below, and for additional services requested by AUTHORITY, as provided in **Section VI.Q** below; and the Yard Waste Fee Component may be adjusted to reflect changes in taxes and fees assessed at the Guadalupe Landfill on Yard Waste, as provided in **Section VI.G.2** below.

1. Yard Waste Proprietary Rate.
   The initial Yard Waste Proprietary Rate shall be $18.58 per Ton for Yard Waste that is processed for Beneficial Use, which rate is effective from January 1, 2006, through June 30, 2007, for Franchise Yard Waste received at the Guadalupe Landfill. Following any adjustment authorized pursuant to **Sections VI.I, J** or **Q**, the new Yard Waste Proprietary Rate shall become the Yard Waste Proprietary Rate for all Franchise Yard Waste received at the Guadalupe Landfill on and after the Adjustment Date until the next subsequent Adjustment Date, as provided in **Section VI.I** below.

2. Yard Waste Transportation Component
   The initial Transportation Component at the Kirby Canyon Recycling and Disposal Facility shall be $7.90 per ton, which rate is effective from January 1, 2006 through June 30, 2007, for Franchise Yard Waste received at the Guadalupe Landfill and transferred to the Kirby Canyon Recycling and Dispsoal Facility. Following any adjustment authorized pursuant to **Sections VI.I,** the new Yard Waste Transportation Component shall become the Yard Waste Transportation Component for all Franchise Yard Waste received at the Guadalupe Landfill and transferred to the Kirby Canyon Recycling and Dispsoal Facility on and after the Adjustment Date until the next subsequent Adjustment Date, as provided in **Section VI.I** below.

3. Yard Waste Fee Component.

The Yard Waste Fee Component shall be based on a per-Ton charge consisting of the total of: (a) all per-Ton franchise fees, regulatory fees, mitigation fees, surcharges and taxes assessed by any governmental entity on Yard Wastes received at the Guadalupe Landfill; and (b) a per-Ton dollar amount calculated by taking the total of all of the surcharges and taxes not assessed on a per Ton basis (except for ad valorem real property taxes) which are assessed on the Guadalupe Landfill (including fees on gross receipts and license fees) and dividing that amount by the number of Disposed Tons of Yard Waste received at the Guadalupe Landfill during the Analysis Period, as defined in **Section VI.H.2**.

The Yard Waste Fee Component, which shall be in effect from January 1, 2006 through June 30, 2007, will be $0.80 per Ton. Fees and taxes that will make up the Yard Waste Fee Component as of the Effective Date are listed in Exhibit D hereto. CONTRACTOR may immediately adjust the Yard Waste Fee Component whenever any franchise fees, regulatory fees, mitigation fees, surcharges and taxes relating to the Guadalupe Landfill are imposed or increased. CONTRACTOR shall immediately reduce the Yard Waste Fee Component whenever such fees are decreased or eliminated. CONTRACTOR shall notify AUTHORITY in writing at least thirty (30) days in advance of any increase or decrease in the Yard Waste Fee Component due to changes in fees, surcharges or taxes. Such Notification of Adjustment shall detail the existing amount of the Yard Waste Fee Component, the basis for the pro rated share and the additional per-Ton fee due CONTRACTOR. The AUTHORITY shall have the right, but not the obligation, to terminate the Agreement if the City of San Jose's Disposal Facility Tax (DFT), now set at $13 per Ton, increases by more than (i) $5.00 per Ton in any single year; or (ii) more than $15.00 per Ton in total over the Term and Extension(s) of this Agreement, the AUTHORITY must exercise its right to terminate hereunder within ninety (90) calendar days of the implementation of the increase in the DFT and must provide no less than 180 calendar days written notice of the termination. The City's right to terminate shall be void if CONTRACTOR agrees to pay all net increases in the existing DFT in excess of $5.00 per Ton in any given year or $15.00 per Ton over the term of the Agreement. During the required notification and termination period the AUTHORITY shall be obligated to pay the entire DFT, plus all increases.

H. Notification of Adjustment to Contract Yard Waste Processing Rate

1. Adjustment Dates.

The first Adjustment Date ("Adjustment Date") shall be on July 1, 2007, and each subsequent Adjustment Date shall be on July 1 of each succeeding year. Increases in the Yard Waste Base Rate due to CPI Increases and Allowable Cost Increases shall become effective on each Adjustment Date.

2. Analysis Period.
This term shall mean to include the time frame since the last rate adjustment was calculated, as provided for in **Section VI.I.**

3. Notices of Adjustments.
On or before March 1 of each year of this Agreement, beginning in March 2007, prior to the years in which an annual adjustment is to be made, CONTRACTOR shall submit to AUTHORITY Representative a Rate Adjustment Statement setting forth the existing Yard Waste Proprietary Rate, the applicable index values, the percentage change in the applicable indices, the calculation of the annual adjustment, the new base rate, the Yard Waste Fee Component, and the resulting Contract Yard Waste Processing Rate. Within forty-five (45) days of CONTRACTOR'S submittal of the Rate Adjustment Statement to AUTHORITY, AUTHORITY Representative shall notify CONTRACTOR of any exceptions to the Contract Yard Waste Rate Adjustment Statement. If AUTHORITY does not submit written exceptions to the Yard Waste Rate Adjustment Statement within said forty-five (45) days, AUTHORITY shall be deemed to have accepted the Yard Waste Rate Adjustment Statement submitted by CONTRACTOR.

Unless a later date is justified by exceptional circumstances, if CONTRACTOR does not submit its complete rate adjustment request by March 1, then no consideration of a rate adjustment shall be made, and no rate adjustment shall be instituted for the forthcoming fiscal year.

I. Yard Waste CPI Increases.
The Yard Waste Proprietary Rate and the Yard Waste Transportation Component in effect on the date preceding any Adjustment Date may be adjusted upward or downward on each Adjustment Date. The annual adjustment shall be a percentage of the compensation payable based on ninety percent (90%) of the annual December-to-December percentage change up to a 4.0% change and eighty five percent (85%) of that amount between a 4% and 5% if it is greater than 4.0% change in the Consumer Price Index for All Urban Consumers (CPI-U), not to exceed 5%, total CPI adjustment.

By way of example, if the CPI is 5% in a given year, the formula would be 90% of 4% multiplied by the existing rate, plus 85% of that amount between 4% and 5% multiplied by the existing rate with the new rate being the sum of the two amounts added to the existing rate.

The index used shall be the All Urban Consumers Index (CPI-U), for all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982-1984 = 100, not seasonally adjusted, compiled and published by the United States Department of Labor, Bureau of Labor Statistics. Should any such index be discontinued, a successor index shall be used. 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. Should any such index not be published for December, the adjustment shall be calculated using the index values of the Novembers immediately preceding the Decembers contemplated by this Agreement.

Annual Yard Waste Proprietary Rate adjustments shall be made only in units of one cent ($0.01). Fractions less than one cent ($0.01) shall not be considered in making adjustments. The indices and rates shall be truncated at four (4) decimal places for the adjustment calculations.

No annual increase or decrease in the Yard Waste Proprietary Rate shall exceed five percent (5%) of the Yard Waste Proprietary Rate in effect as of the Effective Date, after the first Adjustment Date has occurred, or as of the most recent Adjustment Date.

J. Allowable Yard Waste Processing Cost Changes.

Certain costs which increase CONTRACTOR'S cost of providing Yard Waste Processing service under this Agreement shall be allowed as adjustments to the Yard Waste Proprietary Rate, but only to the extent provided in **Section VI.J.2** below.

1. Costs Not Allowable.

The Yard Waste Proprietary Rate to be in effect as of the Effective Date includes costs associated with complying with all Legal Requirements.

CONTRACTOR shall be responsible for any Yard Waste Fee adjustment as a result of the costs of compliance enumerated in Exhibit D, attached, except for any Change in Legal Requirements enumerated in Exhibit D, which is enacted or promulgated after the Effective Date of this Agreement.

2. Allowable Costs.

If and only to the extent the following costs are necessary to comply with a Change in Legal Requirements, they shall be Allowable Costs justifying a proportionate increase or decrease in the Yard Waste Proprietary Rate as specified in **Section VI.J.4** below:

a. Incremental operating, maintenance, monitoring, reporting and capital costs, including but not limited to the costs of making improvements or modifications, at the Guadalupe Landfill and/or Yard Waste Processing Facility necessary to perform under this Agreement, but only to the extent brought about by a Change in Legal Requirements.

3. Mandatory Procedure for Allowable Costs.

CONTRACTOR must follow the procedure in this **Section VI.J.3** before the Yard Waste Proprietary Rate will be increased to reflect Allowable Costs.

a. Notice to AUTHORITY. CONTRACTOR shall give AUTHORITY prompt notice of the Change in Legal Requirements, specifically identifying such Change in Legal Requirements (and providing a copy of the official text of such Change in Legal Requirements) and describing what changes or modifications to operations at the Disposal Facility are required, when compliance is required, and whether CONTRACTOR or the Yard Waste Processing Facility is eligible for any exemptions or variances.

b. Proposed Method to AUTHORITY. CONTRACTOR shall thereafter submit to AUTHORITY its proposed method for complying with the regulations, the estimated cost of compliance, and the associated adjustment in the Contract Yard Waste Rate for AUTHORITY as its proportionate share.

c. Proposed Method to Regulatory Agency. CONTRACTOR shall submit its proposed method of compliance to the appropriate regulatory agency. If the agency approves that method without conditions, the proportionate share of the cost of that method of compliance will be the amount by which the Contract Yard Waste Rate may be adjusted.

d. Implement Compliance Method. If CONTRACTOR'S method is not approved, CONTRACTOR will implement the method of compliance

which is approved by the regulatory agency. The proportionate share of the cost of that method of compliance will be the amount by which the Yard Waste Proprietary Rate may be increased.

4. Method of Allocating Allowable Costs.
The method for allocating allowable Yard Waste processing costs shall be the same as described for allocating allowable Disposal cost in **Section VI.E.4** above.

K. Regulatory Yard Waste Processing Cost Changes.
Any existing costs directly incurred because of compliance with changes in Legal Requirements in the future will result in a proportionate increase or decrease of the Yard Waste Proprietary Rate. Such increase or decrease shall be calculated in the same manner as the calculation of regulatory Disposal costs for the same reason, as described in **Section VI.F** above.

L. Contract Construction and Demolition Debris Processing Rate.
The Contract Construction and Demolition Debris Processing Rate will consist of two components: (1) the proprietary rate for processing Construction and Demolition Debris at the Guadalupe Landfill (the "C&D Proprietary Rate"); and, (2) the total of taxes and fees assessed to the Guadalupe Landfill solely for Construction and Demolition Debris processing purposes related to the (the "C&D Fee Component"). The initial Contract Construction and Demolition Debris Processing Rate will be $37.50 per Ton, which rate is effective from January 1, 2006 through June 30, 2007 as presented in Exhibit C.

The Contract Construction and Demolition Debris Processing Rate may not be increased during the Term, except under the following circumstances: the C&D Proprietary Component may be adjusted for CPI Increases as authorized under **Section VI.N** below, for Allowable Cost Increases as provided in **Section VI.O** below, and for additional services requested by AUTHORITY, as provided in **Section VI.Q** below; and the C&D Fee Component may be adjusted to reflect changes in taxes and fees assessed at the Guadalupe Landfill on Construction and Demolition Debris, as provided in **Section VI.L.2** below.

1. C&D Proprietary Rate.
The initial C&D Proprietary Rate shall be $36.70 per Ton, which fee is effective from January 1, 2006, through June 30, 2007 for Franchise Construction and Demolition Debris received at the Guadalupe Landfill. Following any adjustment authorized pursuant to **Sections VI.N, O** or **Q**,

the new C&D Proprietary Rate shall become the C&D Proprietary Rate on and after the Adjustment Date until the next subsequent Adjustment Date, as provided in **Section VI.N** below.

2. C&D Fee Component.

The C&D Fee Component shall be based on a per-Ton charge consisting of the total of: (a) all per-Ton franchise fees, regulatory fees, mitigation fees, surcharges and taxes assessed by any governmental entity on Construction and Demolition Debris received at the Guadalupe Landfill; and (b) a per-Ton dollar amount calculated by taking the total of all of the surcharges and taxes not assessed on a per Ton basis (except for ad valorem real property taxes) which are assessed on the Guadalupe Landfill (including fees on gross receipts and license fees) and dividing that amount by the number of Disposed Tons of Construction and Demolition Debris received at the Guadalupe Landfill during the Analysis Period, as defined in **Section VI.M.2**.

The C&D Fee Component, which shall be in effect from January 1, 2006 through June 30, 2007, will be $0.80 per Ton. Fees and taxes that will make up the C&D Fee Component as of the Effective Date are listed in Exhibit C hereto. CONTRACTOR may immediately adjust the C&D Fee Component whenever any franchise fees, regulatory fees, mitigation fees, surcharges and taxes relating to the Guadalupe Landfill are imposed or increased. CONTRACTOR shall immediately adjust the C&D Fee Component whenever such fees are decreased or eliminated. CONTRACTOR shall notify AUTHORITY in writing at least thirty (30) days in advance of any increase in the Contract Construction and Demolition Gate Rate due to changes in fees, surcharges or taxes. Such Notification of Adjustment shall detail the existing amount of the C&D Fee Component, the basis for the pro rated share and the additional fee per-Ton fee due CONTRACTOR. The AUTHORITY shall have the right, but not the obligation, to terminate the Agreement; if the City of San Jose's Disposal Facility Tax (DFT), now set at $13 per Ton, increases by more than (i) $5.00 per Ton in any single year; or (ii) more than $15.00 per Ton in total over the Term and Extension(s) of this Agreement. The AUTHORITY must exercise its right to terminate within ninety (90) calendar days of implementation of any increase in the DFT and must provide no less than 180 days written notice. The AUTHORITY'S right to terminate hereunder shall be void if CONTRACTOR agrees to pay all net increases in the existing DFT in excess of $5.00 per Ton in a given year or $15.00 per Ton over the term of the Agreement. During the required notification period the AUTHORITY shall be obligated to pay the entire

DFT, plus all increases.

M. Notification of Adjustment to Contract Construction and Demolition Debris Processing Rate

1. Adjustment Dates.
The first Adjustment Date ("Adjustment Date") shall be on July 1, 2007 and each subsequent Adjustment Date shall be on July 1 of each succeeding year. Increases in the C&D Proprietary Rate due to CPI Increases and Allowable Cost Increases shall become effective on each Adjustment Date.

2. Analysis Period.
This term shall mean to include the time frame since the last rate adjustment was calculated, as provided for in **Section VI.N**.

3. Notices of Adjustments.
On or before March 1 of each year of this Agreement, beginning in March, 2007, in which an annual adjustment is to be made, CONTRACTOR shall submit to AUTHORITY Representative a Rate Adjustment Statement setting forth the existing C&D Proprietary Rate, the applicable index values, the percentage change in the applicable index, the calculation of the annual adjustment, the new base rate, the C&D Fee Component, and the resulting Contract Construction and Demolition Debris Processing Rate. Within forty-five (45) days of CONTRACTOR'S submittal of the Rate Adjustment Statement to AUTHORITY, AUTHORITY Representative shall notify CONTRACTOR of any exceptions to the Construction and Demolition Debris Rate Adjustment Statement. If AUTHORITY does not submit written exceptions to the Construction and Demolition Rate Adjustment Statement within said forty-five (45) days, AUTHORITY shall be deemed to have accepted the Construction and Demolition Debris Rate Adjustment Statement submitted by CONTRACTOR.

Unless a later date is justified by exceptional circumstances, if CONTRACTOR does not submit its complete rate adjustment request by March 1, then no consideration of a rate adjustment shall be made, and no rate adjustment shall be instituted for the forthcoming fiscal year.

N. C&D CPI Adjustments
The C&D Proprietary Rate in effect on the date preceding any Adjustment Date may be adjusted upward or downward on each Adjustment Date. The

annual adjustment shall be a percentage of the compensation payable based on ninety percent (90%) of the annual December-to-December percentage change up to a 4.0% change and eighty five percent (85%) of that amount between a 4% and 5% change if it is greater than 4.0% change in the Consumer Price Index for All Urban Consumers (CPI-U), not to exceed 5%

By way of example, if the CPI is 5% in a given year, the formula would be 90% of 4%, multiplied by the existing rate, plus 85% of that amount between 4% and 5%, multiplied by the existing rate, with the new rate being the sum of the two amounts added to the existing rate.

The index used shall be the All Urban Consumers Price Index (CPI-U), for all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982-1984 = 100, not seasonally adjusted, compiled and published by the United States Department of Labor, Bureau of Labor Statistics. Should any such index be discontinued, a successor index shall be used. 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. Should any such index not be published for December, the adjustment shall be calculated using the index values of the Novembers immediately preceding the Decembers contemplated by this Agreement.

Annual C&D Proprietary Rate adjustments shall be made only in units of one cent ($0.01). Fractions less than one cent ($0.01) shall not be considered in making adjustments. The indices and rates shall be truncated at four (4) decimal places for the adjustment calculations.

No annual increase or decrease in the C&D Proprietary Rate shall exceed five percent (5%) of the C&D Proprietary Rate compensation in effect as of the Effective Date, after the first Adjustment Date has occurred, or as of the most recent Adjustment Date.

O. Allowable Construction and Demolition Debris Processing Cost Adjustments.

Certain costs which increase CONTRACTOR'S cost of providing service under this Agreement shall be allowed as adjustments to the C&D Proprietary Rate, but only to the extent provided in **Section VI.O.2** below.

1. Costs Not Allowable.

The Construction and Demolition Proprietary Rate to be in effect as of the Effective Date includes costs associated with complying with all Legal Requirements.

CONTRACTOR shall be responsible for any Construction and Demolition Processing Fee adjustment as a result of the costs of compliance enumerated in Exhibit D, attached, except for any Change in Legal Requirements enumerated in Exhibit D, which is enacted or promulgated after the Effective Date of this Agreement.

2. Allowable Costs.

If and only to the extent the following costs are necessary to comply with changes to Legal Requirements, they shall be Allowable Costs justifying a proportionate adjustment in the C&D Proprietary Rate as specified in **Section VI.O.4** below:

a. Incremental operating, maintenance, monitoring, reporting and capital costs, including but not limited to the costs of making improvements or modifications, at the Construction and Demolition Debris Recycling Line to perform under this Agreement, but only to the extent brought about by a Change in Legal Requirements.

3. Mandatory Procedure for Allowable Costs.

CONTRACTOR must follow the procedure in this **Section VI.O.3** before the Contract Construction and Demolition Debris Rate will be adjusted to reflect Allowable Costs.

a. Notice to AUTHORITY. CONTRACTOR shall give AUTHORITY prompt notice of the Change in Legal Requirements, specifically identifying such Change in Legal Requirements (and providing a copy of the official text of such Change in Legal Requirements) and describing what changes or modifications to operations at the Construction and Demolition Debris Recycling Line are required, when compliance is required, and whether CONTRACTOR or the Construction and Demolition Debris Recycling Line is eligible for any exemptions or variances.

b. Proposed Method to AUTHORITY. CONTRACTOR shall thereafter submit to AUTHORITY its proposed method for complying with the regulations, the estimated cost of compliance, and the associated adjustment in the Contract Construction and Demolition Rate for AUTHORITY as its proportionate share.

c. Proposed Method to Regulatory Agency. CONTRACTOR shall submit its proposed method of compliance to the appropriate regulatory agency. If the agency approves that method without

conditions, the proportionate share of the cost of that method of compliance will be the amount by which the Contract Construction and Demolition Rate may be adjusted.

d. Implement Compliance Method. If CONTRACTOR'S method is not approved, CONTRACTOR will implement the method of compliance which is approved by the regulatory agency. The proportionate share of the cost of that method of compliance will be the amount by which the Contract Construction and Demolition Rate may be adjusted.

4. Method of Allocating Allowable Costs.
The method for allocating allowable Construction and Demolition Debris processing costs shall be the same as described for allocating allowable Disposal cost in **Section VI.E.4** above.

P. Regulatory Construction and Demolition Debris Cost Changes.
Any existing costs directly incurred because of compliance with Changes in Legal Requirements in the future will result in a proportionate increase or decrease of the C&D Proprietary Rate. Such increase or decrease shall be calculated in the same manner as the calculation of the regulatory Disposal costs for the same reason, as described in **Section VI.F** above.

Q. Costs for Additional Services.
AUTHORITY may from time to time during the Term request that CONTRACTOR perform additional services for AUTHORITY where such services are necessary to enable AUTHORITY to meet its obligations under applicable federal, state and local laws. CONTRACTOR hereby covenants to offer to provide such services to AUTHORITY at a commercially reasonable price, providing for recoupment of CONTRACTOR'S costs of providing such services, plus a reasonable profit, and consistent with the range of prices charged by CONTRACTOR or its affiliates to other entities for the same or similar services. CONTRACTOR shall not be obligated to provide such services to AUTHORITY unless the Parties reach mutual agreement on the price for such services. The agreed rate to be charged by CONTRACTOR for such services may be added to the Contract Rates, or, if appropriate, billed as a lump sum one-time additional fee (to perform a survey or waste composition analyses, for example), as follows:

1. AUTHORITY'S Written Request.
AUTHORITY must submit to CONTRACTOR a written request for additional services, with sufficient detail to allow CONTRACTOR to

estimate the additional costs to CONTRACTOR to perform such services ("Request for Additional Services").

2. CONTRACTOR'S Estimates.

Within thirty (30) days after receipt of a Request for Additional Services, CONTRACTOR shall provide to AUTHORITY a written estimate of the commercially reasonable price of performing such additional services, with a detailed breakdown of the components of CONTRACTOR'S pricing proposal. The estimate shall include the amount by which the Contract Rates would be increased as a result of such additional services, or the lump sum fee for additional services.

3. Meet and Confer; Method of Agreement and Acceptance.

The Parties shall meet and confer in good faith in an effort to reach agreement on the terms and conditions for CONTRACTOR'S providing such services. If, and only if, AUTHORITY agrees that the cost estimate is commercially reasonable, AUTHORITY may deliver a written acceptance to CONTRACTOR ("Notice of Acceptance"), and CONTRACTOR shall implement such additional services and increase the Contract Gate Rate accordingly, or charge the agreed-upon lump sum once services have been performed.

VII. BILLING AND PAYMENT PROCEDURE

A. Invoices.

By the tenth day of each month, CONTRACTOR shall submit to the Designated Hauler invoices at the Contract Rates covering Franchise Solid Waste, Franchise Yard Waste, and Franchise Construction and Demolition Debris delivered to the Disposal Facility during the prior month. A copy of the invoice and report shall be sent to the AUTHORITY Representative, regardless of who receives the original invoice.

CONTRACTOR shall follow the payment procedures included in Exhibit L of this Agreement.

B. Authority Not Liable for Payment.

The Parties acknowledge that AUTHORITY may not generally physically deliver Solid Waste, Yard Waste, or Construction and Demolition Debris to the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility, and that such deliveries may generally be carried out by one or more Designated Haulers, and that in such event the Solid Waste, Yard Waste, or Construction and Demolition

Debris invoices will be paid by the Designated Hauler.

VIII. BOOKS AND RECORDS

Books and records relating to the total amount of monthly Tonnage of Franchise Solid Waste, Franchise Yard Waste, and Franchise Construction and Demolition Debris received from Designated Hauler, and the composition of costs claimed by CONTRACTOR as a basis for an increase in the Contract Rates shall be maintained by CONTRACTOR. AUTHORITY'S designated agent, referred to in **Section VI.E.4.b.(2)**, may audit and inspect such books and records to the extent and for the sole purpose of ascertaining the correct amount of monthly bills and increased Contract Gate Rate when claimed by CONTRACTOR. This right to audit and inspect books and records shall be effective for a period of two years following the Termination Date during regular work hours and upon reasonable notice by AUTHORITY.

IX. COMPILATION OF INFORMATION FOR STATE LAW PURPOSES

CONTRACTOR shall compile information on amounts of Solid Waste, Yard Waste, and Construction and Demolition Debris delivered to the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility which AUTHORITY may reasonably request in order to meet its obligations under the California Integrated Waste Management Act of 1989, as it may be from time to time amended.

X. DESIGNATED HAULERS

A. Requirement to Comply with Laws.

AUTHORITY shall require that any Designated Hauler entering the designated Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility comply with all federal, state and local health and safety regulations, including any reasonable work or safety rules which have been promulgated by CONTRACTOR to govern operations of the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility. Vehicles or persons found not to be in compliance may be denied entry to or removed from the Disposal Facility, Yard Waste Processing

Facility, and Construction and Demolition Debris Processing Facility.

B. Inspection of Records.

If AUTHORITY'S Designated Hauler also delivers material to the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility collected from within another jurisdiction that is not a party to a similar agreement with CONTRACTOR providing for the same Contract Gate Rate as granted to AUTHORITY pursuant to this Agreement, then AUTHORITY shall require that such Designated Hauler provide CONTRACTOR or its agents the right to inspect the books and records of such Designated Hauler for the limited purpose of determining that materials collected from within such other jurisdiction are not being delivered to the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility at the Contract Rates granted AUTHORITY pursuant to this Agreement. If AUTHORITY obtains such records, AUTHORITY shall provide CONTRACTOR with the results of its review thereof.

XI. INDEMNITY AND INSURANCE

A. Basic Indemnification.

CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to or death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims") and attorneys' fees and costs incurred by defending such claims, arising out of or caused in any way by, directly or indirectly, (1) its performance of, or failure to perform, its obligations under this Agreement, including but not limited to failure to comply with Legal Requirements, or breach of its representations and warranties set forth in this Agreement, provided that such damages do not arise out of negligence or intentional misconduct of AUTHORITY. CONTRACTOR'S duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

B. Hazardous Substance Indemnification.

Subject to the provisions of **Section XI.C** below, CONTRACTOR shall protect, defend (with counsel selected by CONTRACTOR and reasonably acceptable to AUTHORITY), indemnify and hold harmless AUTHORITY, its

officers, employees, agents, assigns and any successor or successors to AUTHORITY'S interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, responses, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, AUTHORITY or its officers, employees, or agents arising from or attributable to any repair, cleanup, or detoxification, or preparation, and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action), concerning the release or threatened release of any Hazardous Substance or Hazardous Waste at the Disposal Facility, or if the activities of CONTRACTOR pursuant to this Agreement, from and after the Effective Date of this Agreement, result in a release of Hazardous Waste or Hazardous Substance into the environment, provided that such damages do not arise out of the negligence or intentional misconduct of AUTHORITY, its officers, employees, agents, assigns and any successor or successors to AUTHORITY'S interest. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect and hold harmless and indemnify AUTHORITY from liability. This provision shall survive the termination of this Agreement. The foregoing indemnity shall not have any dollar limitation.

C. <u>No Indemnity Where Hazardous Waste Programs Not in Effect.</u>

The defense and indemnity obligations specified in **Sections XI.A** and **B** above shall not apply with respect to: (1) any Hazardous Waste generated by AUTHORITY itself and knowingly or negligently delivered by AUTHORITY to a third party or CONTRACTOR for Disposal at the Disposal Facility; (2) any Hazardous Waste generated in households collected within the AUTHORITY and delivered to the designated Disposal Facility during a time when AUTHORITY has failed to maintain, or caused to maintain, in effect programs for the safe collection, Recycling, treatment and/or Disposal of Hazardous Wastes generated in households, in substantial compliance with its obligation set forth in **Section IV.A**; or (3) the Disposal or release of Hazardous Substances, which Disposal or release has resulted from the negligence or intentional misconduct of AUTHORITY or its Designated Hauler.

D. No Rights or Benefits, Etc. Regarding Designated Hauler.

Nothing in this **Section XI** shall be deemed to confer any rights or benefits for a defense or indemnification to AUTHORITY'S Designated Hauler, nor shall anything in this Agreement be deemed to be a waiver or release of any claims by CONTRACTOR against AUTHORITY'S Designated Hauler should such Designated Hauler deliver Hazardous Waste or Hazardous Substances, including but not limited to Household Hazardous Waste, to CONTRACTOR.

E. Indemnification Procedure.

1. Notice and Cooperation, Etc.

With respect to any claim for defense and indemnification, AUTHORITY shall: (1) give a minimum of fifteen (15) days written notice to CONTRACTOR following knowledge of the claim or proceeding as to which the right to indemnification may be asserted by AUTHORITY; (2) allow CONTRACTOR (including its employees, agents and counsel) reasonable access to any of AUTHORITY'S employees, property and records for the purpose of conducting an investigation and defense of such claim and taking such other steps as may be necessary to preserve evidence of the occurrence on which the claim is based; and (3) reasonably cooperate with and assist CONTRACTOR in the defense of AUTHORITY.

2. CONTRACTOR'S Option to Assume Defense.

In any instance in which AUTHORITY claims indemnification hereunder, CONTRACTOR may elect to defend with counsel selected by CONTRACTOR and reasonably acceptable to AUTHORITY (and control the defense and settlement of) any litigation arising out of the occurrence from which AUTHORITY claims that CONTRACTOR'S indemnity obligation exists. If CONTRACTOR decides not to select counsel, such decision does not reduce or alleviate CONTRACTOR'S obligation to defend AUTHORITY, pursuant to **Section XI** of this Agreement.

F. Types and Amount of Insurance Coverage.

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the Term the types and amounts of coverage listed in Exhibit A, together with all endorsements and other special provisions also listed therein. CONTRACTOR'S indemnity obligations under this Agreement shall be

fulfilled to the extent that such obligations are satisfied by any defense or indemnity provided to AUTHORITY under any coverage provided by CONTRACTOR pursuant to this Section.

AUTHORITY requires prior approval of CONTRACTOR'S deductibles.

XII. RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

If CONTRACTOR: (1) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action which materially interferes with the ability of CONTRACTOR to perform its obligations under this Agreement; (2) appears in the reasonable judgment of AUTHORITY to be unable to regularly pay its bills as they become due; or (3) is the subject of a criminal proceeding brought by a federal, state, regional or local agency for violation of an Applicable Law concerning operation of the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility which AUTHORITY reasonably believes has placed CONTRACTOR'S ability to perform under this Agreement in substantial jeopardy, AUTHORITY may, at its option and in addition to all other remedies it may have, demand from CONTRACTOR reasonable assurances in such form and substance as AUTHORITY may require of timely and proper performance of this Agreement. Should CONTRACTOR fail to provide reasonable assurances as determined by AUTHORITY, within sixty (60) days of AUTHORITY'S demand, AUTHORITY may terminate this Agreement upon issuance of written notice to CONTRACTOR. Examples of reasonable assurances include but are not limited to the following: for labor unrest, sharing with AUTHORITY written plans to obtain temporary workers, to redeploy management, etc. to assure performance; for financial issues, sharing with AUTHORITY letters of credit, access to bank officials for references, etc., as needed.

XIII. COMPLIANCE WITH LEGAL REQUIREMENTS

In providing the services required under this Agreement, CONTRACTOR shall at all times comply with all Legal Requirements, permits and approvals pertaining to CONTRACTOR'S performance under this Agreement; provided, however, that this provision shall not preclude CONTRACTOR from being entitled to an increase in the Contract Rates due

to a Change in Legal Requirements. In the event of any conflict between this Agreement and any Legal Requirements, the Legal Requirements shall govern, and CONTRACTOR shall not be in breach of this Agreement if CONTRACTOR complies with such Legal Requirements in contravention of this Agreement.

XIV. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

CONTRACTOR represents and warrants as of the Effective Date of this Agreement as follows:

A. Corporate Status.

CONTRACTOR is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

B. Corporate Authorization.

CONTRACTOR has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of CONTRACTOR (or the shareholders, if necessary) have taken all actions required by law and by CONTRACTOR'S articles of incorporation, bylaws, or otherwise, to authorize the execution of this Agreement. The person signing this Agreement on behalf of CONTRACTOR has authority to do so.

C. Status of Disposal Facility.

CONTRACTOR owns and operates the Guadalupe Landfill. The areas to be receiving Franchise Solid Waste under this Agreement at the Guadalupe Landfill have been designed and constructed in accordance with, or have received applicable variances under, 23 California Code of Regulations Section 2510 et seq. ("Chapter 15"), and the Guadalupe Landfill has been issued all permits from federal, state, regional, county and city agencies necessary for it to operate as a sanitary landfill, yard waste processing and construction and demolition processing facility. Upon written request, CONTRACTOR shall provide documentation to AUTHORITY Representative that CONTRACTOR has adequate financial responsibility sufficient to finance CONTRACTOR'S closure and post-closure plan as submitted to state and local permit enforcement agencies.

D. Agreement Will Not Cause Breach.

To the best of CONTRACTOR'S knowledge, after reasonable investigation,

neither the execution nor delivery of this Agreement nor the performance of this Agreement by CONTRACTOR:

1. Conflicts with, violates or results in a breach of any Legal Requirements; or

2. Conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which any CONTRACTOR is a party or by which any CONTRACTOR or any of its properties or assets are bound, or constitutes a default hereunder.

E. No Pending Litigation.

To the best of CONTRACTOR'S knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending against any CONTRACTOR wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by CONTRACTOR of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of CONTRACTOR.

F. Notification of Material Changes.

CONTRACTOR shall notify AUTHORITY within five (5) days if a representation or warranty found herein becomes untrue in a material respect during the Term.

XV. REPRESENTATIONS AND WARRANTIES OF AUTHORITY

AUTHORITY represents and warrants, as of the Effective Date, as follows:

A. Status.

AUTHORITY is a state joint powers authority organized under the laws of the State of California.

B. Corporate Authorization.

AUTHORITY has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of AUTHORITY has taken all actions required by law to authorize the execution of this Agreement. The person signing this Agreement on behalf of AUTHORITY has authority to

do so.

C. Agreement Will Not Cause Breach.

To the best of AUTHORITY'S knowledge, neither the execution nor delivery of this Agreement nor the performance of this Agreement by AUTHORITY:

1. Conflicts with, violates or results in a breach of any applicable law; or

2. Conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority.

D. No Pending Litigation.

To the best of AUTHORITY'S knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending against AUTHORITY wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by AUTHORITY of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement.

XVI. RELATIONSHIP OF PARTIES

The Parties intend that CONTRACTOR shall perform the services required by this Agreement as an independent CONTRACTOR engaged by AUTHORITY and not as an officer or employee of AUTHORITY or as a partner of or joint venturer with AUTHORITY. No employee or agent of CONTRACTOR shall be or shall be deemed to be an employee or agent of AUTHORITY. Except as expressly provided herein, CONTRACTOR shall have the exclusive control over the manner and means of conducting the Solid Waste Disposal, Yard Waste, and Construction and Demolition Debris Processing services performed under this Agreement, and all persons performing such services. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Neither CONTRACTOR nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to AUTHORITY'S employees by virtue of its employment with AUTHORITY. All references to AUTHORITY, or to AUTHORITY'S employees, agents, representatives, successors or assigns shall not be deemed to include or refer to

AUTHORITY'S Designated Hauler.

XVII. SUCCESSORS AND ASSIGNS

The terms, covenants and conditions of this Agreement shall apply to and shall bind the successors and assigns of CONTRACTOR and AUTHORITY. Under no circumstances shall any proposed assignment be considered by AUTHORITY if CONTRACTOR is in default at any time during the period of consideration.

A. Assignment by Contractor.

1. Permitted Assignments.
CONTRACTOR shall not assign its rights nor delegate or otherwise transfer any obligations under this Agreement to any other person without the prior written consent of AUTHORITY. Any such assignment made without the consent of AUTHORITY shall be voidable and the attempted assignment shall constitute a breach of this Agreement.

2. Consent Requirements.
If CONTRACTOR requests AUTHORITY'S consideration of and consent to an assignment, such consent shall not be unreasonably withheld. No request by CONTRACTOR for consent to an assignment need be considered by AUTHORITY unless and until CONTRACTOR or the proposed assignee have disclosed to AUTHORITY all information reasonably requested by AUTHORITY relating to the business, assets and history of the assignee, including at a minimum, and without limitation:

a. Reasonable Expenses. CONTRACTOR shall agree to undertake to pay AUTHORITY its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment, except that any expenses in excess of $15,000 shall be approved by CONTRACTOR in advance;

b. Financial Statements. Audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

c. Experience. Satisfactory evidence that the proposed assignee:

(1) has at least ten (10) years of Solid Waste, Yard Waste, and Construction and Demolition Debris management experience in the field of Solid Waste, Yard Waste, and Construction and Demolition Debris management on a scale comparable to the scale of operations conducted by CONTRACTOR;

(2) has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management laws and that the assignee has provided AUTHORITY with a complete list of such citations and censures;

(3) has at all times conducted its operations in an environmentally safe and conscientious fashion; and

(4) that the proposed assignee conducts its Solid Waste management practices in full compliance with all federal, state and local laws regulating the collection and Disposal of Solid Waste, Yard Waste, and Construction and Demolition Debris, including, Hazardous Waste, as identified in Title 22 of the California Code of Regulations;.

d. Other Information. Such other information as AUTHORITY shall reasonably request in order to ascertain whether the proposed assignee is capable of, and intends to, fulfill its obligations under this Agreement in a timely, safe and efficient manner.

B. Assignment by Authority.

AUTHORITY may assign and delegate all rights and duties of the AUTHORITY, and its Council, Boards and Officials under this Agreement to any joint powers authority or other public agency; provided, however, that this Agreement will continue to govern only the Disposal of Franchise Solid Waste generated within AUTHORITY and processing of Yard Waste, and Construction and Demolition Debris generated within AUTHORITY.

C. Assignment Not a Release.

No assignment by CONTRACTOR or AUTHORITY pursuant to **Sections XVII.A** or **B** shall be construed as a release of CONTRACTOR'S or AUTHORITY'S obligations under this Agreement, unless the Party or

Parties to whom such obligations extend consent in writing to release the obligor from such obligations.

XVIII. REPRESENTATIVES OF THE PARTIES

A. Representatives of Authority.

The person whose title appears on the signature page at the end of this Agreement as the representative of AUTHORITY shall have the authority to exercise all rights of AUTHORITY under this Agreement and shall have authority to perform all obligations of AUTHORITY under this Agreement, unless those rights are outside the scope of the authority of the representative. The Board of Directors of AUTHORITY may authorize such other persons who are employees of AUTHORITY to have and exercise similar rights and such authority. Any such person may, in turn, delegate such rights and such authority to subordinate officers of AUTHORITY. Alternatively, the Board of Directors of AUTHORITY may designate an agency created under any Joint Exercise of Powers Act of which AUTHORITY is a member, as its representative under this Agreement. CONTRACTOR may rely upon actions taken by such delegates with respect to AUTHORITY'S collective rights and obligations, to the extent that such actions are authorized by the Board of Directors. Immediately upon making any such authorization or delegation under this **Section A,** AUTHORITY shall duly notify CONTRACTOR in writing of the name(s) of such persons or agencies and the nature of such authorization or delegation.

B. Representatives of Contractor.

Appearing at the end of this Agreement in the space so provided is the name or names of such person(s) as CONTRACTOR has designated to serve as the representative of CONTRACTOR in all matters related to this Agreement. CONTRACTOR has placed no limitations on the authority of such persons. CONTRACTOR shall inform AUTHORITY in writing of any change in such designation(s) and of any limitations upon his or her authority to bind CONTRACTOR. AUTHORITY may rely upon action taken by such designated representatives as actions of CONTRACTOR unless they are outside the scope of the authority delegated to him/her by the CONTRACTOR as communicated to AUTHORITY.

XIX. NOTICES

Any and all notices to be given under this Agreement, or which any Party may desire to give to another, shall be in writing. Said notices shall be deemed delivered by personal delivery to the other Party's place of business as designated below during regular business hours, or on the third day following deposit in the mail in the County of Santa Clara, California, said deposit by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

A. <u>If to Contractor.</u>

Notices required to be given by AUTHORITY to CONTRACTOR may be deemed received by CONTRACTOR upon being deemed "delivered" to CONTRACTOR according to the provisions of this Section. Notice of Breach by AUTHORITY to CONTRACTOR arising out of the alleged failure, refusal or neglect by CONTRACTOR to accept or Dispose of Franchise Solid Waste, accept or process of Franchise Yard Waste, or Franchise Construction and Demolition Debris, may be given to CONTRACTOR orally or by telephone at the principal office of each, if confirmed in writing and delivered in person or by facsimile by noon the following day. Notice to CONTRACTOR shall be addressed to the following addresses, as indicated:

Street address is:

District Manager
c/o Guadalupe Rubbish Disposal Company, Inc.
15999 Guadalupe Mines Road
San Jose, CA 95120

Mailing address is:

P.O. Box 20957
San Jose, CA 95160

B. <u>If to Authority.</u>

To the name and address shown in the space provided at the end of this Agreement, with a copy to the person whose name and address also so appears. A copy shall also be provided to:

Executive Director
West Valley Solid Waste Management Authority
c/o Hilton Farnkopf & Hobson, LLC
2175 N. California Blvd., Suite 990
Walnut Creek, CA 94596

Changes of address shall be promptly filed with the other Parties.

XX. WAIVER

The waiver by any Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by any Party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement. Failure by any Party to give notice of default pursuant to **Section XIX** within a reasonable time, which in no event shall exceed one year, after the date the non-defaulting Party has notice of the default, shall be deemed a waiver of such default.

XXI. OVERRIDING FEDERAL AND STATE LAWS

The obligations of the Parties in this Agreement are subject to any and all overriding federal and state laws and regulations. Should any material obligation or covenant of any party in this Agreement be determined by a court of competent jurisdiction to be unenforceable by reason of any Federal or State law or regulation, then no Party shall be liable to any other Party for breach of this Agreement or for damages; however, in such event, CONTRACTOR or AUTHORITY may elect to terminate this Agreement without liability to any other Party.

XXII. AUTHORITY'S DEFAULT.

A. Default Defined.

AUTHORITY shall be in default under this Agreement ("AUTHORITY Default"), unless excused under **Section XXIV** or AUTHORITY affects a cure under **Section XXII.B** below, if:

1. A representation or warranty contained in **Section XV** proves to be false or misleading in a material respect as of the date such representation or warranty is made; or

2. AUTHORITY fails to substantially perform its material obligations under this Agreement.

B. Cure.

A default shall occur if AUTHORITY fails to cure such breach within sixty (60) days after receiving notice from CONTRACTOR specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than sixty (60) days to cure, AUTHORITY shall not be in default so long as AUTHORITY promptly commences the cure and diligently proceeds to completion of the cure.

C. Right to Terminate Upon Default.

In the event of an AUTHORITY Default, CONTRACTOR shall have all remedies available under California law for breach of contract, including without limitation the right to terminate performance as a result of an AUTHORITY Default.

D. Contractor's Remedies Cumulative.

CONTRACTOR'S right to terminate this Agreement under **Section XXII.C** is not exclusive, and CONTRACTOR'S exercise of such right shall not constitute an election of remedies. Instead, the right to terminate shall be in the alternative and in addition to any and all other legal and equitable rights and remedies which CONTRACTOR may have. By virtue of the nature of this Agreement, the remedy of damages for a breach hereof by AUTHORITY is agreed to be inadequate and CONTRACTOR shall be entitled to injunctive relief.

XXIII. DEFAULT BY CONTRACTOR

A. Contractor Default.

Each of the following shall constitute an event of default by CONTRACTOR ("CONTRACTOR Default") hereunder, unless it is excused under **Section XXIV** or cured as provided under **Section XXIII.B** below if:

1. CONTRACTOR fails to substantially perform its material obligations under this Agreement;

2. There is a seizure or attachment of, or levy on, the operating equipment of CONTRACTOR used at the Disposal Facility, Yard Waste Processing Facility, or Construction and Demolition Debris Processing Facility which prevents CONTRACTOR from performing the work;

3. A representation or warranty contained in **Section XIV** proves to be false or misleading in a material respect as of the date such representation or warranty is made;

4. CONTRACTOR files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of CONTRACTOR for any substantial part of CONTRACTOR'S operating assets or any substantial part of CONTRACTOR'S property, or shall make any general assignment for the benefit of CONTRACTOR'S debt as they become due or shall take any action in furtherance of any of the foregoing;

5. A court having jurisdiction shall enter a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or CONTRACTOR shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of CONTRACTOR or for any substantial part of CONTRACTOR'S operating equipment or assets, or order the winding up or liquidation of the affairs of CONTRACTOR;

6. CONTRACTOR fails to provide reasonable assurances of performance as required under **Section XII**; or

7. After the first day that any of the Disposal Facility, Yard Waste Processing Facility, and Construction and Demolition Debris Processing Facility become unable to accept Franchise Solid Waste, Franchise Yard Waste, or Franchise Construction and Demolition Debris, CONTRACTOR remains unable to make alternate transfer or Disposal facilities available for the receipt of Franchise Solid Waste, Franchise Yard Waste, or Franchise Construction and Demolition Debris, which are reasonably acceptable to AUTHORITY, in accordance with **Sections V.A, V.B,** and **V.C**.

B. Cure.

A default shall occur unless CONTRACTOR fails to affect a cure, as follows:

1. Failure to Accept Franchise Solid Waste.

Franchise Yard Waste, or Franchise Construction and Demolition Debris. Except for Defaults described in **Section XXIII.A** above, which are addressed in **Section XXIII.C** below, if the failure consists of a failure to accept and Dispose of Franchise Solid Waste, Franchise Yard Waste, or Franchise Construction and Demolition Debris, as required by **Section V.A., V.B,** and **V.C** and is not cured within two (2) business days after receiving notice from AUTHORITY specifying the breach; or

2. Any Other Breach.

Except for Defaults described in **Section XXIII.A** above, which are addressed in **Section XXIII.C** below, if the breach is of any other provision of this Agreement and is not cured within sixty (60) calendar days after receiving notice from AUTHORITY specifying the breach, provided that if the nature of the breach is such that it will reasonably

require more than sixty (60) days to cure, CONTRACTOR shall not be in default so long as CONTRACTOR commences action required to cure the breach within ten (10) calendar days after receipt of such notice and continue such performance diligently until the cure is completed.

C. Authority's Right to Terminate Performance Upon Default.

Upon any CONTRACTOR Default, including but not limited to those defaults described in **Section XXIII**. above, or if CONTRACTOR fails to obtain or maintain the insurance policies and endorsements so long as said insurance and/or endorsements are available, as required by this Agreement, or fails to provide the proof of insurance as required by this Agreement AUTHORITY shall have the right to terminate this Agreement. Such termination shall be effective thirty (30) days after AUTHORITY has given notice of termination to CONTRACTOR, except that such notice shall be effective immediately if the CONTRACTOR Default is one which endangers the health, welfare, or safety of the public, including, but not limited to, failure to properly accept and Dispose of Franchise Solid Waste, Franchise Yard Waste, or Franchise Construction and Demolition Debris, as required by **Sections V.A, V.B,** and **V.C**. Notice shall be in writing and delivered to the representative of CONTRACTOR designated in or under **Section XIX**.

D. Authority's Remedies Cumulative; Specific Performance.

AUTHORITY'S rights to terminate this Agreement under **Section XII** and under **Section XXIII.C** above are not exclusive, and AUTHORITY'S exercise of such right shall not constitute an election of remedies. Instead, the right to terminate shall be in the alternative and in addition to any and all other legal and equitable rights and remedies which AUTHORITY may have. By virtue of the nature of this Agreement, the remedy of damages for a breach hereof by CONTRACTOR is agreed to be inadequate and AUTHORITY shall be entitled to injunctive relief.

E. Notice, Hearing and Appeal of Authority Breach.

Should CONTRACTOR contend that AUTHORITY is in breach of this Agreement, it shall file with the AUTHORITY Manager a written request with Authority for an administrative hearing. Said request shall be made within ninety (90) days of the event or incident which allegedly gave rise to the breach. AUTHORITY shall notify CONTRACTOR of the time and date hearing shall be held within thirty (30) days of receipt of CONTRACTOR'S request. CONTRACTOR shall present its position and all relevant facts after AUTHORITY staff has made its presentation. CONTRACTOR shall be notified of AUTHORITY'S ruling in writing within fourteen (14) days of the

administrative hearing.

If CONTRACTOR is not in agreement with the ruling issued by AUTHORITY at the administrative hearing, it shall have the right to appeal this ruling to the Board of Directors or a 3-person appeal/review board, one member appointed by the Board of Directors, another member appointed by CONTRACTOR and the third member selected by the other two appointees. This appeal shall be made in writing to AUTHORITY no later than fourteen (14) days after receipt of the administrative hearing ruling. AUTHORITY shall notify CONTRACTOR of the time and date the Board will review CONTRACTOR'S allegation. CONTRACTOR shall present its position and all relevant facts after staff has made its presentation. CONTRACTOR shall be notified in writing within thirty (30) days of the Board's ruling. The Board's ruling shall be final, and CONTRACTOR shall have no further rights of appeal and shall be deemed to have exhausted its administrative remedies and shall at that time be allowed to pursue all legal rights and remedies available to it in a court of law.

XXIV. FORCE MAJEURE

No Party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, acts of any government (including legislative, administrative or judicial action), or other similar causes which are not the fault of, and beyond the reasonable control of, the Party claiming excuse from performance. Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing or other concerted job action conducted by CONTRACTOR'S employees or directed at CONTRACTOR is not an excuse from performance and CONTRACTOR shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events. A Party claiming excuse under this **Section XXIV** must: (A) have taken reasonable precautions, if possible, to avoid being affected by the cause; and (B) notify the other Party or Parties in writing within one day after the occurrence of the event specifying the nature of the event, the expected length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform. The Party claiming excuse under this **Section XXIV** shall use its best efforts to remedy its inability to perform as quickly as possible.

XXV. PARTIES IN INTEREST

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

XXVI. DUTY OF CONTRACTOR NOT TO DISCRIMINATE

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

XXVII. OBLIGATIONS SURVIVING TERMINATION

Should this Agreement be terminated pursuant to its terms, each Party shall meet its obligations hereunder accruing to the date of termination, including the continuing indemnity obligations of the Parties as set forth in **Section XI**.

XXVIII. APPLICABLE LAW

The interpretation and effect of this Agreement shall be governed by application of the laws of the State of California.

XXIX. JURISDICTION

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Santa Clara County, California. All depositions made in Santa Clara County, unless another location is selected by AUTHORITY.

XXX. TIME OF THE ESSENCE

Time is of the essence to this Agreement.

XXXI. EXHIBITS

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

XXXII. ENTIRETY

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

XXXIII. ADVICE OF COUNSEL/NEGOTIATED AGREEMENT

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges that no other Party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another Party to execute this Agreement. The Parties agree that no provisions or provision may be subject to any rule of construction based upon any Party being considered the Party "drafting" this Agreement.

XXXIV. HEADINGS

The headings contained in this Agreement are for descriptive purposes only. The operative provisions of this Agreement are found only in the text of this Agreement.

XXXV. TIME PERIODS

All time periods specified herein shall be deemed to begin at 8:00 a.m. on the day marking the beginning of such time period and shall end at midnight of the day marking the end of such time period, unless otherwise specified herein.

XXXVI. SEVERABILITY

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

XXXVII. AMENDMENT

This Agreement may be amended or modified only by written agreement duly authorized by CONTRACTOR and Board of Directors and executed by their authorized representatives.

IN WITNESS WHEREOF, the Parties make this Agreement as of the Effective Date.

FOR CONTRACTOR:

GUADALUPE RUBBISH DISPOSAL COMPANY INC.

By _____

Print Name: DEAN KATTLER

VICE-PRESIDENT.
(Title)

FOR AUTHORITY:

By _____

Print Name: Nick Sinen

Board Chair
(Title)

APPROVED AS TO FORM:

By _____
(AUTHORITY Attorney)

Date 12-15-05

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Exhibit A

Insurance to be Maintained

EXHIBIT A

INSURANCE TO BE MAINTAINED

I. Workers' Compensation and Employer's Liability. CONTRACTOR shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. CONTRACTOR shall maintain employer's liability insurance in an amount not less than five million dollars ($5,000,000) per accident or disease.

II. Comprehensive General Liability (Including Automobile Liability). CONTRACTOR shall maintain comprehensive general liability insurance with a combined single limit of not less than ten million dollars ($10,000,000) per occurrence.

The insurance required by this **Section II** shall be at least as broad as:

a. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001) (Ed. 11/88); and.

b. Insurance Services Office form number CA 0001 (Ed. 6/92) covering Automobile Liability, code 1 "any auto".

The insurer shall agree to waive all rights of subrogation against AUTHORITY, its officers, officials, employees and volunteers for losses arising from work performed by CONTRACTOR for AUTHORITY.

III. Environmental Impairment Liability. CONTRACTOR shall maintain environmental impairment liability insurance in the amount of Ten Million Dollars ($10,000,000), with a One Million Dollar ($1,000,000) deductible, covering liability arising from the release of pollution at the Disposal Facility.

IV. Deductibles. CONTRACTOR shall disclose to AUTHORITY all deductibles for AUTHORITY'S approval.

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

A. Comprehensive General Liability.

1. "Thirty (30) days prior written notice by certified mail, return receipt

requested, shall be given to the AUTHORITY in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:"

2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to AUTHORITY, its officials, employees or volunteers.

3. "The AUTHORITY, its officers, employees, and agents are additional insureds on this policy."

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

5. "Inclusion of AUTHORITY as an additional insured shall not affect AUTHORITY'S rights as respects any claim, demand, suit or judgment brought or recovered against the CONTRACTOR. This policy shall protect CONTRACTOR and AUTHORITY in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

B. Automobile Liability Coverage.

1. "Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the AUTHORITY in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:"

2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to AUTHORITY, its officials, employees or volunteers.

3. "The AUTHORITY, its officers, employees, and agents are additional insureds on this policy."

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

5. "Inclusion of the AUTHORITY as an additional insured shall not affect the AUTHORITY'S rights as respects any claim, demand, suit or judgment brought or recovered against the CONTRACTOR. This policy shall protect CONTRACTOR and the AUTHORITY in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

C. Verification of Coverage.

A minimum of 30 days before the Effective Date, CONTRACTOR shall furnish AUTHORITY with certificates of each policy of insurance required hereunder, with original endorsements affecting coverage and disclosure of all self-insurance programs, in form and substance satisfactory to AUTHORITY. Such certificates shall show the name of the insurance company, type and amount of coverage, effective dates, and dates of expiration of policies. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. CONTRACTOR shall furnish AUTHORITY with a new certificate of insurance and endorsements upon each renewal of coverage or change of insurer's renewal certificates to demonstrate maintenance of the required coverage throughout the Term.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to AUTHORITY.

D. Other Insurance Requirements.

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

2. CONTRACTOR shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve

CONTRACTOR from any obligation under the Agreement, including those imposed by **Section XI** of the Agreement. If any claim is made by any third Person against CONTRACTOR or any subcontractor on account of any occurrence related to this Agreement, CONTRACTOR shall promptly report the facts in writing to the insurance carrier and to the AUTHORITY.

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Exhibit B

City Household Hazardous Waste Exclusion Programs and Policies

EXHIBIT B

CITY HOUSEHOLD HAZARDOUS WASTE EXCLUSION PROGRAMS AND POLICIES

I. CITY Municipal Code

Chapter 17.06 - Above Ground Hazardous Materials Storage

II. Solid Waste Collection Franchise Agreement

The franchise agreement is for a 9-year, eight-month period, from July 1, 1997, through February 28, 2007. The franchise is held by Green Valley Disposal Company, Inc.

Section 5.6 of the Agreement states:

"Service Exceptions; Hazardous Waste Notifications"

A. **Hazardous Waste Inspection and Reporting.** CONTRACTOR reserves the right and has the duty under law to inspect Refuse put out for Collection and to reject Refuse observed to be contaminated with Hazardous Waste and the right not to collect Hazardous Waste put out with Refuse. CONTRACTOR shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Refuse anywhere within the City. In addition to other required notifications, if CONTRACTOR observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of or released on any City property, including storm drains, streets, or other public rights of way, CONTRACTOR will immediately notify the City Manager or the City Manager's designee."

III. Household Hazardous Waste Element

As required by the California Integrated Waste Management Act and subsequent legislation, City Council of CITY adopted on September 1, 1992, by Resolution No. 8377, its Household Hazardous Waste Element (HHWE). The HHWE describes CITY'S current efforts to exclude the introduction of household hazardous wastes into the ordinary waste stream. CITY currently offers households weekly curbside collection of used oil. CITY participates in

a countywide household hazardous waste program, which currently includes nine drop-off events where residents and businesses (small quantity generators) may, by prior appointment, deliver their household hazardous waste to a designated location(s).

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Exhibit C

Contract Rates

EXHIBIT C

CONTRACT FEES

	Disposal Rate	Yard Waste Processing Rate (Beneficial Use at Guadalupe Landfill)	Yard Waste Processing Rate (Beneficial Use at Kirby Canyon Recycling and Dispsoal Facility)	Construction and Demolition Debris Rate
State AB1220 Fee	$ 1.40/Ton	n/a	n/a	n/a
Santa Clara County AB 939 Fee	$ 3.35/Ton	n/a	n/a	n/a
Santa Clara County Solid Waste Planning Fee	$ 0.50/Ton	n/a	n/a	n/a
City of San Jose Business Tax	$13.00/Ton	n/a	n/a	n/a
City of San Jose Solid Waste Enforcement Fee	$ 0.80/Ton	$ 0.80/Ton	$ 0.80/Ton	$ 0.80/Ton
Total Fee Component	$19.05/Ton	$ 0.80/Ton	$ 0.80/Ton	$ 0.80/Ton
Propriety Rate	$20.40/Ton	$18.58/Ton	$18.58/Ton	$36.70/Ton
Transportation Component			$7.90/Ton	
TOTAL FEE	$39.45/Ton	$19.38/Ton	$27.28/Ton	$37.50/Ton

Exhibit D

Disposal Fee Costs Responsibility of Contractor

EXHIBIT D

DISPOSAL FEE COSTS RESPONSIBILITY OF CONTRACTOR

The Disposal Proprietary Rate, Yard Waste Proprietary Rate, and Construction and Demolition Debris Proprietary Rate will not be increased, as a result of, any of the following:

1. Costs of compliance with the "Calderon Legislation" (former California Government Code, Sections 66796.53 and 66796.54, now California Public Resources Code Sections 45300-04, 45700, California Health & Safety Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273); "Proposition 65" (California Health & Safety Code, Section 25249.5 et. seq., and Health & Safety Code Section 25192); the Federal Clean Air Act (42 U.S.C. Sections 7401-7642) and the California Clean Air Act (Health and Safety Code Sections 39000-44384); the Federal Clean Water Act (33 U.S.C. Sections 1251 et seq.); the Porter-Cologne Water Quality Act (California Water Code, Division 7, Section 13000 et seq.); the California Integrated Waste Management Act of 1989 (California Public Resources Code, Divisions 30 and 31, Section 40000 et seq.); the Federal Resource Conservation and Recovery Act (42 U.S.C., Section 6901 et seq.); the California Hazardous Waste Control Act (California Health and Safety Code, Division 20, Chapter 6.5, Section 25100 et seq.); the Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050); the California Hazardous Materials Release Response Plan and Inventory Act (California Health and Safety Code, Division 20, Chapter 6.95, Section 25500 et seq.); the California Underground Storage Tank Act (California Health and Safety Code, Division 20, Chapter 6.7, Section 25280 et seq.); the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Section 6300 et seq.); the Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), and the regulations adopted thereunder, including but not limited to "EPA Subtitle D" (40 C.F.R., Parts 257 and 258); Bay Area Air Quality Management District Regulation 8, Rule 34; Title 14 California Code of Regulations; Title 22 California Code of Regulations; and "Chapter 15" (Title 23 California Code of Regulations, Sections 2510-2601), as they are in effect as of the date of this Agreement, except that "EPA Subtitle D" encompasses both the regulations in effect as of the date of this Agreement and the proposed regulations published on August 30, 1988, at pages 33314-33422 of the Federal Register.

2. Costs, based on regulations existing as of the Effective Date, of closure of the Disposal Facility and for maintenance of the Disposal Facility after it has been closed.

3. Costs of work or monitoring due to CONTRACTOR'S negligence, active or passive, or intentional misconduct, or fines or penalties for violations of law.

4. Costs for CONTRACTOR'S performance of work for which it is responsible under other provisions of this Agreement.

5. Costs of remedial or additional work attributable solely to Franchise Solid Waste already in place at the Disposal Facility prior to the Effective Date.

6. Costs attributable to changing the classification of the Disposal Facility to allow it to accept waste other than Municipal Solid Waste. Nor would AUTHORITY benefit from such change in classification.

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Exhibit E

Schedule of Required Reports

EXHIBIT E

SCHEDULE OF REQUIRED REPORTS

Regular Reports	Contract Reference	Due Date
Rate Adjustment Calculations	Section VI.C.3 Section VI.H.3 Section VI.M.3	March 1st of Each Year
One-Time Initial Documents	**Contract Reference**	**Due Date**
Insurance Certificates with Original Endorsements	Exhibit A.V.C	Prior to execution of the contract, unless waived in whole or in part by AUTHORITY
CPC Financial Assurance Evidence	Section III.A.3	Same as above
Copy of Each Permit, License or Approval	Section V.D	Same as above
As-Requested Reports, As-Required Reports	**Contract Reference**	**Due Date**
Notice of Any Claims Likely To Impair Service	Section V.E	Within Sixty (60) Days of Claim
Change in Hours or Days of Operation	Section V.G	Ninety (90) Days in Advance
Tare Weights of Vehicles/Boxes	Section V.H.2	Within Ten (10) Days of Request by AUTHORITY
Changes to Fee Component	Section VI.C.3 Section VI.H.3 Section VI.M.3	Thirty (30) Days in Advance
Notice of Change in Legal Requirements	Section VI.E.3.a Section VI.J.3.a Section VI.O.3.a	Promptly
Cost Estimate for Additional Services	Section VI.Q.2	Within Thirty (30) Days of Request by AUTHORITY
Tonnage Information for State Reports	Section IX	Upon request by AUTHORITY
Assignment Request	Section XVII.A.2	N/A
Notice of Force Majeure	Section XXIV	N/A

Exhibit F

Yard Waste Processing Operations Plan

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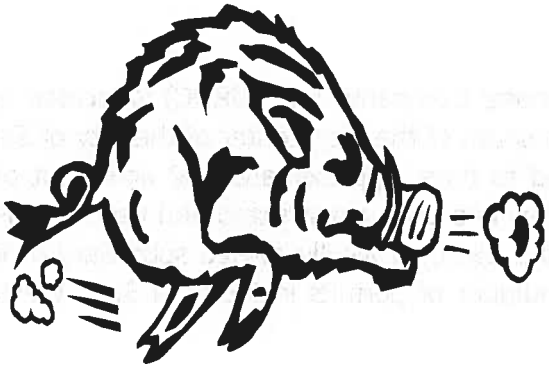
GUADALUPE RUBBISH DISPOSAL COMPANY, INC.

GREEN WASTE OPERATIONS PLAN



January 2006

GUADALUPE RUBBISH DISPOSAL COMPANY, INC.
GREEN WASTE OPERATIONS PLAN

FACILITY OVERVIEW

The Guadalupe Rubbish Disposal Company, Inc. (GRDC) is located approximately 4 miles east of Highway 17 and 9.5 miles south of the City Center of the City of San Jose. The site has been in operation since 1929, and to date, approximately 92 acres out of a total permitted landfill development area of 115 acres has been constructed and used for disposal operations. The site is owned and operated by the GRDC, a wholly owned subsidiary of Waste Management (WM). The site operates under a number of permits including a Solid Waste Facilities Permit (SWFP) issued on March 22, 1999.

The 411-acre site is located at 15999 Guadalupe Mines Road in the City of San Jose, Santa Clara County, California. Pertinent contact information is listed below.

Mailing Address:	Guadalupe Rubbish Disposal Company, Inc. P.O. Box 20957 San Jose, California 95160
Telephone:	408-268-1670
Fax:	408-268-7451

The site is presently open to the general public between 8:00 a.m. and 4:45 p.m., 7 days per week, with limited commercial disposal operations beginning at 6:00 a.m., Monday through Friday. Landfilling equipment operations begin at 7:00 a.m., 7 days per week. The site is closed all day on New Years Day, Easter Sunday, Thanksgiving Day, and Christmas Day; and closed half a day on New Year's Eve and Christmas Eve.

The 1995 modification to the landfill's use permit allows the site to remain open as late as 5:00 p.m., and the operations hours can be extended to alleviate emergency conditions with prior approval of the Local Enforcement Agency (LEA). Equipment operation is allowed to continue until 8:00 p.m.

ADJACENT LAND USES

The land uses adjacent to the GRDC include open space, commercial office space, and residential development. There is low density residential development throughout the hills across Hicks Road on the southwesterly side of the property in the Town of Los Gatos and unincorporated Santa Clara County. The Mid-Peninsula Regional Open Space District recently purchased a large parcel to the south of the site. To the southeast there is the 3,600-acre Almaden Quicksilver County Park. Areas northeast of the site are presently under open space

agriculture use. To the north, within the city limit of San Jose, the land use is rural. The remaining adjacent land uses to the northwest include a new residential development and Guadalupe Creek Research and Development Parks.

OPERATING CONDITIONS

Waste Stream

The amount and types of waste accepted at the GRDC is regulated by the site's Solid Waste Facility Permit (SWFP) which contains two regulatory numbers, a daily maximum and an annual average. The site's SWFP limits the landfill to accepting a maximum gate tonnage of 3,650 tons per day (tpd) with a growth factor of 4% per year, with a 3,000 tpd annual average permitted daily tonnage. Both numbers address "gate tonnage" or "gate capacity" which refers to the amount of waste that passes through the site's entrance gate and includes waste of all categories that are permitted to be received by the SWFP.

Presently, the site averages approximately 1,500 tons per day in total delivered waste. In the past, these daily tonnages have typically peaked at approximately 2,400 tons per day during the work week, while dropping down to approximately 400 tons per day on Saturday and Sunday. On average, the daily tonnage between Monday through Friday, is approximately 1,500 tons. The site is operating well below its current permitted capacity as described above.

C&D debris brought to the site for recycling would be a part of the total site waste stream and would fall within the existing permitted tonnage capacity limits of 3,650 tons per daily maximum, as well as the 3,000 ton annual average permitted daily tonnage.

Recycling Operations

Description

901
4630 →
(6)
(4)

Current recycling operations occurring within the site operational footprint remove a substantial amount of materials from the waste stream. The major recycling operations involve the following waste streams: yardwaste, metals, soil, concrete/asphalt, woodwaste and tires. The discussion below on how the different types of materials are handled primarily applies to clean loads of source separated waste. For example, a hauler carrying yardwaste and tree trimmings would be directed to the yardwaste processing area. However, a load of waste from a residential construction project containing concrete, brush and woodwaste, sheet rock, tile, and other demolition debris (e.g., co-mingled wastes) would be directed to the MRF for material separation and recycling.

Yardwaste and Green Waste Material : Yardwaste and green waste material (GWM) from municipal collection operations and limited public disposal is separated and either shipped off-site for use as compost feedstock and soil amendments, or used onsite for erosion control, slope stabilization or as Alternative Daily Cover (ADC) for the landfill working face(as a last resource with approvals). Trucks are weighed at the scalehouse and are directed to the Certified Recycling and Processing Area (CRPA) [shown on the site's General Development

Plan]. Recycling takes place on a pad surfaced with six to twelve inches of crushed concrete stabilized with soil cement.

Concrete and Asphalt Recycling: Clean loads of concrete and asphalt are segregated and stockpiled for use in drainage construction, erosion control, drainage ditch lining, road base, and winter tipping pads in place of construction materials such as rock and gravel. Trucks are weighed at the scalehouse and are directed to the CRPA, or to a clearly marked stockpile area close to the landfill active face.

Soil Recycling: When soil is brought to the landfill it is placed in a separate area near the active face or the CRPA and stockpiled for future use. The majority of the soil is used for cover material in the landfill operation. Certain types of soils, such as clay, loam, or sand are used for on-site construction projects or sold to off-site users. Off-site soil sales may involve screening of the soil to remove clods and rocks.

Wood Recycling: Trucks carrying clean loads of woodwaste are weighed at the scalehouse and are directed to the CRPA. Recycling takes place on a pad surfaced with six to twelve inches of crushed concrete. The woodwaste operations are currently grinding redwood and other non-painted wood for soil amendments. Wood is unloaded, cleaned (residue sent to landfill), stockpiled for processing and then processed. The finished material is weighed prior to final use as landscaping top-dressing or it is mixed with compost to make mulch which is sold in the materials distribution yard.

Materials Distribution Yard: To complement recycling and develop a market for the recycled organic and rock materials, a materials distribution yard was established at the site in 1993. The materials distribution yard is located within the CRPA sells landscaping products such as soil amendments and top-dressing mulches blended from screened soil, fines from the yardwaste processing, and woodfines from the wood grinding operation. The yard also sells sands and aggregates (crushed rock of various sizes and rock type). Some of the materials carried at the materials yard are imported to the site, including mulches, sands, and aggregates.

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Tires: Tires are collected at the site for off-site recycling/reuse by a permitted tire hauler. Customers with tires are directed to a tire drop-off area where they unload. The tires are stacked in a trailer which is hauled off by the tire recycler when it is full.

Salvaging: A crew of workers at the landfill face removes a variety of metals and white goods from the refuse pile. This material is either loaded into bins for immediate shipment or graded by type/quality at a separate area for later shipment off-site to a recycler.

End Use

Local end markets are utilized as much as possible for resale of recycled material. Recovered wood wastes are ground on-site at the wood recycling area and blended with purchased, screened compost, creating several different soil amendments and top dressing mulches for sale through the materials yard, or once ground some of the wood waste may be sold sold in bulk. Old corrugated cardboard (OCC) is sold using local end markets as much as possible. Scrap metal is salvaged utilizing the site's existing metal salvage contractor. As is currently done, asphalt and concrete will be stockpiled for periodic use in the construction of winter pads and internal roads, or for future beneficial use. Alternative Daily Cover (ADC) qualifying

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material is transported to the active face of the landfill, and used for daily cover (as described below). Yardwaste and GWM separated from the waste stream is sent to the yardwaste processing area and shipped off-site, or used as ADC depending on the time of year and operating needs. Unrecyclable residue, is transported to the active face, and disposed. The remaining recovered materials remain on-site and re-used beneficially, as described above.

Alternative Daily Cover (ADC)

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Regulatory Overview

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The CIWMB promulgated regulations in Title 27, Section 20690, for the use of ADC at municipal solid waste landfills. These regulations provide requirements to control the use of ADC at solid waste landfills and the reporting of that use. Site-specific demonstration projects at various landfills have shown that specific ADC materials can be used as a suitable alternative daily cover (e.g., in lieu of soil) if used in accordance with 27 CCR, Section 20690 (ADC) standards. Site-specific demonstration projects are no longer required for specific ADC materials addressed in these regulations, if used and approved by the LEA as specified in 27 CCR, Section 20690.

The LEA is responsible for reviewing and approving proposed use of ADC at the GRDC. In addition, other entities of the City of San Jose may assist the LEA by reviewing the applicability of CEQA regulations based on potential environmental impacts associated with a newly proposed ADC material and render a determination on any necessary action to comply with CEQA, if required.

For a proposed ADC not specified within the ADC regulations, a demonstration project proposal would be prepared and submitted in accordance with 27 CCR requirements. Once the LEA has approved the ADC proposal, the demonstration project would be initiated. At the end of the ADC demonstration project, the GRDC would prepare a final monitoring report describing the suitability of the ADC in accordance with 27 CCR. The final report would then be submitted to the LEA for approval. Approvals might also be required from other agencies, including the local Bay Area Air Quality Management District (BAAQMD) or the Regional Water Quality Control Board. As a final approval step, the GRDC would prepare the necessary Joint Technical Document amendment or addendum (27 CCR, Section 21600).

Approved GRDC Covers

Cover materials used at the GRDC have all been approved for use by the LEA and include either earthen materials or ADC. The use of ADC at the facility helps to minimize the need for native cover soils and excavation at the facility, which will benefit the environment and preserve landfill airspace.

The earthen materials used for cover at the GRDC may be native soil or customer-generated earthen materials accepted by the facility in accordance with the site Waste Discharge Requirements and BAAQMD permits (i.e., contaminated soils).

The ADCs that are used for cover at the GRDC have been approved by the LEA as part regular operations. GRDC and LEA correspondence regarding ADC use proposals and approval letters can be found as part of the historical file at the GRDC. The GRDC may, at any given time, use all, none, or only some of these materials, independently or in combination, as approved by the LEA or allowed by regulations. Approved ADC materials may be used side by side but are not otherwise combined unless specific approval has been given. Any or all of the approved ADCs may be temporarily staged by the active area(s) where they will be used. In the future, other materials may be presented to the LEA for use by the site as ADC materials. Additionally, the GRDC may use any of the ADC materials as allowed for and listed under 27 CCR Section 20690, with LEA approval where required.

Similar to soil cover materials, the amount of ADC usage will vary greatly for a variety of reasons, but namely due to several factors associated with waste disposal operations and the nature of the ADC material to be used. These factors include, but are not limited to: 1) the size of the area to be covered; 2) the type of waste to be covered; 3) the prevailing climatic conditions present at the time of covering; 4) the type of equipment used to perform the cover operations; 5) the type of ADC material to be used to cover waste; and 6) the prevailing characteristics of the ADC present at the time of cover operations. These factors and others make it difficult to accurately estimate future usage of ADC materials.

Handling of ADCs

Processed Green Material:

Section 20690(b)(3)(A) of Title 27 states that processed green material *"means any plant material that is either separated at the point of generation, or separated at a centralized facility that employs methods to minimize contamination. Green material includes, but is not limited to, yard trimmings, untreated wood wastes, paper products, and natural fiber products. Green material does not include treated wood wastes, mixed demolition or mixed construction debris, manure and plant waste from the food processing industry, alone or blended with soil. Processed green material may include varying proportions of wood waste from urban and other sources and shall be ground, shredded, screened, source separated for grain size, or otherwise processed."*

Section 20690(b)(3)(B) requires that green material to be used as ADC *"shall be processed prior to being applied to the working face unless the green material to be used as alternative daily cover already meets the grain size specifications. Prior to spreading and compacting on the working face, processed green material shall comply with a grain size specification by volume of 95% less than 6 inches. Alternative processing and grain size specification requirements may be approved by the EA if the EA determines that the alternative meets the performance requirements of ¶(a)(2) and (a)(3) of this section and the CIWMB concurs."*

Section 20690(b)(3)(C) restricts the use of processed green material *"to a minimum compacted thickness of 6 inches and average compacted thickness of less than or equal to 12 inches,"* and Section 20690(b)(3)(D) requires that *"processed green material placed as cover shall not be exposed for more than 21 days."*

The GRDC uses processed green materials as ADC on a routine basis. The material arriving at

the GRDC generally meets the grain size specifications for processed material 50% by volume 1' minus and 50% 6" minus (i.e. 95% by volume less than 6 inches). This material is typically sent to the route truck/public area to be used as cover at the end of the day.

Section 20690 allows for approval of alternative processing and grain size specification requirements by the LEA and the CIWMB if the LEA determines that the alternate ADC material characteristics meet the performance requirements of ¶(a)(2) and (a)(3) of Section 20690. GRDC operational experience indicates that while occasionally portions of an ADC material load appear to exceed the grain size specifications, this material satisfies the performance requirements as a cover material. Its effectiveness as a cover material can be enhanced as needed, in accordance with paragraph (a)(2), by combining ADCs with compacted earthen cover to control vectors, fires, odors, blowing litter, and scavenging. The GRDC proposes to continue this process and the use of these materials until such time as the LEA determines that this material does not meet performance requirements of a cover material. Should the LEA determine that cover performance requirements are not being met, the GRDC will modify this process and/or the material in order to maintain continued compliance with cover material performance requirements.

Green material to be used as ADC is unloaded at an area near the active face(s) and applied as ADC using landfill equipment. Green material may also be used on intermediate and/or final covered areas as erosion protection and as an extender for solidified waste, as described in this section.

Processed Construction and Demolition Wastes:

Section 20690(b)(9) of Title 27 allows for use of processed construction and demolition (C & D) waste, as well as the fines derived from processing of such materials, as alternative daily cover. The GRDC uses material screened from the site Materials Recovery Facility (MRF) for use as ADC. This screened material is less than 6 inches in diameter, with average grain size around 1 inch. It consists mainly of ground plant material that is commingled with the C & D wastes from construction work as well as soil, sand, and small amounts of wood products.

This material is typically used as ADC through mixing with green waste and/or wood waste used as an extender in solidification. This material is thought to work well in this process as it enhances the absorbent qualities of the green waste/wood waste extenders and compacts well to form a good cover material free of voids. The GRDC may use this material by itself as ADC at some point but would be cognizant of potentially dusty conditions and would implement control mechanisms to ensure safety and compliance.

Alternative Intermediate Cover

Section 20700 (a) of Title 27 states *"Compacted earthen material of at least twelve (12) inches shall be placed on all surfaces of the fill where no additional solid waste will be deposited within 180 days to control vectors, fires, odors, blowing litter, and scavenging."*

Section 20700 (b) of Title 27 states *"Alternative materials of alternative thickness (other than at least twelve inches of earthen material) for intermediate cover may be approved by the EA with concurrence by the CIWMB, if the owner or operator demonstrates that the alternative material*

and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health or the environment."

Intermediate cover generally consists of materials placed and compacted to a depth of at least 12 inches. The proposed use of an alternative intermediate cover (AIC) would require a site-specific demonstration project. Currently, no AICs that utilize GWM are proposed for the GRDC. In the event that an AIC is proposed, The GRDC will comply with the requirements under 27 CCR 20700 and obtain approval from the LEA for its use.

Soil Building Operations

Some of the GWM received at the GRDC may be used in the facility soil building project. Soil building consists of mixing GWM crushed with a bulldozer, or a similar piece of equipment, into soil and then stockpiling the resulting soil. This process increases the humus content of the soil and in time it can be used to facilitate better vegetative growth. The product of soil building is planned for use as vegetative cover for the landfill closure, but could also be used in areas where seeding of intermediate cover is required to control erosion.

The GWM is mixed with soil at a ratio of 1:5:1 to 2:1:1. The ratio of GWM to soil will be adjusted based on operational considerations. The stockpiled soil will be located outside of Fill Area 1, adjacent to stockpiles or other designated areas.

Due to a general reduction in the availability of green materials as a result of changes in contracts requiring composting, soil building is no longer a primary option for use of these materials, however, it is still considered a worthwhile activity for developing soils capable of supporting vegetative growth by mixing green materials with barren clay soils obtained from on-site excavations or stockpiles. The process is considered similar to soil amendment for agricultural use. While the organic material degrades in the soil, it does not "compost" per se due to the absence of oxygen and improper carbon to nitrogen ratios, precluding growth of bacteria capable of rendering "compost" and decomposition by-products. Development of a composting facility onsite would likely result in all green material going to composting activity. However, the soil building activities will be retained using compost residuals, overs, and substandard quality materials, thereby maintaining a mechanism for producing high quality topsoil for use during closure activities.

Handling of Materials during Inclement Weather

Rain and/or high winds are the predominant inclement weather conditions that may cause the operator to adjust on-site waste handling and disposal procedures. Vehicle access to the unloading areas is provided by paved roads and compacted dirt roads. The unloading area may be treated with some type of aggregate material or recycled road base material to further aide in vehicle access. When heavy rains cause the unloading area to become muddy and unusable, operations are moved to a designated wet weather area to provide continuous operation during inclement weather. This area is generally near an improved internal road. Stockpiles of soil material are maintained near the working face and the designated alternative unloading area to insure an adequate supply of cover material.

For high wind conditions, the unloading area is typically reduced in size and, whenever possible, placed in a portion of the facility that affords some protection from the wind. Additional equipment may be utilized to expedite the spreading and compacting of the refuse as soon as it unloaded. Cover operations may also be implemented to reduce the area of exposed waste on the working face. In addition, portable litter fencing is available on-site and may be used downwind around the unloading areas.

Green Material Recycling

The facility has separate staging areas, away from the active working face(s), where select vehicles are directed to unload processed and unprocessed green material. Processed green materials, including materials source separated at the curbside for residential collection, are used on site for ADC and for solidification. Unprocessed materials are transported to another facility (e.g., for use in composting or biofuel) or may be used in soil building, erosion control and slope stabilization. Green materials are managed in accordance with excluded activities for compostable materials as listed in Title 14.

In general, the materials are handled in such a manner as to preclude reaching temperatures of 122°F or greater. Processed materials quantities are kept to a minimum. The ideal quantity is no more than what can be used within a 1 to 2 week period. Because of the small quantities, there is frequent turnover as materials are moved for use in operations. Movement or transfer of the material maintains aeration, which promotes drying. Thus, composting temperatures are not achieved, as moisture is required for composting. Unprocessed materials generally do not achieve composting temperatures since the material is not well blended, has voids, and is not kept moist – all factors that preclude composting and heat generation.

Exhibit G

Yard Waste Marketing Plan

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Exhibit H

Construction and Demolition Debris Recycling Plan

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GUADALUPE RUBBISH DISPOSAL COMPANY, INC.

CONSTRUCTION AND DEMOLITION DEBRIS RECOVERY OPERATIONS PLAN

January 2006

GUADALUPE RUBBISH DISPOSAL COMPANY, INC. CONSTRUCTION AND DEMOLITION DEBRIS RECOVERY OPERATIONS PLAN

Facility Overview

The Guadalupe Rubbish Disposal Company, Inc. (GRDC) is located approximately 4 miles east of Highway 17 and 9.5 miles south of the City Center of the City of San Jose. The site has been in operation since 1929, and to date, approximately 92 acres out of a total permitted landfill development area of 115 acres has been constructed and used for disposal operations. The site is owned and operated by the GRDC, a wholly owned subsidiary of Waste Management (WM). The site operates under a number of permits including a Solid Waste Facilities Permit (SWFP) issued on March 22, 1999.

The 411-acre site is located at 15999 Guadalupe Mines Road in the City of San Jose, Santa Clara County, California. Pertinent contact information is listed below.

Mailing Address:	Guadalupe Rubbish Disposal Company, Inc. P.O. Box 20957 San Jose, California 95160
Telephone:	408-268-1670
Fax:	408-268-7451

The site is presently open to the general public between 8:00a.m. and 4:45 p.m., 7 days per week, with limited commercial disposal operations beginning at 6:00a.m., Monday through Friday. Landfilling equipment operations begin at 7:00a.m., 7 days per week. The site is closed all day on New Years Day, Easter Sunday, Thanksgiving Day, and Christmas Day; and closed half a day on New Year's Eve and Christmas Eve.

The 1995 modification to the landfill's use permit allows the site to remain open as late as 5:00 p.m., and the operations hours can be extended to alleviate emergency conditions with prior approval of the Local Enforcement Agency (LEA). Equipment operation is allowed to continue until 8:00 p.m.

Adjacent Land Uses

The land uses adjacent to the GRDC include open space, commercial office space, and residential development. There is low density residential development throughout the hills across Hicks Road on the southwesterly side of the property in the Town of Los Gatos and unincorporated Santa Clara County. The Mid-Peninsula Regional Open Space District recently purchased a large parcel to the south of the site. To the southeast there is the 3,600-acre Almaden Quicksilver County Park. Areas northeast of the site are presently under open space agriculture use. To the north, within the city limit of San Jose, the land use is rural. The remaining adjacent land uses to the northwest include a new residential development and Guadalupe Creek Research and Development Parks.

Background

In response to the City of San Jose's new Construction and Demolition Diversion Deposit Program, the GRDC improved the recovery and recycling of construction and demolition (C&D) debris and other materials from the waste stream by relocating theC&D debris recovery operation from the landfill to an existing 20,000 square foot metal warehousetype building (materials recycling facility [MRF]). The recovery operation continues to recycle C&D and commercial debris only. No household waste or putrescible waste is handled in the C&D recovery operation. The C&D recycling operation handles mixed loads from rolloff and public (self-haul) sources. These loads are delivered by Waste Management rolloff trucks, private contractors, and public self-haul customers from within the City of San Jose and other local communities. These materials are unloaded outside the MRF, sorted on the floor and along sort line conveyor equipment into containers of similar material. The recycled materials are processed onsite or shipped off-site and non-recycled materials are disposed of in the landfill. The maximum recycling capacity of the operation, based on the manufacture's specifications for the equipment, is on the order of 780 tons per day (Paul Michael, GuadalupeRubbish Disposal, personal communication).

Other permitted recycling/resource recovery activities that occur at the landfill include yardwaste and wood waste diversion and processing, salvaging of metals and white goods, segregation of clean loads of soil, concrete, and asphalt, segregation of tires, and the operation of a landscaping materials distribution yard.

The GRDC's service area includes the West Valley cities of Los Gatos, Monte Sereno, Saratoga, and Campbell, as well as portions of unincorporated Santa Clara County. In addition, the site receives commercial waste from San Jose and waste hauled privately by San Jose residents.

State Regulatory Mandate

The 2001 improvements to the recovery and recycling operations represent an increase in the GRDC's contribution to help meet recycling and diversion goals mandated by AB939. The improvements increased the amounts of materials diverted and recycled from its permitted waste stream. These improvements increased the percentage of materials recycled in the City and County.

Local Regulatory Mandate

The City of San Jose Environmental Services Department (ESD) has developed a C&D recycling program, implemented via Ordinance #26219 and adopted on November 7, 2000. The improvements to the C&D recycling operations respond in part to these regulations. The GRDC applied and became an "approved facility" under these regulations.

The City of San Jose 2020 General Plan contains solid waste management goals, several of which speak to the promotion of recycling. The C&D recycling improvements implemented by the GRDC are consistent with the following 2020 General Plan Solid Waste Goals and Policies, and will help the City of San Jose improve its rate of recycling:

> **Goal 1:** "Recover the resource value of solid waste and foster the establishment of facilities in San Jose which constructively use and reinvest such resources in the local

economy".

Goal 2: "Extend the lifespan of existing landfills by promoting source reduction, recycling, composting, and transformation of solid waste".

Policy 20: "Solid waste reduction techniques, including source reduction, reuse, recycling, source separation and energy recovery, should be encouraged".

The existing recycling activities at the site also are consistent with the City of San Jose Source Reduction and Recycling Element and the Santa Clara Solid Waste Management Plan (COSWMP).

Existing Permits

The GRDC is operating under the following permits:

California Integrated Waste Management Board (CIWMB) Solid Waste Facilities Permit (SWFP) No. 43-AN-0015.

California Regional Water Quality Control Board, San Francisco Bay Region, Waste Discharge Requirements and Self-Monitoring Program, Order No 01-150.

California Regional Water Quality Control Board, San Francisco Bay Region National Pollution Discharge Elimination System General Permit No. CAG612001 covering discharge of storm water runoff from industrial facilities to South San Francisco Bay and its tributaries.

The Bay Area Air Quality Management District (BAAQMD) has issued permits to operate for sources at the GRDC, Plant # 3294. These permits are reissued each year and expire on July 1.

The California Air Resources Board (CARB) has issued mobile source permits for the use of mobile tubgrinder.

City Council of the City of San Jose adopted a Planned Development, A(PD), Combining District Zoning, File No. PDC 93-05-018, for the Guadalupe Landfill.

The Guadalupe Landfill is included in the state approved CIWMP for Santa Clara County.

OPERATING CONDITIONS

Waste Stream

The amount and types of waste accepted at the GRDC is regulated by the site's Solid Waste Facility Permit (SWFP) which contains two regulatory numbers, a daily maximum and an annual average. The site's SWFP limits the landfill to accepting a maximum gate tonnage of 3,650 tons per day (tpd) with a growth factor of 4% per year, with a 3,000 tpd annual average permitted daily tonnage. Both numbers address "gate tonnage" or "gate capacity" which refers to the amount of waste that passes through the site's entrance gate and includes waste of all categories that are permitted to be received by the SWFP.

Presently, the site averages approximately 1,500 tons per day in total delivered waste. In the past, these daily tonnages have typically peaked at approximately 2,400 tons per day during the

work week, while dropping down to approximately 400 tons per day on Saturday and Sunday. On average, the daily tonnage between Monday through Friday, is approximately 1,500 tons. The site is operating well below its current permitted capacity as described above.

C&D debris brought to the site for recycling would be a part of the total site waste stream and would fall within the existing permitted tonnage capacity limits of 3,650 tons per daily maximum, as well as the 3,000 ton annual average permitted daily tonnage.

C&D DEBRIS RECOVERY OPERATIONS

Description

Mixed loads of waste containing C&D debris will be directed to the MRF. All loads are tipped outside the enclosed building. Materials are pushed up by a loader orloaded with an excavator onto a vibrating feed unit (conveyor belt). The material is then be conveyed up to a sorting area with a 48" wide sorting belt with four manual sort stations (four drop chutes on both sides of the sorting conveyor). Sorters remove concrete, asphalt, scrap metal, wood, cardboard, film plastic, etc. and place them down chutes leading to bunkers or rolloff containers. Non-recyclables remain on the line and are unloaded into a transfer trailer or rolloff box for transport to the active face of the landfill for disposal. Clean loads of singular-type, targeted recyclable commodities are tipped in areas where temporary storage of that product is ongoing, to avoid handling through the sort line.

C&D Recycling Equipment

The equipment and sort line system is designed to handle all types of dry waste, including inert commercial waste and C&D loads. The sort lines will process mixed, dry loads from rolloff and public (self-haul) sources. Primary specific equipment components include:

C&D Recycling Equipment

Quantity	Equipment Type
1	Feed conveyor w/hopper on two steel beams
1	Flow Chute
1	Incline conveyor
1	Starscreen
1	Sorting Conveyor
3	Conveyors
1	Diverter Funnel and Support
1	Pre-Sort Platform w/6 Dump Funnels
1	Sorting Platform w/10 Dump Funnels
VariousSupports	(catwalks, sorting platform, handrails, etc.)
1	Electric Controls
1 or more	Wheeled loader(s)

All stationary equipment is electric. A sufficient complementof equipment is available on-site to provide standby needs. When unusual situations arise which require additional or specialized

equipment, provisions will be made for renting the appropriate equipment from local contractors or suppliers.

End Use

Local end markets are utilized as much as possible for resale of recycled material. Recovered wood wastes are ground on-site at the wood recycling area and blended with purchased, screened compost, creating several different soil amendments and top dressing mulches for sale through the materials yard, or once ground some of the wood waste may be sold sold in bulk. Old corrugated cardboard (OCC) is sold using local end markets as much as possible. Scrap metal is salvaged utilizing the site's existing metal salvage contractor. As is currently done, asphalt and concrete will be stockpiled for periodic use in the construction of winter pads and internal roads, or for future beneficial use. Alternative Daily Cover (ADC) qualifying materialis transported to the active face of the landfill, and used for daily cover. Yardwaste separated from the waste stream is sent to the yardwaste processing area and shipped offsite, or used as ADC depending on the time of year and operating needs. Unrecyclable residue, is transported to the active face, and disposed. The remaining recovered materials remain onsite and re-used beneficially, as described above.

Environmental Controls

As described above, the GRDCI currently implements several on-going programs to control potential environmental impacts associated with the site including dust, vector, odor, and litter control programs, a hazardous waste exclusion program, and a fire control program. The C&D recovery operation will be operated under the same programs. The following is a discussion of specific control actions that will be taken at the C&D recovery operation to reduce and control potential operational impacts.

Dust: Waste sorting activities that occur within the MRF minimizes the potential for fugitive dust problems. Measures implemented in the recycling operation to control dust include, but are not limited to operating the MRF water misting system, manual spraying of loads as they are unloaded, water sprays along sorting lines and in materials handling areas, periodic sweeping of the floor, and daily cleaning of the tipping floor and equipment, appropriate ventilation control, and an all weather surface on roads leading to and from the building. Trucks carrying loads of recycled materials will be enclosed or tarped, as appropriate.

Litter: Minimal litter is generated as the only material handled at the MRF is mixed loads of C&D debris. All waste handling and sorting occurs within the building. Inaddition, all off-site shipments of recyclables are subject to existing covered load requirements. The area surrounding the recovery operation building is patrolled for litter as part of the sit's existing litter control program.

Odors : The material handled at the MRF is mostly C&D debris, although mixed loads of waste may contain paper products and brush, wood and yardwaste. The primary odor source in the C&D waste is any decomposing yardwaste. This material is sorted and transported to the yardwaste processing area and shipped off-site within 48 hours of arrival.

The Landfill portion of the site operates under an Odor Control Program, as described above. Yardwaste odors are controlled by prompt processing of incoming material and good

housekeeping practices. Generally, material is shipped out within 48 hours of receipt and the equipment is cleaned daily to remove any accumulated residue that could become a potential odor source. Odor management is also available through the use of chemicals, suchas lime and a Monsanto product, when conditions warrant.

Vector Control: Vectors in the C&D recovery operation are not an issue as most of the waste handled at the facility is dry demolition debris and all processing operations are conducted within an enclosed MRF. C&D materials do not attract vectors because of lack of food sources and odor.

Hazardous Waste Exclusion: As described below, a Hazardous Waste Exclusion Program for the GRDC has been developed and implemented. The primary goal of thisprogram is to provide periodic load-checking guidance to detect hazardous, medical, liquid, and special waste delivered to the site in private and commercial waste loads. The C&D recovery operation is operated under the same exclusion program.

Non-Salvageable Items/Scavenging and Salvaging: Drugs, cosmetics, foods, beverages, hazardous wastes, poisons, medical wastes, syringes, needles, pesticides and other materials capable of causing public health or safety problems are not salvaged at the recovery operation unless approved by the local health agency and the LEA. Scavenging at the facility is prohibited.

Personal Health and Safety/Protect of the User: The GRDC operates under an Injury and Illness Prevention Program (IIPP). The recovery operation isdesigned, constructed, operated, and maintained so that contact between the public and solid wastes is minimized. This is accomplished through the use of railings, curbs, grates, fences, and/or spotters.

Fire: The recycling building is equipped with an indoor sprinkler fire suppression system. In addition, the MRF is equipped with suitable fire extinguishers for extinguishing any minor fires and for maintaining personnel safety. Water is available in the building for fire fighting, if necessary. Communication equipment is available to personnel to allow quick response to emergencies.

Roads, Traffic Control, Parking, and Signs: All on-site roads and driveways are designed and maintained to minimize the generation of dust and tracking of soil onto adjacent public roads. The roads are kept in safe condition and maintained to allow vehicles utilizing the facility to have reasonable all-weather access to the site. Traffic flow through the facility is controlled to prevent safety hazards and interference with operations. There is adequate off-street parking for transfer vehicles. Signs are posted at the entrance of the facility and at the scalehouse indicating the name of the operator, the operator's telephone number, schedule of charges, hours of operation, and a listing of the general types of materials that either are not accepted.

Employee's Facilities: Sanitary facilities (connected to an existing septic system and leach field) are available in the MRF. Portable toilets are provided at the site scalehouse for employees and customers. San Jose Water Company supplies potable water to the site. A water supply for drinking and emergency use is also available.

Security: Unauthorized access by persons and vehicles is discouraged. The MRF is locked when not in operation. An attendant is on-site 24 hours to monitor the facility.

Record Keeping: THE GRDC maintains records of incoming weights or volumes and

outgoing salvage or residual weights or volumes. All records are kept in the administrative building and are available for inspection during normal working hours. Employee training records are kept in the Safety Office of the Maintenance Building. A daily logbook of special occurrences encountered during operations is kept in the scalehouse. Any written public complaints received are recorded and filed in the administrative building, including: (1) the nature of the complaint, (2) the date the complaint was received, (3) if available, the name, address, and telephone number of the person or persons making the complaint, and (4) any actions taken to respond to the complaint.

Recycling Operations

Description

Current recycling operations occurring within the site operational footprint remove a substantial amount of materials from the waste stream. The major recycling operations involve the following waste streams: yardwaste, metals, soil, concrete/asphalt, woodwaste and tires. The discussion below on how the different types of materials are handled primarily applies to clean loads of source separated waste. For example, a hauler carrying yardwaste and tree trimmings would be directed to the yardwaste processing area. However, a load of waste from a residential construction project containing concrete, brush and woodwaste, sheet rock, tile, and other demolition debris (e.g., co-mingled wastes) would be directed to the MRF for material separation and recycling.

Yardwaste: Yardwaste from municipal collection operations and limited public disposal is separated and either shipped off-site for use as compost feedstock and soil amendments or onsite for erosion control, slope stabilization, or as Alternative Daily Cover (ADC) for the landfill working face. Trucks are weighed at the scalehouse and are directed to the Certified Recycling and Processing Area (CRPA) [shown on the site's General Development Plan]. Recycling takes place on a pad surfaced with six to twelve inches of crushed concrete stabilized with soil cement.

Concrete and Asphalt Recycling: Clean loads of concrete and asphalt are segregated and stockpiled for use in drainage construction, erosion control, drainage ditch lining, road base, and winter tipping pads in place of construction materials such as rock and gravel. Trucks are weighed at the scalehouse and are directed to the CRPA, or to a clearly marked stockpile area close to the landfill active face.

Soil Recycling: When soil is brought to the landfill it is placed in a separate area near the active face or the CRPA and stockpiled for future use. The majority of the soil is used for cover material in the landfill operation. Certain types of soils, such as clay, loam, or sand are used for on-site construction projects or sold to off-site users. Off-site soil sales may involve screening of the soil to remove clods and rocks.

Wood Recycling: Trucks carrying clean loads of woodwaste are weighed at the scalehouse and are directed to the CRPA. Recycling takes place on a pad surfaced with six to twelve inches of crushed concrete. The woodwaste operations are currently grinding redwood and other non-painted wood for soil amendments. Wood is unloaded, cleaned (residue sent to landfill), stockpiled for processing and then processed. The finished material is weighed prior to final use as landscaping top-dressing or it is mixed with compost to make mulch which is sold in the materials distribution yard.

Materials Distribution Yard: To complement recycling and develop a market for the recycled organic and rock materials, a materials distribution yard was established at the site in 1993. The materials distribution yard is located within the CRPA sells landscaping products such as soil amendments and top-dressing mulches blended from screened soil, fines from the yardwaste processing, and woodfines from the wood grinding operation. The yard also sells sands and aggregates (crushed rock of various sizes and rock type). Some of the materials carried at the materials yard are imported to the site, including mulches, sands, and aggregates.

Tires: Tires are collected at the site for off-site recycling/reuse by a permitted tire hauler. Customers with tires are directed to a tire drop-off area where they unload. The tires are stacked in a trailer which is hauled off by the tire recycler when it is full.

Salvaging: A crew of workers at the landfill face removes a variety of metals and white goods from the refuse pile. This material is either loaded into bins for immediate shipment or graded by type/quality at a separate area for later shipment off-site to a recycler.

Environmental Controls

Fire protection compliance: The San Jose Fire Department enforces fire prevention requirements for the site. Concerns related to fire safety on-site are met under operating conditions set by the CIWMB and the LEA. Any fire that occurs within the landfill is to be extinguished by landfill personnel using soil stockpiled near the active landfill face for cover soil. When necessary, a water truck will also be used. In the event that additional fire fighting efforts are necessary, the fire department may be called to the site.

The scale house, equipment maintenance facility, and landfill machinery are equipped with fire extinguishers suitable for extinguishing any minor fires and for safety of personnel, as required by the LEA.

(2) Hazardous Waste Inspection Process: The GRDC operates under a Hazardous Waste Exclusion Program which is designed to educate patrons of the landfill of unacceptable materials and to randomly check loads of waste brought to the site. The primary goal of this program is to provide periodic load-checking guidance to detect hazardous waste delivered to the site in private and commercial waste loads. The program has been effective. Two staff members and (4) one back-up member are trained to conduct the periodic load checking at the site. Typically, five random loads are checked each week. The load is discharged in a specified area, and the driver is instructed to drive forward while unloading so that the refuse forms a long narrow windrow. The refuse is then carefully checked for hazardous or unacceptable materials. If unacceptable materials are found, they are sent back with the driver. Records of the load checks are kept by the Operations Supervisor.

If hazardous or unacceptable wastes are found at the active face, landfill staff will immediately cord off the designated area from the general public and personnel not involved in the incident. If known, the producer of the hazardous waste will be notified of the incident and requested to take corrective action. If no corrective action is taken by the producer of the waste, the landfill will clean-up the waste and bill the producer for all costs. In the cleanup, GRDC management will notify the response unit of an authorized hazardous waste disposal firm which would be

contracted to cleanup, transport, and disposal of the wastes. The wastes would be disposed of at a state-approved hazardous waste disposal facility. The incident and response would be recorded and reported to the Regional Water Quality Control Board and the LEA.

Dust Control: Dust is controlled at the site by various methods including: 1) grading and watering the haul roads; 2) applying a fine water spray on soil moving areas when conditions might cause the formation of fugitive dust; 3) using sprayers on grinding and screening operations to control dust; 4) applying water or planting temporary vegetative cover on intermediate soil cover when conditions might cause recurrent problems with fugitive dust; and 5) planting and maintaining a vegetative cover on completed fill slopes. Dust from the activities in the CRPA is controlled by locating the activities on paved asphalt, which also helps to mitigate any potential surface erosion and ponding of storm water.

Stationary pieces of landfill equipment such as the woodwaste grinder operate under a permit from CARB. In addition, the BAAQMD also regulates the amount of dust emissions throughout the GRDC site.

Odor Control: There are two primary sources of odors at the site; the landfill and yardwaste. The landfill odor is controlled by timely placement of daily and intermediate cover soil over the refuse. Landfill gas odors are controlled through having an effective gascollection and removal system at the site. Landfill related odors have not historically been a problem

Yardwaste odors are controlled by prompt processing of incoming material and good housekeeping practices. Generally, material is shipped offsite within 48 hours of receipt and the equipment is cleaned daily to remove any accumulated residue that could become a potential odor source. Placing a crushed concrete base in the yardwaste processing area has also minimized odors by providing a hard surfaced pad to work on during winter months. Odor management is also available through the use of chemicals such as lime and an odor control product. The program for handling yardwaste processing has effectively managed odor related problems at the site since its implementation after the winter of 1992-1993.

Litter Control: An on-going litter control and collection and street sweeping program minimizes litter impact on the site and surrounding area.

Vector Control: A properly operated landfill does not presenthealth hazards to adjacent land users, because the sanitary landfill method does not create conditions for attracting or allowing the breeding of such potential disease carriers as birds, rodents, and flies. Rodents generally cannot survive the compaction process and covering of refuse with soil eliminates both habitat and food. Covering waste with compacted soil and minimizing the work area over which refuse is spread minimizes bird populations and the emergence of flies from eggs which are present in household waste. However, site personnel frequently inspect site areas for any sign of rodent activity. If such activity is observed, site personnel will contract pest control specialists for professional advice and any services needed to ensure that a vector nuisance does not develop.

Storm Water Runoff: Storm water runoff from the site is managed according to a Storm Water Pollution Prevention Plan (SWPPP) for the landfill, which includes surface water drainage and sedimentation management. As detailed in the SWPPP for the GRDC (dated May, 2005) storm water drainage ditches have been installed to convey storm water away from active work areas and the CRPA to various discharge points. As the landfill is developed, additional storm

water drainage controls will be installed. Storm water detention basins allow suspended solids to settle out before storm water is discharged to tributaries connecting with Guadalupe Creek. Monthly monitoring of runoff and regular site inspections are part of the SWPPP requirements. The monitoring information is submitted annually to the RWQCB.

Landfill Leachate Control System: The landfill operates under a Leachate Management Implementation Plan to control the migration of water within the landfill to ensure it does not migrate off-site into a water body (Guadalupe Creek) or contact groundwater. The existing leachate collection and removal system consists of four separate collection systems, three which collect leachate from the western portion of the site and drain directy into the sewer system, and one system in the eastern area that is collected in a tank for ultimate trucking to the sewer system in the west side of the landfill.

Leachate monitoring occurs as part of the Waste Discharge Requirement's SelfMonitoring Program and for the Industrial Wastewater Discharge Permit for the water pollution control plant.

Landfill Gas Recovery System: An active gas collection and removal system has been installed at the site. Gas Recovery Systems (GRS) operates the gas recovery system at the landfill. In this system, landfill gases are collected and controlled with an extensive system of wells and pipes and sent to an electrical generation facility where 2.5 megawatts of electricity are generated daily.

Exhibit I

Construction and Demolition Debris Marketing Plan

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Exhibit J

Guaranty Agreement

EXHIBIT J

GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty) is given as of the ____ day of ____, 2005.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. Guadalupe Rubbish Disposal Company, Inc., hereinafter ("CONTRACTOR") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by USA Waste of California, Inc., (Guarantor).

B. CONTRACTOR and the West Valley Solid Waste Management Authority ("AUTHORITY") have negotiated an Agreement for Waste Disposal, Yard Waste, and Construction and Demolition Debris Processing Services effective as of January 1, 2006, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the AUTHORITY entering into the Agreement, that Guarantor guaranty CONTRACTOR'S performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the AUTHORITY to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to the AUTHORITY the complete and timely performance, satisfaction and observation by CONTRACTOR of each and every term and condition of the Agreement, which CONTRACTOR is required to perform, satisfy, or observe. In the event that CONTRACTOR fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of CONTRACTOR or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the AUTHORITY of any damages, costs, or expenses which might become recoverable by the AUTHORITY from CONTRACTOR due to its breach of the Agreement.

2. Guarantor's Obligations Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional, and unlimited, and with respect to any payment obligation of CONTRACTOR under the Agreement, shall constitute a guarantee of payment and not of collection. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations

hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to CONTRACTOR in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under this Guaranty for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of CONTRACTOR; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the AUTHORITY'S rights or remedies against CONTRACTOR; or (4) any merger or consolidation of CONTRACTOR with any other corporation, or any sale, lease or transfer of any or all the assets of CONTRACTOR. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code §2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code §2846, 2849, and 2850 as may be amended from time to time, including without limitation, the right to require the AUTHORITY to (a) proceed against CONTRACTOR, (b) proceed against or exhaust any security or collateral the AUTHORITY may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that AUTHORITY may proceed against Guarantor for the obligations guaranteed herein without taking any action against CONTRACTOR or any other guarantor or pledge or and without proceeding against or exhausting any security or collateral the AUTHORITY may hold now or hereafter hold. The AUTHORITY may unqualifiedly exercise in it sole discretion any or all rights and remedies available to it against CONTRACTOR or any other guarantor or pledge or without impairing the AUTHORITY'S rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the AUTHORITY to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification

with respect to CONTRACTOR'S obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the AUTHORITY'S approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the AUTHORITY as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or CONTRACTOR prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the AUTHORITY of any performance bond or other collateral to assure the performance of CONTRACTOR'S obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the AUTHORITY against CONTRACTOR arising out of the Agreement based on CONTRACTOR'S failure to perform which has not been settled or discharged.

No Waivers. No delay on the part of the AUTHORITY in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the AUTHORITY to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the AUTHORITY and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the AUTHORITY in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder, providing the Authority is the prevailing party, otherwise, in all instances in which Guarantor is the prevailing party, Guarantor shall be entitled to recover from Authority its reasonable attorney's fees and reasonable costs and expenses incurred by the Guarantor in defending this Guaranty against the AUTHORITY.

7. Governing Law: This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any suit, action, and other proceeding brought by the AUTHORITY or other party to enforce this Guaranty may be brought and concluded in the courts of the State of California, in Santa Clara County or Federal District court for northern California, which shall have exclusive jurisdiction over such suit, action, or proceeding. Guarantor appoints the following person as its agents for service of process in California: CT Corporation System.

8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have not effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. Binding on Successors. This Guaranty shall inure to the benefit of the AUTHORITY and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. Authority. Guarantor represents and warrants that it has the corporate power and the authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the AUTHORITY: Executive Director
West Valley Solid Waste Management Authority
c/o Hilton Farnkopf & Hobson
2175 N. California Blvd., Suite 990
Walnut Creek, CA 94596

with a copy to the AUTHORITY Attorney at the same address.

To the Guarantor: Group General Counsel

USA Waste of California, Inc.

1001 Fannin, #4000

Houston, TX 7702

With a copy to the CONTRACTOR:

Market Area General Manager
Guadalupe Rubbish Disposal Company, Inc
15999 Guadalupe Mines Road
San Jose, CA 95120

IN WITNESS WHEREOF, the AUTHORITY and Guarantor have executed this Agreement as of the day and year first above written.

GUARANTOR:

USA Waste of California, Inc.
(name of Guarantor)

By: _____
(sign here)

_____
Dean Kattler, Vice President

By: _____
(sign here)

_____
Robert E. Longo, Vice President and Assistant Secretary

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY
"AUTHORITY"
A Municipal Corporation

_____
Name Nick Selen
Title BOARD CHAIR

RECOMMENDED FOR APPROVAL:

_____
Name L. Scott Hobson
Title Executive Director

APPROVED AS TO FORM:
AUTHORITY Attorney

_____
Name
AUTHORITY Attorney

Proper notarial acknowledgment of execution by Guarantor must be attached.

Chairman, president or vice-president and secretary, assistant secretary, CFO or assistant treasurer must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

IN WITNESS WHEREOF, the AUTHORITY and Guarantor have executed this Agreement as of the day and year first above written.

GUARANTOR:

USA Waste of California, Inc.
(name of Guarantor)

By: _____
(sign here)

_____
Dean Kattler, Vice President

By _____
(sign here)

_____
Robert E. Longo, Vice President and Assistant Secretary

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY
"AUTHORITY"
A Municipal Corporation

_____
Name
Title

RECOMMENDED FOR APPROVAL:

_____
Name
Title

APPROVED AS TO FORM:
AUTHORITY Attorney

_____
Name
AUTHORITY Attorney

Proper notarial acknowledgment of execution by Guarantor must be attached.

Chairman, president or vice-president and secretary, assistant secretary, CFO or assistant treasurer must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of SANTA CLARA

On 9 Jan 06 (Date) before me, JOHN B. SORCI (NOTARY PUBLIC) (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared Dean Kattler (Name(s) of Signer(s))

☐ personally known to me – OR – ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(s) acted, executed the instrument.

JOHN B. SORCI
Commission # 1373080
Notary Public — California
Santa Clara County
My Comm. Expires Oct 1, 2006

WITNESS my hand and official seal.

John B. Sorci
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Guaranty Agreement

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☒ Individual	☐ Individual
☒ Corporate Officer	☐ Corporate Officer
Title(s): V. P.	Title(s): _____
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact	☐ Attorney-in-Fact
☐ Trustee	☐ Trustee
☐ Guardian or Conservator	☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
RIGHT THUMBPRINT OF SIGNER — Top of thumb here	RIGHT THUMBPRINT OF SIGNER — Top of thumb here
Signer Is Representing:	Signer Is Representing:

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Exhibit K

Guadalupe Landfill Permits

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Exhibit L

Hauler/Contractor Contract