EXHIBIT A

AGREEMENT FOR DISPOSAL OF SOLID WASTE

BETWEEN THE CITY OF SAN RAMON
AND
BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC.

October, 1995

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EXHIBIT A 39

AGREEMENT FOR DISPOSAL OF SOLID WASTE

The following is an Agreement between the City of San Ramon, hereinafter referred to as CITY, and Browning-Ferris Industries of California, Inc., hereinafter referred to as CONTRACTOR for disposal of the CITY's franchised solid waste.

RECITALS

A. WHEREAS, CITY and CONTRACTOR wish to provide for disposal of CITY's franchised solid waste at Vasco Road Sanitary Landfill for a period of five years with options for three extensions (the "Extension Periods") of five years per extension; and

B. WHEREAS, CITY and CONTRACTOR wish to assure a firm, long-term price for disposal of CITY's franchised solid waste during the term of this Agreement and any Extension Periods;

NOW, THEREFORE, in consideration of the mutual agreements of the parties hereto, CITY and CONTRACTOR mutually agree as follows:

ARTICLE 1. DEFINITIONS

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.

1.2 Agreement

"Agreement" means this Agreement for Disposal of Franchised Solid Waste between CITY and CONTRACTOR, including all exhibits, attachments, and any amendments.

1.3 Base Rate

"Base Rate" means that portion of the "Gate Rate" which represents CONTRACTOR's Landfill Facility's charge for disposal and includes CONTRACTOR's Landfill Facility's operating costs, general and administrative costs, and profit.

1.4 CITY Franchise Area

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

1.5 Collect/Collection

"Collect" or "Collection" means to take physical possession of, transport, and remove materials from the area where the materials are produced or generated.

1.6 Construction Debris and Demolition Debris

"Construction Debris" means used or discarded construction materials removed from a premises during the construction, renovation or improvement of a structure. "Demolition Debris" means used construction materials removed from a premises during the razing, renovation or improvement of a structure.

1.7 Delivery Commencement Date

"Delivery Commencement Date" means the date selected by CITY under Section 2.4 to commence delivery of Franchised Solid Waste to Contractor's Landfill Facility.

1.8 Designated Hauler

"Designated Hauler" means a person or business entity operating under a franchise or license agreement with CITY to collect and transport Solid Waste generated within CITY's Franchise Area.

1.9 Designated Waste

"Designated Waste" means those substances classified as designated waste by California law and regulations, presently in 23 California Code of Regulations, §2522.

1.10 Disposal, Disposal Facility

"Disposal" for purposes of this Agreement means the final disposition of solid waste at a landfill. "Disposal Site" means a landfill.

1.11 Effective Date

"Effective Date" means the date upon which CITY executes this Agreement.

1.12 Environmental Laws

"Environmental Laws" means all Federal and State statutes and regulations, and all county and local ordinances, concerning public health, safety and the environment, including but not limited to, the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 1601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §§ 25100 et seq.; the California Toxic Substances Account Act, California Health and Safety Code §§ 25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §§ 25249.5 et seq.; with all the foregoing laws as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.13 Fee Component

"Fee Component" shall mean that portion of the "Gate Rate" which consists of any Federal, State, and local fees and taxes imposed on franchised solid waste and authorized as a "pass through" pursuant to this Agreement.

1.14 Franchised Solid Waste

"Franchised Solid Waste" shall mean all Solid Waste produced, generated, or accumulated in CITY's Franchise Area, other than (1) Hazardous Waste, Designated Waste, Medical Waste and other waste excluded by the terms of this Agreement, or the disposal of which at CONTRACTOR's Landfill Facility is prohibited by law, regulation or permit, (2) Solid Waste hauled directly to the disposal site by a member of the public, (3) Solid Waste collected by a person or entity and hauled directly to a disposal site where such collection is incidental to the principal business of such person or entity as (a) a landscaping, tree service or gardening contractor, or (b) a construction or demolition contractor (whether by means of trucks, drop boxes or roll-off containers owned or operated by such self-haulers) and (4) recyclable materials, green waste, and wood waste.

1.15 Garbage

"Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any form thereof, resulting from the preparation, storage, handling, use or consumption of such substances.

1.16 Gate Rate

"Gate Rate" means the total of all disposal charges and fees and taxes to be charged by CONTRACTOR to CITY for disposal of waste pursuant to this Agreement. The Gate Rate consists of the Base Rate, the Fee Component, and all increases in those charges and fees permitted under the terms of this Agreement. If transfer services are required, "Gate Rate" shall include any transfer charges.

1.17 Green Waste or Yard Waste

"Green Waste" or "Yard Waste" means tree-trimmings, grass cuttings, dead plants, leaves, branches and dead trees and similar materials generated at a premises.

1.18 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic waste", "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; (ii) (the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; (v) the Clean Air Act, 42 U.S.C. §§ 7901 et seq.; (vi) California Health and Safety Code §§ 25115-25117, 25249.8, 25281, and 25316; and (vii) California Water Code § 13050; (b) any amendments to or regulations under such statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance identified as hazardous or toxic or regulated under any other applicable Federal, State or local environmental laws and regulations currently existing or later enacted, including, without limitation, laws or regulations relating to friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products, and any of their respective by-products, but only to the extent such substances have been identified as hazardous to human health or the environment.

1.19 Hazardous Waste

"Hazardous Waste" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in Health and Safety Code § 25110.02, § 25115, and § 25117 or in the future amendments to or recodifications of such statutes, or identified or listed as "Hazardous Waste" by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), and all future amendments thereto or any regulations thereunder.

1.20 Medical Waste

"Medical Waste" means all materials defined as medical waste in California Health and Safety Code Section 25023.2, or the regulations promulgated thereunder, as amended from time to time.

1.21 Recycling

"Recycling" means the process of collecting, sorting, cleaning, treating or reconstituting solid waste materials and recovering them so that they may be used in the form of raw material for new, reused, or reconstituted products.

1.22 Recyclable Materials

"Recyclable Materials" means domestic, commercial or industrial by-products of some potential economic or re-use value, which are set aside, handled, packaged, or offered for collection in a manner different from garbage or refuse. "Recyclable Materials" includes mixed recyclables, consisting of various types of recyclable materials. "Recyclable Materials" also includes items selected from materials set out as garbage or refuse for re-use or recycling during processing at a materials recovery facility.

1.23 Refuse

"Refuse" includes both Garbage and Rubbish and means putrescible and non-putrescible solid waste or debris (except sewage) whether combustible or non-combustible. Garbage and rubbish as defined herein are included in the definition of "garbage" set forth in Government Code §38790.

1.24 Rubbish

"Rubbish" means all waste wood, wood products, printed materials, paper, paste board, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials which may be lawfully disposed of at CONTRACTOR's Landfill Facility under the terms of this Agreement and which are not otherwise expressly excluded from this Agreement in the definitions of Designated Waste, Garbage, Hazardous Substance, Hazardous Waste, Medical Waste and Green Waste or Yard Waste, or Recyclable Materials.

1.25 Solid Waste

"Solid Waste" means solid waste as defined in California Public Resources Code Section 40191 and regulations promulgated thereunder, as amended from time to time, with the exception of: (1) Designated Waste, Hazardous Waste, Medical Waste, waste water treatment byproducts such as sewage sludge, any other wastes which CONTRACTOR's Landfill Facility is not allowed by law, regulation or permit to accept for disposal, and any special wastes requiring special handling which a disposal site is not permitted to accept, and (2) any materials collected by curbside residential recycling collection programs or commercial recycling programs where such materials are not disposed of but are actually recycled. Notwithstanding any provision herein to the contrary, "Solid Waste" includes those minimal quantities or concentrations of Hazardous Substances or Household Hazardous Wastes remaining in Franchised Solid Waste following implementation of (1) a program by or on behalf of CITY in accordance with law for the safe collection, recycling, treatment and/or disposal of hazardous wastes generated in households, and (2) a program by the Designated Hauler, in accordance with California waste industry standards, for load checking and screening to identify and remove such hazardous wastes generated in households or by other customers.

1.26 Term of Agreement

The "Term" or "Term of this Agreement" shall be for a period of five years commencing on the Effective Date and expiring on the fifth anniversary of the Effective Date, with three options for extensions of five years per extension.

1.27 Transfer Site

"Transfer Site" means any location in which solid waste is transferred from one means of collection and transportation to another means for transportation and disposal, including a transfer station or suitable location for the use of pod transfer equipment.

ARTICLE 2. DISPOSAL, TERM AND OPTION TERMS OF AGREEMENT

2.1 Purpose of Agreement

The purpose of this Agreement is to provide for disposal of CITY's Franchised Solid Waste.

2.2 Disposal Term at Vasco Road Sanitary Landfill

During the term of this Agreement, CONTRACTOR will provide disposal of CITY's Franchised Solid Waste at Vasco Road Sanitary Landfill (hereinafter referred to as "CONTRACTOR's Landfill Facility") at the disposal charges specified in Article 4, below.

2.3 Option Periods

Options to Extend for Three Additional Five Year Periods. The CITY may extend the Term of this Agreement on the same terms and conditions for three additional periods of five years each. Notice of such intent to extend the term shall be given in writing not less than nine (9) months prior to the then-current expiration date of this Agreement. If the CITY does not exercise an option to extend this Agreement, it will otherwise expire at the end of the then-current expiration date.

2.4 Direction of Waste Stream

Following the Effective Date of this Agreement CITY shall notify CONTRACTOR in writing of the date on which delivery of Franchise Solid Waste to CONTRACTOR's Landfill Facility shall commence. The Delivery Commencement Date may be no later than ninety (90) days following the Effective Date. CITY shall direct to CONTRACTOR's Landfill Facility all Franchise Solid Waste collected in CITY's franchise area pursuant to a franchise agreement with CITY. However, the parties understand that reasonable quantities of solid waste residue will be generated from the processing of recyclables or green waste and will not be directed to CONTRACTOR's Landfill Facility.

2.5 Alternate Disposal Site

If for any reason, CONTRACTOR's Vasco Road Sanitary Landfill becomes unavailable to the CITY during the Term of this Agreement, CONTRACTOR will provide the CITY with the same Gate Rate as defined in Article 4 herein at BFI's STAR transfer station in Martinez (which includes transfer to and disposal at the Keller Canyon Landfill) that the City would have been charged at CONTRACTOR's Vasco Road Sanitary Landfill and shall also reimburse CITY for any additional transportation costs associated with delivery to the alternate landfill site. For example, if the Vasco Road Sanitary Landfill became unavailable to the CITY prior to any adjustment in the CITY's Gate Rate under Article 4, the CITY's Franchised Solid Waste would be charged a total Gate Rate at the STAR Transfer Station of $30.19, which would include all disposal fees, State and local taxes, and transfer fees or charges assessed at the STAR Transfer Station and the Keller Canyon Landfill. CONTRACTOR shall also be deemed in compliance in the circumstances described herein if CONTRACTOR pays any disposal or transportation costs in excess of those which would have been paid on behalf of CITY if the waste had been disposed of at CONTRACTOR's Landfill Facility rather than the alternate disposal site.

If CONTRACTOR's inability to provide for disposal of CITY's Franchised Solid Waste is due to a force majeure event, as set forth in 8.11, then CONTRACTOR's obligations shall be governed by that Section.

ARTICLE 3. CONDITIONS TO EFFECTIVENESS OF AGREEMENT

3.1 Conditions to CITY's Obligation to Perform

The obligation of CITY to perform under this Agreement is subject to the satisfaction of each of the conditions set forth below, each of which may be waived wholly or in part by CITY:

(a) Accuracy of Representations: The representations and warranties made by CONTRACTOR in Article 9 of this Agreement shall be true and correct as of the Effective Date.

(b) Furnishing of Insurance: CONTRACTOR shall have delivered to CITY satisfactory evidence of the insurance policies and endorsements required by and described in detail in Section 5.4.

(c) Delivery of Guaranty of CONTRACTOR's Performance: CONTRACTOR shall have delivered to CITY a guaranty of CONTRACTOR's performance under this Agreement in a form to be specified. This guaranty shall be fully transferable and assignable for the benefit of another public agency if the contract rights and duties of CITY are assigned to that public agency as set forth herein.

(d) Termination of CITY's Obligation to Perform. The CITY may terminate this Agreement in its sole discretion at any time during the Term hereof if at such time the Gate Rate plus relevant transportation expenses for disposing Franchise Solid Waste hereunder at CONTRACTOR's Landfill Facility is not the lowest rate available to the CITY; however, the CITY shall first meet and confer with CONTRACTOR before taking final action to terminate this Agreement.

3.2 Conditions to CONTRACTOR's Obligation to Perform

The obligation of CONTRACTOR to perform under this Agreement is subject to the satisfaction of all of the conditions set forth below, each of which may be waived wholly or in part by CONTRACTOR:

(a) Accuracy of Representations. The representations and warranties made by CITY in Article 10 of this Agreement shall be true and correct as of the Effective Date.

(b) Effectiveness of CITY's Approval. The approval of this Agreement by CITY shall have become effective pursuant to California law.

3.3 Effect of Conditions on Remedies

The Conditions in Sections 3.1 and 3.2, above, are not intended to prevent CITY or CONTRACTOR, respectively, from seeking other remedies in the event a representation or warranty, which is a condition to effectiveness of this Agreement, is later discovered to be untrue or incorrect. The conditions in this Section are not intended to waive any rights of CITY or CONTRACTOR, respectively, arising out of any failure by the other party to perform any obligations required under this Agreement.

ARTICLE 4. DISPOSAL CHARGES AND FEES

4.1 Gate Rate

During the Term of this Agreement, the Gate Rate shall consist of the total of two (2) components: (1) a Base Rate for disposal of Franchised Solid Waste at CONTRACTOR's Landfill Facility (the "Base Rate") and (2) a component based on fees and taxes assessed on disposal of Solid Waste at CONTRACTOR's Landfill Facility (the "Fee Component"). The initial Gate Rate on the Effective Date shall be $30.19, subject to adjustment as provided in this Article.

The initial Base Rate, commencing on the Effective Date, shall be $14.50 per ton (2,000 lbs) of Franchised Solid Waste delivered to CONTRACTOR's Landfill Facility. The Base Rate shall be automatically adjusted on each anniversary of the Effective Date proportionate to the percentage change in the then most recently published CPI (All Urban Consumers) for the San Francisco/Oakland/San Jose area and the corresponding monthly index published twelve (12) months earlier. Should the above referenced CPI index become unavailable, the parties shall agree on such other index as is reasonably comparable.

The Fee Component, as defined herein, currently consists of State and local fees and taxes which total $15.69 per ton as of the Effective Date of this Agreement. Local fees are fees imposed on the disposal of Solid Waste at CONTRACTOR's Landfill Facility by Contra Costa County and Alameda County, including other subagencies, such as the Alameda County "Measure D" Recycling Board and the Alameda County Waste Management Authority. Taxes herein are limited to those applied specifically to disposal of Solid Waste. Taxes such as real and personal property taxes and income taxes are not included as part of the Fee Component but are included within CONTRACTOR's calculation of the Base Rate. The Fee Component shall be automatically adjusted, whenever the total amount of governmental fees and taxes increases or decreases, to the new total of such fees and taxes.

4.2 Effect of Future Changes in Law or Permit Requirements

(a) General. The Base Rate established under Section 4.1 already includes the costs resulting from CONTRACTOR's construction and operations to comply with all existing laws and governmental regulations applicable to CONTRACTOR's Landfill Facility as of the Effective Date of this Agreement. The purposes of this Section are (1) to specify those laws and governmental regulations compliance with which is included in the Base Rate, as well as other costs which may not result in an increase in the Base Rate, (2) to identify changes in law for which a proportionate share of the costs of which may be the basis for an increase in the Base Rate, and (3) to specify the method by which such proportionate share will be determined.

(b) Costs Which Shall Not Result in an Increase in the Base Rate.
The Base Rate will not be increased as a result of any of the following:

(1) Costs to comply with all laws and governmental regulations existing as of September 1, 1995 including but not limited to the following: the "Calderon Legislation" (former California Government Code, Sections 66796.53 and 66796.54, now California Public Resources Code

Sections 45300-04, 45700, California Health & Safety Code Sections 40511, 41805.5, and 42311.5, and California Water Code Section 13273); "Proposition 65" (California Health & Safety Code, Sections 25249.5 et seq., and Health & Safety Code Section 25192); the Federal Clean Air Act (42 U.S.C. Sections 7401-7642) and the California Clean Air Act (Health & Safety Code Sections 39000-44384); the Federal Clean Water Act (33 U.S.C. Sections 1251 et seq.); the Porter-Cologne Water Quality Act (California Water Code, Division 7, Section 13000 et seq.); the California Integrated Waste Management Act of 1989 (California Public Resources Code, Divisions 30 and 31, Section 4000 et seq.); the Federal Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 et seq.); the California Hazardous Waste Control Act (California Health & Safety Code, Division 20, Chapter 6.5, Sections 25100 et seq.); the Federal Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. Sections 11001-11050); the California Hazardous Materials Release Response Plan and Inventory Act (California Health & Safety Code, Division 20, Chapter 6.95, Sections 25500 et seq.); The California Underground Storage Tank Act (California Health & Safety Code, Division 20, Chapter 6.7, Sections 25280 et seq.); the California Occupational Safety and Health Act (California Labor Code, Division 5, Parts 1-10, Sections 6300 et seq.); the Federal Occupational Safety and Health Act (29 U.S.C. Sections 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); Bay Area Air Quality Management District Regulation 8, Rule 34; Title 14 California Code of Regulations; Title 22 California Code of Regulations, "Subchapter 15", Title 23 California Code of Regulations, Sections 2510-2601; as the above statutes and regulations exist on the Effective Date of this Agreement; and including existing provisions, if any, in the above statutes and regulations which become effective on or which require compliance by a date after the Effective Date of this Agreement.

(2) Costs of work or monitoring due to any negligence by CONTRACTOR or CONTRACTOR's agents, subcontractors or representatives, or any intentional misconduct of CONTRACTOR, CONTRACTOR's agents, subcontractors or representatives, or fines or penalties assessed against CONTRACTOR for violations of law.

(3) Costs for CONTRACTOR's performance of work for which it is responsible under other provisions of this Agreement, other disposal contracts, and its existing permits.

(4) Costs of remedial or additional work attributable solely to Solid Waste already in place at CONTRACTOR's Landfill Facility prior to the Effective Date of this Agreement.

(5) Costs attributable to changing the classification of CONTRACTOR's Landfill Facility from Class III to allow it to accept wastes other than Class III Solid Waste. If CONTRACTOR becomes authorized to accept Hazardous Waste as a Class I landfill, CITY may, upon ninety (90) days notice, terminate this Agreement.

(c) Costs Which Are Associated With Changes In Law And Which Shall Result in an Increase in the Base Rate: The Base Rate shall be increased to reflect CITY's proportionate share, as determined in Subsection 4.2(d), of the following, which shall collectively be referred to hereinafter as "changes in law ":

(1) Costs of constructing physical improvements or modifications at CONTRACTOR's Landfill Facility as the result of such changes mandated in law.

(2) Costs caused by and necessary for operations at CONTRACTOR's Landfill Facility.

(3) Costs of closure/post-closure, including but not limited to post-closure maintenance and monitoring; provided such costs, and to the extent such costs set forth in these items (1), (2) and/or (3) are necessary to comply with any new laws enacted or promulgated after the Effective Date of this Agreement, and any new permit requirements or conditions, or changes in existing permit requirements or conditions, for CONTRACTOR's Landfill Facility which are imposed by any government agency after the Effective Date of this Agreement, but excluding costs resulting from changes in permit requirements or conditions which are requested by CONTRACTOR or to which CONTRACTOR consents and which are unrelated to providing for disposal of waste pursuant to this Agreement. Costs attributable to compliance with California Integrated Waste Management Board amendments to Title 14 CCR issued after the effective date of this Agreement made in response to the U.S. EPA Regulations (40 CFR Parts 257 and 258), promulgated in 1991, that exceed the costs of compliance with 40 CFR Parts 257/258 also constitute costs which fall within this Section. The increases in Base Rate allowable in this Section also include increased overhead and general/administrative expenses reasonably and necessarily incurred in complying with the changes in law described above.

(d) Proportionate Share of CONTRACTOR's Landfill Facility Costs. To the extent that the costs of complying with changes in law described in Section 4.2(c), above, are attributable to Solid Waste already in place at CONTRACTOR's Landfill Facility at the time such changes in law or permit requirements occur, then CITY's proportionate share of such costs as reflected in an adjustment to Base Rate shall be determined by multiplying such costs by a fraction, the numerator of which is the quantity in tons of Franchised Solid Waste then deposited at CONTRACTOR's Landfill Facility which was delivered on behalf of CITY under this Agreement and the denominator of which is the total quantity in tons of Solid Waste then deposited at CONTRACTOR's Landfill Facility from all sources.

To the extent that the costs of complying with such changes in law or permit requirements are attributable to Solid Waste not yet in place at CONTRACTOR's Landfill Facility at the time such changes occur, then CITY's proportionate share of such costs shall be determined by multiplying such costs by a fraction, the numerator of which is the estimated number of tons of CITY Franchised Solid Waste to be disposed of during the then remaining portion of the term of this Agreement and the denominator of which is the total remaining permitted and reasonably available tonnage capacity of CONTRACTOR's Landfill Facility at the time of such changes in law or permit requirements. The parties will determine by mutual agreement such reasonably available tonnage capacity. During the first year of the Agreement, the estimated number of tons of CITY Franchised Solid Waste to be disposed of shall be calculated based on the average monthly tonnage generated during the previous 36 months within CITY's Franchise Area as that Area exists during the first year of the Agreement, multiplied by the number of months remaining under the Agreement. During the remainder of the Agreement, including any Extension

Periods for which the option to extend is exercised, the estimated number of tons of CITY Franchised Solid Waste to be disposed of shall be calculated based on the average tonnage disposed of during each of the prior months of the Agreement, multiplied by the number of months remaining in the Agreement.

The costs of compliance with such changes in law shall be calculated on a "per ton" basis and amortized over the remaining life, which shall be based on the remaining permitted and reasonably available tonnage capacity of CONTRACTOR's Landfill Facility. In all cases in which the costs of compliance with changes in law or permit requirements are to be charged to CITY or its Designated Hauler, CONTRACTOR shall provide to CITY, on an annual basis, reasonable evidence that (1) the work required by the change in law has been performed, (2) the claimed costs were actually incurred, and (3) the costs incurred were necessary to comply with the changes in law . Costs incurred include internal charges for labor, materials and other expenses, as well as charges by outside vendors. Costs "incurred" shall be determined as of the date CONTRACTOR approves payment of such costs.

(e) Procedures For Sharing in Costs. If CONTRACTOR believes that complying with changes in law has increased or will increase its costs, and that CONTRACTOR is entitled, under Subsection 4.2(c), to an increase in the Base Rate to reflect the costs of compliance, then CONTRACTOR shall follow the procedures in this subsection before the Base Rate will be increased.

(1) CONTRACTOR shall give CITY notice within a reasonable time, in no case more than thirty (30) days, after CONTRACTOR obtains actual knowledge of the actual or proposed changes in law, identifying them to the extent of CONTRACTOR's information and describing the changes in construction, operations, closure/post-closure or other changes at CONTRACTOR's Landfill Facility which are required, when compliance is required, and whether CONTRACTOR or CONTRACTOR's Landfill Facility is eligible for any exemptions or variances. If CONTRACTOR or CONTRACTOR's Landfill Facility is eligible for any such exemptions, or variances, and if such variances and exemptions can be obtained with reasonable effort and expense and without materially prejudicing the operation and efficiency of CONTRACTOR's Landfill Facility, CONTRACTOR shall use reasonable efforts to obtain same. Failure of CONTRACTOR to make reasonable efforts to qualify for such exemptions and/or variances shall prevent CONTRACTOR from receiving any cost increase adjustments that CONTRACTOR would not otherwise have incurred if CONTRACTOR had made reasonable efforts to obtain the exemptions and variances.

(2) CONTRACTOR shall thereafter submit to CITY its proposed method for complying with the changes in law or permit requirements, the estimated cost of compliance, CITY's proportionate share thereof, and the associated increase necessary in the Base Rate. CONTRACTOR shall give CITY an opportunity to comment on the proposed method and related costs.

(3) After consideration of CITY's comments, if any, CONTRACTOR shall submit a proposed method of compliance to the appropriate regulatory agencies. If the agencies approve that method without conditions, the proportionate share of the costs necessary to implement that method of compliance will be the amount by which the Base Rate shall be increased.

(4) Nothing in this Agreement shall prevent CONTRACTOR from challenging, administratively or legally, any changes in law or permit requirements. In the event of uncertainties as to the nature or scope of changes in law or permit requirements, or the associated costs of compliance, CONTRACTOR shall make reasonable, good faith estimates as to the nature, scope and costs, and CITY's proportionate share of costs shall be based on such estimates, subject to adjustment when actual costs are determined.

(5) When CONTRACTOR actually begins to incur the cost increases for which adjustments in the Base Rate are permitted under this Section, CONTRACTOR may adjust the Base Rate and shall notify CITY and its Designated Hauler of the adjustment in the Base Rate and the date from which the adjustment is to occur. At minimum, such information on the increase in Base Rate shall be set forth as a separate item in the invoice sent to CITY and the Designated Hauler. Within sixty (60) days of receiving such notice of rate change or invoice, CITY and/or its Designated Hauler shall pay any undisputed amounts of such cost increase and shall provide CONTRACTOR a written statement of any objections to the increase or a portion thereof, and/or a written request for further information concerning the cost increases. Within sixty (60) days after CITY and/or its Designated Hauler has provided CONTRACTOR with such written objections and/or requests for further information, CONTRACTOR shall respond in writing to any objections and provide a statement of reasons for its response and shall provide the information requested to the extent reasonably available. The parties shall, if necessary, also meet and confer and make reasonable good faith efforts to resolve any disputes or questions concerning such cost increases.

(6) Whether or not any such disputes or questions concerning cost increases are resolved through the procedures in Subsection (5) above, CITY or its Designated Hauler shall pay to CONTRACTOR, not later than one hundred and eighty (180) days after CONTRACTOR's notice to them of the cost increases, the full amount of the requested cost increases, including any disputed amounts of said increase not yet paid. CITY or its Designated Hauler shall thereafter be entitled to interest at the rate specified in Section 4.3(b) on any disputed sums which are paid to CONTRACTOR pursuant to this Section and later determined to be owing to CITY or the Designated Hauler.

(f) Post-Adjustment Review by CITY: CITY shall have the right to inspect the books and records of CONTRACTOR at any time following any adjustment in the Gate Rate to determine whether CONTRACTOR has actually incurred the amounts of allowable costs previously estimated. CONTRACTOR shall maintain and retain its books and records in a manner and in sufficient detail so that CITY or its authorized representative may reasonably make such a determination. If the estimated amounts are determined, as a result of a review of the records or otherwise, to be greater or less than costs actually incurred during a given period, then CONTRACTOR shall make an appropriate adjustment in the Gate Rate, provided that no such adjustment shall be made for any prior costs incurred more than three (3) years prior to any such adjustment.

(g) If the Base Rate is increased pursuant to this Section 4.2, then increases in the Base Rate shall also be reduced to the extent cost decreases occur as a result of other changes in law

or permit to offset all or a portion of cost increases based on changes in law or permit requirements. Notwithstanding any other provisions in this Subsection or Agreement, the Base Rate shall not be reduced below the initial rate of $14.50/ton.

4.3 Billing and Payment Procedure

(a) On or before the twentieth (20th) day of each month, CONTRACTOR shall submit to the Designated Hauler an invoice for disposal services during the first fifteen (15) days of that month. On or before the tenth (10th) day of the following month, CONTRACTOR shall submit to the Designated Hauler an invoice for disposal services during the remainder of the prior month. The invoice shall be accompanied by a report showing the following information for CONTRACTOR's Landfill Facility: date of each delivery; vehicle identification number; quantities in tons (gross weight, tare weight, and net tons) or cubic yards; disposal charge per ton; and cost per load. A copy of the invoice and report shall be sent concurrently to CITY. The invoice shall state separately the amounts, if any, due as increases in the Base Rate as a result of changes in law or permit requirements within Section 4.2 above. The invoice shall be due and payable by the Designated Hauler within twenty-one (21) days of the postmark date. If CITY or its Designated Hauler disputes a portion of an invoice, the Designated Hauler shall pay the undisputed portion within twenty-one (21) days and shall notify CONTRACTOR in writing of the reason(s) for nonpayment of the disputed portion. CITY or its Designated Hauler may request additional information regarding an invoice and report within twenty-one (21) days from receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. CONTRACTOR shall furnish the requested information to CITY or its Designated Hauler within thirty (30) days from the date of the request.

(b) CONTRACTOR may charge the Designated Hauler interest on past due accounts up to one percent (1%) per month, or the maximum amount allowable by law, whichever is less.

(c) In the event the Designated Hauler fails to timely pay to CONTRACTOR undisputed sums invoiced to the Designated Hauler, and such non-payment is not cured within sixty (60) days of the payment due date, CONTRACTOR may require cash advance payment for delivery of further waste shipments by that Designated Hauler. An amount shall be deemed "disputed" only upon written notice from the Designated Hauler to CONTRACTOR accompanied by a statement of reasonable grounds and reasonable supporting evidence.

(d) In the event the Designated Hauler fails to pay undisputed sums pursuant to Section 4.3(a) and fails to make the advance payments required pursuant to Section 4.3(c), and/or fails to pay within ninety (90) days' interest due on undisputed sums pursuant to Section 4.3(c), CONTRACTOR shall notify CITY, and CITY will have the option to guarantee payment of such sums, with payment to be made no later than ninety (90) days after CONTRACTOR's written notice to CITY of such failures by the Designated Hauler. In the event CITY provides a guarantee and payment is made pursuant to CITY's guarantee, as provided above, and thereafter the Designated Hauler resumes its payment obligations under the Agreement, then if at any time thereafter the Designated Hauler again fails to make the payments required by this Subsection 4.3, CONTRACTOR may demand that CITY either assume or guarantee the

Designated Hauler's payment obligations for the balance of the Agreement, including all amounts owed by the Designated Hauler to date. If CITY fails to do so, CONTRACTOR may temporarily suspend or permanently terminate the Designated Hauler's right to deliver waste pursuant to this Agreement.

(e) Unless CITY guarantees payment pursuant to Subsection (d), above, or assumes the obligations of the Designated Hauler pursuant to this Subsection, CITY shall not be liable for payment for disposal charges, fees and taxes, and other costs due under this Agreement for waste delivered by Designated Hauler. The parties acknowledge that CITY generally will not deliver Solid Waste to CONTRACTOR's Landfill Facility, that such deliveries will generally be carried out by one or more Designated Haulers, and that in such event, the disposal charges, fees and taxes, and other costs, will be paid by Designated Hauler. CONTRACTOR will not demand payment from CITY, and CITY shall have no payment obligation, for Franchised Solid Waste delivered to CONTRACTOR's Landfill Facility, unless (i) CITY guarantees payment pursuant to Subsection (d), above, or (ii) CITY physically delivers the waste to CONTRACTOR's Landfill Facility after assuming the obligations of its Designated Hauler under this Agreement. If CITY guarantees payment pursuant to Subsection (d), above, or if CITY physically delivers the waste to CONTRACTOR's Landfill Facility after assuming the obligations of the Designated Hauler, CITY shall be bound by all of the payment terms and other obligations of the Designated Hauler under this Agreement.

(f) CONTRACTOR shall provide prompt notice to CITY of any failure by the Designated Hauler to pay the sums required above and of any disputes between CONTRACTOR and the Designated Haulers.

ARTICLE 5. INDEMNITY, INSURANCE, BOND

5.1 General Indemnity

(a) CONTRACTOR shall indemnify, defend and hold harmless CITY, its officers, employees, and agents (jointly, "CITY and its Representatives") from and against all claims, demands, causes of action, liabilities, damages and expenses (including, for injury to and death of any person and damage to property, or contribution or indemnity claimed by third parties), and including attorneys' fees, expert and consultant fees and costs, and any penalties, forfeitures, or fines (collectively, "Losses"), caused by: (1) the act of negligence or willful misconduct of CONTRACTOR, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the material breach or failure of CONTRACTOR, its officers, employees, agents, and/or subcontractors to comply with the provisions of this Agreement, with applicable laws, including without limitation, Federal and State environmental laws and regulations, and/or applicable permits and licenses; and (3) the acts of CONTRACTOR, its officers, employees, agents and/or subcontractors in performing services or accepting waste for disposal from CITY under this Agreement for which strict liability is imposed on CITY and/or its Representatives by law (including without limitation, Federal and State Environmental Laws such as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. §§ 9601, et seq., the Resource Conservation and Recovery Act (RCRA) 42 U.S.C. §§ 6901 et seq., and State of California Hazardous waste laws and Porter-Cologne Water Quality Act). This indemnity is intended to operate as an indemnity under CERCLA, 42 U.S.C. § 9607(e).

(b) The foregoing indemnity shall not apply if and to the extent the Losses were caused by: (1) the act of negligence or willful misconduct of CITY and/or its Representatives; or (2) the material breach or failure of CITY and/or its Representatives to comply with the provisions of this Agreement, applicable laws, including, without limitation, Federal and State Environmental Laws and regulations, and/or applicable permits and licenses. The Designated Hauler is not a Representative of CITY for any purpose. In circumstances where (a) CITY and/or its Representatives, and (b) CONTRACTOR and/or its officers, employees, agents and/or subcontractors, are both adjudicated to be liable, jointly and/or severally, to a third party based upon their own respective active negligence, or based upon their own respective other fault, this indemnity shall not apply. This limitation on the scope of indemnity set forth in (1) and (2) herein has no application where CITY and/or its Representatives are adjudicated to be only passively at fault, or where their liability to a third party is based solely on principles of vicarious or strict liability under the Environmental Laws arising out of delivery to or disposal of Franchised Solid Waste at CONTRACTOR's Landfill Facility in accordance with the terms of this Agreement.

(c) CONTRACTOR agrees to and shall, upon demand by CITY, at CONTRACTOR's sole cost and expense, defend (with attorneys acceptable to CITY, whose approval shall not be unreasonably withheld) CITY, its officers, agents and employees against any Losses, whether alleged in any actions, suits or other proceedings, whether judicial, quasi-judicial or administrative in

nature, including but not limited to, any claims or lawsuits asserted by third parties including any competing landfill company, solid waste collection company, or any of the subsidiaries or affiliates of same arising out of execution of this Agreement by CITY or resulting from the direction, commitment, delivery or disposal at CONTRACTOR's Landfill Facility of wastes from CITY or the constituents within its jurisdiction. CONTRACTOR's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement. If the Agreement is assigned herein by CITY to any regional entity comprising public agencies, the indemnity and defense provisions above shall apply in favor of both CITY and such entity and its member agencies.

5.2 AB939 Reporting

CITY expressly acknowledges that CONTRACTOR, in providing a disposal site for CITY's Franchised Solid Waste, has no control over, or liability to CITY with respect to, CITY's compliance with the requirements of AB 939, except that CONTRACTOR shall provide to CITY such information requested for CITY's reporting requirement under AB 939.

5.3 CITY's Obligations as to Household Hazardous Waste

As a condition of this Agreement, CITY shall implement the operation within its Franchise Area of a program for the collection and disposal of household hazardous waste, and such program shall meet the requirements of California Household Hazard Waste laws including, but not limited to Public Resources Code Sections 41500, 41510 and 47100, and regulations promulgated thereunder. CITY shall take those measures necessary in compliance with law to exclude household hazardous waste from Franchised Solid Waste to be disposed of under this Agreement. It is not the intent of this paragraph to impose any obligation on CITY not otherwise required by law.

5.4 Types and Amounts of Insurance Coverage

CONTRACTOR, at CONTRACTOR's sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the term the of this Agreement following types and amounts of insurance:

(a) Workers' Compensation and Employer's Liability. CONTRACTOR shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. CONTRACTOR shall maintain employer's liability insurance in an amount not less than one million dollars ($1,000,000) per accident or disease.

(b) Comprehensive General Liability (Including Automobile Liability). CONTRACTOR shall maintain comprehensive general liability insurance with a combined single limit of not less than ten million dollars ($10,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, CONTRACTOR's performance of, or its failure to perform, services under this Agreement. The policy or policies shall not contain a deductible or self-insured retention without the prior written approval of CITY, provided that a deductible or self-insured retention of up to $250,000 will be allowed if CONTRACTOR remains responsible for paying losses and related investigations, claims administration and defense expenses, and the Guaranty provided pursuant

to Section 3.1 (c) covers this obligation. The self-insured retention provision shall be such that the insurance company's duty to defend arises as of the date that CONTRACTOR has incurred defense and related litigation and investigation expenses in that amount.

The insurance required by this Subsection shall include:

(A) Premises Operations;

(B) Independent Contractor's Protection;

(C) Products and Completed Operations;

(D) Personal Injury Liability with Employment Exclusion deleted;

(E) Broad Form Blanket Contractual, including CONTRACTOR's Obligations under Section 5.1, with no exclusions for bodily injury, personal injury, or property damage;

(F) Broad Form Property Damage, including Completed Operations;

(G) Owned, Non-Owned, and Hired Motor Vehicles.

(c) Environmental Impairment Liability. CONTRACTOR shall maintain environmental impairment liability insurance in the amount of Ten Million Dollars ($10,000,000) covering liability arising from the release of pollution at or in the vicinity of CONTRACTOR's Landfill Facility.

(d) Acceptability of Insurers. The insurance policies required by this Section 5.6 shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better. To the extent permitted by law, all or any part of the required insurance may be provided under a plan of self-insurance.

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

(1) General Liability and Automobile Liability Coverages

(A) CITY, its officials, employees and Designated Hauler are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; or automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officials, employees or Designated Hauler.

(B) CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officials, employees, agents and volunteers, and Designated Hauler. Any insurance or self-insurance maintained by CITY, its officials, employees, agents and volunteers, and the Designated Hauler, shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

(C) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, agents and volunteers, and Designated Hauler.

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

(2) Workers Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against CITY, its officials, employees, agents and volunteers, and Designated Hauler for losses arising from work performed by CONTRACTOR for CITY.

(3) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to CITY.

(f) Required Endorsements. The policies shall contain endorsements in substantially the following form:

(1) Workers' Compensation Policy:

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

City Manager
City of San Ramon
2222 Camino Ramon
San Ramon, CA 94583

(b) "Insurer waives all right of subrogation against CITY and their officials, employees, agents and volunteers and Designated Hauler for losses arising from work performed by CONTRACTOR for CITY."

(2) Comprehensive General Liability:

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

City Manager
City of San Ramon
2222 Camino Ramon
San Ramon, CA 94583

(b) "CITY, its officers, employees, agents and volunteers, and Designated Hauler are additional insureds on this policy."

(c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by CITY, including any

self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

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

(g) Delivery of Proof of Coverage. On or before the Effective Date, CONTRACTOR shall furnish CITY with certificates of each policy of insurance required hereunder, in form and substance satisfactory to CITY. Such certificates shall show the type and amount of coverage, effective dates, and dates of expiration of policies and shall be accompanied by originals of all required endorsements. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. If at any time the CITY so requests, complete certified copies of each policy, together with all endorsements, shall also be promptly delivered to CITY. CONTRACTOR shall periodically furnish renewal certificates and endorsements to CITY to demonstrate maintenance of the required Coverages throughout the term of this Agreement.

(h) Other Insurance Requirements

(1) In the event any services are delegated to a subcontractor, CONTRACTOR shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Section 5.4 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section. Such policies shall contain the same, or substantially the same, waiver of subrogation clause as set forth in Section 5.4(f)(1)(b), above, in favor of CITY, its officials, employees and Designated Hauler. Proof of such insurance coverage shall be provided to CITY in the same manner as set forth above.

(2) CONTRACTOR shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve CONTRACTOR from any obligation under this Agreement, including those imposed by Section 5.1. If any claim is made by any third person against CONTRACTOR or any subcontractor on account of any occurrence related to this Agreement, CONTRACTOR shall promptly report the facts in writing to the insurance carrier and to CITY.

(3) If CONTRACTOR fails to procure and maintain any insurance required by this Agreement, CITY may take out and maintain, at CONTRACTOR's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due CONTRACTOR, or bill CONTRACTOR accordingly.

(4) The Comprehensive General Liability insurance required by Section 5.4(b) shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis,

if such coverage is obtainable. If it is not obtainable, CONTRACTOR shall arrange for "tail coverage" to protect CITY, its employees, officials, agents and volunteers and Designated Hauler from claims filed during the time following the expiration or termination of this Agreement relating to incidents which occurred prior to such expiration or termination. If the cost of tail-coverage for an indefinite period of time is commercially unreasonable, CONTRACTOR may, with the consent of CITY, obtain tail-coverage for an agreed upon definite duration.

ARTICLE 6. DEFAULT BY CITY

6.1 Default

CITY shall be in default under this Agreement ("CITY Default"), unless excused under Force Majeure Section 8.11, in the event CITY fails to perform its obligations under this Agreement, and fails to cure such breach within thirty (30) days after receiving notice from CONTRACTOR specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, CITY shall not be in default so long as CITY promptly commences the cure and diligently proceeds to completion of the cure. CITY shall also be in default of this Agreement if a representation or warranty contained in Article 10 proves to be false or misleading in a material respect as of the date such warranty or representation is made.

6.2 Right to Suspend or Terminate Upon Default

In the event of a CITY Default, CONTRACTOR shall have all rights and remedies available under this Agreement and California law, provided, however, that CONTRACTOR shall continue to accept and dispose of CITY's Franchised Solid Waste in accordance with the terms of this Agreement unless (a) the Designated Hauler has failed to make payments required under this Agreement and CITY has refused to guarantee the payments as provided in Section 4.3, or (b) CONTRACTOR obtains a Court order permitting CONTRACTOR to refuse to accept and dispose of waste delivered by CITY or by the Designated Hauler on behalf of CITY.

6.3 CONTRACTOR's Remedies Cumulative

CONTRACTOR's rights to suspend or terminate this Agreement under Section 6.2 are not exclusive, and CONTRACTOR's exercise of one such right shall not constitute an election of remedies. Instead, such rights shall be in the alternative and in addition to any and all other legal and equitable rights and remedies which CONTRACTOR may have.

6.4 Right to Demand Further Assurances

CONTRACTOR may demand and CITY and/or its Designated Hauler shall provide reasonable further assurances of performance by the Designated Hauler, in such form and substance as CONTRACTOR may reasonably require, if the Designated Hauler:

(a) Materially fails to comply with the payment requirements in Section 4.3 and such payment failure is not promptly cured;

(b) Fails to comply with the requirements of this Agreement as to delivery of unauthorized waste and CITY and its Designated Hauler shall provide such further assurances within thirty (30) days of written demand to them by CONTRACTOR.

ARTICLE 7. DEFAULT BY CONTRACTOR

7.1 CONTRACTOR Default

Each of the following shall constitute an event of default by CONTRACTOR ("CONTRACTOR Default") hereunder, unless it is excused under Section 8.11:

(a) CONTRACTOR fails to perform its obligations under this Agreement and (1) if the failure consists of a failure to accept and dispose of Franchised Solid Waste as required by this Agreement and is not cured within two (2) business days after receiving notice from CITY specifying the breach, or (2) if the breach is of any other Section of this Agreement and is not cured within thirty (30) calendar days after receiving notice from the CITY specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, CONTRACTOR shall not be in default so long as CONTRACTOR commences action required to cure the breach within ten (10) calendar days after receipt of such notice and continues such performance diligently until the cure is completed.

(b) There is a seizure or attachment of, or levy on, the property or operating equipment of CONTRACTOR used at CONTRACTOR's Landfill Facility which prevents CONTRACTOR from performing the Agreement;

(c) A representation or warranty contained in Article 9 proves to be false or misleading in a material respect as of the date such representation or warranty is made;

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

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

(f) CONTRACTOR fails to provide reasonable assurances of performance as required under Section 8.15.

Notwithstanding any provision in this Article, if CONTRACTOR is unable to accept and dispose of CITY's Franchised Solid Waste at CONTRACTOR's Landfill Facility due to acts or omissions of CITY, or due to any events within the scope of Force Majeure Section 8.11, CONTRACTOR

shall not be in default of this Agreement. CONTRACTOR shall not be relieved, however, from the obligation set forth in Section 2.5 above, to utilize an alternate disposal site as required thereunder.

7.2 Right to Suspend or Terminate Performance Upon Default

(a) Upon any CONTRACTOR Default, and subject to CONTRACTOR's right to cure, CITY shall have the right to suspend or terminate this Agreement. Such suspension or termination shall be effective thirty (30) days after CITY has given notice of suspension or termination to CONTRACTOR, except that such notice may be effective immediately if CONTRACTOR's Default is one which endangers the health, welfare, or safety of the public. Notice of suspension or termination shall be in writing and delivered to the representative of CONTRACTOR designated in or under Section 8.9.

(b) CITY will also have the right to suspend or terminate this Agreement, upon the same notice provisions, if CONTRACTOR's ability to perform is prevented or materially interfered with by a change in law or permit requirements, which, under Sections 4.2 or 8.2 CONTRACTOR must comply with, or by a cause which excuses non-performance under Force Majeure Section 8.11, despite the fact that non-performance in any such cases is neither a breach nor default by CONTRACTOR.

7.3 Right to Perform

If this Agreement is suspended and/or terminated due to a CONTRACTOR Default, CITY shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work, including, but not limited to, transportation to and disposal of Franchised Solid Waste at alternate Disposal sites, but not including any right to operate CONTRACTOR's Landfill Facility. If such expenses (including, but not limited to, the costs of transportation to an alternative site and the actual fees charged for disposal) exceed the amounts which would have been payable to CONTRACTOR under this Agreement if it had been fully performed by CONTRACTOR, then CONTRACTOR shall pay the amount of such excess to CITY within thirty (30) days of CONTRACTOR's receipt of a claim for reimbursement, and evidence of costs incurred, from CITY. Notwithstanding the above, CONTRACTOR shall have the right, prior to CITY's performance of CONTRACTOR's obligations under this Agreement, to locate and arrange for disposal of CITY's Franchised Solid Waste at another disposal site if CONTRACTOR is for any reason unable to dispose of such waste at CONTRACTOR's Landfill Facility. This provision shall not be deemed to limit CITY's right to sue for damages or seek other available remedies.

7.4 CITY Remedies Cumulative; Specific Performance

CITY's rights to suspend or terminate this Agreement under Section 6.2 or to perform under Section 7.3 are not mutually exclusive, and CITY's exercise of one such right shall not constitute an election of remedies. Instead, such rights shall be the alternative in and in addition to any and all other legal and equitable rights and remedies which CITY may have.

ARTICLE 8. OTHER AGREEMENTS OF THE PARTIES

8.1 Relationship of Parties

The parties intend that CONTRACTOR shall perform the services required by this Agreement as an independent contractor engaged by CITY and not as an officer or employee of CITY nor as a partner of or joint venturer with the CITY. No employee or agent of one party shall be, or shall be deemed to be, an employee or agent of the other party. Except as expressly provided herein, CONTRACTOR shall have the exclusive control over the manner and means of conducting the Solid Waste landfill disposal services performed under this Agreement, and all persons performing such services. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Neither CONTRACTOR nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to CITY's employees by virtue of their employment with CITY.

8.2 Compliance with Law

In performing their respective obligations under this Agreement, CONTRACTOR and CITY shall at all times comply with all applicable laws (including but not limited to the Environmental Laws) of the United States, the State of California, and of local agencies and with all applicable regulations promulgated by Federal, State, regional, county or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the Term, collectively, the "Laws"). In the event of any conflict between this Agreement and the Laws, the requirements of the Laws shall govern, and neither CONTRACTOR nor CITY shall be in breach of this Agreement if they comply with the Laws in contravention of this Agreement, provided that nothing in this Section is intended to limit, or enlarge, CONTRACTOR's obligation under Article 2, or diminish its right to satisfy its obligation to dispose of Franchised Solid Waste by arranging for it to be accepted and disposed of at another landfill under the circumstances described in, and in compliance with the requirements of, Section 2.5.

8.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

8.4 Assignment by CONTRACTOR

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

(b) Assignment Defined. For the purpose of this Section, "assignment" shall include, but not be limited to, (i) a sale, exchange or other transfer to a third party of substantially all of CONTRACTOR's assets dedicated to service under this Agreement; (ii) the issuance of new stock to or the sale, exchange, or other transfer of 30% or more of the then outstanding common stock of CONTRACTOR to a person other than the shareholder owning said stock at the date of this Agreement.

(c) Consent Requirements. CONTRACTOR requests CITY's consideration of and consent to an assignment, CITY may deny or approve such request in its complete discretion. No request by CONTRACTOR for consent to an assignment need be considered by CITY unless and until CONTRACTOR has met the following requirements:

X (1) CONTRACTOR shall furnish CITY with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

X (2) 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; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any Federal, State or local agency having jurisdiction over its waste management operations due to any material failure to comply with Federal, State or local waste management laws and that the assignee has provided CITY with a complete list of such citations and censures and a statement of the underlying facts involved; (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 full compliance with all Federal, State and local laws regulating the collection and disposal of Solid Waste; and (v) of any other information required by CITY to ensure that the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

8.5 Assignment by CITY

CITY may assign its rights and obligations under this Agreement to an authority which is established under the Joint Exercise of Powers Act (California Government Code Sections 6500 et seq.) and which assumes in writing the obligations of CITY under this Agreement. Such assignment shall entitle the assignee to all benefits, and subject it to all the burdens, of this Agreement including, but not limited to, the General Indemnity and insurance coverage provisions. The assignee and CITY may elect to terminate the assignment, and CITY shall then again be the party in interest, and this Agreement shall continue in full force and effect.

8.6 Binding on Successors

The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

8.7 Parties in Interest

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

8.8 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

8.9 Notices

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

If to CITY:
City Manager
City of San Ramon
2222 Camino Ramon
San Ramon, CA 94583

with a copy to:
Solid Waste Manager
City of San Ramon
P. O. Box 5148
San Ramon, CA 94583

If to CONTRACTOR:
Michael Caprio
BFI/Keller Canyon Landfill
901 Bailey Road
Pittsburg, CA 94565

Such written notice, if not personally delivered, shall be mailed in such a manner as to insure delivery within seventy-two (72) hours of deposit in the mail. The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section. Notices shall be deemed delivered only upon receipt.

8.10 Duty of CONTRACTOR Not to Discriminate

CONTRACTOR shall not discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religious creed, sex, physical disability, mental disability, medical condition, or marital status in violation of any applicable Federal or State law.

8.11 Force Majeure

Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic natural events), war, insurrection, riot, or other similar causes which are not the fault of, and are beyond the reasonable control of, the party claiming excuse from performance. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by CONTRACTOR's employees is not an excuse from performance and CONTRACTOR shall be obligated to continue to accept and dispose of Franchised Solid Waste, notwithstanding the occurrence of any or all of such events; provided, however, that labor unrest or job action directed at a third party over whom CONTRACTOR has no control, shall excuse performance, and provided further, that labor unrest by CONTRACTOR's employees shall not constitute a Default under this Agreement if CONTRACTOR fulfills its obligations under this Agreement, including timely cure pursuant to Section 7.1(a) of any of failure or inability to

perform due to such labor unrest. A party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other party in writing within five (5) days after the occurrence of the cause, specifying the nature of the event constituting the cause, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform. The party claiming excuse under this Section shall use its best efforts to remedy its inability to perform as quickly as possible.

If CONTRACTOR is unable to provide for disposal of CITY's Franchised Solid Waste due to a force majeure event, CONTRACTOR shall use reasonable good faith efforts to provide an alternative disposal site, provided, however, CITY or its Designated Hauler shall be responsible for any increased cost for transportation to or disposal at the alternative site.

The interruption or discontinuance of CONTRACTOR's ability to accept and dispose of Franchised Solid Waste caused by one or more of the events described in this Section shall not constitute a default by CONTRACTOR under this Agreement. Notwithstanding the foregoing, however, if CONTRACTOR is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) days or more, CITY shall have the right, in its sole discretion, to terminate this Agreement upon the terms provided in Section 7.2(b).

8.12 Maintenance of Financial Records

(a) General. In order to evaluate requests by CONTRACTOR for adjustments to the Base Rate pursuant to Section 4.2, based on changes in law or permit requirements, or on any changes in fees or taxes, it is necessary for CONTRACTOR to maintain accurate, detailed financial information in a consistent format and to make such information available to CITY in a timely fashion.

(b) CONTRACTOR's Cost Adjustment Records. CONTRACTOR shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all cost adjustments requested pursuant to Section 4.2 of this Agreement.

(c) Inspection of Cost Adjustment Records. CITY, and auditors and other agents selected by CITY, shall have the right to review and copy all records relating to CONTRACTOR's cost adjustment requests pursuant to Section 4.2, unless they contain trade-secret or proprietary information or are documents protected by the attorney-client privilege.

(d) Retention of Records.

(1) CONTRACTOR shall retain all records and data required to be maintained by this Agreement for the period of time that similar records are maintained under its general corporate policy of record retention. In addition, CITY may, within ninety (90) days after its receipt of the annual financial statements and reports required by this Agreement, direct that specified records be retained for at least an additional five (5) years beyond the record retention policy of CONTRACTOR. Records and data that CITY specifically directs CONTRACTOR to retain shall be retrieved by CONTRACTOR and made available to CITY, upon request.

(2) Records and data which are necessary to evaluate CONTRACTOR's performance of this Agreement, and that CONTRACTOR otherwise maintains pursuant to its corporate records retention policy, but which CITY has not specifically directed CONTRACTOR to retain, shall be retrieved by CONTRACTOR and made available to CITY if such records and data, in the sole opinion of CITY, are material to determination of CONTRACTOR's performance of this Agreement.

(3) Records and data which are necessary to evaluate CONTRACTOR's performance of this Agreement, and which CONTRACTOR maintains under its corporate records retention policy, which CITY has not specifically directed CONTRACTOR to retain and which are not material to determination of CONTRACTOR's performance of this Agreement, need not be retrieved by CONTRACTOR. In such a case, however, CITY may make reasonable assumptions regarding what information is contained in such records and data, and may act on the basis of these assumptions unless CONTRACTOR provides records, data or other reasonable evidence contrary to those assumptions.

8.13 Right to Inspect CONTRACTOR's Landfill Facility and Operational Records

To the extent necessary to evaluate CONTRACTOR's performance of the Agreement, CITY shall have the right, but not the obligation, to observe and inspect all of CONTRACTOR's operations under this Agreement. In connection therewith, CITY shall have the right to enter CONTRACTOR's Landfill Facility upon reasonable notice to CONTRACTOR and during operating hours, to observe CONTRACTOR's operations. In addition, upon reasonable notice and without interference with CONTRACTOR's operations, CITY may review and copy, at their expense, any of CONTRACTOR's operational records related to performance of this Agreement, except documents which contain trade secret or proprietary information, or documents protected by the attorney-client privilege. If CITY so requests, CONTRACTOR shall make specified personnel available to accompany CITY representatives on inspections and to respond to inquiries relating to performance of this Agreement.

8.14 Compilation of Information for State Law Purposes

CONTRACTOR shall compile information on amounts of CITY Franchised Solid Waste and other Solid Waste delivered to CONTRACTOR's Landfill Facility and other information which CITY may reasonably request in order to meet its obligations under the California Integrated Waste Management Act.

8.15 Right to Demand Assurances of Performance

If CONTRACTOR (1) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (2) appears in the reasonable judgment of CITY to be unable to regularly pay its bills as they become due; or (3) is the subject of a civil or criminal proceeding brought by a Federal, State, regional or local agency for violation of an Environmental Law at CONTRACTOR's Landfill Facility, which CITY reasonably believes has placed CONTRACTOR's ability to perform under this Agreement in substantial jeopardy, CITY may, at its option and in addition to all other remedies it may have, demand from CONTRACTOR reasonable assurances of timely and proper performance of this Agreement, in such form and substance as CITY may require.

8.16 Guaranty of CONTRACTOR's Performance

Pursuant to a guaranty in substantially the form attached as Exhibit A, Parent Company. has agreed to guaranty CONTRACTOR's performance of this Agreement. The Guaranty is being provided concurrently with owner's execution of this Agreement.

8.17 Binding Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a "good faith" effort to settle dispute within 30 days. If dispute is not resolved within that time, it shall be resolved by arbitration in San Francisco, California, in accordance with the Rules of the American Arbitration Association, and judgement upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event of any arbitration or other legal proceedings pertaining to this Agreement, including the enforcement of any arbitration award, the prevailing party shall be entitled to recover all legal expenses incurred except attorney's fees. Venue in any litigation shall be Contra Costa County, State of California.

8.18 Resource Recovery Programs Not Restricted

CITY anticipates that it will continue to develop and participate in source-reduction and resource recovery and recycling programs within its jurisdiction which are likely over time to reduce the amount of Franchised Solid Waste which requires disposal of at landfills. Nothing in this Agreement shall restrict CITY from any such source reduction and recycling activities.

8.19 Disposition of Unauthorized Wastes

(a) Procedures for identification. CONTRACTOR shall implement reasonable procedures consistent with California waste industry practices at the time to identify and reject waste materials delivered to CONTRACTOR's Landfill Facility which are Hazardous Wastes, Designated Wastes, Medical Wastes, and other wastes excluded under the terms of this Agreement, or which otherwise cannot be legally accepted at CONTRACTOR's Landfill Facility under CONTRACTOR's Landfill Facility's permits and other applicable laws and regulations then in effect (collectively "unauthorized wastes"). CONTRACTOR shall implement such procedures in a uniform and non-discriminatory manner as applied to waste materials delivered to CONTRACTOR's Landfill Facility from CITY and from all other sources.

(b) Disposition of Unauthorized Wastes. CONTRACTOR may refuse to accept unauthorized wastes delivered by CITY's Designated Hauler. CONTRACTOR shall legally dispose of any such unauthorized wastes discovered after disposal at CONTRACTOR's Landfill Facility. With respect to unauthorized wastes which are discovered at the time of delivery to CONTRACTOR, CONTRACTOR may demand that the Designated Hauler arrange for the removal and disposal of such wastes, or CONTRACTOR may, at its option, arrange for the legal and proper removal and disposal of such wastes and may include in the costs charged to the Designated Hauler, any expenses incurred by CONTRACTOR for such removal and disposal. If the Designated Hauler, after such notices and meet and confer efforts by CONTRACTOR and CITY, continues to deliver unauthorized wastes at a frequency or in such quantities or manner as to create, in the reasonable and good faith opinion of CONTRACTOR, a

significant risk of liability on the part of CONTRACTOR to government agencies or third parties or of regulatory actions against CONTRACTOR, including, but not limited to, limitations or revisions to its permits for CONTRACTOR's Landfill Facility, then CONTRACTOR may declare a material breach of the Agreement and so notify CITY, which shall in turn take all reasonable measures permitted in CITY's contract with the Designated Hauler and necessary to prevent further deliveries of unauthorized waste. Such a course of continued deliveries of unauthorized waste by the Designated Hauler shall also give rise to the remedy of suspension or termination of the right to dispose of waste at CONTRACTOR's Landfill Facility, pursuant to Section 6.2.

CITY shall not be responsible for the cost of removal and disposal of any unauthorized wastes that may be delivered to CONTRACTOR's Landfill Facility, unless CITY itself delivers the unauthorized waste, in which case CITY shall be responsible for the cost of legally removing or and disposing of such waste.

8.20 Costs for Additional Services

CITY may from time to time during the term of this Agreement and any Extension Periods, request that CONTRACTOR perform additional services for CITY where such services are necessary to enable CITY to meet its obligations under applicable Federal, State and local solid waste laws. CONTRACTOR hereby covenants to offer to provide such services to CITY at a commercially reasonable price, providing for recoupment of CONTRACTOR's costs of providing such services, plus a reasonable profit. CONTRACTOR shall not be obligated to provide such services to CITY unless the parties reach mutual agreement on the price for such services. The agreed rate to be charged by CONTRACTOR for such services may be added to the Base Rate as follows:

(a) CITY's Written Request. CITY must submit to CONTRACTOR a written request for additional services with sufficient detail to allow CONTRACTOR to estimate the additional costs to CONTRACTOR to perform such services ("Request for Additional Services").

(b) CONTRACTOR Estimates. Within thirty (30) days after receipt of a Request for Additional Services, CONTRACTOR shall provide to CITY a written estimate of the commercially reasonable price of performing such additional services, with a detailed breakdown of the components of CONTRACTOR's costs. The estimate shall include the amount by which the Base Rate would be increased as a result of such additional services.

(c) Meet and Confer: Method of Agreement and Acceptance. The parties shall meet and confer in good faith in an effort to reach agreement on the terms and conditions for CONTRACTOR's providing such services. If CITY agrees that the cost estimate is commercially reasonable, CITY may deliver a written acceptance to CONTRACTOR ("Notice of Acceptance"), and CONTRACTOR shall implement such additional services and increase the Base Rate accordingly.

8.21 Waste stream Commitment Indemnity

If during the term of this Agreement, CITY is notified by a third party that the third party disputes the validity of CITY's Waste stream commitment to CONTRACTOR under this Agreement, based on Federal or State law or regulations, then CITY may request that CONTRACTOR defend,

indemnify and hold harmless CITY from and against such claim. CONTRACTOR shall have sixty (60) days in which to either: (1) agree to defend and indemnify CITY against such claim, with counsel selected by CONTRACTOR and acceptable to CITY; provided, however, that CONTRACTOR's obligation to indemnify CITY against damages based on such claim shall be limited to damages accruing from and after the date of CONTRACTOR's receipt of the request from CITY; or (2) offer CITY to terminate this Agreement. If CONTRACTOR elects to offer to terminate this Agreement, CONTRACTOR shall have no obligation to defend or indemnify CITY regarding such claim, regardless of whether CITY accepts the offer of termination.

8.22 Notification of Material Changes

CONTRACTOR and CITY shall each notify the other within five (5) days if a representation or warranty set forth herein becomes untrue in a material respect during the term of this Agreement.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

CONTRACTOR represents and warrants as follows:

9.1 Corporate Status

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

9.2 Corporate Authorization

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

9.3 Status of CONTRACTOR's Landfill Facility

CONTRACTOR owns CONTRACTOR's Landfill Facility. CONTRACTOR's Landfill Facility has been designed and constructed in accordance with the provisions of 23 California Code of Regulations, Sections 2510 et seq. ("Subchapter 15"). CONTRACTOR's Landfill Facility has been issued all permits from Federal, State, regional, county and local agencies necessary for CONTRACTOR's Landfill Facility to operate as a Class III disposal facility and CONTRACTOR's Landfill Facility is in compliance with all such permits.

9.4 Closure of CONTRACTOR's Landfill Facility

The closure and post-closure maintenance plans required by 14 California Code of Regulations, Sections 18260 et seq., have been submitted to and approved by the State and local permit enforcement agencies having jurisdiction over CONTRACTOR's Landfill Facility. CONTRACTOR has submitted evidence to the appropriate governing agencies of adequate provisions to finance the closure and post-closure maintenance of CONTRACTOR's Landfill Facility as required by 14 California Code of Regulations, Sections 18260 et seq. and these arrangements have also been approved by the State and local permit enforcement agencies having jurisdiction of such matters. The mechanism which CONTRACTOR currently plans to utilize to meet the State requirements of financial assurance for closure is a letter of credit, and the mechanism CONTRACTOR currently plans to use to meet the State requirement of financial assurance for post-closure maintenance is satisfaction of the financial means test. CONTRACTOR may change either or both of these mechanisms to another legally authorized mechanism if the change is approved by the California Integrated Waste Management Board.

9.5 Agreement Will Not Cause Breach

To the best of CONTRACTOR's knowledge, after reasonable investigation, neither the execution nor delivery of this Agreement nor the performance of this Agreement by CONTRACTOR: (i) conflicts with, violates or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative

agency or other governmental authority, or any agreement or instrument to which CONTRACTOR is a party or by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default thereunder.

9.6 No Litigation

To the best of CONTRACTOR's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before any court or by any governmental authority, commission, board, agency or instrumentality, pending or threatened against CONTRACTOR wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially and adversely affect the performance by CONTRACTOR of its obligations hereunder or which, in any way, would materially and adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of CONTRACTOR or any surety guaranteeing CONTRACTOR's performance under this Agreement, which has not been waived by CITY in writing.

9.7 Ability to Perform

CONTRACTOR possesses the business, professional, and technical expertise to manage, handle, treat, store and dispose of Solid Waste at CONTRACTOR's Landfill Facility, and possesses the equipment, plant and employee resources required to perform this Agreement.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES OF CITY

CITY represents and warrants as follows:

10.1 Status of CITY

CITY is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of California. It has the power to carry on its own business, to enter into contracts, and to perform the obligations required by this Agreement.

10.2 City Council's Authorization

CITY has the authority to enter into and perform its obligations under this Agreement. The City Council has taken all actions required by law, and by CITY's own rules and regulations, to authorize the execution of this Agreement. The person signing this Agreement on behalf of CITY has authority to do so.

10.3 Agreement Will Not Cause Breach

To the best of CITY's knowledge, after reasonable investigation, neither the execution nor delivery of this Agreement nor the performance of this Agreement by CITY: (i) conflicts with, violates or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which CITY is a party or by which CITY or any of its properties or assets are bound, or constitutes a default thereunder.

10.4 No Litigation

To the best of CITY's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before any court or by any governmental authority, commission, board, agency or instrumentality, pending or threatened against CITY wherein an unfavorable decision, ruling or finding, in any single cause or in the aggregate, would materially and adversely affect the performance by CITY of its obligations hereunder or which, in any way, would materially and adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of CITY or its ability to perform this Agreement, which has not been waived by CONTRACTOR in writing.

10.5 Ability to Perform

CITY possesses the administrative, professional, business, and technical expertise to perform the obligations required of it under the terms of this Agreement.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 Exhibit

Exhibits A is attached hereto and incorporated herein and made a part hereof by this reference.

11.2 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

11.3 Section Headings

The Article headings and Section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

11.4 Interpretation

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

11.5 Amendment

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

11.6 Severability

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

11.7 Attorneys' Fees

The prevailing party in any arbitration or lawsuit brought to interpret or enforce the terms of this Agreement, or in any claims whether in contract, tort or otherwise arising directly or indirectly out of this Agreement or its performance, shall be entitled to recover its reasonable costs and attorneys' fees from the other party, and the court or arbitrator shall award any such attorneys' fees as an element of costs.

11.8 References to Laws

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided, such as in Section 4.2(c). In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing.

11.9 Surviving Provision

Notwithstanding any provision herein to the contrary, Sections 5.1, 8.13, 8.14 and 8.17 shall survive termination of this Agreement.

11.10 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

The parties each respectively agree to the terms of this Agreement. IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their respective duly authorized officers and representatives, as of the last date last written below.

11.11 Settlement Agreement

Contemporaneously herewith, the CITY and Acme Fill Corporation ("Acme") have entered into a Settlement Agreement (The "Settlement Agreement") concerning the litigation entitled Acme Fill Corporation v. Althin CD Medical, Inc., Civil Action No. C91-4268 SBA, pending in the United States District Court for the Northern District of California (the "Litigation"). As an additional inducement for the CITY to dispose of its Solid Waste at the Vasco Road Landfill, and during the period that CITY continues to dispose of its waste at the Vasco Road Landfill or another disposal facility operated by CONTRACTOR, CONTRACTOR will provide the CITY with a defense in the Litigation and will indemnify the CITY for any judgment against the CITY in the Litigation, provided that Acme has defaulted (and has failed to cure said default within the time periods specified in the Settlement Agreement) in its obligations to defend or indemnify the CITY under the Settlement Agreement. CONTRACTOR shall have the same rights as Acme under the Settlement Agreement providing any such defense or indemnity, including the right to select counsel and the right to settle the litigation.

Furthermore, as an additional inducement to CITY to enter into this Disposal Agreement, and on behalf of the CITY, CONTRACTOR agrees to advance to Acme the settlement payment owed by CITY to Acme Fill Corporation under the Settlement Agreement, in an amount not to exceed $215,000; provided, however, that should CITY fail to exercise the first five year extension option or should CITY terminate this Agreement under section 3.1 (d) prior to the tenth anniversary of the Effective Date, CITY shall reimburse CONTRACTOR for the percentage of the total settlement payment paid by CONTRACTOR to Acme hereunder equal to the percentage of said ten year period during which CITY's Franchised Solid Waste is not disposed of at CONTRACTOR's Landfill Facility. For example, if CITY were to terminate this Agreement at the end of six years after the Effective Date, CITY would reimburse CONTRACTOR for forty (40) percent of said settlement payment made by CONTRACTOR to Acme.

Other than in the case where CITY ceases the disposal of its Franchised Solid Waste at CONTRACTOR's Landfill Facility before the tenth anniversary of this Agreement, CONTRACTOR shall bear the full cost of the settlement payment to Acme as part of CONTRACTOR's Base Rate.

DATED: November 14, 1995

CITY OF SAN RAMON

By _____
Gregg L. Carr
Mayor

DATED:

BROWNING-FERRIS INDUSTRIES

By _____

Vice President of Browning-Ferris Industries of California, Inc.

ATTEST:

_____
Judy Macfarlane, City Clerk

Terms and Conditions
Have been Reviewed and
Approval Recommended:

_____ 11/20/95
Department Director

APPROVED AS TO FORM:

_____
Bob Saxe, City Attorney

_____
Attorney for Browning-Ferris Industries of California