

DOCUMENT # 4

RIGHT OF ENTRY and CONSTRUCTION AGREEMENT

**WETLANDS EDGE BAY TRAIL NEAR AND WITHIN AMERICAN CANYON LANDFILL-
CITY OF AMERICAN CANYON AND NAPA COUNTY, CALIFORNIA**

RIGHT OF ENTRY and CONSTRUCTION AGREEMENT

This Right of Entry and Construction ("Agreement") is entered into as of _____, 2009 by and between the City of American Canyon (GRANTEE), and the Napa-Vallejo Waste Management Authority (GRANTOR).

RECITALS

A. The GRANTOR is the owner of the real property located in the City of American Canyon, County of Napa, State of California, and more particularly known as the NVWMA Landfill and designated by the Napa County Tax Assessor as Assessor's Parcel Number 058-020-012 on Exhibit A (the "Property") attached to this agreement and hereby incorporated by reference.

B. GRANTEE is in the process of constructing, repairing or maintaining certain necessary improvements, made in the public interest on GRANTOR property.

C. GRANTEE wishes to obtain permission from GRANTOR to enter upon the real property as shown on Exhibit A for those purposes.

NOW THEREFORE, in consideration of the mutual promises contained herein the parties have agreed as follows:

AGREEMENT

1. Grant of Right of Entry: The GRANTOR hereby grants the GRANTEE, its employees, consultants, contractors, agents and designees permission to enter upon the Property shown on Exhibit A for the purposes described in the Recitals above (the "Work"). GRANTOR shall not be responsible for any of the costs of the Work. GRANTEE shall direct and control all activities pertaining to the Work and shall not impose, at any time, any charge or exaction against GRANTOR.
2. Assumption of Risk: GRANTEE enters the Property and performs or causes to be performed such work as referred to above, at its own risk and subject to whatever hazards or conditions may exist on the Property.
3. Permits: GRANTEE shall obtain all necessary permits from appropriate agencies at GRANTEE'S sole expense.
4. Termination: The term of this Agreement shall commence on _____, 2009, and expire on _____.
5. Duty to Repair, Restore, or Replace: Prior to termination of this Agreement, GRANTEE shall restore any Property that is damaged and that is not a part of the Work to its original condition. Restoration shall include the repair or replacement of any

landscaping, structures, fences, driveways, or other improvements that are removed, damaged, or destroyed by GRANTEE'S employees, contractors, subcontractors, agents and designees.

6. Indemnification: GRANTEE shall indemnify, defend and hold harmless the GRANTOR, its officers, directors, employees, contractors, subcontractors, agents, and affiliates from any and all claims, suits or actions of every name, kind and description, brought forth on account of injuries to or the death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors, or omissions, of any person directly or indirectly employed by or acting as agent for GRANTEE in performance of this Right of Entry, except to the extent arising from the negligence or intentional misconduct of GRANTOR, its employees, contractors, subcontractors, or agents.

7. Insurance: During the term of this Agreement, GRANTEE and its contractors, subcontractors and agents shall fully comply with the terms of the law of the State of California concerning worker's compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability GRANTEE and its agents may have for worker's compensation.

GRANTEE, if requested, shall provide the GRANTOR with a valid certificate of coverage confirming comprehensive general and automobile liability coverage in the amount of \$1 million as an additional covered party. The certificate will further confirm that the coverage in effect will not be canceled, limited, or allowed to expire, except upon thirty (30) days written notice to the GRANTOR. It is further agreed that any coverage extended by reason of this paragraph shall be primary and that any similar insurance maintained by GRANTOR for its own protection shall be secondary or excess and not contributing insurance.

GRANTEE shall require its contractors and subcontractors to obtain at their sole cost and keep in full force and effect during the term of this Agreement, commercial general liability insurance in the amount of \$ 1 million per occurrence for bodily injury, personal injury and property damage; provided (i) that the GRANTOR, its officers, agents, employees, and volunteers shall be added as additional insureds under the policy, and (ii) that the policy shall stipulate that this insurance will operate as primary insurance; (iii) that no other insurance effected by the GRANTOR or other named insureds will be called upon to cover a loss covered thereunder.

8. Recording: Neither GRANTOR nor GRANTEE shall record this Agreement.

9. Attorney's Fees: If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

10. Notices: All notices required or permitted under the terms of this Agreement shall be in writing and sent to:

Grantee	Grantor
City of American Canyon 4381 Broadway St., Suite 201 American Canyon, CA 94503	Napa-Vallejo Waste Management Authority 1195 Third St., Room 101 Napa, CA 94559

11. Time is of the Essence; Entire Agreement: Time is of the essence of each of the terms and provisions of this Agreement. This Agreement constitutes the entire agreement between GRANTEE and GRANTOR, and no alteration, amendment or any part thereof shall be affective unless in writing signed by parties sought to be charged or bound thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

GRANTOR:

Napa-Vallejo Waste Management Authority

By: _____

Title: _____

Date: _____

GRANTEE:

City of American Canyon

By: _____

Title: _____

Date: _____