

AGREEMENT

BETWEEN THE NAPA-VALLEJO WASTE MANAGEMENT AUTHORITY

AND

**KELLER CANYON LANDFILL COMPANY, A WHOLLY OWNED
SUBSIDIARY OF ALLIED WASTE SYSTEMS, INC.**

FOR

LONG TERM LANDFILL RESIDUE DISPOSAL AND ADC SERVICES

April 19, 2007

As Amended October 6, 2011

AGREEMENT TO PROVIDE LONG-TERM LANDFILL DISPOSAL & ADC CAPACITY

This Agreement is entered into and Executed as of this 1st day of March, 2007, by and between the Napa-Vallejo Waste Management Authority (**Authority**), a joint powers agency organized under the laws of the State of California pursuant to Government Code section 6500 et seq. and Keller Canyon Landfill Company, a wholly owned subsidiary of Allied Waste, Inc. (**Contractor**), a Delaware Corporation.

RECITALS

WHEREAS, the Authority needs a landfill facility to serve as the place of safe, legal, and permitted Disposal for Municipal Solid Waste generated within the Authority that is not otherwise Diverted, and for Residue and ADC resulting from the operation of a transfer station; and

WHEREAS, the Authority is composed of the County of Napa and the Cities of Napa, American Canyon and Vallejo, and was formed for the purpose of providing economical coordination of solid waste processing, transfer and disposal services and provide for the closure of the American Canyon Sanitary Landfill and to that end has designed and constructed the Devlin Road Transfer Station (**Transfer Station**); and

WHEREAS, the Regional Disposal Company was selected to be the Transfer Station operator and to provide Transport and landfill Disposal for the Authority, through a competitive process in 1993. With the Purchase of the Regional Disposal Company in July 1998, Allied Waste Industries, Inc. became the Transfer Station operator, Transporter and Disposal provider until the termination of the current agreement on June 30, 2007 (or as earlier terminated); and

WHEREAS, the Authority determined that the Contractor has proposed to provide Disposal services at the Keller Canyon Landfill in Contra Costa County (**Facility**) in a manner and on terms which are in the best interest of the Authority and its residents and businesses, taking into account the qualifications and experience of the Contractor, and the fees for providing such services; and

WHEREAS, the Authority wishes to engage the Contractor to provide the services specified within this Agreement, in accordance with the terms and conditions of this Agreement, and is authorized to do so under the provisions of Public Resources Code section 40059.

AGREEMENT

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

ARTICLE 1. DEFINITIONS

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

Accept (or **Acceptance or variations thereof**) means the transfer of ownership of the Delivered Residue and ADC to the Contractor, as provided in Sections 7.01(a) and 7.05. Residue and ADC Delivered to the Facility will be deemed Accepted unless the Contractor rejects the materials within the same calendar day. Notwithstanding any other provisions in this Agreement, nothing in this Agreement shall prevent Contractor from pursuing all legal remedies available from the original generators of Hazardous Waste inadvertently Accepted by Contractor for matters related to proper handling, treatment, and Disposal of Hazardous Waste provided that the Authority and Transport Contractor(s) shall in no case be considered the original generator.

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

Adjusted Disposal Fee means the adjustment of the Disposal Fee annually, as provided in Article 8. Any change in the Disposal Fee to match a lower Comparative Disposal Fee as provided in Section 6.02 results in a new Adjusted Disposal Fee.

Agreement means this Agreement, including all Exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 15.05.

Alternative Daily Cover (or **ADC**) means cover material other than at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each Operating day to control vectors, fires, odor, blowing litter, and scavenging as defined in Title 27, Section 20164 of the California Code of Regulations. Acceptability of material to be used as ADC will be at the reasonable discretion of the Contractor and regulatory enforcement agencies involved with the Facility.

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

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

Authority means the Napa-Vallejo Waste Management Authority, composed of the cities of American Canyon, Napa, and Vallejo and the County of Napa.

Authority Vehicle(s) means vehicles owned, operated or contracted by Authority or its members.

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

Base Term means the five (5) year period commencing on the Delivery Date.

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

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

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

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

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

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

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

Collection Contractor(s) means the entity or entities that, separate from this Agreement, are contracted, licensed, permitted, or otherwise designated by the Authority or its Members, to collect Municipal Solid Waste within the Authority's jurisdiction.

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

equivalent if paid on a lump-sum basis or other basis, paid to the Contractor for Disposal or Acceptance of industrial or special waste at the Facility.

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

Contractor means Keller Canyon Landfill Company, a wholly owned subsidiary of Allied Waste Systems, Inc., a Delaware corporation.

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

County means the County of Napa, State of California.

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

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

Delivery Date means the date of first Delivery of Residue and ADC to the Facility, which will be July 1, 2007.

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

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

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

(3) travel and subsistence costs, plus

(4) the reasonable costs of any payments to subcontractors necessary to and in connection with the performance hereunder.

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

(i) a certificate signed by the principal financial officer of the Contractor setting forth the amount of such cost and the reason why such cost is properly chargeable to the Authority,

as the case may be, and stating that such cost is an arm's length and competitive price, if there are competitive prices, for the service or materials supplied; and

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

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

Disposal Facility (or Facility) means the Keller Canyon Landfill located in Contra Costa County, California, that is owned and operated by Contractor.

Disposal Fee is the per-Ton compensation due to the Contractor from Authority for Accepting Residue and ADC for Disposal. The Disposal Fee shall be equal to or lower than the lowest Comparative Disposal Fee, as provided in Section 6.02, received by the Contractor for other Agreements consummated after the Execution Date of this Agreement.

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

Effective Date means July 1, 2007, the date on or after which Residue and ADC may be Delivered.

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

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

Extension(s) (or to Extend) means through an amendment of this Agreement, to cause the end date of this Agreement to be beyond the fifth (5th) anniversary of the commencement of the Base Term as provided for in Section 4.02.

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

Facility (or Disposal Facility) means the Keller Canyon Landfill located in Contra Costa County, California, that is owned and operated by Contractor.

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

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

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

Facility Users (or **Users**) means the Authority, Transport Contractor(s) or other Authority agents Delivering Residue and ADC from the Transfer Station and may include Residue and ADC generated in the Authority.

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

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

Guarantor means Allied Waste Systems, Inc.

Hazardous Waste means materials that are hazardous, including:

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

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

(3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et

seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

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

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

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

Holidays are defined as New Year's Day, Easter, Thanksgiving Day, and Christmas Day. The actual day the Holiday is observed may be changed by notifying the Authority 30 days prior to the Holiday.

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

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

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

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

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

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

Methods may include, but are not limited to, technologies and/or techniques that reduce Disposal volume, risk, or costs and/or are for other reasons deemed desirable by the Authority.

Members or Member Agencies means the Cities of American Canyon, Napa, and Vallejo and the County of Napa.

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

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

Party and **Parties** refers to the Authority and the Contractor, individually and together.

Pass-Through Costs means governmental and regulatory fees, surcharges, and other costs, that are directly assessed against the Contractor by governmental entities, that are remitted to such entities. The Pass-Through Costs are limited to costs incurred by the Contractor as a direct result of mandatory Federal, State, regional and local governmental and/or regulatory fees, surcharges, assessments or other governmental payments related to provision of Disposal services. As of the Execution Date, Pass-Through Costs include the local enforcement agency (LEA) fee, the local AB939 fee, the Contra Costa County Franchise fee (25% of rate net of state and local fees) and state AB1220 fee (\$1.40).

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

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

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

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person’s business

judgment, intending in good faith to take steps calculated to satisfy the obligation that such Person has undertaken to satisfy.

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

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

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

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

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

Significant (cost or event) means that the financial impact to the Authority or Contractor exceeds the amount specified in Exhibit 1. Such amount shall be adjusted to reflect CPI changes over the Base Term and any Extensions in the same manner that Liquidated Damages are adjusted in accordance with Section 8.07.

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

State means the State of California.

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

Transport Contractor(s) means the entity or entities that, separate from this Agreement, are contracted, licensed, permitted, or otherwise designated by the Authority, to Transport ADC and/or Transport Residue from the Transfer Station.

Transfer Station means the Authority's transfer station and includes site improvements, utility interconnections, the scalehouse, the building for Transport and materials Recovery and Processing areas, a C&D Processing Area, together with administrative offices and ancillary

support facilities, furnishings and equipment, and any and all other physical structures and improvements to the site.

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

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

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

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

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

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

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

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

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

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

c. No Conflicts. Neither the Execution or delivery by the Contractor of this Agreement, the performance by the Contractor of Contractor's Obligations, nor the fulfillment by the Contractor of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of any Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor, other than as specifically permitted hereunder.

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

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

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

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

h. Facility Capacity. Contractor will provide Facility Capacity over the Base Term and any Extensions sufficient to ensure Disposal of all Delivered Residue and reuse of all ADC as subject to the limitations of the following paragraph from Facility Users, and Operate the Facility as necessary to provide permanent Disposal for all Delivered Residue and reuse of all ADC subject to the limitations of the following paragraph from Facility Users. Contractor shall guarantee that Facility Capacity shall be adequate over the Base Term and any Extensions to Accept Delivered Residue from the Transfer Station resulting from Waste delivered by the Authority and Authority's Collection Contractors and to Accept Residue and ADC from the recyclables processing operations at the Transfer Station resulting from source separated recyclables or recyclable rich loads of materials delivered by any user of the Transfer Station.

~~Contractor shall also provide Facility Capacity for the first year of the Base Term for Acceptance of up to 1,000 tons per month of ADC, averaged over a rolling six month timeframe. However, in no event shall Contractor be required to accept more than twice the monthly average, in any given month. This maximum amount shall increase by 100 tons per month for each subsequent year of the Base Term [for example, Year 2 equals 1,100 tons per month, Year 3 equals 1,200 tons per month], and continuing thereafter for the remaining Term of this Agreement if the Term is extended beyond the Base Term.~~

2.02 Of the Authority

The Authority represents and warrants as of the date hereof:

a. Status. The Authority is a joint powers agency organized and validly existing under the laws of the State pursuant to Government Code section 6500 et seq.

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

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

d. No Conflicts. Neither the Execution or delivery by the Authority of this Agreement, the performance by the Authority of its Obligations hereunder, nor the fulfillment by the Authority of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

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

ARTICLE 3. THE PARTIES

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

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

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

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

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

To the extent that Contractor obtains permission to, and does, use Authority facilities, space, equipment or support services in the performance hereof, this use shall be at the Contractor's sole discretion based on Contractor's determination that such use will promote Contractor's efficiency and effectiveness. The Authority does not require that Contractor use any Authority facilities, equipment or support services in the performance hereof.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4. TERM OF AGREEMENT

4.01 Base Term. This Agreement shall become Effective on the Effective Date and the Base Term shall commence on the Delivery Date and continue in effect for five (5) years, unless terminated earlier in accordance with Article 12. The Delivery Date may occur on or after July 1, 2007.

4.02 Term Extensions

a. Authority Right of Renewal. The Authority has the right to renew and Extend the Base Term beyond five (5) years, for three (3) separate periods of up to five (5) years each such that the total Extension time does not exceed fifteen (15) years. The Authority shall Notify the Contractor of its request to Extend the Agreement no later than one (1) year prior to the end of the then-current Extension. Within thirty (30) calendar days of Authority's request, Contractor shall provide Authority with written documentation accepting to Extend the Agreement for the period requested by the Authority.

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

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

ARTICLE 5. RIGHTS OF THE PARTIES

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

a. Expect Contractor to provide Capacity at the Facility over the Base Term and any Extensions sufficient for Disposal of all Delivered Residue and ADC from Facility Users.

b. To Transport, or arrange for the Transport of, some or all of Transport Contractor(s) Residue at any time on or after the Effective Date and before the Delivery Date, on a nonexclusive and possibly noncontinuous basis as provided in Article 6. The Authority is not obligated to Deliver any Residue and ADC during this period.

c. Direct Transport Contractor(s) to Deliver all Residue from the Transfer Station, on and after the Delivery Date, to the Facility without commitment regarding the quantity or composition of Delivered Residue, as provided in Article 6. Authority shall bear all costs associated with the transport of Delivered Residue and ADC.

d. Require the Contractor to verify that the current Disposal Fee is no greater than the lowest Comparative Disposal Fee, as provided in Section 6.02, paid by another user(s) of the Facility, and if not, to require the Contractor to reduce the then-current Disposal Fee to match the lowest Comparative Disposal Fee, as provided in Section 6.02.

e. Adjust the Disposal Fee periodically as provided in Article 8 and/or changes to Pass-Through

Costs, as provided in Article 8.

- f.** Arrange for Transport Contractor(s), including the operator(s) of the Transfer Station to implement load checking programs to inspect for the presence of Hazardous Waste.
- g.** Require the Contractor, with appropriate compensation, to implement a change in the Means and Methods as provided in Article 7.
- h.** Terminate the Agreement without any additional compensation to the Contractor for cause due to Contractor default as provided in Articles 11 and 12.

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

- a.** Accept Delivered Residue and ADC at any time after the Effective Date as provided in Article 6. Acceptability of material to be used as ADC will be at the reasonable discretion of the Contractor and regulatory enforcement agencies involved with the Facility.
- b.** In accordance with the contents of Section 2.01(h), accept Delivered Residue and ADC without any commitment from the Authority or the Transport Contractor(s) to provide any specific minimum quantity or composition of Delivered Residue and ADC, as provided in Article 6.
- c.** Provide verification to the Authority as requested that the current Disposal Fee is no greater than the lowest Comparative Disposal Fee paid by another user(s) of the Facility, and, if not reduce the current Disposal Fee to match the lowest Comparative Disposal Fee, as provided in Section 6.02.
- d.** Receive changes in compensation based solely on the adjustment of the Disposal Fee as provided in Articles 8 and 9.
- e.** Obtain, maintain, and comply with all State, Federal, and local Permits necessary to meet applicable state, federal, and local laws and regulations during the Base Term and any Extensions and through the completion of the Contractor's Closure and Post-Closure period(s).
- f.** Indemnify the Authority as provided in Article 10.
- g.** Accept Termination of the Agreement with reasonable Notice from the Authority for cause as provided in Section 11.02(b).
- h.** Provide emergency services at the Authority's request in the event of major accidents, disruption, or natural calamities as provided in 7.01(k).

ARTICLE 6. DELIVERY OF RESIDUE AND ADC

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

6.01 Commencement of Delivery. The Contractor shall Accept Delivered Residue and ADC on and after the Delivery Date.

6.02 Comparative Disposal Fee. By October 1st of each year beginning with October 1, 2008, Contractor shall provide the Authority written verification that the then-current Disposal Fee is the lowest of the comparative service fees that the Contractor is then providing to all other parties that use the Disposal Facility. In addition, the Authority may request, and the Contractor shall within five (5) Working Days provide Authority access to the data which verifies the then-current Disposal Fee is the lowest of the Comparative Disposal Fees the Contractor is providing to all other parties that use the Disposal Facility, provided terms and conditions for such parties meet conditions listed in the definition of Comparative Disposal Fee provided in Article 1. If any Comparative Disposal Fee is lower than the then-current Disposal Fee, the Contractor shall reduce the Authority's Disposal Fee to match the lowest Comparative Disposal Fee. The failure of the Contractor to match the lowest Comparative Disposal Fee, may, at the Authority's sole discretion, be cause for termination subject to the provisions of Section 11.02(b).

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

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

6.05 Authority Obligation on the Delivery Date. The Authority is obligated, beginning on or after the Delivery Date and through the Base Term and any Extensions, to direct the Transport Contractor(s) to Deliver all Residue from the Transfer Station to the Disposal Facility for purposes of Disposal. On or after the Delivery Date, Authority shall direct Authority Member's Collection Contractor(s) to Deliver all Waste to the Transfer Station in accordance with the provisions of the Joint Powers Agreement. Authority has the right, but not the obligation, to direct the Transport Contractor(s) to deliver some or all of its ADC to the Facility. However, from January 1, 2012 through June 30, 2017, Authority shall have the obligation to deliver all of its ADC to the Facility.

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

ARTICLE 7. FACILITY OPERATIONS

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

a. Accept Residue and ADC. In accordance with the provisions of Section 2.01(h) accept

Delivered Residue and ADC from Transport Contractor(s), and weighing all Delivery vehicles at the time of entry at the Facility using Contractor's scales.

b. Operations. Operating the Facility including operation, management, and maintenance of the refuse fill areas, leachate and landfill gas management systems, groundwater monitoring and management systems, treatment facilities, buildings, on-site roadways, utilities, and any other required Facility elements.

c. Personnel. Employing trained personnel to effectively Operate the Facility and providing on-going safety and professional training.

d. Equipment and Supplies. Providing all rolling stock, stationary equipment, transfer truck tippers, material storage containers, spare parts, maintenance supplies, and other consumables necessary to perform Operations.

e. Traffic Direction. Providing necessary signs and personnel to assist drivers to proper unloading areas.

f. Hazardous Waste. Maintaining an effective monitoring system to prevent the Hazardous Waste from being Accepted at the Facility as provided in the load checking program included in Exhibit 3, and ensuring the capability to manage Hazardous Waste following inappropriate Acceptance of Hazardous Waste.

g. Permits. Meeting all Permit conditions and regulatory requirements.

h. Invoicing. Invoicing the Authority on a monthly basis requesting payment of the Disposal Fee corresponding to the Tonnages of ADC and Residue Delivered by the Authority during the previous month.

i. Closure and Post-Closure. Safely managing the Facility and the Facility property in full legal compliance during Closure and Post-Closure period(s) including fulfillment of State funding requirements.

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

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

7.02 Operational Requirements

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

- (1) **Disposal Facility.** The Contractor shall Accept Delivered Residue and ADC 7:00

a.m. to 4:00 p.m., Monday through Friday and 7:00 a.m. to 1:30 p.m. on Saturday or at such other times as Authority and Contractor may agree ("Facility Receiving Hours") except Holidays. The list of excepted Holidays is subject to modification by the Authority upon ninety (90) calendar days Notice to the Contractor.

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

(3) **Mode of Delivery.** The Facility must be able to Accept Delivered Residue and ADC in live floor transfer trailers only.

(4) **Extended Facility Receiving Hours.**

(i) **Unusual Circumstances** Upon request of the Authority no less than one (1) Working Day in advance or in event of emergencies, as soon as possible, Contractor shall use Reasonable Business Efforts to secure appropriate approvals from regulatory agencies and Accept Residue and ADC at times other than Facility Receiving Hours. Contractor may charge Authority for extended Facility Receiving Hours in accordance with Section 8.09.

This provision is intended to address a temporary extension of Facility Receiving Hours that may be needed from time to time to accommodate special or unusual circumstances. Extended Facility Receiving Hours are not intended to be utilized by Transport Contractor or the Authority as an outlet for adverse traffic conditions and are intended to be utilized on an infrequent basis for out of the ordinary circumstances.

(ii) **Ongoing Extended Hours.** Upon request of Authority to modify permits to allow extended Facility hours on an ongoing basis, Authority and Contractor agree to work in good faith to modify such permitted hours and to agree on appropriate compensation.

b. Scale Operation

(1) **Installation, Maintenance and Operation.** Contractor shall maintain and operate an adequate number of scales to meet the Vehicle Turnaround Guarantee during Facility Receiving Hours. The scales shall be State certified motor vehicle scales in accordance with Applicable Law. All scales shall be linked to a centralized computer recording and billing system.

(2) **Establishment of Vehicle Tare Weights.** No more than fifteen (15) calendar days before the Delivery Date, as provided in Article 6, and immediately upon the addition of any new vehicles at any time during the Base Term and any Extensions, the Contractor shall weigh the Transport Contractor(s)' vehicles to determine their unloaded ("tare") weights. In all cases, record of vehicle tare weights shall be recorded by vehicle number and separately provided to the Transport Contractor(s) and the Authority within fourteen (14) calendar days of weighing or re-weighing.

(3) **Additional or Replacement Vehicles.** When additional or replacement vehicles are placed into service by the Authority or by the Transport Contractor(s), the Contractor shall promptly weigh such vehicles and provide the tare weight(s) to the Authority and Transport

Contractor(s) using the same method as provided in (2) above.

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

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

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

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

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

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

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

(1) directing on-site traffic to appropriate unloading areas and providing a safe working environment for Facility Users, visitors, and employees,

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

d. Alternative Daily Cover. In accordance with the provisions of Section 2.01(h), Authority and/or its Transport Contractor(s) may Deliver materials to the Disposal Facility that is suitable for use as Alternative Daily Cover. Contractor shall use, track, and report to the Authority in its monthly reports the material type and Tonnage used for Alternative Daily Cover.

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

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

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

h. Record Keeping. The Contractor shall keep daily accurate and complete records of Residue and ADC Delivered by Transport Contractor and materials used for Alternative Daily Cover using paper, electronic, magnetic or other media, sufficient for the Authority to determine any Liquidated Damages or other damages levied under this Agreement, and to determine compliance with all provisions of this Agreement. At a minimum, such record keeping shall

consist of the date, time of weighing, and weight for each incoming vehicle; invoices submitted by the Contractor to the Authority, including all background data used in generating the invoices. The Contractor shall at the Authority's reasonable request, and with no additional compensation, develop and provide the Authority with information or records as necessary to characterize Recovered Materials. The Contractor shall maintain records so as to be available to the Authority during Facility Receiving Hours and upon Authority request, and shall within five (5) Working Days provide the Authority copies of such records at the Authority's request. All such records shall be preserved and retained for a period no less than seven (7) years including retention of records beyond the expiration date of the Base Term or seven (7) years beyond expiration date of the final Extension period should there be one or more Extensions to the Agreement in order to comply with the seven (7) year record holding requirement.

i. Reporting Requirements

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

(2) Annual Reports

(i) No later than March 1st of each year, the Contractor shall submit an annual report for the previous calendar year that aggregates and summarizes the quarterly reports submitted in accordance with subsection (1) above. If the Contractor has at any time during the previous year failed to comply with Contractor Obligations resulting in Liquidated Damages, the annual report shall also include the amount of any damage calculated pursuant to Section 8.07 and previously paid to the Authority, or owed by the Contractor to the Authority.

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

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

(3) **Other Reporting Requirement.** The Authority reserves the right to request an

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

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

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

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

7.05 Acceptance of Delivered Residue and ADC.

a. Acceptance. The Contractor shall Accept all Delivered Residue and ADC as limited in 2.01 h. during Facility Receiving Hours. If the Contractor refuses or is unable to accept such Delivered Residue or ADC during any portion of the Base Term or any Extensions, the Contractor shall be liable to the Authority for any damages payable and remedies available under Article 11. Notwithstanding any other provisions in this Agreement, nothing in this Agreement shall prevent Contractor from pursuing all legal remedies available from original generators of Hazardous Waste inadvertently Accepted by Contractor for matters related to proper handling, treatment, and Disposal of Hazardous Waste provided that the Authority, Transport Contractor(s), and Collection Contractor(s) shall in no case be considered the original generator.

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

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

d. Turnaround Time of Residue and ADC Transport Vehicles

(1) **Vehicle Turnaround Guarantee.** Contractor guarantees (the "**Vehicle Turnaround Guarantee**") that the average time required for a vehicle Delivering Residue and ADC on behalf of a Facility User, including vehicles of the Authority's Transport Contractor(s) to unload and exit the Facility is twenty (20) minutes commencing from the time the vehicle arrives at the entrance to the receiving weigh scales absent vehicle breakdown, driver negligence, lack of cooperation, or driver parking to use restrooms or telephone or other delays not caused by or under the control of the Contractor where the average time shall be calculated on a thirty (30) calendar day basis as the sum of the vehicle turnaround time for each load of Residue and ADC, Delivered by a Facility User during the month divided by the number of loads received during the thirty (30) calendar day period. Within thirty (30) Working Days of the Authority's request, Contractor shall gather the necessary data and provide documentation of the average vehicle turnaround time for one or more thirty (30) calendar day periods identified by the Authority. Contractor shall manage the Residue and ADC receiving and unloading area in order to facilitate the access and unloading of Facility Users. Contractor shall use Reasonable Business Efforts to ensure that time spent queuing up to the scales is minimized in order to ensure a timely vehicle turnaround.

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

(3) **Vehicle Turnaround Guarantee Liquidated Damages.** In signing this Agreement,

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

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

7.07 Cooperation and Disputes. Contractor shall fully comply with its Obligations and cooperate to its fullest extent with the Transport Contractor. In the event of disputes between Contractor and Transport Contractor, Contractor shall attempt to resolve the dispute directly with the Transport Contractor. As a last resort, Contractor may request assistance from the Authority in resolving the dispute. In the event of a dispute, Contractor shall continue performance of Contractor's Obligations under this Agreement and shall attempt to continue to resolve such dispute in a cooperative manner, including but not limited to negotiating in good faith.

7.08 Means and Methods of Residue and ADC Delivery

a. Initial Method of Delivery. The initial Means and Methods of Delivery will be large-volume highway transfer vehicles with walking floor bottoms only.

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

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

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

Either Party may request that the other Party consider use of an alternative Means or Method of Delivery. Should either Party do so, the terms and conditions governing use of an alternative mode of transport shall be determined under the Extraordinary Review provisions of Article 9. Contractor agrees to be a willing and active participant in assisting the Authority in determining whether an alternative Mean or Method is advantageous to the Authority.

7.09 Means and Methods of Disposal

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

b. Alternative Means and Methods of Disposal. The Parties recognize that the Means and Methods of Disposal may change over the Base Term and any Extensions. Either Party may

request that the other Party consider use of an alternative Means or Method(s) of Disposal. However, if the Contractor's request is approved by Authority, or if such request is initiated by Authority, the terms and conditions governing use of an alternative Means and Methods of Disposal shall be determined under the Extraordinary Review provisions of Article 9. If such alternative means or methods are proposed by Contractor, Authority shall have the right to approve or disapprove such proposal in Authority's sole discretion.

7.10 Means and Methods of Recovery and Diversion

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

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

ARTICLE 8. COMPENSATION

8.01 Disposal Fee. Contractor shall be compensated for performing its obligations in the form of a per-Ton Disposal Fee for each Ton of Residue and ADC Delivered from Authority and/or Transport Contractor. Exhibit 1 provides the Disposal Fee in effect as of the Delivery Date of this Agreement. The Disposal Fee will be adjusted periodically over the Base Term and any Extensions as specified in Exhibit 1. The Disposal Fee collected from Authority is the only compensation due the Contractor for service provided under this Agreement with the exception of compensation for extended Facility Receiving Hours provided in Section 8.09. The Disposal Fee is expressed in terms of dollars of compensation to the Contractor per Ton of Delivered Residue and ADC. The Disposal Fee will be adjusted over the Base Term and any Extensions as specified in Exhibit 1, but will not otherwise be adjusted except specified in Article 8 or the result of an Extraordinary Review as provided in Article 9 or as follows:

8.02 Responsibilities of the Parties

a. Authority Responsibilities. The Authority is responsible for setting, maintaining, and regulating rates for the services provided by the Authority's Transport Contractor(s) handling ADC and Residue. Nothing in this paragraph shall limit rights of Contractor or Authority to pursue all legal, financial and equitable remedies available under Applicable Law.

b. Contractor's Responsibilities

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

On or before the fifteen (15th) day of each month, and beginning with the month immediately following the month in which the Residue and ADC is first Delivered, the Contractor shall invoice the Authority for the total monthly compensation it is due for Residue Delivered or materials Delivered that are used as Alternative Daily Cover during the previous month. Total compensation due to Contractor from the Authority shall be the product of the number of Tons of Residue Delivered as measured by scales at Contractors Facility times the then-current Disposal Fee plus the number of Tons of material Delivered as measured by scales at Contractor's Facility that are used for Alternative Daily Cover times Alternative Daily Cover per-Ton fee, which shall be equal to fifty eight (58%) percent of the then-current Disposal Fee. Such invoice shall indicate that the invoiced party shall pay within forty-five (45) calendar days of receipt of the invoice. The Contractor shall provide the invoice in a format that is reasonably requested by the Authority. The invoice shall be accompanied by a monthly report summarizing the daily Tonnage of Residue or Alternative Daily Cover Delivered by Transport Contractor for the invoice period.

8.03 Allowable Adjustments of Disposal Fee

a. Periodic Disposal Fee Adjustment. The Disposal Fee shall be adjusted periodically as specified in Exhibit 1.

b. Comparative Disposal Fee. If at any time during the Base Term and any Extensions, the then-current Disposal Fee is adjusted to match a lower Comparative Disposal Fee(s), as provided in Section 6.02, the Disposal Fee shall be reduced to match the lower Comparative Disposal Fee

c. Significant Changes to Pass-Through Costs. Contractor may petition the Authority to adjust the Pass-Through Costs at a time other than during an annual adjustment period if the adjustment to the Pass-Through Cost would result in an adjustment to the Disposal Fee Pass-Through Costs of more than a Significant amount of compensation to the Contractor annually where compensation shall be calculated as the Authority's previous twelve (12) month total Disposal Tonnage times the incremental cost change to the Pass-Through Costs. Authority may not unreasonably withhold such request. If adjustments are made to Pass-Through Costs at times other than the annual adjustment time, the Authority reserves the right to pay Contractor for compensation due for the incremental change in the Pass-Through Costs by adjusting the Disposal Fees or through an alternative compensation mechanism. Contractor may petition the Authority to adjust the Pass-Through Costs at a time other than the annual period, if such adjustment is greater than ten (10) cents per ton.

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

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

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

~~8.05 [Reserved]~~

8.05 Protection from Bridge Toll and Local Fee Increases.

a. Bridge Toll Increases. During the contract extension period from July 1, 2012 through June 30, 2013, Contractor shall protect the Authority from increases in bridge tolls in excess of \$0.50 per ton based on 22 ton loads. This agreement is based on a baseline bridge toll of \$25.00 per transfer vehicle effective July 1, 2012. In the event that bridge tolls are increased beyond \$25.00 per vehicle to an amount that increases Authority costs by more than \$0.50 per ton, Contractor shall offset the increase beyond \$0.50 per ton by an equal reduction in per ton disposal fees at the landfill for both ADC and MSW.

b. Local Charge Increases. During the contract extension period from July 1, 2012 through June 30, 2017, Contractor shall protect the Authority from increases in Local Charges in excess of \$1.00 per ton based on 22 ton loads. Local Charges in effect as of July 1, 2012 shall be considered baseline charges for purposes of this paragraph. In the event that Local Charges in excess of the baseline increase Authority costs beyond \$1.00 per ton, Contractor shall offset the increase beyond \$1.00 per ton by an equal reduction in per ton disposal fees at the landfill for both ADC and MSW.

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

8.07 Liquidated Damages

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

b. Annual Adjustment to Liquidated Damages. The amount of Liquidated Damages specified in subsection (a) above for specific events of Contractor nonperformance shall be

adjusted at the same time the Disposal Fee is adjusted commencing with an adjustment effective January 1, 2009. The adjustment shall be rounded to the nearest cent. Liquidated Damage Amounts will be adjusted annually to reflect changes in CPI using the method presented below:

$$\text{Adjusted Liquidated Damage Amount} = \text{Then-current Liquidated Damage Amount} \times (\text{most current CPI} / \text{previous 12-month CPI})$$

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

8.08 Revenues from Diverted Materials. In the event the Contractor shall cause materials to be Diverted from Disposal and shall generate revenues from the sale of such Diverted materials, Contractor shall retain all revenues derived from such sales transactions.

8.09 Extended Facility Receiving Hours. In the event Authority or its Transport Contractor(s) request Contractor to extend Facility Receiving Hours on a temporary basis, Contractor will be compensated by Authority or its Transport Contractor(s) for the amount of time the Facility Receiving Hours are extended on a per-hour basis at the rate provided in Exhibit 1 in addition to the Disposal Fee it will receive for Waste Accepted during the extended Facility Receiving Hours. The additional compensation for extended Facility Receiving Hours shall be the per-hour fee for extended Facility Receiving Hour for any hour or portion thereof that the Facility Receiving Hours are extended. The cost per hour fee provided in Exhibit 1 shall be adjusted on the same schedule as the Disposal Fee, commencing with changes effective January 1st. The cost per hour fee shall be adjusted to reflect changes in CPI, the adjustment shall be rounded to the nearest dollar, and shall be adjusted on an annual basis at the same time the Disposal Fee is adjusted. The first annual increase will be effective January 1, 2009. The per-hour fee will be adjusted annually to reflect one hundred (100) percent of the change in CPI using the method presented below:

$$\text{Adjusted per-hour fee} = \text{Then-current per-hour fee} \times (\text{most recent CPI} / \text{previous 12-month CPI})$$

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

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

ARTICLE 9. EXTRAORDINARY REVIEW OF COMPENSATION

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

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

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

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

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

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

c. Change in the Mode of Disposal. A change in the mode of Disposal as agreed to by the Parties pursuant to Section 7.09 resulting in a Significant increase or decrease to Contractor's Operating and/or capital costs.

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

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

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

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

- a. Variations in Delivered Residue and ADC.** Variations or fluctuations in the weight, volume or composition of Delivered Residue and ADC.
- b. Force Majeure.** Force Majeure events experienced by or directly affecting the Contractor.
- c. Labor Action.** Labor Actions events experienced by or directly affecting the Contractor.
- d. Errors and Omissions.** Errors and omissions on the part of the Contractor in negotiating this Agreement.
- e. Contractor Error.** Equipment failure or failure to Accept Residue and ADC due to Contractor error(s) in planning, failure to maintain proper permits, regulatory actions for compliance-related or enforcement-related matters against Contractor that prohibit or curtail Facility Operations, underestimation of Facility capital and Operating costs, other operating problems, and/or problems related to internal company operations of the Contractor, its subcontractors, vendors, or its agents.
- f. Contractor's Costs.** Costs incurred by the Contractor in fulfillment of Contractor's Obligations including fines, judgments, and settlements levied against Contractor by third parties.
- g. Loss(es) Covered by Insurance.** Costs incurred by Contractor which Contractor can obtain compensation for through insurance.

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

- a. Notice of Extraordinary Review.** The Party initiating an Extraordinary Review shall Notice the other Party, citing the applicable provisions of this Article and providing a complete written summary of the reason for the Extraordinary Review, and its impact on Contractor's Obligations, and the Disposal Fee.
- b. Authority's Request for Proposal.** If an Extraordinary Review is initiated by the Authority or Contractor, Authority may request a Proposal from the Contractor in accordance with the Proposal format specified in Section 9.04(d). The Authority may withdraw such request for Proposal at any time, for any reason, including receipt of a Proposal from the Contractor unsatisfactory to the Authority. As soon as possible, but in any event within twenty (20) Working Days of receiving the Authority's request for Proposal, the Contractor shall submit the Proposal. Such Proposal shall be deemed the Contractor's offer with regard to changes in Contractor's compensation, Contractor's Obligations, and/or Change in Scope pertaining to the extraordinary circumstances under review, as appropriate, in accordance with the terms of such Proposal, and shall be binding for one hundred and eighty (180) calendar days.
- c. Form of Compensation.** The Authority may, at its sole discretion, require that the Contractor propose a change in compensation under this Article in the form of an adjustment to

the Disposal Fee including specific changes to the various components of the Disposal Fee. As an alternative the Authority may require that the Contractor propose compensation in a form of a lump-sum fixed price; a reimbursement of documented Direct Costs; a form that provides the Authority the option to lease-purchase changes in physical plant related to the change in compensation; or other form(s) of compensation to be determined.

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

- (1) Describe the circumstance warranting an Extraordinary Review.
- (2) Describe the impact of the circumstance under Extraordinary Review on Contractor's compensation, Contractor's Obligations, or the need for a Change in Scope.
- (3) Submit work plan for implementing a change in Contractor's Obligations or a Change of Scope if applicable, identifying physical changes to the Facility and Site, changes in Operating methods and labor needs, and implementation schedule.
- (4) Identify the capital and/or Operating cost of modifying the Contractor's Obligations and/or implementing any Change in Scope if applicable to support any requested change in Contractor compensation. The Contractor shall include detailed documentation supporting its cost Proposal, including cost substantiation required with respect to Direct Costs. Contractor covenants that it will not propose a cost in excess of the fair market price for such change in Contractor's Obligations or Change of Scope, whether it implements such changes itself or through a subcontractor.
- (5) Propose a change in compensation, as necessary, as a change in per-ton Disposal Fee, or in an alternate form as directed by the Authority pursuant to Section 9.04.(c).
- (6) Provide draft language changes to the provisions of this Agreement, as Contractor deems appropriate and necessary to affect any change in Contractor's compensation, Contractor's Obligations, and/or Change in Scope.

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

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

The Authority may request operating and business records from the Contractor to verify the

reasonableness and accuracy of the impacts associated with an Extraordinary Review. Contractor shall fully cooperate with the Authority's request and provide Authority and its agent(s) copies of or access to Contractor's records.

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

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

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

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

ARTICLE 10. INSURANCE, INDEMNITY, BONDS, FURTHER ASSURANCES

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

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

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

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

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

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

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

10.03 Hazardous Substances Indemnification. The Contractor shall indemnify, defend with counsel acceptable to the Authority, protect and hold harmless the Authority, its officers, officials, employees, agents, assigns and any successor or successors to the Authority's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Authority or its officers, officials, employees, agents, or assigns, arising from or attributable to acts or omissions including but not limited to any repair, cleanup, Disposal or detoxification, or preparation and implementation of any removal, remedial, response, Closure, Post-Closure, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Wastes at any place where the Contractor transports, stores or Disposes of Solid Waste pursuant

to this Agreement. The foregoing indemnity is also intended to operate as an agreement pursuant to CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the Authority from liability.

10.04 Bonds and Surety Instrument. The Contractor shall carry, and keep in force a performance bond and/or surety instruments as provided for herein. All bonds shall be executed by a corporation admitted to issue surety bonds in the State, subject to regulation by the California Insurance Commissioner, rated not less than "(A.VII)" by A.M. Best Company, Inc. as applicable, and having a financial condition and record of service reasonably satisfactory to the Authority. The corporation(s) executing such bonds shall be financially and organizationally independent of Contractor, and shall be in no manner an affiliate of the Contractor. Within ten (10) Working Days of Authority's issuance of its Notice specifying the Delivery Date on which Residue Delivery to the Facility shall commence, Contractor shall furnish a bond (in a form reasonably acceptable to the Authority and commercially available), and/or comparable instrument(s) approved by the Authority, or any combination thereof, (the "**Surety Instruments**"). The principal sum shall be Five Hundred Thousand Dollars \$500,000. The term of each Surety Instrument shall be issued for a three (3) year period if commercially available to Contractor, but not less than one (1) year or the remaining period in the Base Term or any Extension, whichever is less. Not less than ninety (90) calendar days before the expiration of each such Surety Instrument, the Contractor shall either extend such Surety Instrument as evidenced by a continuation certificate in a form reasonably acceptable to the Authority, or furnish a replacement Surety Instrument in the principal sum equal to Five Hundred Thousand Dollars (\$500,000).

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

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

10.07 Inability to Accept Delivered Residue and ADC. Except in the case of Residue and ADC identified as Hazardous Waste, in the event that the Contractor will not Accept some or all Delivered Residue and ADC as limited in 2.01 h. regardless of the reason for such failure, the following shall occur:

(i) immediately upon the Contractor's temporary inability to Accept Delivered Residue and ADC, Contractor shall make whatever arrangements are necessary for the use of an Alternative Disposal Facility and shall direct the Authority and the Transport Contractor(s) to use its preferred Alternative Disposal Facility. For the purposes of this Agreement, the Forward Landfill in San Joaquin County is designated as the preferred Alternative Disposal Facility.

(ii) during the period of time commencing immediately upon the Contractor's inability to

Accept Delivered Residue and ADC and in the event the Alternative Disposal Facilities identified in this Agreement are not immediately available, Contractor agrees the Authority and/or the Transport Contractor(s) shall make whatever arrangements are necessary for use of an Alternative Disposal Facility that may be a site not otherwise preferred by the Contractor.

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

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

ARTICLE 11. BREACHES AND DEFAULTS

11.01 Contractor Breaches

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

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

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

(3) **Misrepresentation.** A misrepresentation in any representation or disclosure made to the Authority by the Contractor in connection with or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

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

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

(i) the subject of any Labor Action (including work stoppage or slowdown, sick-out,

picketing, lock-out or other concerted job action) in excess of thirty (30) calendar days; or

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

(6) Bankruptcy, Insolvency, Liquidation.

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

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

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

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

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

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

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

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

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

(14) **Unremedied Acts or Omissions.** Any act or omission by the Contractor which violates the terms, conditions, or requirements of this Agreement, or any other Applicable Law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

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

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

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

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

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

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

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

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

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

(iii) Incremental Disposal Costs: The incrementally greater Direct Costs for Disposal of Residue and ADC at an Alternative Disposal Facility, as compared to the then-current Disposal Fee at the Disposal Facility.

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

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

specifically confirms the accuracy of this Section and of Exhibit 5, and the fact that each Party had ample opportunity to consult with legal counsel and to obtain an explanation of these provisions.

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

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

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

(3) The Authority's reliance on Contractor's technical waste management expertise.

Consequently, Authority shall be entitled to all available equitable remedies, including specific performance and injunctive relief.

11.02 Events of Default

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

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

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

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

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

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

(4) **Failure to Remedy Effects of Uncontrollable Circumstance.** The Contractor fails to remedy effects of an Uncontrollable Circumstance within ten (10) Working Days of the event

or within the time period approved by the Authority in accordance with Section 11.06(c).

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

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

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

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

- (i) seek performance by the surety under any performance bond, and/or
- (ii) make a claim on any insurance policy or policies or self insurance instrument.

11.03 Dispute Resolution Procedures. Except as provided in Article 12, neither Party shall have any right to invoke or avail itself of any remedy set forth in Sections 11, including the instituting of any court proceedings, without first complying with the dispute resolution procedures set forth in Article 13.

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

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

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

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

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

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

11.06 Uncontrollable Circumstances

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

(1) The failure of any appropriate Federal, State, Authority, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Operation;

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

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

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

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

(1) Either Party's breach hereunder;

(2) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any business, payroll, franchise or employment taxes.

(3) The consequences of errors in Facility Operation on the part of Contractor, its employees, agents, subcontractor or affiliates or failure to comply with Standard Industry Practices, standard Operating procedures, Permit requirements, and Applicable Law;

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

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

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

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

Contractor shall, as specified in Article 10, carry and keep in force such insurance as is needed to mitigate the financial effects of Uncontrollable Circumstances to which the Facility and/or Contractor may subject. Insurance proceeds from policies covering any Uncontrollable Circumstance act or event shall be used to mitigate any damages caused by insurable events, including prompt reimbursement in full of any Disposal Fee or Direct Cost payments made by the Authority to the Contractor during an Uncontrollable Circumstances affecting the Facility and/or Contractor.

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

ARTICLE 12. TERMINATION

12.01 Authority's Right to Suspend. Authority shall have the right to suspend this Agreement, in whole in or in part, upon the occurrence of a Contractor default under Section 11.02(a)(4) regarding a failure to perform Contractor's Obligations and such occurrence that endangers public health, welfare or safety; provided such suspension is for no longer than forty-five (45) calendar days, during which period the Contractor shall have the opportunity to demonstrate to the reasonable satisfaction of the Authority the Contractor can once again fully perform Contractor Obligations in which case Authority may waive such default and Contractor shall continue to perform Contractor's Obligations. If Authority is not so satisfied, it may exercise any or all remedies, including those under Sections 12.02 and 12.03.

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

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

b. Criminal Activity of Contractor. The Contractor is found guilty of felonious conduct in

accordance with Section 11.05.

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

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

ARTICLE 13. DISPUTE RESOLUTION

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

The dispute resolution procedure may be initiated by either Party upon providing Notice to the other specifying the matter in dispute. Upon receipt of such Notice, both Parties shall, within five (5) Working Days of receipt of such Notice, meet and confer in good faith to resolve such dispute. Each Party shall, in good faith and in writing, promptly provide to the other Party any and all information and documentation reasonably related to the dispute requested by the other Party. If Parties are unable to satisfactorily resolve the dispute within thirty (30) calendar days then the Authority and Contractor shall have all legal and equitable remedies as provided for in this Agreement.

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

ARTICLE 14. ASSIGNMENT

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

successor(s) in interest pursuant to the assignment. If the Contractor is a subsidiary of another corporation or business entity, any "assignment," as defined above, by the parent company or corporation shall be considered an assignment by the Contractor.

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

14.03 Contractor Assignment

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

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

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

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

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

(3) satisfactory proof that in the last five (5) years, the proposed assignee has not suffered any citation or other censure from any Federal, State or local agency having jurisdiction over its waste management operations due to any Significant failure to comply with state, Federal or local waste management law, which citation or censure has not been timely cured to the satisfaction of such agency, or is not now in the process of a

cure; and if it has suffered any citation or other censure, that the assignee has provided the Authority with a complete list thereof;

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

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

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

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

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

(1) Any application for an assignment/transfer shall be made in a manner prescribed by the Authority representative identified in Section 15.02. The application shall include a transfer fee in an amount determined by the Authority Manager to be sufficient to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse the Authority for all direct and indirect expenses. Contractor shall be refunded any amounts deposited that exceeded such expenses actually incurred by Authority.

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

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

ARTICLE 15. OTHER PROVISIONS

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

If to Authority:

Authority Manager
Napa-Vallejo Waste Management Authority
1195 Third Street, Room 101
Napa, CA 94559
707-253-4274

If to Contractor:

Michael Caprio
901 Bailey Road
Pittsburg, CA 94565
925-458-9800

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

15.02 Authorized Representatives

a. Authority. For purposes of this Agreement, the Authority's authorized representative shall be the Authority Manager of the Authority or Manager's designee, who shall have the authority to make operational decisions in accordance with Applicable Law and Authority policy with respect to this Agreement which are binding on the Authority.

b. Contractor. For purposes of this Agreement, the Contractor's authorized representative shall be Michael Caprio, who shall have the authority to make decisions in accordance with Applicable Law and Contractor's articles of incorporation, bylaws and policy.

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

15.04 Governing Law. This Agreement shall be governed by, and construed and enforced in

accordance with, the laws of the State.

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

15.06 Venue. The venue for any legal proceedings in state court filed by either party to the Agreement shall be the Superior Court of California, County of Napa, and a unified court or, in case of federal court jurisdiction the Northern District of California. The appropriate venue for agreed upon alternative dispute resolution shall be Napa County, California.

15.07 Attorney's Fees. In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

ARTICLE 16. SEVERABILITY

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

ARTICLE 17. ENTIRE AGREEMENT

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

[Remainder of page intentionally left blank. Text continues on next page.]

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

Napa-Vallejo Waste Management Authority

Keller Canyon Landfill Company

Chair of Authority Board

Contractor (signature)

Date _____

Contractor (printed name)/Title

Date _____

ATTEST:

(Notarized) Attach Corporate Resolutions

Authority Clerk, _____

Date _____

APPROVED AS TO FORM:

Authority Attorney, _____

Counsel to Contractor (signature)

Counsel to Contractor (printed name)

Date _____

Date _____

**EXHIBIT 1
DISPOSAL FEE AND OTHER FEES**

The Disposal Fees paid to Keller Canyon Landfill Company on a dollar per ton basis for Residue and ADC including annual adjustments shall be as follows:

Date	Disposal Fee	ADC Fee
July 1, 2007	\$24.90	\$14.44
January 1, 2009	\$26.25	\$15.23

Beginning January 1, 2010 the Disposal Fee will be adjusted by 3% annually. The ADC Fee on a go forward basis will be 58% of the Disposal Fee and shall be adjusted along with the Disposal Fee on an annual basis. Other adjustments to the Disposal and ADC fees shall be in accordance with the provisions of Articles 8 and 9.

Amount regarded as significant \$20,000
 Extended Facility Receiving Hours (or any portion thereof) \$500 per hour

The Disposal Fees paid to Keller Canyon Landfill Company on a dollar per ton basis for Residue and ADC including annual adjustments shall be as follows:

Date	Disposal Fee	ADC Fee
January 1, 2012	\$26.00	\$14.00

Beginning January 1, 2013, and each subsequent January 1, the Disposal Fee and the ADC Fee will be adjusted annually by the percentage change in the U.S. Bureau of Labor Statistics Garbage and Trash Collection Index (CUUROOOOSEHGO2) as calculated by computing the average of monthly index values for the most recent published 12 months and comparing that number to the average of monthly index numbers for the 12 month period preceding the first calculation period; however, no annual adjustment shall be less that 0.0% or greater than 3.0%, regardless of the calculated percentage change in the Index. Other adjustments to the Disposal and ADC fees shall be in accordance with the provisions of Articles 8 and 9.

Amount regarded as significant \$20,000
Extended Facility Receiving Hours (or any portion thereof) \$500 per hour

EXHIBIT 2
INSURANCE REQUIREMENTS

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

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

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

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

1. General Liability: \$10,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers’ Compensation and Employer’s Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.
4. Pollution and/or Environmental Impairment Liability: \$3,000,000 each occurrence/\$10,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if

commercially available, without involvement of the Authority, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by the Authority will be called upon to contribute to a loss suffered by the Contractor hereunder and waive subrogation against the Authority and other additional insureds.

D. Other Insurance Provisions.

1. The policies are to contain, or be endorsed to contain, the following provisions:
 - a. The Authority, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.
 - b. The Contractor's insurance coverage shall be primary insurance with regard to the Authority, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. Each insurance policy required by this Agreement shall be occurrence-based, (except environmental impairment coverage which shall be claims based) or an alternate form as approved by the Authority and shall be endorsed to state that the insurer(s) must provide the Contractor and Authority with thirty (30) calendar days notice prior to any cancellation, change or other modification by certified mail, return receipt requested, has been given to the Authority and name the Authority its officers, officials, agents, employees and volunteers as additional insureds.
 - d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or State authorities.
3. Workers' Compensation and Employers Liability Coverage. The Insurer shall agree to waive all rights of subrogation against the Authority, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor

for the Authority, except for the sole or willful misconduct of the Authority, its officers, officials, employees or volunteers.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverages are not available from an "Admitted" Insurer, the coverage may be written with the Authority's permission, by a Non-admitted insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or higher.

F. Verification of Coverage. The Contractor shall furnish the Authority with certificates and endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Authority's Risk Manager before work commences.

G. Other Provisions

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

EXHIBIT 3
LOAD CHECKING PROGRAM

[To be provided by Contractor]

EXHIBIT 4
FINANCIAL GUARANTY AGREEMENT

This Guaranty, made as of the date of the Agreement (as defined below) by _Allied Waste Services, Inc. a corporation duly organized and existing in good standing under the laws of the State of Delaware and having its principal place of business in Phoenix, AZ, ("**Guarantor**"), to and for the benefit of the Napa-Vallejo Waste Management Authority ("**Authority**"), a joint powers agency organized under the laws of the State of California (the "**State**") pursuant to Government Code section 6500 et seq. .

WITNESSETH

WHEREAS, Keller Canyon Landfill Company ("**Contractor**"), and the Authority have negotiated a Service Agreement for Long Term Disposal Capacity dated as of the later of the date of execution thereof by the Authority or the Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof ("**Agreement**"), which Agreement is incorporated herein by reference and hereby made part hereof;

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

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

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

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

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

(2) Governing law; consent to jurisdiction. This Guaranty is made in Napa County, California, and shall be governed by the laws of the State of California without regard to the choice of law or conflicts. The venue for any legal action in state court filed by either party to this Guaranty for the purpose of interpreting or enforcing any provision of this Guaranty shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Guaranty for the purpose of

interpreting or enforcing any provision of this Guaranty lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Guaranty shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Guaranty.

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

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

Guarantor shall undertake to pay 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.

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

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

(5) Waivers. Guarantor hereby waives:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) Notices. All notices, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing, and shall be given in the manner and to the addresses provided in the Agreement, except notices to Guarantor shall be sent to:
[Name,
Address]

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

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

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

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

Allied Waste Services, Inc., a corporation

By: _____

_____, _____

Date

By: _____

_____, _____

Date

EXHIBIT 5
LIQUIDATED DAMAGES

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

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

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

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