

AGREEMENT

between the

COUNTY OF SONOMA

and

for

DISPOSAL OF SOLID WASTE

_____, 2005

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1 Agreement between
2 County of Sonoma
3 and

4 _____
5 for
6 Disposal of Solid Waste
7

8
9 THIS AGREEMENT is made as of this ___ day of _____, 2005 by
10 and between the COUNTY OF SONOMA ("County") and
11 _____, ("Contractor"). County and Contractor shall be referred
12 to collectively as "Parties."
13

14 **RECITALS**
15

16 WHEREAS, Contractor represents that it is duly qualified and experienced in
17 Solid Waste disposal operations and related services; and
18

19 WHEREAS, in the judgment of the County Board of Supervisors, it is necessary
20 and desirable to enter into this Agreement to have Contractor accept Solid Waste from
21 County.
22

23 NOW, THEREFORE, in consideration of the mutual covenants contained herein
24 the parties hereto agree as follows:
25

26 **ARTICLE 1**
27 **DEFINITIONS**
28

29 Defined terms in this Agreement and the Exhibits of this Agreement, which are
30 identified by the capitalization of the first letter of each principal word thereof, shall have
31 the following meanings:
32

33 **Agreement.** "Agreement" means this Agreement between County and Contractor
34 for disposal of Solid Waste, including all exhibits and attachments, and any amendments
35 hereto.
36

37 **Alternative Daily Cover.** "Alternative Daily Cover" means materials used as
38 daily cover over landfilled Solid Waste, instead of soil, including a variety of wastes as
39 approved by the Local Enforcement Agency.

1 **Bulky Waste.** "Bulky Waste" means stoves, refrigerators, water tanks, washing
2 machines, other white goods, furniture, and other similar waste materials which require
3 special handling and disposal methods due to their size, composition, and/or weight.
4

5 **County.** "County" means the County of Sonoma, California.
6

7 **Commencement Date.** "Commencement Date" means _____, 20____,
8 the date on which Contractor begins provision of services required under this Agreement.
9

10 **Contractor.** "Contractor" means _____, [which owns and
11 operates the Landfill.]
12

13 **Contractor Default.** "Contractor Default" has the meaning provided in Section
14 10.01.
15

16 **Designated Waste.** "Designated Waste" means non-Hazardous Material which
17 may pose special disposal problems because of its potential to contaminate the
18 environment and which may be disposed of only in Class II disposal sites, or Class III
19 disposal sites pursuant to a variance issued by the California Department of Health
20 Services or pursuant to applicable Landfill permits. Designated Waste consists of those
21 substances classified as Designated Waste by the State of California, in California Code
22 of Regulations, Title 23, Section 2522.
23

24 **Effective Date.** "Effective Date" means the date of execution of this Agreement
25 by the latter of the two Parties.
26

27 **Environmental Laws.** "Environmental Laws" means all federal and state statutes,
28 and local ordinances concerning public health, safety and environmental issues including,
29 by way of example and not limitation, the Comprehensive Environmental Response,
30 Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Resource
31 Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Federal Clean Air
32 Act, 42 U.S.C. Section 1351 et seq.; the Emergency Planning and Community Right to
33 Know Act, 42 U.S.C. Section 1101, et seq.; the Occupational Safety and Health Act, 29
34 U.S.C. Section 651, et seq.; the California Hazardous Waste Control Act, California
35 Health and Safety Code Section 25100, et seq.; the Carpenter-Presley-Tanner Hazardous
36 Substance Account Act, California Health and Safety Code Section 25300 et seq.; the
37 Porter-Cologne Water Quality Control Act, California Water Code Section 13000 et seq.;
38 the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code
39 Section 25249.5 et seq.; and the California Clean Air Act, Health and Safety Code
40

1 Section 39000 et seq.; as currently in force or as hereafter amended, and all rules and
2 regulations promulgated thereunder.

3
4 **Future Regulations.** "Future Regulations" mean laws or governmental
5 regulations that are enacted after the Commencement Date of this Agreement and which
6 were not reasonably foreseeable at the time of the Commencement Date. For purposes of
7 this Agreement the term "reasonably~~not reasonably~~ foreseeable" shall mean that there
8 was no proposed legislation or proposed regulation existing as of the Commencement
9 Date that could have affected the costs of operating a landfill which was later enacted in a
10 similar form with respect to the impact on costs of operating a landfill.

11
12 **Gate Fees.** "Gate Fees" mean the amount, established under Article 5 of this
13 Agreement, to be charged the Transfer Company by Contractor for disposal of Solid
14 Waste at the Landfill.

15
16 **Generator.** "Generator" means any person whose act or process initially produces
17 Solid Waste, Designated Waste, Hazardous Materials, medical waste or any other product
18 which becomes part of the overall waste stream.

19
20 **Government Fee Component.** "Government Fee Component" means that portion
21 of the Gate Fees which represents all federal, state and local fees applied to disposal at the
22 Landfill.

23
24 **Guarantor.** "Guarantor" means _____.

25
26 **Hazardous Materials.** "Hazardous Materials" mean:

- 27
28 (1) All substances defined or characterized as "hazardous waste" by the Federal
29 Solid Waste Disposal Act (42 U.S.C. Section 3251 et seq.) as amended,
30 including the Resource Conservation and Recovery Act (42 U.S.C. Section
31 6901 et seq.), and all future amendments thereto and regulations
32 promulgated thereunder;
33
34 (2) All "Hazardous Substances" as defined by the Comprehensive
35 Environmental Response, Compensation and Liability Act of 1980, Title 42
36 Section 9601, et seq. (CERCLA) as amended from time to time;
37
38 (3) All substances defined as hazardous waste, acutely hazardous waste, or
39 extremely hazardous waste by Health and Safety Code Sections 25110.02,
40

1 25115, and 25117, and future amendments thereunder, including Title
2 23 California Code of Regulations Sections 2521 and 2522;

- 3
4 (4) Radioactive wastes;
5
6 (5) Polychlorinated byphenyls;
7
8 (6) Chemicals known to cause cancer or reproductive toxicity;
9
10 (7) Any substance the presence of which on the Landfill is prohibited by any
11 governmental requirements; and
12
13 (8) Any substances for which any governmental requirements require a permit
14 or special handling in its use, collection, storage, treatment or disposal.
15

16 If two or more governmental agencies having concurrent or overlapping
17 jurisdiction over Hazardous Materials adopt conflicting definitions of "Hazardous
18 Materials," for purposes of processing and disposal to land, the broader definition shall be
19 employed for purposes of this Agreement.
20

21 **Household Hazardous Waste.** "Household Hazardous Waste" means hazardous
22 materials generated at residential premises.
23

24 **Landfill.** "Landfill" means the site of the permitted landfill disposal operation
25 which is commonly known as _____ Landfill which is owned and operated
26 by Contractor and located at _____ in _____.
27

28 **Operating Year.** "Operating Year" shall mean any 12-month period commencing
29 July 1 during the term of this Agreement including any extension.
30

31 **Party or Parties.** "Party" or "Parties" refers to the County and Contractor,
32 individually or together.
33

34 **Person.** "Person" includes an individual, firm, association, organization,
35 partnership, corporation, limited liability company, joint venture, the United States, the
36 State of California, the County, municipality, political subdivision, governmental agency
37 or any other entity whatsoever.
38

39 **Recyclable Material.** "Recyclable Material" means domestic, commercial or
40 industrial by-products with some potential economic value.

1 **Resource Recovery.** “Resource Recovery” means recycling, material reuse and
2 recovery, mulching, composting, land application or transformation.

3
4 **Service Fee Component.** “Service Fee Component” means that portion of the
5 Gate Fees which represents Contractor's charge for disposal and includes all Contractor's
6 expenses (except the Government Fee Component) and profit.

7
8 **Solid Waste.** “Solid Waste” means all putrescible and nonputrescible solid, semi-
9 solid and associated liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes,
10 industrial wastes; discarded non-hazardous home and industrial appliances; dewatered,
11 treated or chemically fixed sewage sludge which is not a hazardous material; special
12 waste; manure; vegetable or animal solid and semi-solid wastes; and other discarded solid
13 and semi-solid wastes. Solid waste does not include the following:

- 14
15 (1) Hazardous Material;
16
17 (2) Infectious waste as defined by _____;
18
19 (3) Automobiles;
20
21 (4) Designated Waste; and
22
23 (5) Other material deemed unacceptable by applicable law and/or permit
24 conditions.

25
26 **State.** “State” means the State of California.

27
28 **Term.** “Term” means the Term of this Agreement as described in Article 2.

29
30 **Ton.** “Ton” means a short ton of 2,000 pounds where each pound includes 16
31 ounces.

32
33 **Transfer Company.** “Transfer Company” means the company or companies
34 which operate transfer vehicles in accordance with agreements with County.

35
36 **Transfer Vehicle.** “Transfer Vehicle” means a tractor and trailer designed to haul
37 Solid Waste from a transfer station to a landfill.

38
39 **Unincorporated Curbside Collected Waste.** “Unincorporated Curbside
40 Collected Waste” means the Solid Waste collected curbside within the unincorporated

1 portion of the County by County's licensed haulers.

2
3 **Unpermitted Material.** "Unpermitted Material" means materials that the Landfill
4 may not receive under its permits.

5
6 **Work Day.** "Work Day" means any day Monday through Sunday that is not a
7 holiday as set forth in Section 4.08.2.

8
9 **ARTICLE 2**
10 **TERMS OF AGREEMENT**

11
12 **2.01 Initial Term.** The Term of this Agreement shall commence on the
13 Commencement Date and terminate on _____, 20__ ("Expiration Date"), unless
14 terminated earlier in accordance with the provisions of this Agreement.

15
16 **2.02 County's Options to Extend Term.** County shall have the option to
17 extend the Term of this Agreement for up to twelve (12) additional months, by providing
18 Contractor with written notice at least sixty (60) days prior to the Expiration Date.

19
20 **2.03 County's Right to Terminate.**

21
22 **2.03.1 Termination for Contractor Default.** County shall have the right
23 to terminate this Agreement for any Contractor Default as defined in Section 10.01
24 below.

25
26 **2.03.2 Termination for Non-Appropriations.** Contractor hereby
27 acknowledges that pursuant to Section 18 of Article 16 of the California Constitution,
28 there are certain limits on County incurring liability under this Agreement. In no event
29 shall County's obligation to deliver Solid Waste hereunder extend beyond County's ability
30 to collect tipping fees for the services. In addition, County shall have the right to cancel
31 and terminate this Agreement at the end of any fiscal year of the County, if County is not
32 authorized by state or federal law or regulation to appropriate moneys sufficient to pay the
33 compensation required for the disposal of Solid Waste at the Landfill. County may effect
34 such termination by giving Contractor sixty (60) days prior written notice of termination
35 unless the giving of such advance notice is impractical under the circumstances.

36
37 ~~2.03~~ **County's Right to Terminate.** **3 Discretionary Termination.**
38 After the first twelve (12) months of this Agreement, County shall have the absolute right,
39 in its sole discretion, to terminate this Agreement for any reason by providing Contractor
40 with ninety (90) days prior written notice.

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**ARTICLE 3
OBLIGATIONS OF COUNTY**

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3.01 General. Solid Waste will be delivered to the Landfill by the Transfer Company. The Parties acknowledge that Gate Fees will be paid by the Transfer Company. County shall be obligated for the first twelve (12) months of this Agreement to direct one hundred percent (100%) of the Unincorporated Curbside Collected Waste to the Landfill. County shall encourage residents to participate in the Sonoma County Household Hazardous Waste Program that provides residents with a place for safe recycling, treatment and/or disposition of Household Hazardous Waste. The Parties recognize, however, that County cannot assure Contractor that such programs will prevent any amount of Household Hazardous Waste from being delivered to the Landfill.

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3.02 Quantity and Composition of Solid Waste. County expressly disclaims any warranties, either expressed or implied, as to the composition and quantities of Solid Waste to be delivered to the Landfill. County specifically reserves the right to dispose of Solid Waste at its own facilities or facilities owned by others. County makes no representation, and is under no obligation regarding the quantity and/or composition of Solid Waste, including providing Contractor with any minimum or maximum tonnage of Solid Waste.

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**ARTICLE 4
OBLIGATIONS OF CONTRACTOR**

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4.01 Receipt of Solid Waste. Beginning on the Commencement Date and continuing through the Term of this Agreement plus any extensions thereof, Contractor shall receive, accept and safely and lawfully dispose of or otherwise process at the Landfill ~~all~~ Solid Waste originating within Sonoma County and delivered to the Landfill by the Transfer Company, provided however that, Contractor shall have the right to limit daily tonnage to a maximum of _____ Tons. Contractor shall place all Solid Waste disposed of pursuant to this Agreement in a fully lined waste cell that complies with Federal RCRA Subtitle D standards.

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

1 Waste at the Landfill. Contractor shall provide County with a list of all such permits and
2 approvals designating the issuing agency, the date of issuance and the expiration of the
3 permits and, upon County's request, provide copies of any such permits and approvals.
4 Contractor shall keep the County fully informed, in a timely manner, of its progress in
5 securing permits, or renewals of permits, which occur during the Term as the same
6 pertains to the disposal operations at the Landfill in accordance with this Agreement and
7 costs related thereto. Throughout the Term, Contractor shall notify and consult with the
8 County regarding any proposed amendment to or alteration to any existing permits,
9 as well as notifying County, in a timely manner, of its intent in seeking new permits.

10
11 **4.03 Reservation of Disposal Capacity.** Contractor shall guarantee its ability to
12 accept and dispose of ~~all~~ Solid Waste originating within Sonoma County and delivered to
13 Landfill by the Transfer Company up to the maximum daily tonnage set forth in Section
14 4.01 above. Contractor shall be solely responsible for estimating the quantity of capacity
15 that shall be required to handle such Solid Waste over the Term of the Agreement.
16 County makes no representations, and is under no obligation, regarding the quantity or
17 composition of the Solid Waste delivered to the Landfill by the Transfer Company.

18
19 **4.04 Alternative Disposal Facility.**

20
21 **4.04.1 Inability to Accept Solid Waste Due to Contractor.** If Contractor
22 becomes unable to accept Solid Waste generated in County at the Landfill because it did
23 not use reasonable business efforts in resisting changes, alterations and amendments to
24 permits, or due to reasons within its control and which could have been avoided by the
25 exercise of due care, then Contractor shall (a) accept and dispose of such Solid Waste at
26 another landfill owned by it (or by another company which is owned and controlled,
27 directly or indirectly, by _____), at the then current Gate Fee in effect under
28 this Agreement, and shall pay any additional transportation costs incurred by County and
29 Contractor delivering the Solid Waste to the other landfill, or (b) shall arrange for all
30 Solid Waste to be disposed of at another landfill not owned by it or an affiliated company,
31 in which case Contractor shall pay any difference between: (i) the Gate Fee charged at
32 such landfill plus any additional transportation costs incurred in delivering the Solid
33 Waste to the other landfill; and (ii) the then current Gate Fee in effect under this
34 Agreement.

35
36 **4.04.2 Inability to Accept Solid Waste Due to Other Factors.** If
37 Contractor, despite using reasonable business efforts to resist changes, alterations and
38 amendments to permits, becomes unable to accept and dispose of Solid Waste at the
39 Landfill, or if Contractor becomes unable to accept and dispose of Solid Waste at the
40 Landfill as the result of causes which are beyond its control (i.e., force majeure events

1 described in Article 9), then Contractor shall, to the extent it is legally able to do so, offer
2 to accept and dispose of Solid Waste at another landfill owned by it (or by another
3 company which is owned and controlled, directly or indirectly, by _____), at
4 the then current Gate Fee in effect under this Agreement. Contractor has no obligation,
5 however, to reduce the Gate Fee for additional transportation costs. County has no
6 obligation to accept such offer.
7

8 **4.05 Diversion.** Contractor shall use reasonable efforts, to the extent
9 economically feasible as determined by Contractor, to operate the Landfill to segregate
10 Recyclable Materials. Contractor shall document the quantity of Recyclable Materials
11 removed from the Solid Waste delivered by the Transfer Company for recycling and the
12 quantity of such material diverted from disposal. Contractor shall calculate the quantity
13 of Recyclable Materials diverted from disposal on a monthly basis using a methodology
14 acceptable to County and shall report thereon in accordance with the reporting
15 requirements in Section 4.14. Contractor shall retain all revenues generated from the sale
16 of Recyclable Materials.
17

18 **4.06 Alternative Daily Cover.** The Transfer Company may deliver materials to
19 the Landfill that are suitable for use as Alternative Daily Cover. Contractor shall use,
20 track and report to County in its monthly reports the material type and tonnage used for
21 Alternative Daily Cover.
22

23 **4.07 Days and Hours of Operation.** Contractor shall operate the Landfill for
24 the receipt and disposal of Solid Waste in accordance with the days and hours of
25 operation as set forth in all permits. The current permitted hours of operation are
26 _____. At a minimum, Contractor shall accept and dispose of Solid Waste
27 generated in the County at the Landfill during the hours of _____.
28 Contractor may not reduce the hours or total number of hours for acceptance and disposal
29 required by this Agreement without the concurrence of the County, except such changes
30 which are mandated by a change in a Landfill permit.
31

32 **4.07.1 Emergency Services.** In the event of a tornado, major storm,
33 earthquake, fire, flood, natural disaster, or other such event, County may require
34 Contractor to extend the hours of operation in order to accept materials from the Transfer
35 Company. However, Contractor shall not be required to extend the hours of operation to
36 the extent that such extension would cause Contractor to violate its permit.
37

38 **4.07.2 Holidays.** Contractor shall not be required to accept Solid Waste
39 from the Transfer Company on Easter Sunday, Fourth of July, Labor Day, Thanksgiving
40 Day, Christmas Day and New Years Day.

1
2 **4.08 Traffic Control and Processing.**
3

4 **4.08.1 Traffic.** Contractor shall be responsible for the construction and
5 maintenance of all roads required at the Landfill for purposes of transporting Solid Waste
6 to the actual point of unloading by the Transfer Company. Contractor shall provide
7 necessary signs and personnel to assist drivers to proper unloading areas. Contractor shall
8 provide and maintain signs for the convenience of vehicles using the Landfill and to
9 facilitate safe and efficient traffic flow at the Landfill.

10
11 **4.08.2 Turnaround Time.** Contractor guarantees that each Transfer
12 Vehicle delivering Solid Waste under this Agreement is able to tip, unload at the tip floor
13 or other designated location, and leave the Landfill, within twentythree (2030) minutes of
14 leaving the entry scale, absent vehicle breakdown or driver negligence or excessive
15 delays (beyond 10 minutes) in the unloading of a Transfer Vehicle.
16

17 **4.09 Scale Operation.**
18

19 **4.09.1 Weighing Standards and Procedures.** The scale house(s) at the
20 Landfill's entrance shall serve as the location for weighing vehicles and charging Gate
21 Fees as provided herein. Contractor scale house personnel shall be responsible for
22 inspecting the Solid Waste delivered to the Landfill. The Transfer Company vehicles
23 shall be charged disposal fees based on the tonnage of Solid Waste accepted by the
24 Landfill and the applicable Gate Fees as set forth in this Agreement. Contractor shall
25 weigh and record inbound weights of all Transfer Vehicles when the vehicles arrive at the
26 Landfill. In addition, Contractor shall weigh and record outbound weights of such
27 vehicles for which Contractor does not maintain tare weight information. Contractor
28 shall provide each driver a receipt showing the date, time, and quantity of Solid Waste
29 delivered to the Landfill and the Gate Fee charged for such material. The scale house
30 computer system shall compile information into various reports in which a typical
31 transaction includes documentation of the Gate Fee charged, weight of vehicle, vehicle
32 identification number, date and time, customer account, material type, route number,
33 vehicle type, and origin of Solid Waste (i.e., Sonoma County).
34

35 **4.09.2 Maintenance and Operation.** Contractor shall maintain,
36 in accordance with applicable law, at least two State certified motor vehicle scales at the
37 Landfill. Contractor shall operate such scales during Landfill receiving hours, established
38 in Section 4.07, provided that Contractor shall provide County with access to weighing
39 information at all times and copies thereof on the next Work Day on which the scale
40 house is open.

1 **4.09.3 Vehicle Tare Weights.** Between the Effective Date and the
2 Commencement Date, Contractor shall weigh and determine the unloaded (“tare”) weight
3 of each Transfer Vehicle to be used to deliver Solid Waste to the Landfill. Before the
4 Commencement Date, Contractor shall provide County and the Transfer Company with a
5 report listing vehicle tare weight information, which shall include, at a minimum, hauler
6 name, tare weight, vehicle identification number, and date tare weight was determined.
7 Contractor shall, at least every year, re-weigh and revise tare weights for all Transfer
8 Vehicles used to deliver Solid Waste to the Landfill. When new vehicles are placed into
9 service and immediately after any significant repairs to Transfer Vehicles are made,
10 Contractor shall promptly weigh such vehicles and determine the tare weight of each
11 vehicle. Within ten (10) Work Days of weighing, Contractor shall provide County and
12 the Transfer Company with a report listing vehicle tare weight information. Contractor,
13 County and Transfer Company shall have the right to request re-weighing of vehicles
14 up to two (2) times per year, unless there is reasonable suspicion of evidence that tare
15 weights are not accurate, in which case, tare weights may be updated more frequently to
16 ensure accuracy.

17
18 **4.09.4 Substitute Scales.** To the extent practicable, if either scale is
19 inoperable, being tested or otherwise unavailable, all vehicles shall be weighed on the
20 remaining operating scale. To the extent that both the scales are inoperable, being tested,
21 or otherwise unavailable, Contractor shall substitute portable scales until the permanent
22 scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be
23 repaired as soon as possible and, in any event, within three (3) Work Days of the failure
24 of the permanent scale. Contractor shall arrange to immediately obtain a temporary
25 substitute scale(s) should the repair of the permanent scale require more than twelve (12)
26 hours.

27
28 **4.09.5 Estimates.** Pending substitution of portable scales or during power
29 outages, Contractor shall estimate the tonnage of Solid Waste delivered to the Landfill by
30 utilizing the arithmetic average of that vehicle's recorded tons of Solid Waste delivered on
31 its preceding three (3) deliveries, on the same day of the week, to the Landfill, with the
32 exception that the tonnage estimated in roll-off containers shall be made by multiplying
33 the estimated number of cubic yards of Solid Waste delivered per roll-off container by
34 0.20 tons per cubic yard for Solid Waste. All information required by Sections 4.09.1 and
35 4.09.7 shall continue to be recorded for each delivery of Solid Waste to the Landfill
36 during any period the scales are out of service.

37
38 **4.09.6 Testing.** Contractor shall test and calibrate all scales in accordance
39 with applicable law, but at least every twelve (12) months. Contractor shall provide
40 County with copies of test results. As of the Effective Date, Contractor has provided

1 County with the test results dated _____ 2005 for the scales.
2 Contractor shall further test and calibrate any or all scales upon written request by
3 County, within three (3) Work Days of such request. If such test results indicate that the
4 scale or scales complied with applicable law, County shall reimburse Contractor the direct
5 costs of such tests. If such test results indicate that the scale or scales did not comply
6 with applicable law, Contractor shall bear the costs thereof and Contractor shall at its own
7 cost adjust and correct, consistent with the results of such test, all weight measurements
8 recorded and Gate Fees calculated, charged and paid, as the case may be, from the date of
9 such request.

10
11 **4.09.7 Records.** Contractor shall maintain scale records that provide
12 information such as, but not limited to, date of receipt, inbound and outbound time,
13 inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of
14 origin of materials received (i.e., Sonoma County), type of material, hauler identification
15 and/or classification, type, weight, and destination of outbound material.

16
17 **4.10 Rejection of Unpermitted Material**

18
19 **4.10.1 Inspection.** Contractor shall use standard industry practices to
20 endeavor to detect and discover Unpermitted Material and shall not knowingly accept
21 Unpermitted Material at the Landfill. Contractor shall comply with the inspection
22 procedures contained in its permit requirements. Contractor shall promptly modify such
23 procedure to reflect any changes in permits or applicable law.

24
25 **4.10.2 Unpermitted Materials Handling and Costs.** Contractor shall
26 arrange for or provide transportation and delivery to an appropriately permitted facility of
27 all Unpermitted Materials that are encountered and which cannot be accepted at the
28 Landfill. Contractor ~~is~~shall be solely responsible for handling and arranging transport
29 and disposition of any Unpermitted Material that is contained in or with Solid Waste
30 accepted by the Contractor, and for all related costs. Notwithstanding Contractor's
31 obligations under this Section 4.10.2, Contractor shall have the remedies set forth in
32 Section 4.10.3 below to deal with Unpermitted Materials.

33
34 **4.10.3 Remedies for Rejected Materials.** If Contractor rejects material
35 delivered to the Landfill by the Transfer Company, because it contains Unpermitted
36 Material including Hazardous Materials, Contractor shall direct the Transfer Company to
37 remove and dispose of it in a safe and lawful manner, at the sole expense of the Transfer
38 Company. In the event that Unpermitted Material is delivered to the Landfill, Contractor
39 shall be entitled to pursue whatever remedies, if any, it may have against the Generator(s)
40 of such waste if the Generator(s) can be identified. In addition, Contractor may require

1 the Transfer Company to dispose of such Unpermitted Material and/or remediate the
2 same, as well as any contamination resulting therefrom at their expense if the
3 Unpermitted Materials are identified prior to or while such material is being deposited by
4 the Transfer Company at the Landfill. In no case shall County be considered to have
5 brought such Unpermitted Material to the Landfill. In the event the Transfer Company
6 delivers Unpermitted Materials on a frequent or continuous basis and the Transfer
7 Company refuses to provide for the proper handling and disposition of such Unpermitted
8 Material, Contractor shall provide written notice to County of such refusal by the Transfer
9 Company. Nothing herein shall excuse Contractor from the responsibility of handling
10 such Unpermitted Materials in a lawful manner and to arrange for the proper disposition
11 of such materials.
12

13 **4.10.4 Notification.** In the event Contractor rejects delivered materials,
14 Contractor shall immediately notify County verbally and then follow such verbal
15 notification with written notice within fourteen (14) Work Days. The written notice shall
16 identify: the date and time of occurrence; material type (along with a photo of the
17 materials); material weight or volume; characterization of material; and the Contractor's
18 reason for rejection of the delivered material.
19

20 **4.11 Ownership of Materials.** Once Solid Waste is accepted by the Landfill
21 from the Transfer Company, ownership and possession of such material shall transfer
22 directly from the Transfer Company to Contractor. Contractor is hereby granted the right
23 to retain, recycle, process, dispose of and otherwise use such materials, or any part
24 thereof, in any lawful fashion or for any lawful purpose desired by Contractor and such
25 right shall include Contractor's right to retain any benefit resulting from its right to retain,
26 recycle, process, dispose of, or reuse the Solid Waste.
27

28 **4.12 Personnel.** Contractor shall engage and train qualified and competent
29 employees, including managerial, supervisory, clerical, maintenance and operating
30 personnel, in numbers necessary and sufficient for operation of the Landfill and to
31 perform Contractor's obligations hereunder.
32

33 **4.13 Closure of Landfill.** Contractor shall safely manage the Landfill in full
34 regulatory compliance not only during normal Landfill operating period but also during
35 the Landfill closure and post-closure periods. Contractor acknowledges that it is solely
36 responsible for: (i) the appropriate closure and post-closure activities of the Landfill; and
37 (ii) the establishment and funding of any reserve funds required by applicable law for the
38 purposes of providing funds for the payment of costs of closure of the Landfill (or any
39 cell within the Landfill) or post-closure activities relating to the Landfill. Without
40 limitation, in no event shall County or the Transfer Company be responsible for paying

1 any deficiencies in such required reserves. In addition, neither County nor the Transfer
2 Company shall have any responsibility to make any payments in the event that actual
3 closure and post-closure costs relating to the Solid Waste exceed the amounts upon which
4 the Gate Fees hereunder were based on and the amount reserved by Contractor for such
5 purposes.

6
7 **4.14 Reports.**

8
9 **4.14.1 Monthly Reports.** Beginning on the Commencement Date, and
10 monthly during the term of this Agreement, Contractor shall provide a monthly report by
11 the twentieth (20th) day of the month following the reporting month (e.g., the first report
12 will be due no later than the twentieth (20th) day of the month following the
13 Commencement Date). The report shall include the total tonnage of Solid Waste
14 generated in the County that was diverted, transferred, and disposed at the Landfill.
15 In addition, the monthly report shall include the following: (a) tonnage information by
16 material type for material accepted at the Landfill; (b) number and nature of rejected
17 loads during the month; (c) number and nature of occurrences in which Contractor
18 identified Hazardous Materials inadvertently accepted; (d) number and nature of any
19 notice of violations; (e) copy of invoices submitted to the Transfer Company pursuant to
20 Section 5.05 below; and (f) copies of the scale records for each Transfer Vehicle
21 transaction during the month as described in Section 4.10.7.

22
23 **4.14.2 Annual Report of Landfill Activity.** Contractor shall submit an
24 annual report of Landfill activity to County. This report shall contain all items required
25 by this Section which, as a minimum, include the following: (a) an analysis of the
26 changes to the airspace of the Landfill since the previous report; (b) an analysis of the
27 remaining capacity of the Landfill; (c) a projection of the remaining life of the Landfill;
28 and (d) a list of parties that Contractor has guaranteed capacity to through written
29 agreements provided that such list includes the annual estimated tonnage to be disposed
30 by each party and the term of Contractor's capacity commitment. In the event Contractor
31 has agreements with private companies, the name of the party may be withheld from the
32 list; however, the annual tonnage estimate and term of the commitment must be provided.
33 Each analysis shall be based on data generated by an aerial topographic survey of the
34 Landfill. As a minimum, the airspace and remaining capacity of the Landfill shall be
35 expressed in the following or similar terms: gross remaining airspace (cubic yards of
36 remaining airspace that includes final cover, refuse, daily cover and liner); effective
37 remaining airspace (cubic yards of remaining airspace available for refuse only). In
38 addition, the annual report of Landfill activity submitted to County shall contain the date
39 of the aerial survey flight; the methodology employed in the analyses; and the calculations
40 performed to determine the airspace and remaining capacity. The annual report shall be

1 submitted to County no later than September 1st of each Operating Year, unless County
2 agrees to a later submittal date.

3
4 **4.15 Operation and Safety Plans.**

5
6 **4.15.1 Emergency Operations Plan.** Contractor has provided to County a
7 written comprehensive emergency operations plan designed to mitigate and correct
8 hazards that may arise due to accidents or disruption of operation of the Landfill or
9 disposal of Solid Waste under this Agreement, including, but not limited to: damage to
10 property, release of hazardous or dangerous materials and the release of any Solid Waste.
11 A copy of the emergency operations plan is attached hereto as Exhibit A and shall be
12 updated by Contractor and submitted for County approval on an annual basis.

13
14 **4.15.2 Safety Plan.** Contractor has provided to County a written
15 comprehensive safety plan which includes Contractor's employee injury and illness
16 protection plan (SB 198). A copy of the safety plan is attached hereto as Exhibit B and
17 shall be updated by Contractor and submitted for County approval on an annual basis.

18
19 **ARTICLE 5**
20 **COMPENSATION TO CONTRACTOR**

21
22 **5.01 General.** Contractor shall perform all of its obligations, responsibilities
23 and duties under this Agreement, including, but not limited to, paying the costs associated
24 with obtaining and complying with all permits and approvals, operating the Landfill,
25 conducting construction, closure, post-closure maintenance and remediation activities,
26 environmental monitoring, as well as operating any diversion programs or Resource
27 Recovery programs in consideration of the right to charge and collect from the Transfer
28 Company, Gate Fees as determined in accordance with this Agreement. Contractor shall
29 not look to County, but only to the Transfer Company for payment of any and all sums
30 due under this Agreement; provided, however, that if the Transfer Company is over forty-
31 five (45) days delinquent in making payments to Contractor, Contractor shall notify
32 County. If County fails to make up the delinquency within five (5) days of Contractor's
33 notice, Contractor shall have the right to terminate this Agreement.

34
35 **5.02 Gate Fees.** The Gate Fee shall be comprised of two components: a Service
36 Fee Component and a Government Fee Component.

37
38

<u>Operating Year*</u>	<u>Service Fee</u> <u>Component</u>	<u>Government Fee</u> <u>Component</u>	<u>Total Gate Fee</u>
------------------------	----------------------------------------	-------------------------------------------	-----------------------

1	2005/2006	\$ ____/ton	\$ ____/ton	\$ ____/ton
2	2006/2007	\$ ____/ton	\$ ____/ton	\$ ____/ton
3	2007/2008	\$ ____/ton	\$ ____/ton	\$ ____/ton

4
5 * Rates are for the Operating Year commencing July 1 and ending June 30.
6

7 Notwithstanding the foregoing, at any time during the term of this Agreement, the
8 Gate Fee shall not exceed the lowest Solid Waste disposal fee then being charged at the
9 Landfill to any other public entity, or private company that is delivering Solid Waste to
10 the Landfill for disposal that has been collected under an agreement with a city, county or
11 district.
12

13 **5.03 Adjustments to Components of the Gate Fees.** Except as provided in
14 Section 5.04, the Gate Fees shall not be adjusted. In the event of an adjustment to Gate
15 Fees in accordance with Section 5.04, Contractor shall provide County or its agent access
16 to the Landfill and its financial and operations records.
17

18 **5.04 Effect of Future Regulations.**
19

20 **5.04.1 General.** The Gate Fees established under Section 5.02 already
21 include all costs associated with complying with all existing laws and governmental
22 regulations (including, but not limited to, Environmental Laws) applicable to the Landfill
23 as of the date of this Agreement as those laws are currently interpreted. The purpose of
24 this Section is to: (a) specify those laws and regulations for which the cost of compliance
25 has already been included (as currently interpreted) and other costs which may not result
26 in an increase in the Gate Fees, and (b) identify those laws and governmental regulations
27 which may be enacted in the future, or changes in the interpretation of current laws and
28 regulations, the costs of which may be the basis for an increase in the Gate Fees.
29
30

31 **5.04.2 Regulatory Costs Included in the Gate Fees.** The Service Fee
32 Component of the Gate Fee already includes and will not be increased as a result of any
33 of the following:
34

35 (a) The current costs to comply with all laws and governmental
36 regulations, excluding Future Regulations, including, but not limited to the following:
37

- 38 i. "Calderon Legislation" (former California Government Code,
39 Sections 66796.53 and 66796.54, now California Public

1 Resources Code Sections 45300-04, 45700, California Health
2 and Safety Code Sections 40511, 41805.5 and 42311.5, and
3 California Water Code Section 13273);

4
5 ii. “Proposition 65” (California Health and Safety Code Section
6 25249.5 et seq., and Health and Safety Code Section 25192;
7

8 iii. “Federal Clean Air Act (42 U.S.C. Section 7401-7642) and
9 the California Clean Air Act (Health and Safety Code
10 Sections 1251 et seq.;

11
12 iv. Porter-Cologne Water Quality Act (California Water Code,
13 Division 7, Section 13000 et seq.;

14
15 v. California Integrated Waste Management Act of 1989
16 (California Public Resources Code, Divisions 30 and 31,
17 Section 40000, et seq.);

18
19 vi. Federal Resource Conservation and Recovery Act (42 U.S.C.
20 Section 6901 et seq.;

21
22 vii. California Hazardous Waste Control Act (California Health
23 and Safety Code, Division 20, Chapter 6.5, Section 25100 et
24 seq.);

25
26 viii. Federal Emergency Planning and Community Right to Know
27 Act of 1986 (42 U.S.C. Sections 11001-11050);

28
29 ix. California Hazardous Materials Release Response Plan and
30 Inventory Act (California Health and Safety Code, Division
31 20, Chapter 6.95, Section 25500 et seq.);

32
33 x. California Underground Storage Tank Act (California Health
34 and Safety Code, Division 20, Chapter 6.7, Section 25280, et
35 seq.);

36
37 xi. California Occupational Safety and Health act (California
38 Labor Code, Division 5, Parts 1-10, Section 6300 et seq.);
39

- xii. Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), and the regulations adopted thereunder, including but not limited to the Solid Waste Disposal Facility Criteria promulgated by the U.S. EPA on October 9, 1991 (40 C.F.R., Parts 257 and 258);
- xiii. Bay Area Air Quality Management District Regulation 8, Rule 34;
- xiv. Title 14 California Code of Regulations;
- xv. Title 22 California Code of Regulations;
- xvi. Title 27 California Code of Regulations; and
- xvii. "Subchapter 15" (Title 23 California Code of Regulations, Sections 2510-2610).

(b) Costs incurred due to Contractor's negligence, or intentional misconduct.

(c) Costs incurred due to permit changes that were not noticed by Contractor to County.

(d) Any fines or penalties imposed on Contractor.

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

(f) Costs attributable to changing the classification of the Landfill.

(g) Expenses related to the disposal of Hazardous Materials, Designated Waste and Unpermitted Materials.

~~(h) Costs attributable to~~ The Government Fee Component of the Gate Fee may be increased as a result of any Future Regulation that directly increases any federal, state or local ~~taxes and fees,~~ fee, tax or ~~surcharges of any form, that apply to any and all persons, property, income, equipment, materials, supplies, structures, or activities~~

1 ~~that are involved in the performance of this Agreement~~ surcharge applied to disposal
2 operations at the Landfill.
3

4 **5.04.3 Process for Requesting an Increase in Gate Fees Resulting from**
5 **Future Regulations.** If Contractor believes that complying with Future Regulations will
6 increase or decrease the costs of operating the Landfill, then it must follow the procedures
7 in this subsection before the Gate Fees will be adjusted.
8

9 (a) Contractor shall give County prompt notice, in no case less
10 than ninety (90) calendar days before the effective date of the Future Regulation,
11 specifically identifying them and describing what changes in operations at the Landfill are
12 required, when compliance is required, and whether Contractor is eligible for any
13 exemptions or variances. Contractor shall also provide evidence documenting that the
14 regulation meets the definition of a Future Regulation.
15

16 (b) Contractor shall thereafter submit to the County its proposed
17 method for complying with the Future Regulation, the estimated net cost of compliance,
18 and the associated adjustment necessary in the Gate Fees. Contractor shall provide
19 County with access to its operations and records. County may comment on this proposal
20 and Contractor shall consider such comments before submitting the proposal to any
21 regulatory agency.
22

23 (c) Contractor shall submit the proposed method of compliance
24 (as may be amended by Section 5.04.3(b) above) to the appropriate regulatory agency. If
25 the appropriate regulatory agency approves that method without conditions, the cost
26 necessary to implement that method of compliance pro rated to the tonnage delivered by
27 the Transfer Company of any offsetting cost reductions as determined in accordance with
28 this Section will be the amount by which the Gate Fees may be adjusted subject to County
29 review and approval.
30

31 (d) If Contractor's proposed method is not approved by the
32 appropriate regulatory agency, Contractor will implement the method of compliance
33 which is approved by the regulatory agency. The costs necessary to implement that
34 method of compliance will be used to calculate the amount pro rated to the tonnage
35 delivered by the Transfer Company, net of any offsetting cost reductions, as determined
36 in accordance with this Section, by which the Gate Fees may be adjusted subject to
37 County review and approval.
38

39 **5.05 Contractor Incentive Payments.** [TO BE NEGOTIATED]
40

1 Section shall, in any way, obligate the County to accept a letter of credit in lieu of the
2 performance bond.

3
4 **6.03 Corporate Guarantee.** In addition to the performance assurance required
5 in Section 6.01 or Section 6.02, Contractor is required to obtain a guaranty in a form as
6 set forth in Exhibit D. Guarantor has agreed to guarantee Contractor's performance of
7 this Agreement, including Contractor's indemnification obligations hereunder pursuant to
8 the guaranty agreement. The guaranty agreement is being provided concurrently with
9 Contractor's execution of this Agreement. Along with the guaranty agreement, Contractor
10 has provided an opinion of counsel in a form satisfactory to County Counsel that the
11 guaranty agreement has been duly executed and delivered by Guarantor and constitutes a
12 legal, valid, and binding obligation of Guarantor enforceable against Guarantor in
13 accordance with its terms.

14
15 **ARTICLE 7**
16 **INSURANCE**

17
18 **7.01 Insurance Policies.** Contractor shall secure and maintain throughout the
19 Term of this Agreement insurance against claims for injuries to persons or damages to
20 property which may arise from or in connection with Contractor's performance of work or
21 services under this Agreement. Contractor's performance of work or services shall
22 include performance by Contractor's employees, agents, representatives and
23 subcontractors.

24
25 **7.01.1 Minimum Scope of Insurance.** Insurance coverage shall be at least
26 this broad:

27
28 (a) Insurance Services Office Form No. GL 0002 (Ed. 1/96)
29 covering Comprehensive General Liability and Insurance Services Office Form No.
30 GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services
31 Office Commercial General Liability coverage ("occurrence" form CG 0001), including
32 X, C, U where applicable.

33
34 (b) Insurance Services Office Form No. CA 0001 (Ed. 12/93)
35 covering Automobile Liability, code 1 "any auto," or code 2 "owned autos" and
36 endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9
37 "non-owned autos."

38
39 **7.01.2 Workers' Compensation.** Workers' Compensation Insurance as
40 required by the California Labor Code and Employers Liability Insurance.

1 **7.01.3 Hazardous Waste and Environmental Impairment Liability**
2 **Insurance.**

3
4 **7.02 Minimum Limits of Insurance.** Contractor shall maintain insurance limits
5 no less than:

6
7 **7.02.1 Comprehensive General Liability:** \$10,000,000 combined single
8 limit per occurrence for bodily injury, personal injury and property damage. If
9 Commercial General Liability insurance with a general aggregate limit is used, either the
10 general aggregate limit shall apply separately to this Agreement or the general aggregate
11 limit shall be \$5,000,000.

12
13 **7.02.2 Automobile Liability:** \$10,000,000 combined single limit per
14 accident for bodily injury and property damage.

15
16 **7.02.3 Workers' Compensation and Employers Liability:** Workers'
17 Compensation limits as required by the California Labor Code and Employers Liability
18 limits of \$1,000,000 per accident.

19
20 **7.02.4 Hazardous Waste and Environmental Impairment Liability:**
21 \$10,000,000 per occurrence.

22
23 **7.03 Deductibles and Self-Insured Retention.** Any deductibles or self-insured
24 retention must be declared to, and approved by, County's Risk Manager. At the option of
25 County, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured
26 retention as respects County, its officers, employees, agents and contractors; or
27 (b) Contractor shall procure a bond guaranteeing payment of losses and related
28 investigations, claim administration and defense expenses in an amount specified by
29 County's Risk Manager.

30
31 **7.04 Endorsements.** The policies are to contain, or be endorsed to contain, the
32 following provisions:

33
34 **7.04.1 General Liability and Automobile Liability Coverage.**

35
36 (a) County, its officers, employees, agents and contractors are to be
37 covered as additional insureds as respects: Liability arising out of activities performed
38 by, or on behalf of, Contractor; products and completed operations of Contractor;
39 premises owned, leased or used by Contractor; and automobiles owned, leased, hired or
40 borrowed by Contractor. The coverage shall contain no special limitations on the scope

1 of protection afforded to County, its officers, employees, agents and contractors. The
2 Automobile liability shall be endorsed to contain MCA 90 coverage.

3
4 (b) Contractor's insurance coverage shall be primary insurance
5 as respects County, its officers, employees, agents and contractors. Any insurance, or
6 self-insurance maintained by County, its officers, employees, agents or contractors shall
7 be in excess of Contractor's insurance and shall not contribute with it.

8
9 (c) Any failure to comply with reporting provisions of the policies
10 shall not affect coverage provided to County, its officers, employees, agents, contractors
11 or the Transfer Company.

12
13 (d) Coverage shall state that Contractor's insurance shall apply
14 separately to each insured against whom claim is made or suit is brought, except
15 with respect to the limits of the insurer's liability.

16
17 **7.04.2 All Coverage.** Each insurance policy required by this Agreement
18 shall be endorsed to state that coverage shall not be suspended, voided, canceled, or
19 reduced in limits except after thirty (30) calendar days prior written notice has been given
20 to County.

21
22 **7.05 Acceptability of Insurers.** Insurance is to be placed with insurers
23 acceptable to County's Risk Manager.

24
25 **7.06 Verification of Coverage.** Prior to the Effective Date, Contractor shall
26 furnish County with certificates of insurance and with original endorsements affecting
27 coverage required by this Agreement. The certificates and endorsement for each
28 insurance policy are to be signed by a person authorized by that insurer to bind coverage
29 on its behalf. Contractor shall furnish County with a new certificate of insurance and
30 endorsements within ten (10) Work Days of each renewal of coverage or change of
31 insurers. Proof of insurance shall be mailed to the following address or any subsequent
32 address as may be directed in writing by County's Risk Manager:

33
34 Risk Manager
35 County of Sonoma
36 575 Administration Drive, Room 116A
37 Santa Rosa, California 95403
38

1 ~~in defending such action shall be payable by Contractor.~~ Additionally, if Contractor, after
2 receipt of written notice from County, fails to make any payment due under this
3 Agreement to County, Contractor shall pay any reasonable attorneys' fees or costs
4 incurred by County in securing any such payment from Contractor. Payment of any
5 amount due pursuant to the foregoing indemnity shall, after receipt of written notice by
6 Contractor from County that such amount is due, be made by Contractor prior to the
7 County being required to pay same, or in the alternative, County, at County's option, may
8 make payment of an amount so due and Contractor shall promptly reimburse County for
9 same, together with interest thereon at the rate of twelve (12%) per annum simple interest
10 from the date of receipt by Contractor of written notice from County that such payment is
11 due. This provision is, in addition to all other provisions in this Agreement and is
12 intended to survive the end of the term of this Agreement. Contractor's guaranty
13 agreement shall extend to the indemnification obligation hereunder.
14

15 **8.02 Hazardous Material Indemnification.** Contractor shall indemnify, defend
16 with counsel reasonably acceptable to County, and hold harmless, at Contractor's sole cost
17 and expense, County, its Board of Supervisors, officers, officials employees, volunteers
18 and agents, and the Transfer Company (collectively, "indemnitees") from and against any
19 and all claims, damages, injuries, costs (including and without limit any and all response,
20 remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action,
21 suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses
22 (including reasonable attorneys' and expert witness fees, expenditures for investigation
23 and remediation) and costs of any kind whatsoever paid, imposed upon, incurred, or
24 suffered by or asserted against any of the indemnitees by reason of, or arising from, the
25 presence, disposal, escape, migration, leakage, spillage, discharge, emission, release,
26 handling or transportation of Hazardous Materials to, in, on, at, or under the Landfill
27 (collectively, "environmental events"), any personal injury, death, or property damage,
28 arising out of or related to any of the environmental events; any lawsuit brought or
29 threatened, settlement reached, or government hearing, investigation, inquiry, proceeding,
30 or order relating to any Hazardous Materials or any of the environmental events. Such
31 indemnification shall apply to all events arising from or attributable to the acts or
32 omissions of Contractor, its officers, directors, employees, whether or not negligent or
33 otherwise culpable, in connection with or related to Contractor's performance of this
34 Agreement, including without limitation damages arising from or attributable to any
35 operations, repair, clean-up or detoxification, or preparation and implementation of any
36 removal, remedial, response, closure post-closure or other plan (regardless of whether
37 undertaken due to governmental action) concerning any Hazardous Materials at the
38 Landfill. For the avoidance of doubt, the foregoing indemnity is intended to operate as an
39 agreement pursuant to §107(e) of the Comprehensive Environmental Response,
40 Compensation and Liability Act, CERCLA, 42 U.S.C. §9607(e) and California Health

1 and Safety Code §25364, to defend, protect, hold harmless, and indemnify County from
2 liability thereunder. This provision is in addition to all other provisions in this Agreement
3 and is intended to survive the end of the term of this Agreement. Contractor's guaranty
4 agreement shall extend to the indemnification obligation hereunder.
5

6 **8.03 Environmental Indemnification.** Contractor shall indemnify, defend with
7 counsel acceptable to County, and hold harmless, at Contractor's sole cost and expense,
8 County, its Board of Supervisors, officers, officials, employees, volunteers and agents,
9 and the Transfer Company (collectively "indemnitees") from and against any and all
10 claims, damages, injuries, costs (including and without limit any and all response,
11 remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action
12 suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses
13 (including reasonable attorneys' and expert witness fees, expenditures for investigation
14 and remediation) and costs of any kind whatsoever, paid, imposed upon, incurred,
15 suffered by or asserted against any of the indemnitees by any lawsuit brought or
16 threatened, settlement reached, or government hearing, investigation, inquiry, proceeding,
17 or order relating to, or arising from, directly or indirectly, Contractor's alleged failure or
18 actual failure to comply with Environmental Laws and regulations. This provision is in
19 addition to all other provisions in this Agreement and is intended to survive the end of the
20 term of this Agreement. Contractor's guaranty agreement shall extend to the
21 indemnification obligation hereunder.
22

23 **8.04 Consideration.** It is specifically understood and agreed that the
24 consideration inuring to Contractor for the execution of this Agreement consists of the
25 promises, payments, covenants, rights and responsibilities contained in this Agreement.
26

27 **8.05 Obligation.** The execution of this Agreement by Contractor shall obligate
28 the Contractor to comply with the foregoing indemnification provision; however, the
29 collateral obligation of providing insurance must also be complied with as set forth in
30 Article 7 above.
31

32 **8.06 Subcontractors.** Contractor shall require all subcontractors to enter into an
33 agreement containing the provisions set forth in the preceding subsection in which
34 agreement the subcontractor fully indemnifies County in accordance with this Agreement.
35

36 **8.07 Exception.** Notwithstanding Sections 8.01, 8.02 and 8.03, Contractor's
37 obligation to indemnify, hold harmless and defend County, its officers and employees,
38 agents and contractors shall not extend to any loss, liability, penalty, claim, damage,
39 action or suit arising or resulting from acts or omissions constituting willful misconduct
40

1 on the part of County, its officers, employees, agents, ~~contractors, or~~ contractors.
2 Contractor's obligation to indemnify, hold harmless and defend the Transfer Company
3 under this Agreement shall not extend to any loss, liability, penalty, claim, damage, action
4 or suit arising or resulting from the Transfer Company's negligent acts, omissions or
5 willful misconduct.
6

7 **ARTICLE 9**
8 **FORCE MAJEURE**
9

10 **9.01 Force Majeure.** Contractor shall not be in default of its obligations under
11 this Agreement in the event, and for so long as, it is impossible or extremely
12 impracticable for it to perform its obligations due to an "act of nature" (including, but not
13 limited to, flood, earthquake, or other catastrophic events), war, insurrection, riot, or
14 other similar causes which are not the fault of, and beyond the reasonable control of, the
15 party claiming excuse from performance. Labor unrest, including but not limited to,
16 strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action
17 conducted by Contractor's employees or directed at Contractor is not an excuse from
18 performance and Contractor shall be obligated to continue to accept and dispose of Solid
19 Waste, notwithstanding the occurrence of any or all of such events. To claim excuse
20 under this Section, Contractor must: (i) have taken reasonable precautions, if possible, to
21 avoid being affected by the cause, and (ii) notify County in writing within five (5) Work
22 Days after the occurrence of the event specifying the nature of the event, the expected
23 length of time that Contractor expects to be prevented from performing, and the steps
24 which Contractor intends to take to restore its ability to perform.
25

26 **9.02 County's Right to Terminate for Force Majeure.** The interruption or
27 discontinuance of Contractor's ability to accept and dispose of Solid Waste caused by
28 one or more of the events described in Section 9.01 shall not constitute a default by
29 Contractor under this Agreement. Notwithstanding the foregoing, however, if
30 Contractor is excused from performing its obligations hereunder for any of the causes
31 listed in Section 9.01 for a period of thirty (30) calendar days or more, upon expiration of
32 the thirty (30) calendar days, County shall have the right, in its sole discretion, to
33 terminate this Agreement by giving five (5) Work Days' notice.
34

35 **ARTICLE 10**
36 **BREACHES AND DEFAULT**
37

38 **10.01 Contractor Defaults.** The happening of any one of the following events
39 shall constitute a Contractor Default:
40

1 **10.01.1 Bankruptcy, Insolvency, Liquidation.**
2

3 (a) Contractor shall take the benefit of any present or future
4 insolvency statute, or shall make a general assignment for the benefit of creditors, or file
5 a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement
6 for its reorganization or the readjustment of its indebtedness under the Federal
7 bankruptcy laws or under any other law or statute of the United States or any state
8 thereof, or consent to the appointment of a receiver, trustee or liquidator of all or
9 substantially all of its property; or

10
11 (b) By order of decree of a Court, Contractor shall be adjudged
12 bankrupt or an order shall be made approving a petition filed by any of its creditors or by
13 any of the stockholders of the Contractor, seeking its reorganization or the readjustment
14 of its indebtedness under the Federal bankruptcy laws or under any law or statute of the
15 United States or of any state thereof, provided that if any such judgment or order is
16 stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of
17 default shall be and become null, void and of no effect, unless such stayed judgment or
18 order is reinstated in which case, said default shall be deemed immediate; or

19
20 (c) By, or pursuant to, or under the authority of any legislative act,
21 resolution or rule or any order or decree of any Court or governmental board, agency or
22 officer having jurisdiction, a receiver, trustee or liquidator shall take possession or
23 control of all or substantially all of the property of Contractor, and such possession or
24 control shall continue in effect for a period of sixty (60) calendar days.
25

26 **10.01.2 Failure to Meet Payment or Reporting Requirement.**

27 Contractor has defaulted, by failing or refusing to: (a) pay in a timely manner any
28 monies due County hereunder; or (b) provide County with required information, reports
29 and/or records; and said default is not cured within ten (10) Work Days of receipt of
30 written notice by County to do so.
31

32 **10.01.3 Misrepresentation.** A misrepresentation in any representation or

33 disclosure made to County by Contractor in connection with or as an inducement to
34 entering into or performing this Agreement or any future amendment to this Agreement
35 which proves to be false or misleading in any material respect as of the time the
36 representation or disclosure is made, whether or not any such representation or disclosure
37 appears as part of this Agreement.
38

1 **10.01.4 Failure to Maintain Performance Bond or Surety Instrument.**

2 Contractor fails to maintain the performance bond, insurance, or alternative security
3 agreement as required under this Agreement.
4

5 **10.01.5 Lapse of Guaranty.** Lapse of any financial guaranty required

6 under this Agreement.
7

8 **10.01.6 Cessation of Services.** Contractor ceases to provide disposal

9 services as required under this Agreement for a period of two (2) consecutive Work Days
10 or more, for any reason within the control of Contractor, including labor disputes or
11 regulatory agency actions or order or court-ordered injunction to cease operation.
12

13 **10.01.7 Regulatory Violation.** Contractor violates any permits, orders, or

14 filings of any regulatory body having jurisdiction over Contractor relative to this
15 Agreement in such a manner as to materially interfere with Contractor's present or future
16 ability to perform Contractor's obligations under this Agreement, provided Contractor
17 may contest any such orders or filings by appropriate proceedings conducted in good
18 faith, in which case no breach of this Agreement shall be deemed to have occurred.
19

20 **10.01.8 Other Defaults.** Contractor has defaulted, by failing or refusing

21 to perform or observe any other terms, conditions or covenants in this Agreement which
22 is not specifically identified above, or has wrongfully failed or refused to comply with
23 the instructions of County relative thereto and said default is not cured within thirty (30)
24 calendar days of receipt of written notice by County to do so, or if by reason of the nature
25 of such default, the same cannot be remedied within thirty (30) calendar days following
26 receipt by Contractor of written demand from County to do so, Contractor fails to
27 commence the remedy of such default within said thirty (30) calendar days following
28 such written notice or having so commenced shall fail thereafter to continue with
29 diligence the curing thereof (with Contractor having the burden of proof to demonstrate
30 (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is
31 proceeding with diligence to cure said default), and such default will be cured within a
32 reasonable period of time.
33

34 **10.02 Remedy of Breach, Specified Monetary Damages.** Upon delivery of

35 notice of a Contractor Default to Contractor, County may exercise any one or more of the
36 following remedies:
37

38 **10.02.1 Compensatory Damages.** Upon a Contractor Default, County

39 shall have the right to recover any applicable damages to County or County's Transfer
40 Company, including but not limited to the following:

1 **(i) Incremental Haul Costs:** The incrementally greater direct costs
2 for hauling and transporting Solid Waste to an alternative disposal facility, as compared
3 to the County and/or its Transfer Company's then-current haul costs to the Landfill.
4

5 **(ii) Incremental Disposal Costs:** The incrementally greater direct
6 costs for disposal of Solid Waste at an alternative disposal facility, as compared to the
7 then-current Gate Fee at the Landfill under this Agreement.
8

9 **(iii) Consequential Fines:** Any consequential fines and penalties
10 assessed on County, including by the California Integrated Waste Management Board,
11 directly resulting from Contractor's failure to meet all its obligations hereunder.
12

13 **10.02.2 Termination.** Upon a Contractor Default, County shall have the
14 right to terminate this Agreement immediately upon written notice to Contractor.
15

16 **10.02.3 Right to Security.** Upon a Contractor Default, County shall have
17 the right, in addition to all other rights and remedies available to County hereunder or
18 otherwise provided by law, to foreclose upon the performance bond (or draw upon the
19 letter of credit).
20

21 **10.02.4 Remedies Cumulative.** In addition to the monetary damages
22 specified in Section 10.02.1 and liquidated damages provided for hereunder, Contractor
23 acknowledges that County's remedy of damages of a breach hereof by Contractor may be
24 inadequate for reasons including: the urgency of timely, continuous and high quality
25 waste management service hereunder, including disposal of Solid Waste that constitute a
26 threat to public health; and County's reliance on Contractor's technical waste
27 management expertise. Consequently, County shall be entitled to all available equitable
28 remedies, including specific performance and injunctive relief.
29

30 **10.3 Waiver.** County reserves the right to waive any and all breaches or
31 defaults of this Agreement, and any such waiver shall not be deemed a waiver of all
32 previous or subsequent breaches or defaults. In the event County chooses to waive a
33 particular breach or default of this Agreement, it may condition same on payment by
34 Contractor of actual damages occasioned by such breach or default of Agreement and
35 shall make every effort to resolve the same quickly and amicably.
36

37 **10.4 Criminal Activity.** Should Contractor or any of its officers or directors be
38 "found guilty" of felonious conduct relating to the Contractor's obligations hereunder or
39 other felonious conduct at any of the Contractor's operations involving, but not limited
40 to: (i) price fixing, (ii) illegal transport or disposal of Hazardous Materials, (iii) bribery

1 of public officials, or (iv) fraud or tampering, Contractor shall be in default and County
2 reserves the right to unilaterally terminate this Agreement in accordance with
3 Section 10.02.2. Such action shall be taken after Contractor has been given notice and
4 an opportunity to present evidence in mitigation. The term "found guilty" shall be
5 deemed to include any judicial determination that Contractor or any of Contractor's
6 officers, directors or employees is guilty, and any admission of guilt by Contractor, or
7 any of Contractor's officers, directors or employees including, but not limited to, the
8 pleas of "guilty," "nolo contendere," "no contest," or "guilty to a lesser felony" entered as
9 part of any plea bargain. If County does not terminate this Agreement, Contractor shall
10 dismiss or remove such officers, directors or employees and take all action necessary and
11 appropriate to remedy any breach of Contractor's obligations.

12
13 **ARTICLE 11**
14 **LIQUIDATED DAMAGES**
15

16 **11.01 Determination of Damages.** County and Contractor agree, that as of the
17 time of the execution of this Agreement, it is impractical, if not impossible, to reasonably
18 ascertain the extent of damages which shall be incurred by County as a result of a breach
19 by Contractor of certain obligations under this Agreement. The factors relating to the
20 impracticability of ascertaining damages include, but are not limited to, the fact that:
21 (i) substantial damage results to the Transfer Company or County who are denied services
22 or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety,
23 frustration, and deprivation of the benefits of the Agreement to County for whose benefit
24 this Agreement exists, in subjective ways and in varying degrees of intensity which are
25 incapable of measurement in precise monetary terms; (iii) that the services provided
26 hereunder might be available at substantially lower costs than alternative services and the
27 monetary loss resulting from denial of services or denial of quality or reliable services is
28 impossible to calculate in precise monetary terms; and (iv) the termination of this
29 Agreement for such breaches, and other remedies are, at best, a means of future
30 correction and not remedies which make the County whole for past breaches.

31
32 **11.02 Liquidated Damages.** The Parties further acknowledge that consistent and
33 reliable disposal service is of utmost importance to County and that County has
34 considered and relied on Contractor's representations as to its quality of service
35 commitment in awarding this Agreement to Contractor. The Parties further recognize that
36 some quantified standards of performance are necessary and appropriate to ensure
37 consistent and reliable service and performance. The Parties further recognize that if
38 Contractor fails to achieve the performance standards, or fails to submit required
39 documents in a timely manner County, and County's residents and businesses will suffer
40 damages and that it is and will be impractical and extremely difficult to ascertain and

determine the exact amount of damages. Therefore, without prejudice to County's right to treat such non-performance as a Contractor Default under Article 10, the Parties agree that the liquidated damages amount defined in this Section represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to County that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

County Initials: _____ Contractor Initials: _____

Contractor agrees to pay (as liquidated damages and not as penalty) the following amounts:

Liquidated Damages		
Item		Amount
a.	Failure to turnaround Transfer Company vehicles at the Landfill within the 20-minute limit	\$100 per occurrence
b.	Failure to submit monthly report to County in accordance with Section 4.14	\$100 per calendar day of delay
c.	Failure to submit annual report by September 1st of each Operating Year	\$300 per calendar day after September 1 st
d.	Failure to comply with any time periods set forth in <u>Sections 4.15 and 7.06</u> of this Agreement	\$100 per calendar day of delay
e.	Failure to notify County in accordance with <u>Section 12.01</u> of any regulatory violation, order or similar notice that could impact Contractor's ability to accept Solid Waste at the Landfill or potentially affect County's liability	\$100 per calendar day of delay
f.	Failure to maintain minimum operation hours or days	\$100 per Work Day

1 County may determine the occurrence of events giving rise to liquidated damages
2 through the observation of its own employees or representative or investigation of
3 complaints by Transfer Company.
4

5 **11.03 Notification.** Prior to assessing liquidated damages, County shall give
6 Contractor notice of its intention to do so. The notice will include a brief description of
7 the incident(s) and non-performance. County may present evidence of non-performance
8 in writing and through testimony of its employees and others relevant to the incident(s)
9 and non-performance. County will provide Contractor with a written explanation of its
10 determination on each incident(s) and non-performance (hereinafter “Liquidated
11 Damages Determination”) prior to authorizing the assessment of liquidated damages. Contractor shall have the right to submit evidence in support of its defense within ten (10)
12 days of receiving the Liquidated Damages Determination which County shall consider
13 before authorizing the assessment of liquidated damages. The ultimate decision of
14 County shall be final and no further administrative remedies shall be available.
15
16

17 **11.04 Deposit for Liquidated Damages.** Prior to the Commencement Date,
18 Contractor shall deposit with County, Ten Thousand Dollars (\$10,000) as security for
19 Contractor's obligation to pay liquidated damages hereunder. County shall maintain the
20 security deposit in an interest bearing account with the County Treasurer which shall earn
21 interest at the then current County Treasury Pool rate. Upon the termination or expiration
22 of this Agreement, any funds remaining in the account, including any interest, shall be
23 paid to Contractor.
24

25 **11.05 Payment.** Contractor shall pay any liquidated damages assessed by County
26 within ten (10) Work Days after they are assessed. If they are not paid within the ten
27 (10) day period, County may deduct such amount from the security deposit required under
28 Section 11.04 above. If any deductions are made from the security deposit, Contractor
29 shall replenish the security deposit within ten (10) Work Days or County may proceed
30 against the performance bond or security agreement required by this Agreement.
31

32 ARTICLE 12

33 COMPLIANCE WITH LAW

34

35 **12.01 Compliance With Law.** In providing the services required under this
36 Agreement, Contractor shall at all times comply with all applicable laws (including but
37 not limited to Environmental Laws) of the United States, the State of California, the
38 County, and with all applicable regulations promulgated by federal, state, regional, or
39 local administrative and regulatory agencies, now in force and as they may be enacted,
40 issued, or amended during the term, (collectively, the “Laws”). In the event of any

1 conflict between this Agreement and Laws, the requirements of the Laws shall govern,
2 and Contractor shall not be in breach of this Agreement if Contractor complies with the
3 Laws in contravention of this Agreement, provided that nothing in this section is intended
4 to diminish Contractor's right to satisfy its obligation to dispose of Solid Waste by
5 arranging for it to be accepted and disposed of at another landfill under the circumstances
6 described in, and in compliance with the requirements of, Section 4.04. Contractor shall
7 notify County, within ten (10) Work Days, of any regulatory violation, order or similar
8 notice that could impact Contractor's ability to accept Solid Waste at the Landfill or
9 potentially affect County's liability.

10
11 **12.02 Due Diligence.** The Parties acknowledge that County may be subject to
12 fines for failure to cause Solid Waste to be transported from County disposal facilities
13 in accordance with applicable law and permits and that waste management is a public
14 health and safety concern. The Parties agree that each shall exercise due diligence in the
15 performance of any of the terms and conditions of this Agreement and that time is of the
16 essence hereunder.

17
18 **12.03 Patents, Trademarks, Licenses.** Contractor and its affiliates shall hold or
19 possess a right to use all patents, rights to patents, trademarks, copyrights and licenses, as
20 the case may be of any equipment or software necessary for the performance by
21 Contractor of its performance obligations hereunder and the transactions contemplated by
22 this Agreement.

23
24 **12.04 Complaints.** Contractor shall promptly and politely respond to complaints,
25 including complaints from County, the Transfer Company and the public at large,
26 related to Contractor's performance or nonperformance of its obligations hereunder, and
27 shall use its best efforts to resolve such complaints within thirty (30) days' receipt thereof.
28

29 **ARTICLE 13**
30 **ASSIGNMENT**

31
32 **13.01 Assignment by Contractor.** No assignment of this Agreement or any right
33 occurring under this Agreement shall be made in whole or in part by Contractor without
34 the express written consent of County. ~~County shall have full discretion to approve or~~
35 ~~deny, with or without cause, any proposed or actual assignment by Contractor. which~~
36 ~~shall not be unreasonably withheld.~~ Any assignment of this Agreement made by
37 Contractor without the express written consent of County shall be null and void and shall
38 be grounds for County to declare a default of this Agreement and immediately terminate
39 this Agreement by giving written notice to Contractor, and upon the date of such notice
40 this Agreement shall be deemed immediately terminated, and upon such termination all

1 liability of County under this Agreement to Contractor shall cease, and County shall have
2 the right to call the performance bond or security agreement. The use of a subcontractor
3 to perform services under this Agreement shall not constitute delegation of Contractor's
4 duties provided that Contractor has received prior written authorization from County to
5 subcontract such services and County has approved a subcontractor who will perform
6 such services. Contractor shall be responsible for directing the work of Contractor's
7 subcontractors and any compensation due or payable to Contractor's subcontractor shall
8 be the sole responsibility of Contractor. County shall have the right to require the
9 removal of any approved subcontractor for reasonable cause. The subcontractors listed in
10 Exhibit E, which is attached to and incorporated in this Agreement, are hereby approved
11 by County. For purposes of this Agreement, an assignment shall mean: (i) the sale or
12 other transfer of more than an aggregate of forty percent (40%) of the voting share of
13 Contractor (other than to immediate family members by reasons of gift, death or other
14 reasons arising from attempts to plan for the disposition of the estate of such partner or
15 member); or (ii) the sale, mortgage, hypothecation, or pledge of more than an aggregate
16 of forty percent (40%) of the value of Contractor's unencumbered assets; or (iii) the
17 dissolution, merger, consolidation, or other reorganization of Contractor. An assignment
18 shall not include a transfer to any entity that controls, is controlled by, or is under
19 common control with Contractor.

20
21 **13.02 Assignment by County.** County may assign its rights and responsibilities
22 under this Agreement to any other entity as long as any such proposed assignee under this
23 Section shall: (a) have the legal authority and financial capacity sufficient to assume and
24 perform all of County's obligations hereunder; and (b) shall agree in writing to do so.

25
26
27 **ARTICLE 14**
28 **NOTICES; PARTY REPRESENTATIVES**

29
30 **14.01 Notice.** All notices, demands, requests, proposals, approvals, consents, and
31 other communications which this Agreement requires, authorizes or contemplates shall,
32 except where specifically provided otherwise, be in writing and shall either be personally
33 delivered to a representative of the parties at the address below or be deposited in the
34 United States mail, first class postage prepaid, (certified or registered mail, return receipt
35 requested) addressed as follows:

36
37 If to the County: Sonoma County Transportation &
38 Public Works
39 2300 County Center Drive, Suite B100
40 Santa Rosa, CA 95403

Attn.: Integrated Waste Manager

If to the Contractor:

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

14.02 Party Representatives.

14.02.1 County Representative. Authority to act on behalf of the County is hereby delegated to the person(s) designated in Exhibit F.

14.02.2 Contractor Representative. Contractor acknowledges that is is important to County to have a Contractor representative at the Landfill who is authorized and empowered by Contractor to serve as liaison between Contractor and County. Authority to act on behalf of Contractor is hereby delegated to the person(s) designated in Exhibit F. Such person’s statements, representations, actions and commitments shall fully bind Contractor. All oral directions or instructions and notices given by County to such named representative shall bind Contractor as if delivered to Contractor personally.

14.02.3 Emergency Telephone Numbers. The Parties have designated in Exhibit F, persons who shall be available on a 24-hour basis, including their telephone numbers.

14.02.4 Changes to Named Representatives. The Parties may change the names of their designated representative or emergency contact person by providing the other party with prior written notice.

**ARTICLE 15
RECORDS**

15.01 Contractor’s Records.

15.01.1 Payment Records. Contractor shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged

1 to the Transfer Company for a minimum period of three (3) years, or for any longer
2 period required by law, from the date of termination of this Agreement.
3

4 **15.01.2 Performance Records.** Contractor shall maintain all documents
5 and records which demonstrate performance under this Agreement for a minimum period
6 of three (3) years, or for any longer period required by law, from the date of termination
7 of this Agreement.
8

9 **15.01.3 Inspections.** Any records or documents required to be maintained
10 pursuant to this Agreement shall be made available for inspection or audit, at any time
11 during regular business hours, upon written request by County. Copies of such
12 documents shall be provided to County for inspection at County offices when it is
13 practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the
14 records shall be available at Contractor's address indicated for receipt of notices in this
15 Agreement.
16

17 **15.01.4 Protection of Records.** Where County has reason to believe that
18 such records or documents may be lost or discarded due to the dissolution, disbandment
19 or termination of Contractor's business, County may, by written request, require that
20 custody of the records be given to County and that the records and documents be
21 maintained in _____. Access to such records and documents shall be granted
22 to any party authorized by Contractor, Contractor's representatives, or Contractor's
23 successor-in-interest.
24

25 **15.02 Right to Inspect Operations.** County shall have the right, but not the
26 obligation, to observe and inspect all of Contractor's operations under this Agreement. In
27 connection therewith, County shall have the right to enter the Landfill unannounced
28 during operating hours, speak to any of Contractor's employees and receive cooperation
29 from such employees in response to inquiries.
30

31 **ARTICLE 16**
32 **PERFORMANCE**
33

34 **16.01 Dispute Resolution Procedures.**
35

36 **16.01.1 General.** In the event that any dispute arises between the Parties
37 concerning the interpretation, enforcement or any other matter related to or in connection
38 with this Agreement, the Parties shall comply with the procedures provided in this
39 Article 16, in an attempt to resolve such dispute.
40

1 results in a breach of any term or condition of any judgment, order or decree of any court,
2 administrative agency or other governmental authority, or any Agreement or instrument to
3
4 which Contractor is a party or by which Contractor or any of its properties or assets are
5 bound, or constitutes a default thereunder.
6

7 **17.04 No Litigation.** To the best of Contractor's knowledge, after reasonable
8 investigation, there is no action, suit, proceeding or investigation, at law or in equity,
9 before or by any court or governmental authority, commission, board, agency or
10 instrumentality decided, pending or threatened against Contractor wherein an unfavorable
11 decision, ruling or finding, in any single case or in the aggregate, would materially
12 adversely affect the performance by Contractor of its obligations hereunder or which, in
13 any way, would adversely affect the validity or enforceability of this Agreement or which
14 would have a material adverse effect on the financial condition of Contractor or any
15 surety guaranteeing Contractor's performance under this Agreement, which has not been
16 waived by County in writing.
17

18 **17.05 No Adverse Judicial Decisions.** To the best of Contractors knowledge,
19 after reasonable investigation, there is no judicial decision that affects the validity of this
20 Agreement or subject this Agreement to legal challenge.
21

22 **17.06 Ability to Perform.** Contractor possess the business, professional, and
23 technical capabilities to accept and dispose of Solid Waste at the Landfill; Contractor
24 possesses the permits to perform this Agreement; and Contractor possesses the
25 equipment, facility, and employee resources required to perform this Agreement.
26

27 **17.07 Contractor Investigation.** Contractor has made an independent
28 investigation to its satisfaction of matters, conditions and circumstances relating to its
29 execution and delivery of this Agreement and its obligations hereunder.
30

31 **17.08 Conflict of Interest.** Contractor warrants and represents that no elected
32 official, officer, agent or employee of County has a financial interest, directly or
33 indirectly, in this Agreement, the compensation to be paid under it and, further, that no
34 County employee who acts in the County as a "purchasing agent" as defined in the
35 appropriate Section of California Statutes, nor any elected or appointed officer of the
36 County, nor any spouse or child of such purchasing agent, employee or elected or
37 appointed officer, is a partner, officer, director, or proprietor of the Contractor and,
38 further, that no such County employee, purchasing agent, County elected or appointed
39 officer, or the spouse or child of any of them, alone or in combination, has a material

1 interest in the Contractor. Material interest means direct or indirect ownership of more
2 than five percent (5%) of the total assets or capital stock of the Contractor.

3
4 **ARTICLE 18**
5 **MISCELLANEOUS PROVISIONS**
6

7 **18.01 Relationship of the Parties.** The parties intend that Contractor shall
8 perform the services required by this Agreement as an independent contractor engaged by
9 County and not as an officer or employee of County nor as a partner of or joint venturer
10 with County. No employee or agent of Contractor shall be or shall be deemed to be an
11 employee or agent of County. Except as expressly provided herein, Contractor shall have
12 the exclusive control over the manner and means of conducting the Solid Waste disposal
13 services performed under this Agreement, and all persons performing such services.
14 Contractor shall be solely responsible for the acts and omissions of its officers,
15 employees, subcontractors, and agents. Neither Contractor nor its officers, employees,
16 subcontractors, and agents shall obtain any rights to retirement benefits, workers'
17 compensation benefits, or any other benefits which accrue to County employees by virtue
18 of their employment with County.
19

20 **18.02 Governing Law.** This Agreement shall be governed by, and construed and
21 enforced in accordance with the laws of the State of California.
22

23 **18.03 Jurisdiction.** Any lawsuits between the parties arising out of this
24 Agreement shall be brought and concluded in the courts of the State of California, which
25 shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties
26 agree that this Agreement is made in and will be performed in the County of Sonoma.
27

28 **18.04 Binding on Successors.** The provisions of this Agreement shall inure to
29 the benefit of and be binding on the successors and permitted assigns of the Parties.
30

31 **18.05 Parties in Interest.** Nothing in this Agreement, whether expressed or
32 implied, is intended to confer any rights on any persons other than the Parties and their
33 representatives, successors and permitted assigns.
34

35 **18.06 Duty of Contractor Not to Discriminate.** Contractor shall not
36 discriminate in the employment of persons engaged in the performance of this Agreement
37 on account of race, color, national origin, ancestry, religion, sex, physical handicap, or
38 medical condition, in violation of any applicable federal or state law.
39

1 **18.07 Acknowledgment.** It is acknowledged that each Party was, or had the
2 opportunity to be represented by counsel in the preparation of and contributed equally to
3 the terms and conditions of this Agreement and, accordingly, the rule that an Agreement
4 shall be interpreted strictly against the party preparing the same shall not apply herein due
5 to the joint contributions of both Parties.
6

7 **18.08 Exhibits.** Each of the Exhibits, identified as Exhibits "A", "B", "C", "D",
8 "E" and "F" is attached hereto and incorporated herein and made a part hereof by this
9 reference.
10

11 **18.09 Entire Agreement.** This Agreement including the Exhibits, represents the
12 full and entire Agreement between the Parties with respect to the matters covered herein
13 and supersedes all prior negotiations and agreements, either written or oral.
14

15 **18.10 Section Headings.** The article headings and section headings in this
16 Agreement are for convenience of reference only and are not intended to be used in the
17 construction of this Agreement nor to alter or affect any of its provisions.
18

19 **18.11 Amendment.** This Agreement may not be modified or amended in any
20 respect except in writing signed by the Parties.
21

22 **18.12 Severability.** If any term or provision of this Agreement is for any reason
23 deemed to be invalid, and unenforceable, the invalidity or unenforceability of such
24 provision shall not affect any of the remaining provisions of this Agreement which shall
25 be enforced as if such invalid, or unenforceable provision had not been contained herein.
26

27 **18.13 Attorneys' Fees.** The prevailing Party in any action brought to enforce the
28 terms of this Agreement or arising out of this Agreement may recover its reasonable costs
29 and attorneys' fees expended in connection with such an action from the other Party.
30

31 **18.14 References to Laws.** All references in this Agreement to laws and
32 regulations shall be understood to include such laws and regulations as they may be
33 subsequently amended or recodified, unless otherwise specifically provided. In addition,
34 references to specific governmental agencies shall be understood to include agencies
35 which succeed to or assume the functions they are currently performing.
36

37 **18.15 Definitions.** Capitalized terms used in this Agreement without definition
38 have the meanings specified in Article 1, unless the context clearly requires otherwise.
39

1 **18.16 Actions of County in its Governmental Capacity.** Nothing contained
2 herein shall be interpreted as limiting the rights and obligations of County in its
3 governmental or regulatory capacity.
4

5 **18.17 Personal Liability.** This Agreement is not intended to create or result in
6 any personal liability for any County public official, employee or agent, nor shall the
7 Agreement be construed to create that liability.
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Exhibit A to Disposal Agreement
Contractor's Emergency Operations Plan

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Exhibit B to Disposal Agreement
Contractor's Safety Plan

Exhibit C to Disposal Agreement
Contractor's Faithful Performance Bond

KNOW ALL MEN BY THESE PRESENT:

That _____, a _____ corporation, as PRINCIPAL, and _____, a corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the COUNTY OF SONOMA, a political subdivision of the State of California, in the penal sum of _____ (\$ _____) lawful money of the United States, for the payment of which, well and truly to be made, PRINCIPAL and SURETY hereby bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these present.

NOW THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounded PRINCIPAL has entered into an Agreement with the COUNTY OF SOMONA dated as of _____, 2005 for the Disposal of Solid Waste ("Agreement").

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

And the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, alteration or addition to the work or to the specifications of the Agreement.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ day of _____ 2005.

CONTRACTOR: By: _____
Title: _____

SURETY: By: _____
Title: _____

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Exhibit D to Disposal Agreement
Corporate Guaranty

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Exhibit E to Disposal Agreement
List of Approved Subcontractors

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Exhibit F to Disposal Agreement
Parties Designated Representatives