

**AGREEMENT FOR DISPOSAL OF MUNICIPAL SOLID WASTE
BETWEEN
THE CITY OF LOS ALTOS
AND
INTERNATIONAL DISPOSAL CORP. OF CALIFORNIA, INC.**

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AGREEMENT FOR DISPOSAL OF MUNICIPAL SOLID WASTE

THIS AGREEMENT FOR DISPOSAL OF MUNICIPAL SOLID WASTE (this “Agreement”) is made and entered into on September ____, 2022, by and between the CITY OF LOS ALTOS, CALIFORNIA a California municipal corporation (the “City”), and INTERNATIONAL DISPOSAL CORP. OF CALIFORNIA, INC., a California corporation (“Contractor”).

RECITALS

WHEREAS, City desires to contract for recycling and long-term disposal of Municipal Solid Waste (defined below); and

WHEREAS, Contractor owns and operates the Newby Island sanitary landfill and associated recycling facilities (“Newby Island”); and

WHEREAS, City and Contractor desire that Newby Island be maintained as a fully permitted facility in order to receive Municipal Solid Waste from City for recycling and disposal in accordance with this Agreement; and

WHEREAS, this Agreement is intended to supersede and replace all prior contracts between the parties.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions contained in this Agreement, and for other good and valuable consideration, the parties to this Agreement hereby agree as follows.

1. **DEFINITIONS.** The following capitalized names and terms shall have the respective meanings indicated below:

1.1. “Biomedical Waste” means waste which may be reasonably considered infectious, pathological or biohazardous, originating from hospitals, public or private medical clinics, departments or research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes equipment, instruments, utensils, fomites, laboratory waste (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.), dialysis unit waste, animal carcasses, offal and body parts, biological materials, (vaccines, medicines, etc.) and other similar materials, but does not include any such waste which is determined by evidence reasonably satisfactory to Contractor to have been rendered non-infectious, non-pathological and non-biohazardous.

1.2. “City” means the City of Los Altos, California, a municipal corporation organized under the laws of the State of California, all of the geographic area lying within the municipal boundaries of the City.

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1.3. “Construction and Demolition Debris” means commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder blocks, concrete, copper, electrical wire, fiberglass, formica, granite, iron, lead, linoleum, marble, plaster plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial buildings and other structures. Construction and Demolition Debris does not include Excluded Waste.

1.4. “Contractor” means International Disposal Corp. of California, its successors and assigns.

1.5. “Debris Box” means a roll-off waste container used to collect, without compaction, residential and commercial Municipal Solid Waste, yard trimmings, construction debris, and similar materials.

1.6. “Designated Hauler” means the waste hauler or haulers named by City pursuant to Subsection 3.3.2 to deliver Municipal Solid Waste to Newby Island.

1.7. “Excluded Waste” means Biomedical Waste, Hazardous Waste, sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, and those wastes under the control of the Nuclear Regulatory Commission.

1.8. “Hazardous Waste” means any of the following:

(a) all waste defined or characterized as hazardous waste by the federal Solid Waste Disposal Act (42 U.S.C. Section 3251 et seq.), as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and all future amendments thereto, or regulations promulgated thereunder;

(b) all waste defined or characterized as hazardous waste by the principal agencies of the State of California (including without limitation the Department of Health Services and the California Waste Management Board) having jurisdiction over hazardous waste generated by facilities within such State, and pursuant to any applicable State or local law or ordinance, and all future amendments thereto, or regulations promulgated thereunder;

(c) radioactive wastes;

(d) any sewage sludge or other residue from wastewater treatment facilities;

(e) waste commonly known as cannery waste;

(f) those substances or items which require special or extraordinary handling or disposal due to their hazardous, harmful, toxic or dangerous character or quality; and

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(g) those substances and items which are not normally expected to be disposed of by generally accepted sanitary landfill disposal methods.

1.9. “Hazardous Waste” shall be construed to have the broader, more encompassing definition where a conflict exists in the definitions employed by two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste. If any governmental agency or unit having appropriate jurisdiction shall hereafter determine that substances which are not, as of the date hereof, considered harmful, toxic, dangerous or hazardous, are harmful, toxic, dangerous or hazardous, then such substances shall be Hazardous Waste for the purposes of this Agreement as of the effective date of such determination. If any governmental agency or unit having appropriate jurisdiction shall hereafter determine that substances which are, as of the date hereof, considered harmful, toxic, dangerous or hazardous, are not harmful, toxic, dangerous or hazardous, then such substances shall not be Hazardous Waste for purposes of this Agreement as of the effective date of such determination.

1.10. “Municipal Solid Waste” means all substances or materials that are generally discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of rejection, including, without limitation, trash, garbage, refuse and rubbish, and which are generated by all residential, commercial, industrial, institutional, municipal, agricultural and other activities within the City; provided, however, Municipal Solid Waste does not include Excluded Waste, Construction and Demolition Debris, Source Separated Organic Materials, and Source Separated Recyclables.

1.11. “Newby Island” means the Newby Island Sanitary Landfill and associated recycling facilities, located at 1601 Dixon Landing Road, San Jose, CA 95131.

1.12. “Source Separated Organic Materials” means discarded materials separated from Municipal Solid Waste by the generator and deposited into the organics container for Recycling, including any vegetative matter resulting from normal yard and landscaping maintenance that is not more than three (3) feet in its longest dimension or six (6) inches in diameter and food scraps and trimmings from food preparation, including but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, Stable Matter, and acceptable food packaging such items as pizza boxes, paper towels, waxed cardboard and food contaminated paper products. Source Separated Organic Materials include plant debris, such as palm, yucca and cactus, ivy, grass clippings, leaves, pruning, weeds, branches, brush, holiday trees, and other forms of vegetative waste. Source Separated Organic Materials does not include items herein defined as Excluded Waste.

1.13. “Publicly Hauled Waste” means Municipal Solid Waste generated at residences or commercial establishments in the City and hauled directly to a solid waste facility, including Newby Island, by the respective generators (or, in the case of residences, their family members or designees) of such waste.

1.14. “Recycling” or “Recycle” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

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1.15. “Regulatory Changes” means changes in laws or regulations (including enactment or new laws or regulations and permit changes) affecting Newby Island which occur on or after November 21, 2023, and changes in the enforcement or interpretation of present or future laws or regulations (including permits) affecting Newby Island which occur on or after November 21, 2023, including Contractor’s future increased costs for financial assurances for closure, post-closure, third-party and pollution liability required by applicable regulatory agencies.

1.16. “Source Separated Recyclables” means discarded materials that are separated from Municipal Solid Waste by the generator prior to collection for purposes of Recycling, including but not limited to including newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (up to 20 pounds); steel including “tin” cans, empty aerosol cans (empty, non-toxic products) and small scrap (up to 20 pounds); bimetal containers; plastic bags, plastic food containers, #1-7 plastics regardless of form or mold (including but not limited to plastic containers, bottles, wide mouth tubs, plastic bags, film plastic, and polystyrene), aluminum foil and pans.

1.17. “Taxes” means all taxes or governmental fees now or hereafter imposed on the Recycling and/or disposal of Municipal Solid Waste delivered to Newby Island pursuant to this Agreement. As of the date of this Agreement, “Taxes” are \$19.66 per Ton, composed of the following: The current City of San Jose Business Tax of \$13.00 per ton, the City of San Jose Enforcement Fee of \$0.38 per ton, the County of Santa Clara Solid Waste Planning Fee of \$0.78 per ton, the County of Santa Clara AB 939 Fee of \$4.10 per ton, and the \$1.40 fee resulting from State AB 1220.

1.18. “Tipping Fee” means the amount, as set forth in Section 5, payable by City to Contractor for each Ton of Municipal Solid Waste delivered to Newby Island pursuant to this Agreement.

1.19. “Ton” means a short ton of 2,000 U.S. pounds.

2. CITY’S RESPONSIBILITIES.

2.1. Delivery of Municipal Solid Waste. Subject to the other provisions of this Agreement, during the term of this Agreement, City shall deliver or cause delivery of all Municipal Solid Waste to Newby Island, for Recycling and/or disposal in accordance with this Agreement; provided, however, City shall not be required to deliver or cause delivery of Municipal Solid Waste not controlled by the City’s franchise agreement, including Publicly Hauled Waste. City shall have no obligation to deliver any specific number of tons to Contractor at any time.

2.2. Excluded Waste. City shall use reasonable business efforts to prevent delivery to Newby Island by Designated Haulers of Excluded Waste or material other than Municipal Solid Waste. Subject to Contractor’s agreement, as set forth in Section 3.4 to attempt to reject or have a Designated Hauler remove such other Excluded Waste, City shall pay all costs of handling, demurrage, reloading, transportation and/or disposal of such other waste or material.

2.3. Debris Box Municipal Solid Waste. City shall deliver or cause delivery of all Municipal Solid Waste and Construction and Demolition Debris collected in Debris Boxes to Newby Island for Recycling and/or disposal in accordance with this Agreement. If Contractor does not meet the diversion goal for the Debris Box waste stream described in Section 3.1, the City shall have the option of directing its Debris Box waste stream to another facility if that other facility offers to pursue a higher diversion rate goal than that being achieved by Contractor at Newby Island, provided that Contractor shall have the right of first refusal, with a minimum of sixty (60) days advance written notice from the City of the terms (diversion level and price) offered by such other facility, to meet those terms and retain the City's Debris Box waste stream.

3. CONTRACTOR'S RESPONSIBILITIES.

3.1. Receipt of Municipal Solid Waste. Subject to the other provisions of this Agreement, during the term of this Agreement, Contractor shall receive all Municipal Solid Waste delivered to Newby Island for disposal at Newby Island in accordance with this Agreement. Contractor shall determine in its sole discretion whether to Recycle or dispose of such Municipal Solid Waste.

3.2. Receipt of Construction and Demolition Debris. Contractor shall use reasonable business efforts starting with the date of execution of this Agreement to achieve the annual goal of Recycling and diverting from disposal 65 percent by weight of the Construction and Demolition Debris delivered to Newby Island in Debris Boxes by the Designated Hauler and Publicly Hauled Waste. Contractor's compliance with this diversion goal shall be determined annually based upon the determination of a third-party certifier as recommended by Contractor and designated by the City which may change from time-to-time. Third-party certifications may be conducted by the City of San Jose, the Recycling Certification Institute, or any other certifier that is determined by the City to meet the City's standards. Contractor shall provide the City with annual reports by the designated Third-Party Certifier that include the certifier's determination of Contractor's diversion rate.

Contractor shall not be in breach of this Agreement if Contractor fails to achieve the annual Recycling and diversion goal of 65 percent, and the City's sole remedy if Contractor fails to achieve this goal is to seek another facility to achieve higher Recycling and diversion levels, subject to Contractor's right of first refusal described herein.

3.3. Provision of Compost. Contractor shall provide up to 750 tons of landscaping-grade compost to the City annually. City shall be responsible for arranging for the pickup of the compost at 601 Dixon Landing Rd. Milpitas, CA and shall inform Contractor six months in advance of the quantities to be picked up. If Contractor opens an area of the landfill site for residential customer pick-up of compost or mulch materials, access to that pick-up area shall be granted to residents of the City that provide adequate proof of residency, of up to 10 cubic yards of compost per resident per day. The compost picked up by residents shall be accounted for as a part of the 750 annual tons of compost described in Section 3.3.

3.4. Operational Requirements

(a) Hours. Contractor shall operate Newby Island for the receipt of Municipal Solid Waste from the Designated Haulers from at least 6:00 a.m. to 5:00 p.m. Monday through Friday and from 8:00 a.m. to 4:00 p.m. on Saturday, except that Newby Island may be closed on Christmas Day, the fourth Thursday of November and New Year's Day. Notwithstanding the foregoing, Contractor changed the Saturday hours at Newby Island due to the Covid-19 pandemic from 5:00 a.m. to 1:00 p.m., and may continue to operate Newby Island on Saturdays during this reduced schedule until Contractor determines, in its reasonable judgment, that it may resume the regular hours of operation on Saturdays. Contractor shall provide the City with notice of such change in advance.

(b) Signs. At Contractor's sole expense, Contractor shall prominently post signs at the entrance to Newby Island detailing the regulations which must be followed by vehicles entering the site, indicating the hours of operation, the types of Municipal Solid Waste accepted and a local telephone number to call for information or in case of emergency.

(c) Site Access. Contractor shall construct and maintain all roads running in and over Newby Island as shall be reasonable under the circumstances, from the end of the public access road to the points designated for the deposit of materials. A smooth surface within the disposal area will be maintained properly to assist vehicles in their disposal operations. Contractor shall designate an area immediately adjacent to an all-weather road for disposal during periods of inclement weather. Contractor shall operate and maintain such inclement weather site and shall construct and maintain an access road to such site. Contractor shall not be responsible for any expense or inconvenience incurred by Designated Haulers as a result of construction along the public access road. If delay occurs, Contractor and Designated Haulers shall attempt to arrange alternate scheduling.

(d) Scales; Cubic Yard Conversion. Contractor shall operate and maintain a scale or scales to weigh all Municipal Solid Waste and Construction and Demolition Debris delivered by Designated Haulers to Newby Island. Contractor shall test and calibrate, as necessary, all scales in accordance with applicable local, state and federal law.

(e) Records. Contractor shall maintain all records as required by law, including records of financial transactions and weight tickets. City or City's designated representative shall have the right to inspect such records and the record keeping procedures at any time during normal business hours provided that such representative does not interfere with work being performed by Contractor and for a period of up to three years following expiration or termination of the contract. These records shall be retained for a period of no less than three years from the later of the following (except weight records which shall be kept for seven years): 1) final payment made, 2) expiration of the contract, or 3) termination of the contract.

(i) City's Right to Obtain Copies of LEA Reports. The parties acknowledge that the Contractor must generate, and deliver to the LEA, periodic reports pertaining to the recycling and diversion of solid waste. Contractor waives any restriction which may prevent the City from obtaining copies of such reports directly from the LEA and shall not object to any request by the City to obtain such reports.

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(f) Truck turnaround time and queuing: City and Designated Hauler vehicles shall have priority access to landfill and weigh stations; contractor shall ensure turnaround time for City and Designated Hauler vehicles no more than 25 minutes for route collection trucks and 55 minutes for transfer trucks (defined as time between arriving at the location and dumping the load, accounting for time spent waiting to be weighed) and provide queuing space within landfill to avoid queuing on public streets. If this turnaround time is exceeded, Contractor may be subject to Liquidated Damages of up to \$50 per 10-minute increment.

(g) Subcontractors. Contractor shall not use Subcontractors without written approval of City for any subcontracts in excess of \$10,000, and Contractor shall remain responsible for Contract and paying Subcontractors.

(h) Designated Haulers.

(i) Acceptance of Waste. Contractor shall accept all Municipal Solid Waste from City's Designated Haulers and shall charge City the Tipping Fee therefor. Contractor shall have no obligation to accept Excluded Waste.

(ii) City Designation. City shall designate those waste haulers responsible for delivery of Municipal Solid Waste to Newby Island, provided that those so designated shall agree to observe all regulations at Newby Island and to operate according to safe industry practices.

(iii) No Preference. Contractor shall give no preference or priority of treatment over Designated Haulers to any other persons bringing wastes to Newby Island. Also, Contractor shall not give any preference or priority among Designated Haulers unless and until such preference or priority is requested by Contractor or City and approved in writing by the other party to this Agreement. Said approval shall not be unreasonably withheld.

3.5. Excluded Waste. If Excluded Waste or other waste or material other than Municipal Solid Waste is delivered or attempted to be delivered by Designated Haulers to Newby Island, Contractor shall first attempt to reject such attempted delivery or cause the Designated Hauler, at its expense, to remove such waste or material from Newby Island. However, if such delivery occurs and such waste or material is not so removed, Contractor shall promptly notify City thereof and, subject to City's payment of costs as set forth in subsection 2.3, use reasonable business efforts to comply with City's request for handling and transportation of such waste or material to a disposal facility that can lawfully accept it.

3.6. Compliance with Laws and Regulations. Subject to the other terms and conditions of this Agreement, Contractor agrees that, in the operation of Newby Island and the performance of services under this Agreement, Contractor will qualify under, and comply with, any and all federal, state and local laws and regulations now in force and which may hereafter, during the term of this Agreement, be enacted and become effective, which are applicable to Contractor, its employees, agents, or subcontractors, if any, concerning the operation of Newby Island. However, Contractor shall have the right to contest in good faith the application of such law or regulation to Newby Island and Contractor shall not be deemed in breach of this Agreement during such good faith contest for failure to comply.

3.7. Permits, Licenses, Closure/Post-Closure.

(a) Contractor to Obtain. Subject to the other terms and conditions of this Agreement, Contractor shall be responsible, at its sole expense, for obtaining and maintaining all necessary permits, licenses and approvals from any and all governmental entities having jurisdiction over Newby Island in order that Contractor may operate Newby Island in accordance with the terms and conditions of this Agreement and any laws or regulations applicable to Newby Island. City shall fully cooperate with Contractor in obtaining and maintaining such permits, licenses and approvals as long as any out-of-pocket expense incurred by City is borne by Contractor. Contractor shall file with the City a true and correct copy, certified by the granting agency, of each permit, license, or approval. However, Contractor shall have the right to contest in good faith any requirement of a permit, license, or approval necessary for the operation of Newby Island and Contractor shall not be deemed in breach of this Agreement during such good faith contest for failure to comply.

(b) Closure Plan. Contractor shall demonstrate adequate financial responsibility sufficient to finance Contractor's closure and post closure plan as submitted to state and local permit enforcement agencies.

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

3.9. Labor Force.

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

(b) Safety Provisions. Contractor shall operate Newby Island in compliance with all applicable federal, state and local laws and regulations pertaining to safety.

(c) Discrimination Prohibited. In the performance of this Agreement, Contractor will comply with the provisions of the California Fair Employment and Housing Act, California Government Code Section 12900 et seq., as amended, and any regulations promulgated thereunder, and with any federal statutes, and regulations promulgated thereunder, prohibiting employment discrimination.

4. TERM.

4.1. Term. The initial term of this Agreement shall commence on November 21, 2023 (the "Effective Date") and shall continue for a period of the lesser of (i) fifteen years or (ii) the useful life of Newby Island, which for purposes of this Agreement means that the permitted

capacity of the landfill is met (the “Initial Term”) unless otherwise terminated in accordance with Section 7.1. After the Initial Term (if the landfill still has capacity), the parties may extend this Agreement in up to two-year increments by written agreement. Contractor shall provide City with notice at least four years prior to the end of the useful life of the landfill and each year thereafter. If the landfill’s capacity is increased via an expansion, Contractor and City shall meet and confer on a term extension and tipping fee, and Contractor shall maintain City’s right of first refusal for access to the increased capacity for the life of the landfill at a mutually agreed-upon tipping fee. As requested by City, Contractor shall provide any necessary supporting documentation to support the adjustment during the expansion period.

5. COMPENSATION.

5.1. Tipping Fee. The Tipping Fees payable under this Agreement shall not exceed the fees listed in Exhibit A, as it may be adjusted in accordance with Sections 5.2 and 5.4. As of the Effective Date, the Tipping Fee for the disposal of Municipal Solid Waste at Newby Island shall not exceed \$52.00 per Ton, inclusive of Taxes; the Tipping Fee for the recycling of Mixed C&D shall not exceed \$89.00 per ton inclusive of Taxes; the Tipping Fee for Source Separated C&D materials shall not exceed \$30.00 per ton inclusive of Taxes. Maximum Tipping Fees shall be adjusted in accordance with Sections 5.2 and 5.4. Notwithstanding the foregoing, for Debris Boxes containing source separated loads of concrete or clean soil the City shall be charged the gate rates for concrete and clean soil, respectively, provided application of those gate rates results in a lower cost to the City.

5.2. Annual Tipping Fee Adjustment. Contractor shall increase the rates for all services effective on each anniversary of the Effective Date of this Agreement in an amount equal to the percentage increase in the Consumer Price Index for All Urban Consumers (Water, Sewer and Trash Collection Services) U.S. City Average, as published by United States Department of Labor, Bureau of Statistics (the “CPI-W”), except that the CPI-W shall not cause the Tipping Fee to increase more than 6.0% per year. For the CPI calculation, rates will be adjusted using the most recently available trailing twelve (12) months average CPI compared to the twelve (12) months preceding.

5.3. Other Adjustments.

(a) Regulatory Change. The Tipping Fee may be adjusted by Contractor from time to time to reflect City’s pro rata share of all costs incurred or to be incurred by Contractor in operating Newby Island (including closure and post-closure monitoring) which are attributable to Regulatory Changes and exceed 1% of total cost incurred by Contractor; provided, however, Contractor may not increase the Tipping Fee for costs attributable to any of the following:

(i) Regulatory Changes, by their terms, imposed solely with respect to operation of a sanitary landfill located adjacent to San Francisco Bay;

(ii) existing regulatory or remedial work, monitoring or other work which is required due to refuse which was placed in Newby Island sanitary landfill prior to November 21, 1988 even if part of such wastes were generated in the City;

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(iii) Contractor's intentional misconduct or negligent acts or omissions in operation of Newby Island;

(iv) compliance with the Calderon Legislation (California Health & Safety Code Section 41805.5), subchapter 15, BAAQMD Rule 34, Proposition 65, and California Administrative Code Titles 14 and 22, and the final version of EPA's Subtitle D criteria when it is enacted; provided, however, this subparagraph (iv) shall not include any future changes to the foregoing statutes, rules and/or regulations; and

(v) odor, noise and/or dust control due to encroaching land uses around Newby Island which uses were not present on November 21, 2023.

(b) City's Proportionate Share. The City's pro rata share of costs attributable to Regulatory Changes under subsection 5.3(a) shall be determined on the basis of either of the following:

(i) The percentage of the daily volume of wastes disposed of at the sanitary landfill at Newby Island or Recycled at Newby Island, as the case may be, which is attributable to City, for those costs which are, according to generally accepted accounting principles, attributable to the daily operating costs of the sanitary landfill and Recycling operations at Newby Island, as the case may be. The percentage of daily volume attributable to City, shall be based upon the average amounts during the one-year period immediately preceding the request for an adjustment pursuant to this Section; or

(ii) The percentage of the remaining total site capacity at the sanitary landfill at Newby Island or the percentage of material Recycled at Newby Island, as the case may be, which is expected to be utilized by or attributable to the City under this Agreement, for those costs which are, by generally accepted accounting principles, not attributable to the daily operating costs of disposal or Recycling operations, as the case may be. If costs incurred by Contractor are amortized over several years, the increase in the Tipping Fee shall be repealed at the end of such amortization period. This repeal shall not affect other increases resulting from costs which were not amortized.

(iii) Contractor shall notify City of any Tipping Fee adjustment attributable to Regulatory Changes under this Section 5.3 at the earliest practicable time. At the time Contractor makes a request for a Tipping Fee adjustment attributable to Regulatory Changes pursuant to this Section 5.3, Contractor shall submit to City written documentation showing the actual costs incurred or estimated to be incurred in future years (for costs that are expected to be incurred or amortized over more than one year), demonstrating that the costs were incurred by reason of Contractor's compliance with changes in laws or regulations or changes in the enforcement or interpretation thereof, indicating the method of determining City's pro rata share of such cost, and showing the calculation of City's pro rata share. If Contractor bases the request for adjustment on a change in the enforcement or interpretation of a law or regulation affecting Newby Island, then Contractor shall also provide to City supporting documentation demonstrating the existence of and the nature of the change in enforcement or interpretation. City shall have the right, at reasonable times and upon reasonable notice to Contractor, to inspect all records or other information contained therein pertaining to Contractor's request for adjustment under Section 5.4.

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No increase in the Tipping Fee attributable to Regulatory Changes shall be made pursuant to this Section 5.3 unless and until Contractor has submitted the above-described written documentation to City.

(c) Taxes. The Tipping Fee shall be adjusted by Contractor from time to time to include all Taxes.

5.4. Payment.

(a) Monthly Invoice and Report. On or before the tenth (10th) day of each month, Contractor shall submit to the City or Designated Hauler(s) an invoice for the preceding month. Said invoice shall state the Tipping Fee then in effect and the amount due for the invoice month calculated in accordance with the provisions of this Section 5. At the time Contractor submits the monthly invoice, Contractor shall also submit to City a report stating, for each Designated Hauler, the information in substantially the form of the sample report form attached hereto as Exhibit B and made a part hereof. If the City institutes a voucher system whereby City issues vouchers or coupons to Designated Haulers for delivery of Municipal Solid Waste, Contractor shall attach to the monthly report either copies of such list or the voucher numbers printed on such vouchers and the name of the Designated Hauler submitted voucher.

(b) Time of City's Payment. The City or Designated Hauler(s) shall review the monthly invoice and the monthly report received from Contractor. The City shall have ten (10) working days from receipt of the report to request reasonable additional information regarding the report. Such request shall be in writing and shall specify the information requested. Contractor shall have ten (10) working days from the date of the request to supply the City the requested additional information. City shall remit payment to Contractor with thirty (30) days of receipt of the requested information, or, if no additional information is requested, within thirty (30) days of receipt of the invoice and report. Where the City or Designated Hauler(s) disputes a portion of any invoice, the City or Designated Hauler(s) shall nevertheless timely pay in full the undisputed portion. The City shall pay a charge for all past due amounts for each month or part thereof during which such amounts remain unpaid at the prime annual interest rate then established by Chase Manhattan Bank, N.A., but in no event higher than the maximum rate allowed by applicable law.

(c) Payment for Publicly Hauled Waste. Contractor shall accept Publicly Hauled Waste for disposal and shall require those delivering such waste to pay directly for disposal at a rate not more than that posted from time to time for deliveries of waste by the general public.

(d) False Claims Act. CONTRACTOR acknowledges that it is aware of liabilities resulting from submitting a false claim for payment by the CITY under the California False Claims Act (Cal. Gov. Code 12650 et. seq.), including treble damages, costs of legal actions to recover payments and civil penalties of up to \$10,000 per false claim.

5.5. Full Payment. Contractor hereby agrees to accept payments from City or Designated Haulers and those delivering Publicly Hauled Waste as described above as full compensation for services rendered under this Agreement. Late penalties or interest on outstanding invoices are not to be levied by Contractor on City or Designated Haulers.

6. ASSURANCE OF PERFORMANCE.

6.1. Force Majeure. Except for City's obligation to pay amounts due to Contractor, any failure or delay in performance under this Agreement due to contingencies beyond a party's reasonable control, including, but not limited to, strikes, riots, terrorist acts, compliance with applicable laws or governmental orders, fires, bad weather and acts of God, shall not constitute a breach of this Agreement, but shall entitle the affected party to be relieved of performance at the current pricing levels under this Agreement during the term of such event and for a reasonable time thereafter. The collection or disposal of any increased volume resulting from a flood, hurricane or similar or different Act of God over which Contractor has no control, shall not be included as part of Contractor's service under this Agreement. If increased volume due to a Force Majeure event, Contractor and the City shall negotiate the additional payment to be made to Contractor.

6.2. Alternate Disposal Arrangements. If Contractor fails or is unable to accept or dispose of any waste which it is obligated to accept or dispose of under the terms of this Agreement because of any event other than described in Section 6.1 whose occurrence materially and adversely affects Contractor's ability to accept or dispose of such waste at Newby Island, Contractor shall transport and dispose of such waste at an alternative landfill site or disposal facility selected by Contractor at no additional cost to City or in the alternative, at Contractor's option, shall reimburse City for any and all extra costs incurred by City, over and above the Tipping Fee, to haul and dispose of Solid Waste at such other location. If the City hauls or arranges for hauling of said waste, it is understood that these costs may include costs incurred by the City which are payable by it to Designated Haulers for using an alternative landfill site. The provisions of this Section 6.2 shall govern over any conflict with Section 7.

6.3. Performance Bond. Contractor shall also make, execute, and deliver to City within fourteen days, a good and sufficient surety bond or letter of credit in a form reasonably satisfactory to City to secure the faithful performance by Contractor of the terms and conditions herein. Such bond shall be in the penal amount One Million and No/100 Dollars (\$1,000,000.00) and shall be for a term of at least one (1) year. Such bond shall be signed by the President or General Officer of Contractor, together with signature of its corporate secretary and corporate seal. The surety shall be a surety company duly authorized to do business in the State of California and acceptable to City. The surety company which issues the bond shall not be obligated to renew the bond after the expiration of the year term; provided, however, Contractor shall maintain similar replacement bonds issued by a mutually acceptable surety company meeting the requirements set forth above during the term of this Agreement. City agrees that Contractor's failure to replace the bond shall not result in City having any right to make a claim on the expiring bond. Notwithstanding the foregoing, Contractor may at any time, in lieu of the aforesaid surety bond, provide City with a letter of credit in the aforesaid sum, in a form reasonably satisfactory to City, securing the faithful performance by Contractor of the terms and conditions herein.

6.4. Insurance Requirements. Contractor shall procure and maintain for the duration of this Agreement insurance as described in Exhibit C against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors. The insurance requirements set forth in Exhibit C shall be reviewed

for sufficiency by City at five-year intervals and such requirements may be reasonably amended or modified by City as deemed necessary or prudent by City, provided that any required new or increased coverage is available on a commercially reasonable basis. Within (30) days of the effective date of this Agreement, Contractor shall submit proof of the aforesaid coverage in the form of Certificates of Insurance, with copies of all required blanket-form endorsements attached thereto to City.

6.5. Hold Harmless and Indemnity.

(a) By Contractor. To the fullest extent permitted by law, Contractor shall defend (with counsel reasonably approved by City), indemnify and hold City, the City Council, members of the City Council, its employees, representatives, agents and volunteers harmless from any and all suits, damages, costs, fees, claims, demands, causes of action, liabilities, losses expenses, damage or injury of any kind, in law or equity, to property or persons, including wrongful death and financial losses (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any actual or alleged negligent acts, errors or omissions, or willful misconduct of Contractor or Contractor's officers, assistants, subcontractors, employees or agents in connection with the performance of Contractor's services or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and reasonable attorneys' fees and other related costs and expenses.

(b) Notwithstanding the foregoing, to the extent Contractor's services are subject to Civil Code Section 2782.8, (Design Professionals) the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, the City Council, members of the City Council, its employees, or authorized volunteers.

(c) Negligence Defined. For purposes of Sections 6.5(a) and 6.5(b), "negligence" shall be deemed to include both negligent acts and omissions and willful misconduct, and the negligence of a party shall include the negligence of its respective officers, employees or agents (including subcontractors).

(d) Notice and Access. The party claiming a right to indemnity shall:

(i) give written notice thereof within a reasonable period following the earlier of actual or constructive notice of the event or occurrence as to which the right to indemnification is or may be asserted, provided, that any delay in or failure to give such notice shall not alter any obligation of indemnity herein, except to the extent the indemnifying party is materially prejudiced thereby; and

(ii) allow the other party (including their employees, agents and counsel) reasonable access to any of its employees, property and records reasonably related to the matter giving rise to the claim for indemnification (excluding records protected by the privilege applicable to communications between attorney and client and the work product of attorneys) for the purpose of conducting an investigation of such claim and taking such other steps as may be necessary to preserve evidence of the occurrence on which the claim is based.

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(e) Insurance Coverage. Provision of the insurance coverage set forth in Section 6.4 does not relieve Contractor or its subcontractors from liability under the above hold harmless/indemnification clause.

(f) Survival. The indemnities contained in this Section 6 shall survive expiration or termination of this Agreement.

6.6. Agreement Defense

Contractor shall defend, at its sole cost and expense, with counsel approved by the City, the City in any Actions that assert or allege liabilities paid, incurred or suffered by, imposed upon or asserted against, the City that result or are claimed to have resulted directly or indirectly by Contractor's negligent performance or non-performance of this Agreement, including the following:

(a) Contractor negligence or misconduct: the wrongful, willful or negligent act, error or omission, or the misconduct of the Contractor;

(b) Failure to comply with Applicable Law: Contractor's failure or alleged failure to comply with Applicable Law or any alleged violation thereof, including any actions in connection with its permits;

(c) Breach of representation: Contractor's breach of any representation, warranty or covenant made in this Agreement; or,

(d) Challenges to Agreement: legal challenge to the City of the City to enter into this Agreement or to contract out Services, regardless of the legal theory advanced or relied upon by any interested third party, including any appeals necessary to validate that City or the Agreement.

City reserves the right to retain, at its sole cost and expense, co-counsel and Contractor shall direct Contractor's counsel to assist and take direction from such co-counsel with respect to City's defense.

6.7. Unpermitted Waste Defense and Indemnification

Contractor shall defend, indemnify, and hold harmless at its sole cost and expense with counsel approved by the City, the City in any actions that assert or allege liabilities paid, incurred or suffered by, imposed upon or asserted against, the City that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release or emission of Excluded Waste or petroleum to, in, on, at, or under the landfill whether: (1) in one or more instance, (2) threatened or transpired, (3) Contractor is negligent or otherwise culpable, or (4) those liabilities are litigated, settled, or reduced to a final judgment. For purposes of this Indemnity, liabilities include, liabilities arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, Closure, Post-Closure or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources. The foregoing indemnity is

intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the City from liability in accordance with this Section.

6.8. Environmental Indemnity

Contractor shall defend, indemnify, and hold the City harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded Waste.

7. SUSPENSION OR TERMINATION FOR DEFAULT.

7.1. Suspension or Termination by City.

(a) Termination for Default. If either party breaches any material provision of this Agreement and such breach is not substantially cured within thirty (30) days after receipt of written notice from the non-breaching party specifying such breach in reasonable detail, the non-breaching party may terminate this Agreement by giving thirty (30) days' written notice of termination to the breaching party. However, if the breach cannot be substantially cured within thirty (30) days, the Agreement may not be terminated if a cure is commenced within the cure period and for as long thereafter as a cure is diligently pursued. Upon termination, the City shall pay Contractor only such charges and fees for the Services performed on or before the termination effective date and Contractor shall collect its equipment, and Contractor shall have no further obligation to perform any Services under this Agreement.

(b) City shall not suspend or terminate this Agreement unless and until Contractor has failed to substantially perform under this Agreement and has been given notice of such failure and has not cured such failure, or commenced to cure such failure, within thirty (30) days after receipt of said notice (and, in the case of commencement to cure, does not thereafter diligently proceed to cure such failure); provided that no opportunity to cure prior to suspension shall be required if the health, welfare, or safety of the public is endangered by the continued delivery of Municipal Solid Waste to Newby Island.

(c) Performance Assurance Defaults. (1) Failure to Provide Insurance. Contractor fails to provide insurance in accordance with Section 6.4; (2) Failure to Provide Assurances of Performance. Contractor fails to timely provide assurances of performance; (3) Failure to Pay Authority. Contractor fails to timely pay Authority any amounts due and owing to Authority, reimbursement of costs for alternative services (4) Transfer, Assignment. Contractor Assigns this Agreement without Authority approval; (5) Seizure, Attachment. Any asset used to provide services is seized, attached, or levied upon (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely and fully perform Services, and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours, excepting weekends and Holidays; (6) Insolvency, Bankruptcy, Liquidation. Contractor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of assets no longer used to provide services

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or backup services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestration, administrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general Assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing. The foregoing notwithstanding, nothing herein shall or is intended to affect the jurisdiction and authority of any trustee or receiver in connection with bankruptcy proceedings pursuant to the federal Bankruptcy Act or any similar or successor statute. A court, having jurisdiction, enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any proceeding, or that court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, administrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

(d) A copy of the suspension order or action of the City shall be served on Contractor and on Contractor's surety (if there is a surety). When work is suspended for any cause or causes during the term of this Agreement, Contractor shall discontinue the work or such part thereof as City shall designate, whereupon the surety may, at its option, assume this Agreement or that portion thereof which City has ordered Contractor to discontinue, and may perform the same or may sublet the work or that portion of the work taken over to a contractor approved in writing by City's Director of Public Works; provided, however, that the surety shall exercise its option and begin performance of the work, it at all, within thirty (30) days after the written notice to discontinue the work has been served upon Contractor and upon the surety or its authorized agent. The surety, in such event, shall assume Contractor's place in all respects and shall be bound by all the terms and conditions of this Agreement. The surety shall be paid by City for all work performed by it in accordance with the terms of this Agreement.

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

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

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(f) In all instances, Contractor and its surety shall be liable for all damages incurred by City during the period after notice to discontinue the work has been served upon Contractor and the surety; provided, however, notwithstanding anything to the contrary contained in this Agreement, Contractor shall not be liable to City for any special, punitive or consequential damages, whether in contract, tort, strict liability or otherwise. Rights and remedies of City provided in this section shall not be exclusive and are in addition to any others provided by law/Contract.

(g) In computing damages which City incurs under this Section, additional costs of haulage of waste to a more distant site for waste disposal shall be included, as well as actual fees charged for disposal. Such additional haulage costs shall be negotiated in good faith between City and its Designated Haulers and shall be passed on to surety and Contractor without markup.

7.2. Suspension or Termination by Contractor. Contractor shall not suspend or terminate this Agreement unless and until City has failed to substantially perform under this Agreement and has been given notice of such failure and has not cured such failure, or commenced to cure such failure, within thirty (30) days after receipt of said notice (and, in the case of commencement to cure, does not thereafter diligently proceed to cure such failure); provided that no opportunity to cure prior to suspension shall be required if the health, welfare, or safety of the public is endangered by the continued delivery of Municipal Solid Waste to Newby Island.

8. TITLE TO WASTE. Title to Municipal Solid Waste shall pass to Contractor when loaded into Contractor's collection vehicle or otherwise received by Contractor. Title to and liability for any Excluded Waste shall at no time pass to Contractor.

9. GENERAL PROVISIONS.

9.1. Independent Contractor. It is expressly understood and agreed that Contractor shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and the exclusive right to control the details of the services and work performed hereunder and all persons performing the same; that Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing herein shall be construed as creating a partnership or joint venture between City and Contractor. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of City, nor shall any such person be entitled to any benefits available or granted to employees of City.

9.2. City Warranty. City warrants to Contractor that:

(a) City has full power in accordance with applicable law to enter into this Agreement;

(b) the entering into this Agreement will not constitute a violation or breach by City of any contract or other instrument to which the City is a party, OR of any judgment, order, writ, injunction or decree issued against or imposed upon City, or that will result in a violation of any applicable law, order, rule or regulation of any governmental authority; and

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(c) this Agreement constitutes a valid and binding obligation of City in accordance with its terms, including, without limitation, for the full period of the term of this Agreement notwithstanding the future change of elected or appointed City officials or the City's failure to budget and appropriate sufficient funds for this Agreement. Prior to the parties' entering into this Agreement, legal counsel for the City shall render a written legal opinion to Contractor that the matters set forth in this Section 9.2 are true and correct.

9.3. Representations and Warranties.

(a) The City represents and warrants that:

(i) Existence. The City is a general law city validly existing under the Constitution and laws of the State of California.

(ii) Due Authorization. The City has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the City.

(iii) No Litigation. There is no action, suit or other proceeding, at law or equity, before or by any court or Governmental Body pending or, to the City's best knowledge, threatened against the City in which an unfavorable decision, ruling or finding which would materially and adversely affect the validity of or enforceability of this Agreement or any other agreement or instrument to be entered into by the City in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the City of its obligations hereunder or under any such other agreement or instrument.

(b) The Contractor represents and warrants that:

(i) Existence. The Contractor is a corporation organized and existing under the laws of the State of California.

(ii) Due Authorization. The Contractor has duly authorized the execution and delivery of this Agreement, and this Agreement has been duly executed and delivered by the Contractor.

(iii) No Conflict. Neither the execution nor the delivery by the Contractor of this Agreement nor the performance by the Contractor of its obligations hereunder nor the consummation by the Contractor of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any applicable law or (2) conflicts with, violates or results in a breach of any term or conditions of any contract, agreement, franchise, judgment, instrument or decree to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default under any such contract, franchise, judgment, decree, agreement or instrument.

(iv) No Litigation. There is no action, suit or other proceeding, at law or equity, before or by any court or governmental body pending or, to the Contractor's best knowledge, threatened against the Contractor in which an unfavorable decision, ruling or finding which would materially and adversely affect the validity of or enforceability of this Agreement or

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any other agreement or instrument to be entered into by the Contractor in connection with the transactions contemplated hereby, or which would materially and adversely affect the performance by the Contractor of its obligations hereunder or under any such other agreement or instrument.

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

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

9.6. Headings. The Section and paragraph headings contained herein and the table of contents attached hereto are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

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

9.8. Assignment. This Agreement is assignable with the written consent of both parties and shall be binding upon and insure to the benefit of the parties hereto and their respective heirs, successors in interest, and assigns. The reasonable costs for evaluation of City approval for assignment shall be paid by Contractor. Such consent shall not be withheld unreasonably, nor shall such consent be required if of any of the following: (i) an assignment by operation of law, (ii) an assignment to an affiliate or subsidiary of Contractor, or (iii) an assignment by City to the State of California or to any agency or subdivision of the State of California or to any agency or subdivision of the State or of City if such entity undertakes responsibility of the disposal of Municipal Solid Wastes; provided, however, assignor shall remain responsible for performance of its obligations under this Agreement.

9.9. Contractor Request for Assignment. If Contractor requests the City's consideration of and consent to an assignment, the City may reasonably deny or approve such requests. No request by Contractor for consent to any assignment need be considered by City unless and until Contractor has met the following requirements:

Contractor shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An initial, retainer deposit payment to reimburse such costs shall be made in the amount of one hundred thousand dollars (\$100,000) to the City by Contractor or the proposed assignee along with Contractor's formal request for the City's consideration of an assignment. City shall draw against the retainer for its actual reasonable costs of the assignment review. In the event such costs exceed the deposit amount, Contractor shall make the additional payment, beyond the initial deposit amount, upon approval of the assignment. In the event that the actual costs of the review are less than the retainer deposit amount, such unused portion of the retainer shall be returned upon the conclusion of the review of the Assignment.

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Contractor shall furnish City with audited financial statements of the proposed Assignee’s operations for the Immediately preceding three (3) operating years. Contractor shall furnish City with satisfactory proof: (i) that the proposed Assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed Assignee has not suffered any significant citations or other censure from any federal, State, or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal, or local Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State, and local laws regulating the collection and Disposal of Solid Waste including Hazardous Materials; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner. Under no circumstances shall City be obligated to consider any proposed assignment if Contractor is in default at any time during the period of consideration.

9.10. Notices. Notices by either party to this Agreement to the other party shall be deemed given if personally served or if sent by express mail or deposited in the United States Mail as certified mail, return receipt requested, postage prepaid, addressed to the other party as designated below, or to such other place designated in writing. Such notice shall be deemed effective on the date personally served or when actually received. Notice that a party intends to rely upon the occurrence of an event described in Section 7.1 or 7.2 hereof to suspend obligations under this Agreement may be given verbally; provided that written notice is provided immediately following such verbal notification.

To the City:

To Contractor:

City of Los Altos, California
Attn: Director, Environmental Services and
Utilities Dept.
1 N. San Antonio Road,
Los Altos, CA 94022

International Disposal Corp. of California, Inc.
Attn: General Manager
Newby Island Resource Recovery Park
1601 Dixon Landing Road
Milpitas, CA 95035

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

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

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9.13. Attorney’s Fees. If legal action is instituted to enforce this Agreement the prevailing party shall be entitled to reasonable attorneys’ fees and actual costs incurred in connection with such action.

9.14. Severability. Should any portion of this Contract be determined to be void or unenforceable, such shall be severed from the whole and the Contract will continue as modified.

9.15. Disputes. Should a dispute or controversy arise concerning provisions of this Contract or the performance of work hereunder, the parties may elect to submit such to a court of competent jurisdiction.

9.16. Entire Agreement. The parties agree that this Agreement represents the full and entire agreement between the parties to this Agreement with respect to matters covered herein. This Agreement completely replaces and supersedes any prior agreements between the parties except for any indemnification obligations or other obligations that by their nature survive.

THE PARTIES TO THIS AGREEMENT hereby indicate their acknowledgment and acceptance of the terms and conditions stated herein by the following signatures of their duly authorized representatives.

The City of Los Altos

International Disposal Corp. of California, Inc.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A Rates/Tipping Fees

Material	Tipping Fee	Taxes, effective April 2022 (included in Tipping Fee)
Municipal Solid Waste	\$52.00	\$19.66
Mixed C&D	\$89.00	\$0.38
Source Separated C&D*	\$30.00	\$0.38
Clean Concrete	Lesser of \$30/ton or Gate Rate	\$0.38
Clean Soil**	Lesser of \$30/ton or Gate Rate	\$0.38

* Source Separated C&D means inerts, drywall, wood, clean fill up to 10 yards, and other materials as determined by Contractor.

* Clean Soil means soil originating from existing residential properties in quantities less than ten cubic yards. Soil originating from commercial and industrial locations requires profiling before acceptance.

Tipping Fees shall be adjusted annually in accordance with Section E of the Agreement.

EXHIBIT B Monthly Reporting

1. Materials Received

Date	Weight Ticket Number	Material Type Received	Weight of Load (tons)	Charge Rate (\$/T)	Load Cost (\$)
..					
Monthly Totals					

2. Compost and other usable products provided to City

Date	Weight Ticket Number	Material Type Received	Weight of Load (tons)	Charge Rate (\$/T)	Load Cost (\$)
..					
Monthly Totals					

EXHIBIT C Insurance Requirements

CONTRACTOR shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required blanket-form endorsements to: **Project Manager, City of Los Altos, 1 N. San Antonio Road, Los Altos, CA 94022**

Minimum Scope of Insurance

Coverage shall be *at least as broad as*:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, with limits no less than **\$5,000,000 or \$5,000,000 aggregate** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. CGL insurance must include coverage for the following:
 - a. Bodily Injury and Property Damage
 - b. Personal Injury/Advertising Injury
 - c. Premises/Operations Liability
 - d. Products/Completed Operations Liability
 - e. Aggregate Limits that Apply per Project
 - f. Explosion, Collapse and Underground (UCX) exclusion deleted
 - g. Contractual Liability with respect to this Agreement
 - h. Broad Form Property Damage
 - i. Independent Consultants Coverage

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

2. **Automobile Liability:** Insurance Services Office Form Number CA 00 01 covering, Code 1 (any auto), or if CONTRACTOR has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation/Employer’s Liability:** CONTRACTOR certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and it will comply with such provisions before commencing work under this Agreement. To the extent CONTRACTOR has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement CONTRACTOR shall maintain insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

4. **Umbrella or Excess Liability:** Umbrella or Excess Insurance. If umbrella or an excess liability insurance policy is used to satisfy the minimum requirements for CGL or Automobile Liability insurance coverage listed above, the umbrella or excess liability policies shall provide coverage at least as broad as specified for the underlying coverages and covering those insured in the underlying policies. Coverage shall be “pay on behalf.”. CONTRACTOR shall provide a “follow form” endorsement or schedule of underlying coverage satisfactory to the CITY indicating that such coverage is subject to the same terms and conditions as the underlying liability policy.

5. If applicable, The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the umbrella or excess policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations. If CONTRACTOR maintains broader coverage, umbrella or excess coverage and/or higher limits than the minimums shown above, the CITY requires and shall be entitled to the broader coverage, umbrella or excess coverage and/or the higher limits maintained by CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and any other coverages shall be available to the CITY.

Other Insurance Provisions. The insurance policies are to contain, or be endorsed via blanket-form endorsement to contain, the following provisions:

Additional Insured Status. The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy and the Automobile Liability policy, with endorsements under CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage, with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage. For any claims related to this contract, the CONTRACTOR’s insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR’s insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy required above other than workers’ compensation and, if applicable umbrella, shall be endorsed via blanket-form endorsement to state that coverage shall not be canceled except after thirty (30) days’ prior written notice (10 days for non-payment) has been given to the CITY.

Waiver of Subrogation. CONTRACTOR hereby grants to CITY a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any blanket-form endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

ATTACHMENT 1

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall be at the sole risk of CONTRACTOR.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

Claims Made Policies. If any of the required policies provide claims-made coverage:

6. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
7. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract work.*
8. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONSULTANT must purchase "extended reporting" coverage for a minimum of *three (3) years* after completion of contract work.

Verification of Coverage. CONTRACTOR shall furnish the CITY with original certificates and blanket-form amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR's obligation to provide them.