

Attachment B

AGREEMENT

between the

CITY OF CUPERTINO

and

INTERNATIONAL DISPOSAL CORP. OF CALIFORNIA, INC.

for

SOLID WASTE DISPOSAL SERVICES

June 2025

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1 **AGREEMENT**
2 **BETWEEN THE**
3 **CITY OF CUPERTINO**
4 **AND**
5 **INTERNATIONAL DISPOSAL CORP. OF CALIFORNIA, INC.**
6 **FOR**
7 **SOLID WASTE DISPOSAL SERVICES**

8 This Agreement is entered into by and between City of Cupertino ("City") and International Disposal Corp.
9 of California, Inc. ("Contractor") (together, the "Parties") on the Effective Date.

10 **RECITALS, DETERMINATIONS, AND FINDINGS**

11 This Agreement is entered into with reference to the following facts, circumstances, determinations, and
12 findings made by the Cupertino City Council:

13 **Whereas**, the City is responsible for protection of the public health, safety and the environment. City is
14 authorized and required to provide Solid Waste handling services to their citizens under the provisions of
15 the California Integrated Waste Management Act of 1989 ("Act"), which is set forth in the California Public
16 Resources Code at Section 40000, *et seq.*, including source reduction, Recycling, Composting, and
17 Recovery activities, and the collection, Transport, and Disposal of Solid Waste within City's boundaries
18 subject to Solid Waste handling jurisdiction, as provided in Section 40057 of the Act.

19 **Whereas**, the City adopted the CALGreen Building Codes through adoption of City Municipal Code Section
20 16.72, which establishes requirements for Diversion of C&D Materials from construction and demolition
21 projects within the City, including mandatory recordkeeping and enforcement provisions.

22 **Whereas**, through enactment of the Act, the State of California also recognizes the important health and
23 safety consideration to long-term planning for adequate Disposal needs.

24 **Whereas**, this Agreement also advances the objectives of the federal government to encourage
25 environmentally sound Solid Waste management pursuant to the Resource Conservation and Recovery
26 Act of 1976 ("RCRA"), 42, U.S.C. Section 6941 *et. seq.*

27 **Whereas**, the Newby Island Sanitary Landfill Facility is intended to be the designated Landfill Disposal
28 Facility for Municipal Solid Waste generated in the City.

29 **Whereas**, this Agreement helps the City achieve the following goals:

- 30 • Ensuring high quality and cost-effective Disposal Services that support achieving the City's
31 environmental and regulatory compliance goals while helping to maintain competitive customer
32 rates.
- 33 • Establishing Service and performance standards to help assure that the City meets its obligations
34 under law and protects and preserves the health, safety, and financial assets of its citizens; and,

- Giving the City tools to monitor Contractor’s compliance with Service terms, administer Solid Waste management programs, and enforce City rights.

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

ARTICLE 1. DEFINITIONS

Except as otherwise specified in this Agreement, capitalized terms have the meanings defined in Exhibit A, Definitions, which is attached and incorporated by reference herein.

ARTICLE 2. TERMS OF AGREEMENT

2.01 EFFECTIVE DATE

This Agreement becomes effective on the Effective Date. Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to prepare itself to start providing Services required by this Agreement on the Commencement Date.

2.02 TERM AND EXTENSIONS

The Term of this Agreement commences on November 21, 2025 (“Commencement Date”) and expires 10 years after the Effective Date, unless the Agreement is extended in accordance with this Section, terminated due to lack of capacity at the landfill per this section, terminated in order to route the City’s full Solid Waste stream described in this Agreement to processing per this section, or terminated pursuant to Article 7.

At City’s sole discretion, the Term of this Agreement may be extended for up to a total of five (5) years following the expiration date shown above in this Section 2.02. Such extension may be granted in one (1) or more periods specified by City of no less than twelve (12) months in length. If City elects to exercise this option to extend the Term, City shall give Notice of its decision to extend the Agreement to the Contractor one hundred eighty (180) Days prior to the expiration date of the current Term, and such Notice shall specify the duration of City’s extension.

If at any point during the term of this Agreement the City receives direction from its City Council to route the City’s full Solid Waste stream to a materials recovery facility for processing, the City will provide Contractor a minimum of one hundred eighty (180) Days notice.

If at any point eighteen (18) months or more prior to the scheduled expiration date, but no later than May 20, 2034, Contractor determines it will be unable to guarantee availability of capacity through November 20, 2035, Contractor shall immediately provide written notice to the City. In the absence of such notice, Contractor guarantees City right to continue to Deliver Solid Waste through November 20, 2035 under the terms of this Agreement.

If Contractor provides the foregoing notice to the City that it will be unable to guarantee availability of disposal capacity through November 30, 2035, the City will then have the option to terminate the Agreement without further cause upon a minimum of ninety (90) days written notice delivered to Contractor. Should Contractor give the foregoing notice to the City, Contractor shall thereafter be excused from its obligations (including in section 4.12) to provide the City with transportation and alternative disposal facilities for disposal of the City's Solid Waste if Contractor at any time thereafter lacks the disposal capacity to dispose of waste from the City and Contractor's other customers.

2.03 SURVIVAL OF CERTAIN PROVISIONS

A. The following five provisions will survive the expiration or termination of this Agreement:

1. All representations and warranties;
2. All Indemnities;
3. Obligations to pay any due and payable monetary amounts, or claims for those amounts, including Liquidated Damages, any Per-Ton Rates, and payment of any amounts accrued and payable upon termination of the Agreement in accordance with Section 7.02;
4. Obligations to submit Records and any reports for periods (or portions thereof) concluded prior to the expiration or termination of this Agreement; and
5. Any other rights and obligations of the Parties stated to survive the expiration or termination of this Agreement.

ARTICLE 3. OBLIGATIONS OF CITY

3.01 FACILITY DESIGNATION

The Newby Island Sanitary Landfill Facility is the designated facility for management of Delivered Materials.

3.02 CITY DIRECTION OF MATERIAL

The City will, at all times, direct the Collection Contractor to deliver the applicable Delivered Material(s) it collects to the Contractor's Facility(ies) specified in this Agreement. The City is not obligated to physically deliver any Delivered Material to the Facility(ies) or pay Contractor any Per-Ton Rates, except as provided for herein.

3.03 NO TONNAGE OBLIGATION OR LIMIT ON WASTE PREVENTION

Neither City nor the Collection Contractor is obligated to deliver any specified quantity or composition of Delivered Materials to the Facility.

The City maintains programs to reduce the amount of waste intended for Disposal. It is the City's intent to continue to improve, develop, and enhance existing programs as well as to implement new programs and Services throughout the Term as it deems necessary to meet or exceed mandated Diversion program requirements and goals established by AB 939 and subsequent federal, State, County or local legislation including, but not limited to, the State's seventy-five percent (75%) Recycling goal established in AB 341, the programmatic requirements of AB 1826, the requirements of SB 1383, and the Diversion requirements under CALGreen. In addition, Delivered Material tonnages or composition may be affected by Extended Producer Responsibility Programs established by the City, the County, the State, or other applicable regulatory bodies. Contractor acknowledges that the characterization and quantity of Delivered Materials that are delivered to the Facility will change over the Term and may, over time, be significantly different than that as of the Commencement Date of the Agreement, but the obligation of Contractor to Accept the Delivered Material will continue for the Term of the Agreement so long as it conforms to the definitions and requirements of this Agreement.

Nothing in this Agreement shall, in any manner, prevent, penalize, or impede the City from continuing programs, altering programs, or developing new programs that have the effect of reducing or increasing the amount of Solid Waste or Delivered Materials collected and delivered to the Facility by the Collection Contractor.

ARTICLE 4. OBLIGATIONS OF CONTRACTOR

4.01 ACCEPTANCE OF DELIVERED MATERIALS; LIMITATIONS AND EXCLUSIONS; SUBCONTRACTORS

A. **Acceptance of Delivered Materials.** Contractor shall receive, Accept, and safely and lawfully Dispose of City's Delivered Materials at the Facility in accordance with this Article 4 Obligations of Contractor and Exhibit B-1, Operations Plan, attached hereto and incorporated herein; and Applicable Law. Contractor's failure to take all actions it deems necessary to perform the Services does not relieve Contractor of its obligations to perform such act or the Services.

B. **Scope Limitations and Exclusions.** The award of this Agreement shall not preclude the categories of Recyclable Materials, Organic Materials, C&D Materials, and Solid Waste listed below from being Collected by Persons other than the Collection Contractor and Transferred, Transported, Processed, or Disposed by Persons other than the Contractor, provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City, which is otherwise required by law:

1. Self-Hauled Materials. A commercial business Owner or Resident may Dispose of Recyclable Materials, Organic Materials, Solid Waste, and C&D Materials generated in or on their own Premises with their own vehicle so long as they are in compliance with the City's Municipal Code.
2. Donated or Sold Materials. Any items which are Source Separated at any Premises by the Generator and sold or donated to other Persons, including youth, civic, or charitable organizations.

3. Edible Food Recovery. Edible Food which is Collected from a Generator by other Person(s) for the purposes of food recovery; or which is Self-Hauled by the Generator to another Person(s) for the purposes of food recovery, regardless of whether the Generator donates, sells, or pays a fee to the other Person(s) to Collect or receive the Edible Food. Contractor shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of food recovery program efforts in the City.
4. Food Scraps for Animal Feed. Food Scraps that are separated by the Generator and used by the Generator or distributed to other Person(s) for lawful use as animal feed, in accordance with 14 CCR Section 18983.1(b)(7). Food Scraps intended for animal feed may be Self-Hauled by Generator or hauled by another party.
5. Materials That Collection Contractor Does Not Divert. Materials which the Collection Contractor is not required to Collect for Diversion under the Collection Agreement as of the Effective Date of this Agreement which subsequently, in the City's reasonable judgment, become economically feasible to Collect for Diversion. In such event, the City may provide for Collection, Processing, and Diversion of such materials in any manner it deems appropriate.
6. Beverage Containers. Containers delivered for redemption value Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code.
7. Materials Removed as Incidental Part of Services. Recyclable Materials, Organic Materials, Solid Waste, C&D Materials, or other materials removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, construction contractor, Residential clean-out service) as an incidental part of the service being performed.
8. On-Site and Community Composting. Organic Materials Composted or otherwise legally managed at the site where it is generated (e.g., backyard Composting, on-site anaerobic digestion).
9. Used Cooking Oil, Manure, Animal Waste, and Grease. Used cooking oil; manure, animal waste, remains from slaughterhouse or butcher shops, animal grease.
10. Sewage Treatment By-Product. By-products of sewage treatment, including sludge, sludge ash, grit, and screenings.
11. Unpermitted Waste. Unpermitted Waste regardless of its source.
12. Excluded Waste. Excluded Waste regardless of its source.
13. Materials Generated by State and County Facilities. Materials generated by State and County facilities located in the City provided that the Generator self-hauls, has arranged services with other Persons, or has arranged services with the Contractor through a separate agreement.
14. Dirt. Loose soil or earth from the ground may be collected and otherwise legally handled, managed, diverted, and/or disposed by other Persons.

15. Extended Producer Responsibility Programs. Materials covered by Extended Producer Responsibility Programs may be collected and otherwise legally handled, managed, diverted, and/or disposed of by other Persons.

16. Climate and Disaster Resiliency Debris. Debris generated as result of a wartime, natural, physical, or other disaster that the Collection Contractor is unable to Collect and or Contractor is unable to Dispose within a reasonable timeframe as determined by the City or that the City directs the Collection Contractor or Contractor to not Collect, Process, or Dispose in accordance with Section 4.20 of this Agreement and in accordance with the Collection Agreement. City reserves the right to enter into a third-party agreement to provide disaster debris Collectio, Processing, or Disposal services that augment those provided by the Contractor or Collection Contractor.

C. **Subcontracting.** Contractor is solely responsible for management and oversight of the activities of all Subcontractor(s). Contractor shall be considered to be in breach or default should the activities of any Subcontractor(s) constitute a breach or Event of Default under this Agreement.

Contractor shall not engage a Subcontractor(s) for Disposal Services without the prior written consent of City Representative, which may be granted in their sole discretion. As of the Effective Date of this Agreement, City has approved Contractor's use of Subcontractor(s) as proposed by Contractor and approved by City for inclusion in Exhibit B-1 Operations Plan. Following the Effective Date, if the Contractor plans to engage any Affiliate as a Subcontractor in the provision of services, Contractor shall provide City Representative with thirty (30) calendar days written notification of its plans and provide an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement. Contractor shall require that all Subcontractors file an insurance certificate with the City describing such Subcontractor's insurance coverage, and name City as an additional insured. The City Representative may waive or excuse these insurance requirements in its sole discretion. Contractor shall require that all Subcontractors comply with all material terms of this Agreement.

4.02 FACILITY SERVICE SPECIFICATIONS

A. ***Reserved.***

B. ***Reserved.***

C. **Landfill Disposal Specifications.**

Contractor shall provide Disposal Services at the Disposal Facility in accordance with the Service standards described in Section 4.19 and the following Service specifications:

1. Operating, managing, and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement, and compaction (if necessary) of daily cover, intermediate cover, and final cover; management of fill operations including, but not limited to fill sequencing, side slopes configuration, and working face location and configuration.

- 212 2. Safely and lawfully Disposing of City’s Solid Waste at the Facility in lined cells meeting
213 requirements of Subtitle D of RCRA, if such cells are required in accordance with Applicable
214 Law.
- 215 3. Providing, operating, and maintaining landfill tipper for the unloading of Solid Waste or other
216 materials delivered to the Facility by the Collection Contractor.
- 217 4. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for
218 operations, Closure, Post-Closure, and environmental monitoring.
- 219 5. Operating, maintaining, and managing leachate and landfill gas management systems,
220 groundwater monitoring and management systems, storm water drainage and control
221 systems, treatment facilities, buildings, on-site roadways, utilities, and any other required
222 Facility elements.
- 223 6. Accepting delivery of City’s Solid Waste by the Collection Contractor, subject to the limitations
224 of Section 4.05.
- 225 7. Operating and maintaining the scale house and scale system and weighing City’s Solid Waste
226 in accordance with Section 4.09.
- 227 8. Directing on-site traffic to appropriate unloading areas in accordance with Section 4.08 and
228 providing a safe working environment for Facility users, visitors and employees, in accordance
229 with Sections 4.10 and 4.11 and Applicable Law.
- 230 9. Safely managing Solid Waste Accepted at the Facility in accordance with Section 4.11 and
231 Applicable Law.
- 232 10. Ensuring that Source Separated Organic Waste is not used as Alternative Daily Cover (“ADC”)
233 or Alternative Intermediate Cover (“AIC”) at the Facility.

234 **4.03 PERMITS**

- 235 A. **Securing Permits.** Contractor will obtain and maintain at Contractor’s sole cost all Permits required
236 under Applicable Law to perform Services. Contractor will provide City proof of Permits and will
237 demonstrate compliance with the terms and conditions of Permits promptly upon request of City.
238 In its Annual Report or more frequently, as necessary, Contractor will inform City of any Permit-
239 related or regulatory concerns and Contractor’s plans to, and status of, securing the issuance,
240 revision, modification, extension, or renewal of Permits. Promptly upon City direction, Contractor
241 will provide City with copies of Permits and any applications or other correspondence that the
242 Contractor submits in connection with securing Permits.
- 243 B. **Complying with Permits.** Contractor will at all times provide Services in compliance with all Permits,
244 including any mitigation measures related to the operation and maintenance of the Facility.
245 Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with
246 or Violation of Permits or failure to obtain Permits.

4.04 OWNERSHIP OF DELIVERED MATERIALS

Once City's Delivered Materials are delivered to the Facility and received and Accepted by Contractor, ownership and the right to possession of City's Delivered Materials will transfer directly from the Collection Contractor or other Person designated to deliver City's Delivered Materials to Contractor. For Solid Waste received at the Disposal Facility, Contractor may retain, Recycle, Process, Dispose of, and otherwise use City's Solid Waste in any lawful fashion or for any lawful purpose. Both benefits and Liabilities resulting from ownership and possession will accrue to Contractor.

4.05 REJECTION OF UNPERMITTED AND EXCLUDED WASTE

A. **Inspection.** Contractor shall use Standard Industry Practices to detect and reject Unpermitted Waste and Excluded Waste in a uniform and non-discriminatory manner and will not knowingly Accept Unpermitted Waste or Excluded Waste at the Facility. Contractor will comply with the inspection procedure contained in its Permit requirements and in accordance with its Operations Plan contained on Exhibit B-1. Contractor will promptly modify that procedure to reflect any changes in Permits or Applicable Law.

B. **Unpermitted Wastes and Excluded Wastes Handling and Costs.** Contractor will arrange for or provide handling, Transportation, and delivery to a Recycling, Processing, or Disposal Facility permitted in accordance with Applicable Law of all Unpermitted Wastes or Excluded Wastes detected at the Facility. Contractor is solely responsible for making those arrangements or provisions and all costs thereof; provided, however, unless contrary to law, that at no point will Contractor be deemed to be the owner or generator of Unpermitted Waste or Excluded Waste delivered to the Facility; Contractor shall retain all legal remedies against the owner or generator of the Unpermitted Waste or Excluded Waste.

C. **Remedies for Rejected Materials.** If Unpermitted Waste or Excluded Wastes are delivered to the Facility, Contractor may reject the Unpermitted Waste or Excluded Wastes and require the Person(s) bringing such Unpermitted Waste or Excluded Wastes to the Facility to remove it. Contractor shall also be entitled to pursue whatever remedies, if any, it may have against Person(s) bringing that Unpermitted Waste to the Facility. If Contractor identifies Unpermitted Waste or Excluded Wastes delivered by Collection Contractor, the Contractor may reject it and require Collection Contractor remove it. Further, City's agreement with the Collection Contractor will require the Collection Contractor to collect, transport, and dispose of that Unpermitted Waste or Excluded Wastes and/or to remediate any contamination resulting there from at Collection Contractor's expense, but Contractor may not require City to take those actions or pay those costs. Nothing in this Agreement will excuse the Contractor from the responsibility of handling Unpermitted Waste or Excluded Wastes that Contractor inadvertently accepts in a lawful manner and of arranging for the disposition of that Unpermitted Waste or Excluded Wastes in accordance with Applicable Law.

D. **Notification.** If the Contractor rejects Unpermitted Waste or Excluded Wastes delivered by the Collection Contractor, Contractor will immediately Notify the City verbally and then follow verbal notifications with Notice identifying the date and time of occurrence; material type; material weight or volume; characterization of material; the Contractor's reason for rejection of the delivered material; and, the vehicle that delivered the material.

4.06 DAYS AND HOURS OF OPERATION

A. **General.** Contractor will operate the Facility for the receipt of City's Delivered Materials in accordance with the Days and hours of operation set forth in its Permits and as specified below.

1. *Reserved.*

2. *Reserved*

3. At a minimum, Contractor shall receive and Accept Solid Waste at the Disposal Facility from 6:00 a.m. to 5:00 p.m. Monday through Friday and from 8:00 a.m. to 4:00 p.m. on Saturday, except for Holidays.

While Contractor may increase these hours, Contractor may not reduce the hours or total number of hours for acceptance of City's Delivered Materials without the concurrence of City and Collection Contractor, unless reductions are required by a change in a Permit subsequent to the Effective Date.

4.07 EQUIPMENT AND SUPPLIES

To operate the Facility, a variety of equipment is used for the refuse disposal operation at the Facility. Onsite equipment meets disposal and site maintenance needs to allow operations of the Facility to be conducted in an environmentally sound manner and to comply with all applicable regulatory requirements. Onsite equipment is routinely maintained to provide ongoing compliance with State minimum standards. The numbers and types of equipment utilized to meet operational requirements is adjusted as necessary based on landfill development and refuse inflow rates. Below is a list of the existing onsite equipment. The listed equipment is adequate to handle all site operations in a safe manner and in compliance with all applicable permits and regulations, at maximum permitted tonnage levels.

- 3 CAT 836H Compactors
- 2 CAT D8T Bulldozers
- 1 CAT D6R Bulldozer
- 1 Liebherr PR736 Bulldozer
- 1 CAT 140M Motor Grader
- 1 CAT 330 Excavator
- 1 CAT 336 Excavator
- 1 Water Truck
- 1 CAT 966M Rubber Tire Loader
- 2 CAT 730C All Terrain Dump Trucks
- 1 CAT 740C All Terrain Dump Truck

4.08 TRAFFIC CONTROL AND DIRECTION

A. **General.** Contractor shall construct and maintain all roads required to Transport City's Delivered Materials from the Facility site entrance to scale house and to the actual point of unloading at the Disposal area of the Facility. Contractor will direct on-site traffic to appropriate unloading areas and provide a safe working environment for Facility users, visitors, and employees. Contractor will provide necessary roadways, signs, and personnel to assist drivers to proper unloading areas. Contractor will maintain all roadways and signs at the Facility in a clean and usable condition. The

327 Contractor will provide and maintain roadways and signs for the convenience of vehicles using the
328 Facility and to facilitate safe and efficient traffic flow at the Facility.

329 B. **Guaranteed Vehicle Turnaround Times.** Contractor shall maintain a Maximum Vehicle Turnaround
330 Time of twenty (20) minutes for Collection Contractor delivery of Delivered Materials to the Facility.
331 Failure to meet this guaranty equates to default of Contractor's performance obligations under this
332 Agreement. Contractor shall have a twenty-four (24) hour period to cure this breach before
333 Liquidated Damages will be assessed in accordance with this Section and Section 7.06.

334 C. **Failure to Meet Maximum Vehicle Turnaround Time.** If Contractor fails to meet the Maximum
335 Vehicle Turnaround Time, it shall pay Liquidated Damages as provided in Section 7.06 and Exhibit
336 E.

337 D. **Assessment of Liquidated Damages.** The City shall provide Notice of its intent to assess liquidated
338 damages to the Contractor within sixty (60) Days of City becoming aware of the Contractor's failure
339 to meet the Maximum Vehicle Turnaround Time. The assessment of Liquidated Damages shall be
340 made in accordance with Section 7.06.

341 E. **Turnaround Time Documentation Requirements.** On or before the Service Commencement Date,
342 Contractor shall, at its own cost, implement and maintain a technology-based vehicle tracking
343 system of recording inbound and outbound vehicle times. Contractor shall, upon City request,
344 provide City with the opportunity to review documentation from this system, such as video
345 recordings, of the inbound and outbound vehicles to calculate average vehicle Turnaround Time.

346 **4.09 SCALE OPERATION**

347 A. **Maintenance and Operation.** Contractor will maintain at least two (2) State-certified motor vehicle
348 scales at the Facility in accordance with Applicable Law. Contractor will link all scales to a centralized
349 computer recording and billing system that will be compatible with Contractor's systems and
350 account for tracking all incoming and outgoing materials. Contractor will operate those scales during
351 Facility receiving hours established in Section 4.06. Contractor will provide City with access to
352 weighing information at all times and copies thereof on the next Working Day following City's
353 request therefore.

354 B. **Vehicle Tare Weights.** When Collection Contractor places new vehicles into Service, Contractor will
355 promptly weigh the new vehicle and determine its unloaded (tare) weight(s). Contractor will record
356 tare weight, hauler name, and vehicle identification number. Within ten (10) Working Days of
357 weighing, Contractor will provide City and Collection Contractor with a report listing vehicle tare
358 weight information. Contractor will have the right to request re-determination of tare weights of
359 vehicles twice each Calendar Year. If there is reasonable suspicion or evidence that tare weights are
360 not accurate, Collection Contractor may request re-determination of tare weights, in which case
361 Contractor will promptly re-determine tare weights for requested vehicles up to four (4) times per
362 Calendar Year. Contractor may update tare weights (at its own initiative) more frequently.

363 C. **Substitute Scales.** If any scales are inoperable, being tested, or otherwise unavailable, Contractor
364 will use Reasonable Business Efforts to weigh vehicles on the remaining operating scales. To the
365 extent that all the scales are inoperable, being tested, or otherwise unavailable, Contractor will
366 substitute portable scales until the permanent scales are replaced or repaired. Contractor will

arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours, Contractor will immediately obtain a temporary substitute scale(s).

- D. **Estimates.** Pending substitution of portable scales or during power outages, Contractor will estimate the Tonnage of City's Delivered Materials delivered to the Facility by utilizing the arithmetic average of each vehicle's recorded Tons of the Delivered Materials delivered on its preceding three (3) deliveries, on the same Day of the week, to the Facility.

All information required by Section 4.09.G will continue to be recorded for each delivery of Delivered Materials to the Facility and each Transported load of Delivered Materials during any period the scales are out of Service.

- E. **Testing.** Contractor will test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months. Upon City request, Contractor will promptly provide City with copies of test results. Contractor will further test and calibrate any or all scales within three (3) Working Days of City direction. If test results indicate that the scale or scales complied with Applicable Law, City will reimburse Contractor the Direct Costs of the tests. If the test results indicate that the scale or scales did not comply with Applicable Law, Contractor will bear the costs thereof and Contractor will at its own cost adjust and correct, consistent with the results of that test, all weight measurements recorded and Per-Ton Rates calculated, charged, and paid, as the case may be, from the date of City's direction.

- F. **Weighing Standards and Procedures.** Contractor will use the Facility's entry scale(s) located at the scale house to weigh vehicles and charge Per-Ton Rates. Contractor scale house personnel will be responsible for inspecting the Solid Waste delivered to the Facility. Contractor will charge the Per-Ton Rates based on the Tonnage of City's Delivered Materials delivered by the Collection Contractor to the Facility. Contractor will weigh and record inbound weights of all Collection Contractor's vehicles when the vehicles arrive at the Facility and weigh and record outbound weights of vehicles for which Contractor does not maintain tare weight information. Contractor will provide each driver a receipt showing the date, time, and quantity of City's Delivered Materials that the vehicle delivered to the Facility and the Per-Ton Rate charged therefore.

- G. **Records.** Contractor will maintain scale Records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, jurisdiction of origin of materials received, type of material, hauler identification and/or classification, type, weight, and destination of outbound materials.

4.10 PERSONNEL

Contractor will engage, train, and maintain qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for operation of the Facility and to perform Services.

4.11 SAFETY

The Contractor will perform all Services in a safe manner, in accordance with Applicable Law and insurance requirements provided in Article 6.

4.12 ALTERNATIVE FACILITY(IES)

A. **Alternative Facility for Reasons other than Uncontrollable Circumstances.** If Contractor does not Dispose of City's Delivered Materials at the Facility for reasons other than Uncontrollable Circumstances, then following City approval given in City's sole discretion, Contractor will: (i) receive, Accept, and Dispose of City's Delivered Materials at another facility owned by it or an Affiliate at a price not to exceed the Per-Ton Rate in effect under this Agreement and pay City for any additional Transportation costs incurred by City or Collection Contractor in delivering City's Delivered Materials to the other facility, or (ii) arrange for City's Delivered Materials to be Disposed of at another facility not Owned by it or an Affiliate, in which case Contractor will pay any difference in the per-ton rate charged at that Disposal location compared to the Per-Ton Rate plus any additional Transport costs incurred by City or Collection Contractor in delivering the all tons of Delivered Materials to the Disposal facility.

B. **Alternative Facility for Uncontrollable Circumstances.** If Contractor does not Dispose of City's Delivered Materials at the Facility due to Uncontrollable Circumstances, then promptly upon City direction Contractor will, to the extent it is legally able to do so in accordance with Applicable Law, receive, Accept, and Dispose of Delivered Materials at another Disposal facility owned by it or an Affiliate at a per-ton rate not to exceed the Per-Ton Rate in effect under this Agreement. Contractor is not obligated to pay for any additional Transport costs incurred by City or Collection Contractor in delivering City's Delivered Materials to the other facility. If City does not so direct Contractor, City may in its sole discretion terminate this Agreement as provided in accordance with Section 7.02.

C.**Alternative Facility(ies).** Contractor has proposed and City has approved use of the Alternative Facility(ies) specified in Exhibit A. Contractor is solely responsible for ensuring continued availability of City-approved Alternative Facility(ies) throughout the Term.

4.13 INVOICING AND MONTHLY REPORT

On or before the fifteenth (15th) Day of each month, Contractor shall invoice or otherwise charge Collection Contractor in amounts equal to the then-current Per-Ton Rate pursuant to Article 5 multiplied by Tonnages of City's Solid Waste delivered by the Collection Contractor to the Facility during the previous month. Contractor will simultaneously provide the City a copy of that invoice for the purpose of review before payment. Invoices will only be for tons collected as a result of services covered by the City's agreement with the Collection Contractor and shall not include tons collected from schools, unincorporated areas or any other generators receiving services from the Collection Contractor under separate agreements. Contractor shall work with Collection Contractor and Approved Facility(ies) to determine methodology to ensure correct invoicing. Invoices will be in a form satisfactory to the Collection Contractor, subject to City approval. All undisputed amounts shall be payable by Collection Contractor within thirty (30) Days of receipt of the invoice. For example, for services provided in July, Contractor will invoice Collection Contractor on or before August 15 and payment will be due and payable by Collection

Contractor on or before September 15. The Collection Contractor shall, within fifteen (15) Days of receipt of invoice, identify any disputed charges and communicate these to Contractor. Contractor may deliver to Collection Contractor, with a copy to the City a Notice of late payment for a given monthly invoice thirty-five (35) Days after the date of generation of the invoice. Contractor's invoices shall be deemed delinquent if Collection Contractor has not paid within sixty (60) Days of the date of the Notice of late payment. Thereafter, Contractor may suspend receipt and Acceptance of City's Solid Waste deliveries from the Collection Contractor until the delinquent invoice(s) are paid in full excluding disputed amounts. The delinquent invoice shall bear interest on the unpaid balance at a rate not to exceed one and one-third percent (1 1/3%) per month.

Along with its monthly invoice, Contractor shall provide a report to Collection Contractor, with a copy to the City presenting daily Tonnage received from Collection Contractor by material type, the actual average monthly vehicle Turnaround Time (determined in accordance with Section 4.08), and the number of loads of City Solid Waste in which the actual Turnaround Time was in excess of the Maximum Vehicle Turnaround Time. The City Representative may at any time request changes to Contractor's monthly report format and/or content, and Contractor shall not unreasonably deny such requests.

4.14 REPORTING

A. **General.** Contractor will submit an Annual Report described in this Section no later than forty-five (45) Days after the end of each Rate Period. City shall have the right to inspect all documents upon which the representations contained in said report are based. If Contractor does not submit the Annual Report by the due date, it will pay Liquidated Damages as provided in Section 7.06 and Exhibit E.

If City identifies an error in an Annual Report or omission of required information, City may assess Liquidated Damages in accordance with Section 7.06 and Exhibit E.

If the Contractor identifies an error in an Annual Report it submitted to the City, Contractor shall Notify the City of the error and submit a corrected Annual Report within fifteen (15) Days of the Notice. City agrees to waive Liquidated Damages in the event Contractor self-identifies an error and submits the corrected Annual Report within fifteen (15) Days of Contractor's Notice to the City. If Contractor is late in submitting the corrected Annual Report, the City may assess Liquidated Damages for the late report as provided in Section 7.06 and Exhibit E.

B. **Report Format.** Contractor shall propose Annual Report formats for review and approval by City. City's approval shall not be unreasonably withheld. The City Representative may at any time review and request changes to Contractor's report formats and content, and Contractor shall not unreasonably deny such requests.

Contractor shall submit (via mail and/or e-mail at the City's option) all reports to the City's Representative.

The City reserves the right to require Contractor to provide additional reports or documents as City Representative reasonably determines to be required for the administration of this Agreement or compliance with Applicable Law.

C. **Report Content.** Annual reports shall, at a minimum, include the following:

- 483 1. Total number of vehicle loads delivered by Collection Contractor vehicles to the Facility for
484 each month in the Rate Period and in total for the most-recently-completed Rate Period.
- 485 2. Totals Tons for all vehicle loads delivered by Collection Contractor vehicles to the Facility for
486 each month in the Rate Period and in total for the most-recently-completed Rate Period.
- 487 3. Average Tons per vehicle load delivered by Collection Contractor to the Facility for the most-
488 recently-completed Rate Period.
- 489 4. Date, time, , Collection Contractor truck number, and reason for Contractor rejection of any
490 delivered vehicle loads for each month in the Rate Period and in total for the Rate Period.
- 491 5. Reserved.
- 492 6. Reserved.
- 493 7. Reserved.
- 494 8. Reserved.
- 495 9. Documentation that Contractor paid all Government Fees and taxes in accordance with
496 Sections 5.05 and 5.06.
- 497 10. List of any Violations received during the Rate Period.
- 498 11. Facility capacity status report that identifies the remaining permitted capacity, the aggregate
499 capacity committed to other entities through Contractor's contracts, and the available,
500 uncommitted capacity, and the estimated remaining years of Facility capacity.
- 501 12. Any relevant information related to Extended Producer Responsibility programs as specified
502 in Section 4.22E to be reported to the City.
- 503 13. Other relevant information including, but not limited to, a description of any advances in
504 environmental mitigation measures; any advanced technologies utilized in the course of
505 business; any pilot programs which test advanced technologies; any new third-party
506 certifications for Diversion or other Facility standards; and report on any recent, pending, or
507 planned changes in Facility Permits.

508 **4.15 DUE DILIGENCE**

509 Contractor acknowledges that waste management is a public health and safety concern. It agrees that it
510 will exercise due diligence in performing Service.

511 **4.16 CLOSURE AND POST-CLOSURE OF DISPOSAL FACILITY**

512 Contractor shall safely operate, maintain, and manage the Facility in compliance with Applicable Law not
513 only during the Term, but also thereafter until and during the Facility Closure and Post-Closure period(s)
514 (including fulfillment of State funding requirements). Contractor's compliance obligations include
515 compliance with the Closure/Post-Closure requirements of California's Department of Resource Recycling

and Recovery (CalRecycle) throughout the Term of this Agreement and through the required federal, State, or local Post-Closure period. Contractor is solely responsible, operationally and financially, for: (i) the appropriate Closure and Post-Closure activities of the Facility; and, (ii) the establishment and funding of any reserve funds required by Applicable Law for the purposes of providing funds for the payment of costs of Closure of the Facility (or any cell within the Facility) or Post-Closure activities relating to the Facility. Contractor will not hold City or the Collection Contractor responsible for paying any deficiencies in required reserves. In addition, Contractor will not hold City or the Collection Contractor responsible for making any payments if actual Closure and Post-Closure costs relating to the Facility exceed the amounts reserved by the Contractor for that purpose. This obligation survives expiration or termination of the Agreement.

4.17 RIGHT TO ENTER FACILITY AND OBSERVE OPERATIONS

The City and its designated representative(s) may enter, observe, and inspect the Facility at any time during Facility operations and meet with the Facility manager(s) or their representatives upon at least seventy-two (72) hours advance notice, provided that City and its representatives comply with Contractor's reasonable safety and security rules and do not interfere with the work of the Contractor or its Subcontractors.

4.18 RESERVED

4.19 SERVICE STANDARDS

Contractor will perform Services in accordance with Applicable Law, Standard Industry Practice, and specification and other requirements of this Agreement.

4.20 CLIMATE AND DISASTER RESILIENCY

A. **Climate and Disaster Resiliency Planning.** No less than ninety (90) calendar days prior to the Commencement Date, the Parties shall meet to discuss development of a Climate and Disaster Response Plan to address the role of the Contractor in addressing City's disaster debris management needs related to wartime, natural, physical, or other disaster in, or proximate to the City resulting in the declaration of a State of Emergency by the City Manager, or City Council, or by the Governor, County Board of Supervisors, County Health Office, or County Sheriff.

B. **Disaster Response Protocol.** The Parties shall develop and finalize a Disaster Response Plan prior to the Commencement Date that identifies specific communication and logistical actions, and such other coordination between the Parties and internal to each Party such that Contractor assistance can occur immediately following City declaration of an emergency. The Climate and Disaster Response Plan to be developed by the Parties as provided in this Section shall be included in the Agreement as Exhibit B-2. The Parties shall review the Protocol no less than annually and revise as warranted.

C. **Essential Service.** Contractor acknowledges that it provides an essential service, and that while provision of Disposal service during or following a disaster may be affected by impacts to facilities, equipment, and/or public infrastructure, the Contractor is obligated to take all measures reasonably necessary to provide such service in a timely and effective manner in compliance with this

Agreement, Section 8.12.A. notwithstanding. Such measures may include, but are not limited to, a change in Approved Facility(ies) and/or Alternative Facility(ies).

D. **Availability of Contractor's Personnel and Equipment.** In the event of a declaration of an emergency as provided in subsection A., Contractor shall provide, upon City request, reasonable access to equipment, vehicles, and/or personnel normally performing services under this Agreement, for use by the Contractor in conducting emergency operations within the City. These emergency services shall be performed in consultation with the City Representative to ensure appropriate prioritization of services. Neither the Collection Contractor nor the City shall be required to compensate Contractor for the Contractor's provision of equipment, vehicles, or personnel normally performing services under this Agreement when made available during a declaration of emergency for the Contractor's use in excess of what is otherwise payable to the Contractor pursuant to this Agreement.

E. **Contractor Reimbursement for Use of Additional Resources.** In the event of a declaration of an emergency, should the Contractor provide, upon City request, additional equipment, vehicles, and/or personnel beyond that normally performing services under this Agreement, for use by the Contractor in conducting emergency operations under City direction, the Contractor may submit to the City detailed records of specific, additional, and reasonable costs and expenses borne by the Contractor in providing such additional resources. The City shall reimburse the Contractor for such documented, reasonable expenses within ninety (90) Days after the City receives State and/or Federal emergency agency reimbursement specific to these expenses. Should such State and/or Federal reimbursement not occur within five hundred and forty (540) Days after the Contractor's complete submission as verified by the City, Contractor may seek a change in Contractor Compensation under the terms of this Agreement. The Contractor shall promptly cooperate with the City, State and/or Federal reporting and documentation requirements related to a request for reimbursement. The Contractor shall further comply with all applicable Federal, State, or local funding and accounting requirements that may apply to expenses that will be reimbursed upon notice of the same from the City.

F. **Disaster Waivers.** In the event of a disaster, the City may grant the Contractor a waiver of some or all Disposal requirements under this Agreement and 14 CCR, Division 7, Chapter 12, Article 3 in the disaster-affected areas for the duration of the waiver, provided that such waiver has been approved by CalRecycle. Any resulting changes in Disposal requirements shall be addressed as a Change in Scope in accordance with Section 4.23.

4.21 GENERATION, CHARACTERIZATION, AND PILOT STUDIES

The Contractor acknowledges that the City, CalRecycle, other governmental agencies, or Extended Producer Responsibility Programs may wish to perform and/or participate in periodic material generation or characterization studies or pilot programs related to materials covered under this Agreement. The Contractor agrees to participate and cooperate with the City and its agents and to perform studies and data collection exercises, as needed, to determine weights, volumes and composition of materials generated and/or Disposed. If the City requires Contractor to participate in such a study or program, Contractor and the City shall mutually agree on the scope of services to be provided by Contractor and the change in Contractor Compensation, if any, that the City will pay to Contractor specifically for such participation. In any event, Contractor shall permit and in no way interfere with the handling of the subject materials by other Persons for such purposes.

4.22 EXTENDED PRODUCER RESPONSIBILITY PROGRAMS

A. **General.** The City and the Contractor acknowledge that the requirements under the existing Extended Producer Responsibility Programs (including, but not limited to, AB 1201, SB 1383, SB 54, and SB 343) may be applicable to the services provided by the Contractor under this Agreement, and that additional or amended Extended Producer Responsibility Programs may be established in the future. The Contractor further acknowledges that, because the Approved Disposal Facility accepts materials from the public that may be regulated by an Extended Producer Responsibility Program, the Contractor may be uniquely positioned to operate or participate in such programs.

B. **Reserved.**

C. **City Right to Solicit Proposals.** The City may, from time-to-time, request that the Contractor initiate or participate in an Extended Producer Responsibility Program; provided, however, that the Contractor acknowledges and agrees that the City is under no obligation to request any such proposal from the Contractor. Furthermore, the Contractor acknowledges and agrees that, at any time during the Term of this Agreement, the City may solicit proposals from other Persons related to Extended Producer Responsibility Programs and may permit other Persons besides Contractor to provide such services, as provided for in Section 4.01B.15 and that nothing herein shall prevent the City from also soliciting cost and operating information from other Persons in order to inform the City's evaluation of any Contractor-provided proposal.

D. **City Requested Proposal.** If the City requests an Extended Producer Responsibility Program proposal from Contractor under this Section, the Contractor shall be required seek out and coordinate with the applicable Stewardship Organization designated for the applicable program and shall describe such partnership in its proposal; these requirements are in addition to the requirements provided in Section 4.23. The City's written request for a proposal may also require additional and/or specific information relating to the Extended Producer Responsibility Program, including such information determined by the City Representative (at the City Representative's sole discretion) to be reasonably necessary. The City shall review the proposal and may request additional supporting documentation, calculations, or other information necessary to evaluate the Contractor's proposal for reasonableness and to evaluate Contractor's ability to comply with the requirements of the Extended Producer Responsibility Program. Notwithstanding any other provision in this Agreement, any additional obligations imposed on Contractor by such Change in Scope required by the City shall be conditioned on the City and Contractor agreeing on a reasonable increase in Contractor's Compensation.

E. **Record Keeping and Reporting.** The Contractor acknowledges that, as part of the services provided under this Agreement, the Contractor's participation in any Extended Producer Responsibility Program may impact the City, subscribers to Collection services, City, and other City service providers. As such, regardless of whether the Contractor is specifically contracted under this Agreement to provide any such Extended Producer Responsibility Programs under this Agreement, the Contractor acknowledges and agrees it has obligations to the City, nonetheless.

Throughout the Term of this Agreement, the Contractor shall maintain records of all funding or other resources the Contractor receives directly or indirectly through an Extended Producer Responsibility Program. The Contractor shall inform and report to the City as part of Contractor's obligations under Section 4.14C and shall calculate and demonstrate the dollar amount that can be attributed to services provided under this Agreement. Any cost savings identified shall be remitted

to the City as either a direct payment sent to the City within thirty (30) Days after Contractor's receipt of funds or as a reduction to the Contractor's Per-Ton Rate in accordance with Article 5, at the City Representative's sole discretion. The Contractor shall include copies of invoices or receipts with the applicable Stewardship Organization with its payment or Tipping Fee Application, as appropriate, regardless of whether the City is aware such funding or other resources have been received by the Contractor.

The Contractor shall also maintain all operational and financial records related to Extended Producer Responsibility Programs as provided in Section 8.13 and report such information to the City in accordance with Section 4.14 or as otherwise requested by the City Representative.

4.23 MODIFICATIONS TO SCOPE OF SERVICE

A. **General.** City may direct Contractor to perform additional Services (including, but not limited to, the performance of additional material Recovery activities and Extended Producer Responsibility Programs as provided in Section 4.22) or the Contractor may propose additional Services. Per-Ton Rates will be increased or decreased, in accordance with this Section, to give effect to these adjustments.

B. **Proposal for Modification of Services.** Within sixty (60) Days of City request for a proposal or at any time Contractor chooses to propose additional Services, Contractor will present its proposal to modify existing Services. At a minimum, the proposal will contain a completed description of the following:

1. Methodology to be employed (changes to equipment, labor needs, staffing, etc).
2. Equipment to be utilized (equipment number, types, capacity, age, etc).
3. Labor requirements (changes in number of employees by classification).
4. Provision for program publicity/education/marketing (if appropriate).
5. Estimate of the impact of the Service modification (increased Diversion Tonnage, reduced costs, increased public Service, etc).
6. Five- (5-) year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumption underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing Services.

C. **City's Review.** If the City does not review, comment, and approve or disapprove of the modification to the scope of Services within ninety (90) Days of receiving the Contractor's proposal, the proposal will be deemed disapproved. The City and Contractor may mutually agree to extend the time period for review due to the complexity of the scope of Service modification under consideration, the time needed for the review or approval, or for other reasonable reasons.

The City may request the assistance of an independent third party to review the proposal. Contractor shall pay the reasonable costs of that review if the modification to the scope of Services is initiated by the Contractor. City shall pay those costs if the modification to the scope of Services

is initiated by the City. The cost of that review will be estimated in advance of the work and provided to the Contractor for comment and agreement to pay. Contractor's refusal to pay the reasonable cost of review of a Contractor-initiated proposal will be grounds for City rejection of that proposal.

Contractor will promptly provide operating and business Records requested by City that are reasonably required to verify the reasonableness and accuracy of the impacts associated with a modification to the scope of Services. Contractor will fully cooperate with City's request and provide City and its agent(s) copies of or access to Contractor's Records.

If Contractor and City cannot agree on terms and conditions of Services within thirty (30) Days of the end of City's review period described in this subsection, City may permit Persons other than Contractor to provide those Services at a location other than the Facility.

- D. **Approval of Modification to Scope of Services.** Upon City approval or determination, City will issue a Notice approving the modification to the scope of Service and documenting any change to the Per-Ton Rates, and approved change to Contractor's obligations under this Agreement. The Parties will prepare a written amendment to the Agreement documenting any and all changes resulting from the modification to the scope of Services. No adjustment in Per-Ton Rates, change in Contractor's obligations, or Change in Scope of Services will become effective absent that City approval or determination.

ARTICLE 5. CONTRACTOR COMPENSATION

5.01 GENERAL

The Contractor will perform all of its Services, obligations, responsibilities, and duties under this Agreement, including paying costs associated with obtaining and complying with all Permits; operating the Facility in full compliance with Applicable Law; constructing the Facility and its cells, closing the Facility, and performing Post-Closure maintenance of the Facility after its Closure; monitoring for environmental impacts; and, remedying environmental damage. In consideration of its performance of these duties, the Contractor may charge and collect the Per-Ton Rates from Collection Contractor for each Ton of City's Delivered Materials that Collection Contractor delivers to the Facility, and may charge and collect from Collection Contractor for each Ton of Delivered Materials delivered to the Facility by employees of City. The City is responsible for payment of any and all sums due under this Agreement or consequent to delivery of the Services, with the exception that the Contractor shall invoice the City for payment of any Delivered Materials delivered to the Facility by employees of City performing City duties and for the provision of emergency Services pursuant to Section 4.13.

Contractor Compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, operations, profit, Government Fees, and all expenses Contractor deems necessary to perform all the Services required by this Agreement in the manner and at the times prescribed. Nothing herein shall obligate City or Collection Contractor to provide any compensation to Contractor beyond Per-Ton Rates.

If Contractor's actual costs, including any fees or payments due to others, are more than the Per-Ton Rate and/or more than gross receipts received under this Agreement, Contractor shall not be compensated for the difference in actual costs and actual Per-Ton Rates or gross receipts except to the extent City grants an extraordinary Rate adjustment request pursuant to Section 5.04. If Contractor's actual costs are less than the actual Per-Ton Rates or actual gross receipts, Contractor shall retain the difference.

The Per-Ton Rate(s) approved by City for Rate Period One is presented in Exhibit B-3. The Parties acknowledge that the Per-Ton Rate provided for in this Agreement has been determined on the basis of the exclusive and long-term nature of City's obligations hereunder.

5.02 PER-TON RATE

General. The Per-Ton Rate shall have two components: (i) the Contractor Component; and, (ii) the Governmental Fee Component; the sum of which shall equal the total Per-Ton Rate. The "Contractor Component" of the Per-Ton Rate reflects the Contractor's Compensation for the Services provided under this Agreement. The Governmental Fee Component reflects Government Fees and taxes assessed on a per-Ton basis in connection with providing the Services required under this Agreement and represent a pass-through payment to Contractor. The applicable Government Fees and the Governmental Fee Component for the initial Per-Ton Rates are contained in Exhibit B-3.

The Per-Ton Rate for any Delivered Materials delivered to the Facility by an employee of City performing City duties will equal the Per-Ton Rate.

The City shall be responsible for adjusting the Per-Ton Rate as described in this Article 5.

B. **Per-Ton Rate for Rate Period One.** The Per-Ton Rate for Rate Period One was proposed by Contractor, finalized through negotiation with the City, and approved by City Council on or before the execution of the Agreement. The Per-Ton Rate for Rate Period One will be effective from the Service Commencement Date of this Agreement through February 1, 2027, and is contained in Exhibit B-3.

5.03 PER-TON RATE ADJUSTMENTS

The Per-Ton Rate for all Rate Periods following Rate Period One shall be adjusted annually commencing with the first adjustment that will be effective on February 1, 2027. The Per-Ton Rate adjustment will be performed in accordance with this Section.

A. **Definitions.** For the purposes of this Section, the following terms are defined as follows:

1. **"Annual Percentage Change"** means the Average Index Value of an index for the twelve- (12-) month period ending in June of the then-current Rate Period minus the Average Index Value for the twelve- (12-) month period ending in June of the most-recently completed Rate Period, divided by the Average Index Value for the twelve- (12-) month period ending in June of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (0.000). However, the first Annual Percentage Change shall allow for an adjustment of the first year Rate Period plus the initial term, from the Commencement Date to the start of Rate Period one which commences on February 1, 2027, based on the

754 increase in the CPI for the most recent fourteen month period for which CPI data is available
755 at the time Contractor submits its rate application for the rate adjustment to be effective on
756 February 1, 2027; provided that in no case shall this first Annual Percentage Change be
757 adjusted by more than 6%, nor less than 0%.

758 2. **“Average Index Value”** means the sum of the monthly index values during the twelve- (12-)
759 month period ending in June divided by twelve (12) (in the case of indices published monthly)
760 or the sum of the bi-monthly index values divided by six (6) (in the case of indices published
761 bi-monthly).

762 For example, if the Contractor is preparing its Rate application in July 2027 for Rate(s) to be
763 effective for Rate Period Two (February 2028 – January 2029), the Annual Percentage Change
764 in CPI shall be calculated as follows: [(Average CPI for July 2026 through June 2027) minus
765 (Average CPI for July 2025 through June 2026)] divided by (Average CPI for July 2025 through
766 June 2026)].

767 3. **“CPI”** means the All Urban Consumers Index (CPI-U) compiled and published by the U.S.
768 Department of Labor, Bureau of Labor Statistics or its successor agency, using the following
769 parameters:

770 Area – San Francisco-Oakland-Hayward Metropolitan Area
771 Item – All Items
772 Base Period – Current 1982-84=100
773 Not seasonally adjusted
774 Periodicity – Bi-monthly
775 Series ID – CUUSS49BSA0
776

777 If said CPI is discontinued, it shall be replaced by the CPI which the City Representative
778 determines most closely approximates the original category as determined by the U.S. Bureau
779 of Labor Statistics.

780 B. **Contractor Component.** The Contractor Component of the Per-Ton Rate will be adjusted annually
781 on the basis of hundred percent (100%) of the Annual Percentage Change in the CPI; or five percent
782 (5%), whichever is less, with a minimum adjustment of zero percent (0%). If the Annual Percentage
783 Change in the CPI is greater than 5%, up to 2% per year of that difference above 5% may be carried
784 over in subsequent years where Annual Percentage Change in the CPI is lower than 5% until the
785 difference has been exhausted.

786 C. **Governmental Fee Component.** The Governmental Fee Component of the Per-Ton Rate will only
787 be adjusted upward or downward, and Government Fees added or deleted to reflect actual
788 mandated changes in Government Fees which are outside the control of Contractor. Government
789 Fees for Rate Period One are presented in the table in Exhibit B-3.

790 In making adjustments to the Governmental Fee Component, Contractor shall increase or reduce
791 the Governmental Fee Component for any Government Fee that is imposed, increased, or reduced
792 to reflect actual changes in the fees. Contractor shall provide documentation demonstrating to the
793 City’s satisfaction any change in the governmental fees.

- 794 D. **Total Adjusted Per-Ton Rate.** The total adjusted Per-Ton Rate will be calculated as the sum of the
795 adjusted Contractor Component, as calculated in subsection B above, and the adjusted
796 Governmental Fee Component, as calculated in subsection C above.
- 797 E. **Adjusted Per-Ton Rate for City-Hauled Solid Waste.** The adjusted Per-Ton Rate for any Delivered
798 Materials delivered to the Facility by an employee of City, performing City duties, will equal the
799 adjusted Per-Ton Rate (determined in accordance with subsection D).
- 800 F. **Per-Ton Rate Adjustment Application.** Annually on or before August 1 Contractor will submit to
801 City Representative an application requesting the adjustment of Per-Ton Rate for the coming Rate
802 Period via email that includes a letter request that summarizes the requested Per-Ton Rate
803 adjustment and editable Microsoft Excel file that presents all supporting schedules, formulas, and
804 calculations. For example, on August 1, 2027_, Contractor will submit its Rate adjustment
805 application for the adjustment of Per-Ton Rate to be effective February 1, 2028 (i.e., Rate Period
806 Two). Above dates to be filled in based on the actual Commencement Date.
- 807 Such application will include the Per-Ton Rate adjustment calculations in accordance with Section
808 5.03.A through 5.03.E and an updated Per-Ton Rate table.
- 809 City will evaluate Contractor's application for mathematical accuracy and consistency with the
810 requirements of the Agreement and may require changes to the application prior to approval on
811 the basis of the application's mathematical inaccuracy or failure to comply with the procedures
812 defined in the Agreement. Upon City Representative's agreement that the calculations are
813 consistent with the requirements of this Agreement and are mathematically accurate, the Per-Ton
814 Rate adjustment (if any) will be approved by City Representative.
- 815 G. **No Other Adjustments.** As of the Service Commencement Date, the Per-Ton Rate set forth in
816 Section 5.02 and adjusted in accordance with Sections 5.03 and 5.04 will not be increased thereafter
817 to include any of the following costs of providing Services, even if Contractor's projections and
818 estimates thereof prove inaccurate:
- 819 1. Costs incurred due to Contractor's negligence or misconduct
 - 820 2. Costs incurred due to Permit changes of which Contractor did not provide timely Notice
 - 821 3. Any fines or penalties imposed on Contractor or the Facility
 - 822 4. Cost of remediation and cost recoveries pursuant to Applicable Law, including Comprehensive
823 Environmental Response, Compensation and Liability Act (CERCLA) and RCRA, as applicable
 - 824 5. Costs attributable to changing the classification of the Facility under Applicable Law, unless
825 directed by City in accordance with Section 4.23
 - 826 6. Costs and expenses related to the handling of Unpermitted Waste
 - 827 7. Increases in Contractor costs to provide Services including, but not limited to, costs for labor,
828 fuel, equipment, maintenance, and monitoring (except as Contractor's costs are adjusted in
829 Sections 5.03 and 5.04).

- H. **Dispute Resolution.** All disputes arising under this Section will be resolved in accordance with Section 8.17. If a dispute exists, the Per-Ton Rate will not be adjusted until the dispute has been resolved.

5.04 EXTRAORDINARY RATE ADJUSTMENTS

- A. **General.** Contractor acknowledges that it assumes and accepts the risk for changes in cost of providing Services and/or quantities and composition of Delivered Materials delivered to the Facility, and therefore the extraordinary adjustments to Per-Ton Rate shall be limited to a Change in Law, or a City-directed Change in Scope of Services that has a material, documented impact on the Contractor's cost of providing the Disposal Service as specified in Section 8.10. If a Change in Law or City-directed Change in Scope of Services (pursuant to Section 4.23) occurs, the Contractor may petition City for an adjustment to the Per-Ton Rate in excess of the annual adjustment as described in Section 5.03.

- B. **Extraordinary Rate Adjustment Application.** Contractor shall prepare an application for the extraordinary Per-Ton Rate adjustment calculating the net financial effect on its operations (both increases and decreases of costs) resulting from the Change in Law or City-directed Change in Scope of Services, clearly identifying all assumptions related to such calculations and providing such underlying documentation as is necessary to fully support the assumptions. The application shall provide all information requested by City Representative specific to the nature of the request being made. City Representative shall evaluate the application for reasonableness. As part of that review, City Representative may request access to the financial statements and accounting Records required to be maintained by the Contractor (pursuant to Section 8.13.D) in order to determine the reasonableness of the Contractor's application. Should the Contractor not grant such access, then City may rely on the Contractor's Proposal for Post-Collection Services (and subsequent, related correspondence) and other information available to it as the basis for making reasonable assumptions regarding what those accounting and financial Records would have shown and therefore the reasonableness of the Contractor's application. Alternatively, the City Representative may make a determination of the validity of the request based solely on the information provided by Contractor through the application process. Contractor shall pay all reasonable costs incurred by City, including the costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the reasonableness of the Contractor's requested Rate adjustment.

In the event of such an application for extraordinary Per-Ton Rate adjustment, it is understood that City or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of the requested adjustment. The City shall grant the Contractor's extraordinary rate adjustment request provided that such request is reasonably supported by Contractor's application.

If the extraordinary Per-Ton Rate adjustment review warrants an increase in the applicable Per-Ton Rate(s) outlined above to compensate Contractor, the adjustment shall cover only Allowable Costs (defined below) and such Allowable Costs shall be in the proportion of the total volume that Contractor reasonably projects that City will deliver to the Facility for the Term of this Agreement compared with all other customers of the Facility.

"Allowable Costs" shall include: incremental operating, maintenance, monitoring, reporting, and capital costs, including, but not limited to, the costs of making improvements (including, but not limited to future Facility cells) or modifications, at the Facility necessary to perform under this

Agreement, but only to the extent brought about by Change in Law or Change in Scope that are not otherwise reflected in the calculations used to adjust the Per-Ton Rate (e.g., Contractor Component and Governmental Fee Components pursuant to Section 5.03). Contractor shall Notify City in writing sixty (60) Days in advance of any request for increase in the Per-Ton Rate pursuant to this Section.

The City shall have a ninety (90) Day review period following receipt of Contractor’s application for the requested Per-Ton Rate adjustment. During this period, City may request, and Contractor shall provide, supporting documentation that justifies the increase. Should the Parties be in dispute over the adjusted Per-Ton Rate at the end of the ninety (90) Day period, no adjustment shall be made, and the dispute shall be subject to Section 8.17 of this Agreement. Upon resolution of the dispute and assuming both Parties agree on the adjustment of the Per-Ton Rate, Contractor shall be entitled to the adjusted Per-Ton Rate retroactively to latter of the end of the sixty (60) Day advanced Notice period or the effective date of the increased Allowable Costs.

5.05 PAYMENT OF GOVERNMENT FEES

Contractor will timely pay any and all Government Fees to the appropriate federal, State, regional, or local governmental entities that levied the Government Fees and will promptly provide City with proof of payments upon City direction.

5.06 PAYMENT OF TAXES

Contractor will timely pay all Government Fees, assessments, or taxes incurred as a result of the Contractor’s provision of Services, including estimated taxes. Contractor will promptly provide City with proof of payments upon City direction.

**ARTICLE 6.
INDEMNITY AND INSURANCE**

6.01 INDEMNIFICATION

A. General. Contractor shall indemnify, defend with counsel reasonably acceptable to City, and hold harmless (to the full extent permitted by law) City and its officers, elected and appointed officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including reasonable attorneys’ and expert witness fees and costs) (collectively, “Damages”) of every nature arising out of or in connection with Contractor’s performance under this Agreement, or its failure to comply with any of its obligations contained in this Agreement, except to the extent such loss or damage was caused by the gross negligence or willful misconduct of City. The provisions of this Section shall survive the expiration or termination of this Agreement and shall not be construed as a waiver of City’s legal or equitable rights as defined herein and permitted under Applicable Law.

B. Excluded Waste Indemnification. Contractor acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

Contractor shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City, officers, employees, volunteers, and agents (collectively, “indemnitees”—but expressly excluding from this definition the City’s Collection Contractor and all other transporters or generators of Excluded Waste) from and against all claims, damages (including, but not limited to, special, consequential, natural resources, and punitive damages), injuries, costs, (including, without limitation, any and all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, without limitation, reasonable attorneys’ and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, “Damages”¹) of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the handling of Excluded Waste under this Agreement, including, without limitation, damages arising from or attributable to any operations, repair, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action).

The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability.

This provision is in addition to all other provisions in this Agreement and shall survive the expiration or earlier termination of this Agreement. Nothing in this paragraph shall prevent City or the Contractor from seeking indemnification or contribution from Persons or entities other than indemnitees, for any liabilities incurred by Contractor, City or the indemnitees.

In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, Contractor shall first obtain City’s approval of any proposed investigatory or remedial action. Should Contractor fail at any time to promptly take such action, City may undertake such action at Contractor’s sole cost and expense, and Contractor shall reimburse City for all such expenses within thirty (30) calendar days of being billed for those expenses. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

C. Regulatory Indemnification. Contractor’s duty to defend and indemnify herein includes all fines and/or penalties imposed by any regulatory agency, if the requirements of Applicable Law, including but not limited to AB 939 (1989), SB 341 (2011), AB 1826 (2014), SB 1383 (2016), SB 343 (2021), SB 54 (2022), AB 1201 (2022), and the Advanced Clean Fleets Rule are not met by City with respect to the services provided under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or City from submitting reports to regulators in a timely manner.

Notwithstanding any other provision in this Agreement, Contractor's obligations in this subsection C with respect to such Applicable Law shall be subject to the provisions of Section 40059.1 of the Public Resources Code, and Contractor shall not be liable for any indemnity obligations or penalties under this Agreement in respect of any such requirements except to the extent that indemnity obligations by Contractor are enforceable under said Section.

D. CalPERS Eligibility Indemnification. Contractor's employees, agents, or Subcontractors providing service under this Agreement shall not: (i) qualify for any compensation and benefit under the California Public Employees Retirement System ("CalPERS"); (ii) be entitled to any benefits under CalPERS; (iii) enroll in CalPERS as an employee of City; (iv) receive any employer contributions paid by City for CalPERS benefits; or, (v) be entitled to any other CalPERS-related benefit that would accrue to a City employee. Contractor's employees, agents, or Subcontractors hereby waive any claims to benefits or compensation described in this Section 9.1. This Section 9.1 applies to Contractor notwithstanding any other agency, State or Federal policy, rule, regulation, law, or ordinance to the contrary.

If Contractor's employees, agents, or Subcontractors providing services under this Agreement claim, or are determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employer and employee contributions for CalPERS benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions which would otherwise be the responsibility of the City.

Contractor's Compensation under this Agreement shall be the full and complete compensation to which Contractor and Contractor's officers, employees, agents, and Subcontractors are entitled for performance of any work under this Agreement. Neither Contractor nor Contractor's officers, employees, agents, and Subcontractors are entitled to any salary or wages, or retirement, health, leave, or other fringe benefits applicable to City employees. The City will not make any Federal or State tax withholdings on behalf of Contractor. The City shall not be required to pay any workers' compensation insurance on behalf of Contractor.

Contractor agrees to defend and indemnify the City for any obligation, claim, suit, or demand for tax, retirement contribution including any contribution to CalPERS, social security, salary or wages, overtime payment, or workers' compensation payment which the City may be required to make on behalf of: (i) Contractor; (ii) any employee of Contractor; or, (iii) any employee of Contractor construed to be an employee of the City, for work performed under this Agreement.

E. Hazardous Substance Indemnification. Contractor shall indemnify, defend with counsel acceptable to the City, protect, and hold harmless the City, its officers, employees, volunteers, and agents (collectively, "indemnitees" —but expressly excluding from this definition the City's Collection Contractor and all other transporters or generators of Excluded Waste) from and against all claims, damages (including, but not limited to, special, consequential, natural resources, and punitive damages), injuries, costs, (including, without limitation, any and all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, without limitation, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or

attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the handling of any Hazardous Substance or Hazardous Waste under this Agreement, including, without limitation, damages arising from or attributable to any operations, repair, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action). This indemnity afforded indemnitees shall only be limited to exclude coverage for intentional wrongful acts and negligence of indemnitees, and as provided below. Contractor shall be required to indemnify the City for the costs for any claims arising from the Disposal of Solid Waste at the Disposal site, including, but not limited to, claims arising under CERCLA. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability.

This provision is in addition to all other provisions in this Agreement and shall survive the expiration or earlier termination of this Agreement.

F. Unpermitted Waste Defense and Indemnification. Contractor shall defend, indemnify, and hold harmless at its sole cost and expense with counsel reasonably acceptable to the City, the City (including the Persons described in the definition of "City" in Exhibit A) in any actions that assert or allege Liabilities paid, incurred, or suffered by, imposed upon or asserted against, the City that result or are claimed to have resulted directly or indirectly from the presence, Disposal, escape, migration, leakage, spillage, discharge, release, or emission of Unpermitted Waste or petroleum to, in, on, at, or under the Landfill, whether:

- (1) in one (1) or more instance,
- (2) threatened or transpired, or
- (3) Contractor is negligent or otherwise culpable; or
- (4) those Liabilities are litigated, settled, or reduced to judgment.

For purposes of this Indemnity, "**Liabilities**" includes Liabilities arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, Closure, Post-Closure, or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

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

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

6.02 INSURANCE

A. Policies

- 1028 1. Types and Amounts; Deductibles and Self-Insured Retentions. As of the Effective Date,
1029 Contractor will secure and maintain, and enter into agreements to cause its Subcontractors,
1030 if any, to secure and maintain or provide that Subcontractors are insureds under Contractor's
1031 policies, in full force and effect the types and amounts of insurance coverage, together with
1032 specified blanket-form endorsements, listed in Exhibit C, Insurance, attached hereto and
1033 incorporated herein, or required by Applicable Law, whichever is greater, in standard industry
1034 forms acceptable to City.
- 1035 If any third Person makes a claim against Contractor or any Subcontractors exceeding the
1036 amount of any deductibles, self-insured reserves, letters of credit, or bonds guaranteeing
1037 payment thereof, Contractor will promptly Notify the insurer, bond surety, or letter of credit
1038 provider and City thereof.
- 1039 B. **Insurers.** Contractor will procure insurance from insurers approved by City Risk Manager, an
1040 approved company in California and authorized to do business there, having not less than size
1041 category VIII and a rating of A or better ("A-VIII") by A.M. Best Company, Inc.
- 1042 C. **Notices to City of Cancellation, etc.** General and Auto Liability policies must bear blanket-form
1043 endorsements in substantially the form provided in Exhibit C providing that coverage will not be
1044 canceled or not renewed, or otherwise materially changed except after prior written Notice, to City
1045 thirty (30) Days in advance, or if the reason for cancellation is non-payment of premiums, ten (10)
1046 Days in advance.
- 1047 D. **Evidence of Coverage.** As of the Effective Date, Contractor will provide ACORD 25 certificates of
1048 insurance supplemented with the blanket-form endorsements required under this Agreement,
1049 signed by an authorized representative of the insurance company. At that time and thereafter
1050 simultaneously with renewal of the policies, Contractor will file with City an ACORD 25 certificate of
1051 insurance and blanket-form endorsements, in form and substance satisfactory to City (including
1052 type and amount of coverage, effective dates and expiration dates) signed by an authorized
1053 representative of the insurer(s), evidencing that the coverage is in effect. If Contractor fails to
1054 procure and maintain any insurance required under this Agreement, City may take out and maintain
1055 that insurance at Contractor's expense and Contractor will pay costs to City therefore. This remedy
1056 is in addition to City's right to declare an Event of Default and terminate the Agreement. Upon
1057 request of City, the Contractor will cause its Subcontractors (if any) to provide proper evidence of
1058 insurance coverage required under this Agreement, satisfactory to City. Contractor will maintain
1059 procedures to assure City it is monitoring all insurance requirements under this Agreement,
1060 including those of its Subcontractors.
- 1061 E. **Contractor Compliance.** Contractor will comply with all requirements of policies and the insurers.
1062 Carrying insurance will not relieve Contractor from any obligations under this Agreement. Nothing
1063 in this Agreement may be construed as limiting in any way the extent to which the Contractor may
1064 be held responsible for payments of damages to Persons or property resulting from Contractor's or
1065 any Subcontractors' performance of Services.

1066 **ARTICLE 7.**
1067 **DEFAULT BY CONTRACTOR AND TERMINATION**

1068 **7.01 EVENTS OF DEFAULT**

1069 All provisions of the Agreement are considered material. Each of the following shall constitute an event
1070 of default.

1071 **A. Fraud or Deceit.** Contractor, its Affiliates, any Subcontractor, or any other Person employed by or
1072 with an ownership interest in Contractor, its Affiliates, or any Subcontractor practices, or attempts
1073 to practice, any fraud or deceit upon the City.

1074 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or
1075 upon entry of an order for relief in favor of Contractor in a bankruptcy proceeding.

1076 **C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and effect the
1077 Workers' Compensation, liability, or any other insurance coverage as required by this Agreement.

1078 **D. Violations of Regulation.** Contractor receives any notices, citations, orders or filings of any
1079 regulatory body having authority over Contractor relative to this Agreement, provided that
1080 Contractor may contest any such orders or filings by appropriate proceedings conducted in good
1081 faith, in which case no breach or default of this Agreement shall be deemed to have occurred.

1082 **E. Violations of Applicable Law.** Contractor has been found by a court of proper jurisdiction to be in
1083 violation of Applicable Law (other than criminal law) directly or indirectly related to the
1084 performance of this Agreement, provided that Contractor may contest any such allegation or finding
1085 by appropriate proceedings conducted in good faith, in which case no breach or default of this
1086 Agreement shall be deemed to have occurred.

1087 **F. Failure to Perform Direct Services.**

1088 **1. General.** Contractor fails to Accept Delivered Materials at the Approved Facility(ies) or ceases
1089 to provide Disposal Services as required under this Agreement for a period of two (2)
1090 consecutive calendar days or more, for any reason within the control of Contractor.

1091 **2. Suspension or Termination of Service.** There is any termination or suspension of the
1092 transaction of business by Contractor related to this Agreement lasting more than two (2)
1093 calendar days.

1094 **3. Labor Unrest.** Pursuant to Section 7.07, Contractor fails to perform services as required under
1095 this Agreement for any period of time due to labor unrest, including but not limited to strike,
1096 work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by
1097 the Contractor's employees or directed at the Contractor or an Affiliate; or any labor action
1098 initiated by Contractor, including but not limited to a lock-out.

1099 **4. Facility Disruption.** The Contractor is unable to use any of the Approved or Alternative
1100 Facilities under this Agreement for more than thirty (30) Days in a consecutive twelve (12)
1101 month period.

- 1102 **G. Failure to Use Approved Facilities.** Contractor fails to deliver City Delivered Materials to the
1103 appropriate Approved Disposal Facility for each material type.
- 1104 **H. Failure to Pay or Report.** Contractor fails to make any payments to City required under this
1105 Agreement including payment of City Reimbursements or Liquidated Damages, or Contractor fails
1106 to pay Approved Facility operators as provided under this Agreement, and/or refuses to provide
1107 City with required information, reports, and/or records in a timely manner as provided for in the
1108 Agreement.
- 1109 **I. Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions,
1110 or requirements of this Agreement, or Applicable Law and which is not corrected or remedied within
1111 the time set in the written notice of the violation or, if Contractor cannot reasonably correct or
1112 remedy the breach or violation within the time set forth in such notice, if Contractor should fail to
1113 commence to correct or remedy such violation within the time set forth in such notice and diligently
1114 effect such correction or remedy thereafter.
- 1115 **J. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City by
1116 Contractor in connection with or as an inducement to entering into this Agreement, or any future
1117 amendment to this Agreement, which proves to be false or misleading in any material respect as of
1118 the time such representation or disclosure is made, whether or not any such representation or
1119 disclosure appears as part of this Agreement; and, any Contractor-provided report containing a
1120 misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly
1121 defined by the Agreement, excepting non-numerical typographical and grammatical errors.
- 1122 **K. Seizure or Attachment.** There is a seizure of, attachment of, or levy on some or all of Contractor's
1123 operating equipment, including without limitation its equipment, maintenance, or office facilities,
1124 or Approved Facility(ies), owned/operated by Contractor, by Affiliates, and/or by Subcontractors,
1125 or any part thereof.
- 1126 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of Criminal
1127 Activity related directly or indirectly to performance of this Agreement or any other agreement held
1128 with the City.
- 1129 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the express
1130 written approval of the City unless the assignment is permitted without City approval pursuant to
1131 Section 8.05.
- 1132 **N. Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under
1133 this Agreement and fails to cure such breach after written notice by the City as set forth below.
- 1134 City shall provide Contractor written notice of default within seven (7) calendar days of the City's
1135 first knowledge of the Contractor's default.

1136 **7.02 RIGHT TO TERMINATE UPON EVENT OF DEFAULT**

1137 Contractor shall be given three (3) Business Days from written notification by City to cure any default
1138 which, in the City Representative's sole opinion, creates a potential public health or safety threat.

Contractor shall be given three (3) Business Days from written notification by City to cure any default arising under subsections C, E, F.1, F.2, I, J, and K in Section 7.01 provided, however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period or for events of default arising under subsections F.3 and F.4 in Section 7.01.

Contractor shall be given thirty (30) calendar days from written notification by City to cure any other default (which is not required to be cured within three (3) Business Days); provided, however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period.

7.03 CITY'S REMEDIES IN THE EVENT OF DEFAULT

Upon Contractor's default, City has the following remedies:

A. Waiver of Default. City may waive any event of default or may waive Contractor's requirement to cure a default event if City determines that such waiver would be in the best interest of the City. City's waiver of an event of default is not a waiver of future events of default that may have the same or similar conditions.

B. Suspension of Contractor's Obligation. City may suspend Contractor's performance of its obligations if Contractor fails to cure default in the time frame specified in Section 7.02 until such time the Contractor can provide assurance of performance in accordance with Section 7.08.

C. Liquidated Damages. City may assess Liquidated Damages for Contractor's failure to meet specific performance standards pursuant to Section 7.06 and Exhibit E.

D. Termination. In the event that Contractor should default, and subject to the right of the Contractor to cure, in the performance of any provisions of this Agreement, and the default is not cured for any default within three (3) Business Days if the default creates a potential public health or safety threat or arises under Section 7.01.C., E, F.1, F.2, I, J, or K, or otherwise thirty (30) calendar days after receipt of written notice of default from the City, then the City may, at its option, terminate this Agreement. In the event City decides to terminate this Agreement, the City shall serve upon Contractor twenty (20) calendar days written notice of its intention to terminate. In the event City exercises its right to terminate this Agreement, the City may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

Contractor shall not be entitled to any further revenues from Disposal operations authorized hereunder from and after the date of termination.

E. Other Available Remedies. City's election of one (1) or more remedies described herein shall not limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

7.04 POSSESSION OF RECORDS UPON TERMINATION

In the event of termination for an event of default, the Contractor shall furnish City Representative with immediate access to all of its business records, including without limitation, proprietary Contractor computer systems, related to its services under this Agreement.

7.05 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

City's rights to terminate the Agreement under Section 7.02 and to take possession of the Contractor's records under Section 7.04 are not exclusive, and City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service; the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief (including but not limited to specific performance).

7.06 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

A. General. The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches and other remedies are, at best, a means of future correction and not remedies that make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Disposal services are of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established in Exhibit E of this Agreement and the Liquidated Damage amounts therein represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement,

1214 including the relationship of the sums to the range of harm to City that reasonably could be
1215 anticipated and the anticipation that proof of actual damages would be costly or impractical.

1216 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
1217 Exhibit E, Performance Standards and Liquidated Damages.

1218 Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The
1219 notice will include a brief description of the incident(s) and non-performance. City may review (and
1220 make copies at its own expense) all information in the possession of Contractor relating to
1221 incident(s) and/or non-performance. City may, within thirty (30) Business Days after issuing the
1222 notice, request a meeting with Contractor. City may present evidence of non-performance in writing
1223 and through testimony of its employees and others relevant to the incident(s) and non-
1224 performance. City Representative shall provide Contractor with a written explanation of their
1225 determination on each incident(s) and non-performance prior to authorizing the assessment of and
1226 non-performance prior to authorizing the assessment of Liquidated Damages under this Section
1227 7.06. Within ten (10) Business Days of receipt of such notice of intention to assess Liquidated
1228 Damages, or within forty (40) Business Days if the intended assessment results in a material impact,
1229 as defined in Section 8.10, no Liquidated Damages may be imposed on Contractor until Contractor
1230 has been given a reasonable opportunity to respond to allegations and to meet and confer with the
1231 City Representative. The City Representative's decision shall be final subject to Contractor's ability
1232 to pursue judicial relief in accordance with Section 8.17.

1233 **C. Amount.** City may assess Liquidated Damages for each Working Day or event, as appropriate, that
1234 Contractor is determined to be liable in accordance with this Agreement in the amounts specified
1235 in Exhibit E. Liquidated Damages shall be subject to annual adjustment on each July 1 equal to the
1236 Annual Percentage Change in the CPI-U as defined in Article 5.

1237 **D. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by City within ten (10)
1238 Business Days of the date the Liquidated Damages are assessed. If they are not paid within the ten
1239 (10) Business Day period, City may proceed against the performance bond required by the
1240 Agreement, order the termination of the rights or granted by this Agreement, or all of the above.

1241 **7.07 EXCUSE FROM PERFORMANCE**

1242 **A. General.** Notwithstanding any other provision in this Agreement, each Party shall be excused from
1243 performing its respective obligations hereunder and from any obligation to pay Liquidated Damages
1244 if it is prevented from so performing by reason of floods, earthquakes, other acts of nature, war,
1245 civil insurrection, riots, acts of any local, State, or Federal government (including judicial action),
1246 and other similar catastrophic events which are beyond the control of and not the fault of the Party
1247 claiming excuse from performance hereunder (each a "Force Majeure Event").

1248 **B. Third Party Labor Unrest.** Performance is excused to the limited extent that: In the case of labor
1249 unrest or job action directed at a third party over whom Contractor has no control, the inability of
1250 Contractor to provide services in accordance with this Agreement due to the unwillingness or failure
1251 of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while
1252 providing such services; or, (ii) make reasonable accommodations with respect to point of delivery,
1253 time of Acceptance, or other operating circumstances to minimize any confrontation with pickets
1254 or the number of Persons necessary to perform Disposal services. The foregoing excuse shall be

conditioned on Contractor's cooperation in performing Disposal services at different times and in different locations (as provided for in Section 4.12). If the Collection Contractor is unable to use any of the Approved or Alternative Facilities under this Agreement for more than thirty (30) Days in a consecutive twelve (12) month period for any reason, including, but not limited to third-party labor unrest, and such inability prevents Contractor from performing its obligations under this Agreement through the use of Alternative Facilities as provided for in Section 4.12, such circumstance shall be considered an event of default in accordance with Section 7.01.F.

C. Contractor Labor Unrest. In the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor or an Affiliate, the Contractor shall not be excused from performance and such event shall not be considered a Force Majeure event under this Section. Contractor may direct Delivered Materials to an Alternative Facility as provided in Section 4.12. In such case, Contractor shall continue to provide consistent, reliable, and uninterrupted levels of performance during the pendency thereof. Any labor action initiated by Contractor, including but not limited to a lock-out, shall not be grounds for any excuse from performance and Contractor shall perform all obligations under this Agreement during the pendency of such Contractor-initiated labor action. In the event that any labor unrest related to Contractor's operations or facility(ies) causes those facilities to be partially or completely inaccessible by the Collection Contractor and thereby creates increased costs for the City and/or Collection Contractor related to delivery to Alternative Facilities, Contractor shall be liable for any and all such costs. In the event of such increased costs, City shall make a determination of the allowable costs under the Collection Agreement with the City as well as any direct or indirect costs incurred by the City during the pendency of such disruption. Contractor shall pay to City or, at City's direction, Collection Contractor the amount of such increased costs as determined by the City within thirty (30) calendar days of receiving the City's determination.

D. Notice. The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section. If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any damages sustained thereby.

E. Default and Termination. The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more Force Majeure Events shall not constitute a default by Contractor under this Agreement, except as otherwise specified in Section 7.01.F.4. 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) calendar days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) Business Days' notice to Contractor provided Contractor does not fully resume performance of its obligations hereunder within such ten (10) Business Days, in which case the provisions of Section 7.04 shall apply.

7.08 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those members of the public residing or doing business within City who will be adversely affected by interrupted waste management service, that there be no material interruption in services provided under this Agreement.

If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing, or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional, or local agency for violation of an Applicable Law, and City believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, City may, at its sole 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 believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Section 7.01.

7.09 COOPERATION AND DISPUTES BETWEEN CONTRACTORS

Contractor shall fully comply with its obligations to provide services under this Agreement including Acceptance of Delivered Materials by the Collection Contractor in a manner that meets the requirements of this Agreement and Applicable Law. Contractor shall also fully comply with its obligations to deliver Delivered Materials to the approved Facility(ies). In the event of disputes between the Collection Contractor and the Contractor, either party may provide written notice of the dispute to the City and any other party involved in the dispute. If Contractor initiates a written notice of dispute, such notice shall include a summary of the dispute, the section(s) of the Agreement or agreements the asserted dispute arises from, an estimate of the financial implications to Contractor asserted, and a proposed resolution. Contractor agrees to timely meet and confer directly with the Collection Contractor or Approved Facility(ies) in good faith to resolve the dispute for thirty (30) calendar days following the initial notice to the City and the other involved party. A longer period may be established if mutually agreed upon between the parties. If at the end of the thirty (30) day period, Contractor and the Collection Contractor or Contractor and Approved Facility(ies) have met and conferred in good faith but have not resolved the dispute, either party to the dispute may notify the City and the City shall facilitate the dispute resolution procedure in accordance with Section 8.17 as well as any applicable provisions of the involved party's contract with the City. In the event of a dispute, Contractor shall continue performance of Contractor's obligations under this Agreement and shall attempt to continue to resolve that dispute in a cooperative manner, including but not limited to negotiating in good faith.

7.10 ACTS NECESSARY TO PERFORM SERVICE

The City's failure to specifically require an act necessary to perform any of the services required under this Agreement and comply with Applicable Law does not relieve Contractor of its obligation to perform such act, or the service(s) dependent on such act, or to comply with Applicable Law at all times throughout the Term of this Agreement. Further, any suggestions or recommendations, whether verbal or in writing, made by the City to Contractor shall not be relied upon by Contractor to the extent such suggestions or recommendations may compromise or inhibit Contractor's performance under this Agreement or ability to comply with Applicable Law. Contractor assumes all liability and responsibility for actions and inactions to perform services under this Agreement in accordance with Applicable Law and expressly waives any claims against the City or use of City's actions or inactions as a legal defense for Contractor's failure to perform or comply with Applicable Law in the performance of this Agreement.

In the event of any ambiguity as to the interpretation of the Agreement or the requirements of Contractor under this Agreement, Contractor shall be responsible for seeking clarity and approval from the City prior

to engaging in actions to resolve ambiguities not otherwise explicitly stated in the Agreement. To the extent that the Contractor engages or fails to engage in performing an act in violation of this Agreement or Applicable Law and fails to obtain explicit written permission from the City in advance, the Contractor shall be solely liable and the City shall not be responsible for any payment, compensation adjustments, or administrative support arising from Contractor's actions or inactions. To the extent the Contractor's non-compliance results in increased costs to the City, City shall notify the Contractor, identifying the dollar value of such cost impacts, and Contractor shall, within thirty (30) calendar days of written notice from the City, remit such costs to the City in the form of a direct payment sent or delivered to the City or paid to the City via an electronic payment method. The City retains the right to pursue any remedies specified in this Article in the event of non-compliance, at the City Representative's sole discretion.

ARTICLE 8. OTHER AGREEMENTS OF THE PARTIES

8.01 RELATIONSHIP OF PARTIES

The Parties intend that Contractor will 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 or joint venturer with City. No employee or agent of Contractor will be or will be deemed to be an employee or agent of City. Contractor will have the exclusive control over the manner and means of conducting Services, and all Persons performing those Services, except for City's right to change the scope of Services in accordance with Section 4.20. Contractor is solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents, none of whom is deemed an officer, employee, Subcontractor, or agent of City. Neither Contractor nor its officers, employees, Subcontractors, and agents will obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees, and Contractor expressly waives any claim it may have or acquire to those benefits.

8.02 COMPLIANCE WITH LAW

A. **Compliance.** Contractor will perform, and will cause any contractors or Subcontractors to perform, all Services in accordance and compliance with Applicable Law, whether or not referenced specifically in the text of this Agreement and regardless of whether specified Service obligations may be stated less stringently than Applicable Law. If any provision of this Agreement is more stringent than Applicable Law, Contractor must comply with that provision.

The Contractor acknowledges that City, by this Agreement, has stated necessary and reasonable rules and regulations regarding aspects of Solid Waste handling Services covered by this Agreement. Contractor agrees to comply with any and all of those rules and regulations, subject to clause (vi) of the definition of "Uncontrollable Circumstances" in Section 8.12 and subject to possible adjustments in the Per-Ton Rates for Uncontrollable Circumstances, including Changes in Law.

B. **Referenced Provisions.** Reference in this Agreement, including Exhibit A, to particular provisions or requirements of Applicable Law will not be construed to limit Contractor's obligation to comply with all provisions of Applicable Law. Those references are deemed to include reference to implementing rules and regulations. The references are intended to facilitate Contractor's satisfaction of its performance obligations and City's administration and specific enforcement of this Agreement, and may not be construed to imply lack of obligation to comply with other provisions or requirements

of Applicable Law not referred to or cited in this Agreement. If any Applicable Law specifically referenced or cited in this Agreement is modified, amended, or repealed, that reference or citation will be deemed to refer to that amendment or modification, or to any re-codified or substituted Applicable Law.

C. **Permits.** Contractor will obtain and maintain all Permits in accordance with Section 4.02.

D. **Fines and Penalties.** Contractor is solely responsible for timely payment of any and all fines and penalties imposed on Contractor related directly or indirectly to the Services provided under the Agreement. Contractor will not seek reimbursement from City, Collection Contractor, residents, or businesses for any such fines and penalties.

8.03 GOVERNING LAW AND VENUE

This Agreement will be governed by, construed and enforced in accordance with the laws of the State of California, without giving effect to the State's conflict of laws rules. Venue will be in the Santa Clara County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure section 394, to file a motion to transfer any action arising from or relating to this Agreement to a venue outside of the County.

8.04 FURTHER ASSURANCES

Contractor will promptly execute and deliver any instruments and perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

8.05 ASSIGNMENT

A. **Assignment by Contractor.**

1. Permitted Assignments. Subject to the terms and conditions of this Section 8.05, Contractor shall have the right to Assign this Agreement to any other company that is owned and controlled by International Disposal Corporation of California , provided that, (i) such company is qualified to do business in California, and assumes in writing all of Contractor's obligations under this Agreement prior to or concurrently with such Assignment, and (ii) the Guaranty Agreement remains in full force and effect. Contractor shall not otherwise Assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person.

2. Assignment Defined. For the purpose of this Section when used in reference to Contractor, "Assign" and "Assignment" shall be as defined in Exhibit A.

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the Services specified herein based on (i) effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations, and best management practices, and (ii) Contractor's obligations to City under this Agreement. The City has relied on each of these factors, among others, in choosing Contractor to perform the Services to be rendered by Contractor under this Agreement.

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

a. Contractor shall undertake to pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment.

b. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

c. 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 sale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State, or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal, or local Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State, and local laws regulating the collection and Disposal of Solid Waste including Unpermitted Waste; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner.

d. Under no circumstances shall City be obligated to consider any proposed Assignment by City if Contractor is in default at any time during the period of consideration.

8.06 BINDING ON SUCCESSORS

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

8.07 PARTIES IN INTEREST

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors, and permitted assigns. There are no intended third-party beneficiaries.

8.08 SERVICES PERFORMED AT CONTRACTOR'S SOLE EXPENSE

Contractor will perform Services solely for the Contractor Compensation expressly provided for herein.

8.09 NOTICES AND COMMUNICATION

All Notices, requests, and approvals must be sent in writing to the Persons below, which will be considered effective on: the date of personal delivery; the date of delivery confirmed by a reputable overnight delivery service; the fifth (5th) Day after deposit in the United States Mail, postage prepaid, registered or certified; or the next Working Day following electronic submission: If to City:

City of Cupertino
Attention: City Manager
10300 Torre Avenue
Cupertino, California, 95014

CC: Director of Public Works

If to Contractor:

General Manager
Attn. Enrique Perez
International Disposal Corp. of California
Newby Island Landfill
1601 Dixon Landing Road
Milpitas, CA 95035

Parties may change their address upon Notice to the other Party.

8.10 REPRESENTATIVES OF THE PARTIES

References in this Agreement to "City" shall mean the City of Cupertino and all actions to be taken by the City except as provided below. City may delegate, in writing, authority to the City Representative and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Contractor shall, by the Effective Date, designate in writing the Contractor's Contract Manager. The Contractor's Contract Manager shall be the representative of Contractor in all matters related to the Agreement and Contractor shall inform the City in writing of such designation and of any limitations upon their authority to bind Contractor. The City may rely upon action taken by Contractor's Contract Manager as actions of Contractor unless they are outside the scope of the authority delegated to them by Contractor as communicated to the City.

In the event of dispute between the City Representative and the Contractor regarding the interpretation of or the performance of services under this Agreement, the City Representative's determination shall be conclusive except where such determination results in a material impact to the Contractor's revenue and/or cost of operations. In the event of a dispute between the City Representative and the Contractor results in such material impact to the Contractor, the provisions of Section 8.17 shall apply. For the purposes of this Section 8.10, "material impact" is an amount equal to or greater than fifty thousand dollars (\$50,000) per year.

8.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE

In the performance of all work and Services under this Agreement, Contractor will not discriminate against any Person on the basis of that Person's race, color, religion (including religious dress and grooming practices), sex/gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), sex stereotype, gender identity/gender expression/transgender (including whether or not the Person is transitioning or has transitioned), sexual orientation, national origin, ancestry, age (40 and above), physical or mental disability, medical condition, genetic information/characteristics, marital status/registered domestic partner status, military or veteran status, or any other basis protected by federal, State, or local law or ordinance or regulation. Contractor will not discriminate based on the perception that anyone has any of these characteristics or is associated with a Person who has or is perceived as having any of these characteristics. Contractor will comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

8.12 FORCE MAJEURE

A. **Performance Excused.** Neither Party is deemed in breach or default of its duties, obligations (other than a payment obligation at the time due and owing), responsibilities, or commitments under this Agreement to the extent that the breach or default is due to an Uncontrollable Circumstance, *provided* the Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.

1. Uncontrollable Circumstance(s) means any act, event, or condition, whether affecting (i) Services or (ii) either Party, that is beyond the reasonable control of the Party relying thereon and not the result of willful or negligent action or inaction of that Party (other than the contesting in good faith or the failure in good faith to contest that action or inaction), which materially and adversely affects the ability of either Party to perform any obligation under this Agreement, comprised of:

a. an act of nature, including landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated weather conditions for the geographic area of City), explosion, sabotage, terrorism, acts of a public enemy, war, blockade or insurrection, riot, or civil disturbance.

b. the failure of any appropriate federal, State, or local public agency, or private utility having operational jurisdiction in the area in which the Facility is located to provide and maintain utilities, services, water, sewer, or power transmission lines thereto. In addition thereto, any appropriate federal, State, or local public agency deciding that no permits or approvals that are required for continued operation of the facility will be issued to the Contractor, despite the Contractor's best effort to obtain said permits.

c. a Change in Law other than a Change in Law excluded in item 2 below.

d. strikes, work stoppages, or other labor disputes or disturbances of Persons other than Contractor or any Affiliates performing Services.

2. Uncontrollable Circumstances *excludes*, without limitation:

a. either Party's own breach of its obligations under this Agreement.

- 1535 b. adverse changes in the financial condition of either Party or any Change in Law with
1536 respect to any taxes based on or measured by net income, or any unincorporated
1537 business, payroll, franchise, or employment taxes.
- 1538 c. strikes, work stoppages, or other labor disputes or disturbances of Contractor or any
1539 Affiliates performing Services, or Contractor's or Affiliates' inability to hire adequate
1540 numbers of personnel who are competent and skilled in the work to which they are
1541 assigned, or the organization of any Contractor's or any Affiliates' employees under a
1542 collective bargaining agreement.
- 1543 d. the failure of the Contractor to secure patents, licenses, and trademarks, necessary for
1544 Services.
- 1545 e. as to the Contractor, the failure of any Service assets to perform in accordance with any
1546 warranties, unless caused by Uncontrollable Circumstances.
- 1547 f. Changes in Law mandated by State or federal Applicable Law that do not materially
1548 interfere with the ability to perform under the agreement; provided, however any such
1549 Change in Law may still entitle Contractor to an Extraordinary Rate Adjustment if the
1550 requirements of section 5.04 are met.
- 1551 B. **Notice.** The Party experiencing an Uncontrollable Circumstance and relying thereon will give
1552 immediate Notice thereof to the other Party, including describing performance under this
1553 Agreement for which it seeks to be excused; the expected duration of the Uncontrollable
1554 Circumstance; the extent Services may be curtailed; any requests or suggestions to mitigate the
1555 adverse effects of the Uncontrollable Circumstance; or, any consequent adjustment of the Per-Ton
1556 Rates in accordance with Sections 5.03 or 5.04.
- 1557 C. **City's Rights.** Notwithstanding that Contractor's failure to timely and fully provide Services due to
1558 Uncontrollable Circumstances does not constitute an Event of Default, following the continuance
1559 of the failure for twenty (24) hours, City may, in its sole discretion, secure alternative services.
1560 Following the continuance of that failure for thirty (30) Days, City may terminate the Agreement in
1561 accordance with Section 7.02.
- 1562 D. **Use of Alternative Facility.** Contractor shall use an alternative facility in accordance with Section
1563 4.12 if Uncontrollable Circumstances prevent it from using the Facility for all or a portion of City's
1564 Solid Waste. If, as a result of Uncontrollable Circumstances, the Collection Contractor is unable to
1565 deliver all City's Solid Waste at the Facility for one (1) month or more or if City has incurred ten
1566 thousand dollars (\$10,000) or more in additional Transportation costs to arrange for delivery of
1567 City's Solid Waste to an alternative facility, City may, in its sole discretion, suspend or terminate the
1568 Agreement in accordance with Section 7.02, but is not obligated to do so.

1569 **8.13 MAINTENANCE OF RECORDS**

- 1570 A. **Location of Records.** Contractor will maintain Records at the Facility, or at an alternative location
1571 as approved by City.

1572 B. **Contractor's Accounting Records.** In order to effectuate the adjustments to the Per-Ton Rates
1573 contemplated by Sections 5.03 and 5.04, Contractor must maintain accurate, detailed financial and
1574 operational information in a consistent format and to make that information available to City in a
1575 timely fashion. This Section is intended to effectuate these requirements. Contractor will maintain
1576 accurate and complete accounting Records containing the underlying financial and operating data
1577 relating to and showing the basis for computation of all costs associated with providing Services.
1578 The accounting Records will be prepared in accordance with Generally Accepted Accounting
1579 Principles (GAAP), which will be consistently applied. The Parties acknowledge that the Contractor's
1580 accounting procedures may not produce accounting Records that separate the financial and
1581 operational data related to specific Services provided to City, but rather the accounting Records are
1582 consolidated financial and operational data for all Services provided by Contractor or at Contractor's
1583 Facility.

1584 C. **Retention of Records.** Contractor will retain all Records required to be maintained by this
1585 Agreement for a minimum of five (5) years following the end of the Term.

1586 Contractor will retrieve Records specifically directed to be retained in accordance with this
1587 Agreement and make them available to City within ten (10) Days of City's direction.

1588 Contractor will retrieve Records that are material, in the sole opinion of City, to determining the
1589 cost of compliance with changes in Government Fees or regulations; verifying payment of
1590 Government Fees or taxes; determining cost impact related to modifications to scope of Services or
1591 new waste management programs or economic incentives; or determining an adjustment to the
1592 Per-Ton Rate as provided for in this Agreement, and make them available to City within ten (10)
1593 Days of City's direction. If Contractor is not required to maintain those Records under this
1594 Agreement, then City and Contractor will meet and confer in good faith to reach agreement on
1595 reasonable assumptions that are necessary to make determinations at issue.

1596 D. **Delivery of Financial Information.** The Parties agree that Contractor shall submit financial
1597 information that provides sufficient information, in City's opinion, for performance of the review
1598 necessary for determination as to whether an extraordinary adjustment to the Per-Ton Rate(s) is
1599 warranted as provided in Section 5.04.

1600 **8.14 RIGHT TO INSPECT RECORDS**

1601 Upon reasonable Notice and without interference with Contractor's operations, City, its auditors, and
1602 other agents selected by City, will have the right, at its sole cost, during regular business hours as described
1603 in Section 4.06, to conduct on-site inspections of Records and to make and retain copies of any Records
1604 that are reasonably necessary to: (1) determine the cost of compliance with changes in Government Fees
1605 or regulations (in accordance with Section 5.03); (2) verify payment of Government Fees or taxes (in
1606 accordance with Sections 5.05 and 5.06); (3) determine cost of modifications to scope of Services (in
1607 accordance with Section 4.20); (4) determine cost of new programs or economic incentives (in accordance
1608 with Section 4.20); or, (5) verify Contractor's reported aggregate Facility capacity commitments (in
1609 accordance with Section 4.14.C). Contractor will cooperate with City, its auditors, and other agents
1610 selected by City; will make those Records available to City; and, will provide City copies of those Records
1611 (which City may retain) at City's request (with the exception that Contractor is not obligated to provide
1612 copies of agreements with entities related to the review of the aggregate Facility capacity under Item 5 of

this Section). If City so requests, Contractor will make specified personnel available to assist City Representatives in accessing Records.

8.15 COMPILATION OF INFORMATION FOR STATE LAW PURPOSES

Contractor will compile information on amounts of Solid Waste delivered to the Facility and Disposed and other information, which City may reasonably request in order to meet its obligations under the Act and other State regulations.

8.16 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

A. If Contractor:

1. is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing, or other concerted job action that affects Contractor's performance under this Agreement.
2. appears in the judgment of City to be unable to regularly pay its bills as they become due.
3. is the subject of a civil or criminal proceeding brought by a federal, State, regional, or local agency for Violation of an Applicable Law with respect to Services.
4. is, in the City's reasonable opinion, in substantial jeopardy of non-performance under this agreement, or
5. if City disagrees with Contractor's estimate of Facility capacity required to meet Contractor's warranty in accordance with Section 9.01 or of remaining capacity, considering Contractor's Disposal obligations to both City and other Persons, as contained in the Annual Report or otherwise, then following dispute resolution in accordance with Section 8.17 that concludes either of Contractor's estimates is erroneous, at its option and in addition to all other remedies it may have, City may demand from Contractor written assurances of timely and proper performance of this Agreement. Assurances include reduction or elimination of deductibles or self-insured retention with respect to insurance or procuring a bond or letter of credit guarantying or in size sufficient to cover payment of losses and related investigations, claim administration, and defense expenses. If Contractor fails or refuses to provide reasonable assurances by the date required by City no less than fifteen (15) Days after Notice, that failure or refusal will constitute an Event of Default in accordance with Section 7.01.

8.17 DISPUTE RESOLUTION

In the event of dispute between the City and the Contractor regarding the interpretation of or the performance of services under this Agreement which results in a material impact to the Contractor's revenue and/or cost of operations, as defined in Section 8.10, the provisions of this Section 8.17 shall apply. The representatives of the Parties who have primary responsibility for operation and administration of this Agreement will engage in best efforts to resolve the dispute informally. If the Parties are unable to resolve a dispute informally, the Party seeking redress may submit an informal written claim to the City, specifying the nature of the claim, the applicable provisions of the Agreement, a summary narrative of the events leading to the claim, and the remedy sought to resolve the claim. Within 30 days thereafter, the City Representative will arrange to meet and confer in person or by videoconference with Contractor's

General Manager, in a further attempt to informally resolve the claim. If, within 30 days following the initial attempt to meet and confer, the claim is not resolved, the Parties agree to submit the dispute to mediation with an experienced third-party neutral in an effort to resolve the claim by compromise, with each Party to share equally in the mediator's fees and each Party to bear its own legal fees, if any. City and Contractor will mutually agree to a mediator. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each Party requires to represent its interests. The Mediation shall be completed within sixty (60) days of the written requests of a Party unless both Parties agree to extend the timeframe. To the maximum extent permitted by law, all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts, or attorneys, or by the mediator or any employees of the mediation services, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until the end of the sixty (60) Day period referred to above. The Parties will take such action, if any required to effectuate such tolling. Good faith compliance with the informal dispute resolution provisions set forth in this Section is a condition precedent to filing a claim pursuant to the California Government Code or to otherwise initiating legal proceedings with regard to the dispute. The provisions of this Section will survive expiration or termination of the Agreement.

8.18 CRIMINAL ACTIVITY OF CONTRACTOR

- A. **Notice of Convictions or Pleas.** The Contractor will immediately Notify City upon the occurrence of any Convictions or Pleas with respect to Contractor or Contractor's Contract Manager.
- B. **Contractor Cure.** Upon the occurrence of any Convictions or Pleas, the Contractor will :
1. as soon as permitted under Applicable Law, terminate from employment or remove from office the offending Contract Manager who is an individual, or, with respect to a Contract Manager that is the Contractor or an Affiliate, the individual or individuals responsible for the Criminal Activity.
 2. immediately eliminate the participation by that Contract Manager who is an individual or, with respect to a Contract Manager that is the Contractor or Affiliate the individual or individuals responsible for the Criminal Activity, in any position of influence.
 3. replace the offending Contract Manager in their capacity as Contract Manager relative to this Agreement should Contractor be unable to terminate the offending Contract Manager.
 4. not hire or transfer from any Affiliate any employee, officer, or director of an Affiliate who is the subject of any Criminal Activity to a position as Contract Manager and will not allow its Affiliates to do so.
- C. **City Remedies.** The City, in its sole discretion, may terminate the Agreement upon thirty (30) Days' Notice to the Contractor, or may impose those other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, if the following events are continuing at the end of those thirty (30) Days:

1. the Contractor or any Affiliate fails to comply with their obligation under subsection B.

2. the Criminal Activity concerns and is related to this Agreement.

Contractor must be given the opportunity to present to City Representative evidence in mitigation during the preceding thirty (30) Day Notice period and City will consider that evidence.

8.19 COOPERATION AND DISPUTES BETWEEN CONTRACTOR AND COLLECTION CONTRACTOR

Contractor will fully comply with its obligations to provide Service to the Collection Contractor and cooperate to its fullest extent with the Collection Contractor and City. In the event of disputes between Contractor and Collection Contractor, Contractor will attempt to resolve the dispute directly with the Collection Contractor. As a last resort, Contractor may request assistance from City in resolving the dispute. In the event of a dispute, Contractor will continue performance of Contractor's obligations under this Agreement and will attempt to continue to resolve that dispute in a cooperative manner, including, but not limited to, negotiating in good faith.

8.20 GUARANTY OF CONTRACTOR'S PERFORMANCE

The Guarantor has agreed to guaranty Contractor's performance of this Agreement including Contractor's Indemnification obligations hereunder pursuant to a Guaranty Agreement in substantially the form attached as Exhibit D. The Guaranty Agreement is being provided concurrently with Contractor's execution of this Agreement.

ARTICLE 9. REPRESENTATIONS AND WARRANTIES

9.01 MADE BY CONTRACTOR

By acceptance of this Agreement, Contractor represents and warrants that:

A. **Existence and Powers.** Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of California, is qualified to transact business in the State and has full legal right, power, and authority to enter into and perform its obligations under this Agreement.

B. **Due Authorization and Binding Obligation.** Contractor has the authority to enter into and perform its obligations under this Agreement. Contractor has taken all actions required by law or otherwise necessary to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of Contractor have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of Contractor enforceable against Contractor under its terms.

C. **Truth and Accuracy of Information.** The information supplied by Contractor in all written submittals made in connection with Contractor's Services, including Contractor's Proposal and any other supplementary information submitted to the City, and which the City has relied on in awarding and entering this Agreement, is true, accurate, and complete, and does not contain material omissions

- 1726 or misleading statements. Contractor will inform the City Representative of any change in that
1727 information within one (1) week of discovering any untruth or inaccuracy.
- 1728 D. **Contractor's Due Diligence.** Contractor has made an independent investigation and examination
1729 (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to
1730 be performed hereunder. Relying solely upon its own investigation, advice, and counsel, Contractor
1731 has taken such matters into consideration in entering this Agreement to provide Services in
1732 exchange for the Per-Ton Rates provided for under the terms of this Agreement.
- 1733 E. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to
1734 manage, Dispose of Delivered Materials, and Contractor possesses the equipment, facilities, and
1735 employee resources required to perform its obligations under this Agreement.
- 1736 F. **Voluntary Use of Facilities.** Contractor, without constraint and as a free-market business decision
1737 in accepting this Agreement, agrees to use the Facility(ies) it has proposed, or other location
1738 approved by City, for the purposes of Disposing all Delivered Materials and for Disposal of Residue.
1739 Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change
1740 in Law regarding flow control limitations or any definition thereof.
- 1741 G. **No Warranty Regarding Volumes or Material Types.** Contractor recognizes that City expressly
1742 disclaims any warranties, either express or implied, as to the quantity, composition, volume, type,
1743 merchantability or fitness for any particular purpose of Delivered Materials as delivered and
1744 Accepted, and Disposed of by Contractor. Contractor acknowledges that the quantity and
1745 composition of Delivered Materials will vary over the Term.
- 1746 H. **Capacity.** Contractor warrants that as of the Commencement Date it has Disposal capacity at the
1747 Facility(ies) to Dispose of all Delivered Materials delivered to the Facility(ies). Contractor shall
1748 maintain such capacity throughout the Term.
- 1749 I. **Permits and Approvals.** Contractor warrants that all licenses, Permits, qualifications, and approvals
1750 that are legally required or otherwise necessary for Contractor to perform its obligations under this
1751 Agreement shall be secured on or before the Commencement Date of this Agreement; provided,
1752 however, the parties acknowledge that Contractor has yet to secure operating permits from the Bay
1753 Area Air District for the full term of the agreement, which applications are currently pending before
1754 the BAAD . Contractor further warrants that it shall, at its sole cost and expense, use its best efforts
1755 to keep in effect or obtain at all times during the Term all licenses, Permits, and approvals that are
1756 legally required for Contractor to perform its obligations under this Agreement.
- 1757 J. **Covenant Not to Sue.** For the Term of this Agreement, Contractor agrees that neither Contractor,
1758 its officers, employees, agents, Subcontractors, nor its Affiliates, will file any lawsuit against City
1759 that alleges any claims related to, arising out of, or in connection with City's Request for Proposals
1760 process for the Contractor's Services, including the award of any agreement or contract thereunder.
- 1761 K. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance with
1762 and has completed all requirements necessary to comply with the Iran Contracting Act (Public
1763 Contract Code Sec. 2200).
- 1764 L. **No Default.** Contractor shall not be in breach or default under this Agreement or any other
1765 agreement with the City.

M. **Compliance with Laws.**

1. Contractor shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of Contractor or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation, ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of Contractor's employment practices and to all of Contractor's activities as a provider of Services to the City.
2. Contractor shall comply with all federal, State and City laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.01 EXHIBITS

If any provisions contained in the text of Articles 1 through 10 are inconsistent or conflict with any Exhibits to this Agreement, then the provisions of the text will govern.

10.02 INTEGRATION

This Agreement contains the entire agreement between the Parties with respect to the rights and responsibilities of the Parties under this Agreement, including the enforcement and administration of this Agreement. This Agreement, including any subsequent amendments hereto pursuant to Section 10.05, completely and fully supersedes all prior understandings and agreements between the Parties with respect to those rights and responsibilities.

10.03 SECTION HEADINGS

Any captions or headings following the Exhibit, Section, subsection, paragraph, and Article numbers and preceding the operative text of this Agreement is for convenience of reference only and do not control or affect the scope, intent, meaning, construction, interpretation, or effect of this Agreement.

10.04 INTERPRETATION AND CONSTRUCTION

- A. **Drafting.** This Agreement must be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Contractor acknowledges that it determined to participate in the procurement of this Agreement upon its own choice and initiative and, during the course of that procurement, City solicited Contractor's comments, exceptions, and proposals with respect to provisions in the Agreement. The Parties have negotiated this Agreement at arm's length and with advice of their respective attorneys, and no

1800 provision herein is construed against City solely because it prepared this Agreement in its executed
1801 form.

1802 B. **Gender and Plurality.** Words of any gender include correlative words of any other genders. Words
1803 importing the singular number mean and include the plural number, and vice versa, unless the
1804 context demands otherwise.

1805 C. **Font.** Any underlined, italicized, bold-faced, upper captioned, or other font style are for ease of
1806 reading and contract administration only and do not imply relative importance or unimportance of
1807 any provision of this Agreement.

1808 D. **References to Parts.** References to Sections and Articles refer to Sections and Articles of this
1809 Agreement, unless specified otherwise. References to Exhibits refer to Exhibits attached to this
1810 Agreement. Reference to “subsections” refers to the subsection contained in the same Section in
1811 which the reference occurs, unless otherwise provided.

1812 E. **Examples.** Examples are for purpose of illustration only. If any example is ambiguous or is
1813 inconsistent or conflicts with the text that it illustrates, the text governs.

1814 F. **Specifics No Limitation on Generalities.** The mention of any specific duty or Liability imposed upon
1815 the Contractor may not be construed as a limitation or restriction of any general Liability or duty
1816 imposed upon the Contractor by this Agreement or Applicable Law.

1817 **10.05 AMENDMENT**

1818 The Parties may change, modify, supplement, or amend this Agreement only upon written agreement
1819 duly authorized and executed by both Parties. . However, the Plans attached to this agreement as Exhibits
1820 B-1 and B-2 may be modified or edited by the City Representative and Contractor Representative, upon
1821 their mutual agreement and evidenced in writing, unless the Agreement or Applicable Law specifically
1822 requires approval by City Council.

1823 **10.06 SEVERABILITY**

1824 A. If any clause, sentence, provision, subsection, Section, or Article of this Agreement or Exhibit to this
1825 Agreement (an “Agreement Provision”) is ruled unconstitutional, illegal, invalid, non-binding, or
1826 unenforceable by any court of competent jurisdiction, then the Parties will:

1827 1. promptly meet and negotiate a substitute for those Agreement Provision and any related
1828 amendments, deletions or additions to other provisions of this Agreement which together
1829 effect the Parties’ original intent to the greatest extent allowable under Applicable Law.

1830 2. if necessary or desirable to accomplish preceding item (1), apply to the court that made that
1831 ruling for a judicial construction of the substituted Agreement Provision and any
1832 amendments, deletions, or additions to this Agreement. Contractor will pay City half of the
1833 Direct Costs of that application within twenty (20) Days of City’s request if Contractor or a
1834 third Person other than City instituted proceedings resulting in the ruling.

B. If the unconstitutional, illegal, invalid, non-binding, or unenforceable Agreement Provision does not affect any of the remaining provisions of this Agreement, such Agreement Provision or portion thereof will be excluded from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

10.07 COSTS OF ENFORCING AGREEMENT

If City initiates legal action, files a complaint or cross-complaint, or pursues arbitration, appeal, or other proceedings to enforce its rights or a judgment in connection with this Agreement, the prevailing party will be entitled to reasonable attorney fees and costs.

10.08 AUTHORITY

City warrants that the officers listed below have been duly authorized by City to execute this Agreement on behalf of City. Contractor warrants that the individuals listed below have been duly authorized by the Contractor to execute this Agreement on behalf of the Contractor.

10.09 COUNTERPARTS

This Agreement, including dated signatures on amended Exhibits and attachments to those Exhibits, may be executed in counterparts, each of which will be deemed to be an original.

IN WITNESS WHEREOF, the Parties have caused the Agreement to be executed as of the latter of the date written below.

**INTERNATIONAL DISPOSAL CORP.
OF CALIFORNIA, INC.**

CITY OF CUPERTINO

By: _____
(print name)

By: _____
(print name)

Date:

Date:

ATTEST:

ATTEST:

By: _____
Corporate Officer (print name)

By: Kirsten Squarcia
City Clerk

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APPROVED AS TO FORM:

Christopher D. Jensen
Cupertino City Attorney

EXHIBIT A: DEFINITIONS

AB 341 means California Assembly Bill 341, the California Jobs and Recycling Act of 2011 (Chesbro, Chapter 476, Statutes of 2011) as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

AB 939 means California Assembly Bill 939 (Sher, Chapter 1095, Statutes of 1989) the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.), as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

AB 1201 means California Assembly Bill 1201 (Ting, Chapter 504, Statutes of 2021) amending Sections 42356, 42356.1, and 42357 of, and amending the heading of Chapter 5.7 (commencing with Section 42355) of Part 3 of Division 30 of, the California Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

AB 1826 means California Assembly Bill 1826, the Organic Waste Recycling Act of 2014 (Chesbro, Chapter 727, Statutes of 2014) modifying Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

Accept, Accepted, or Acceptance (or any variation thereof) means and refers to Delivered Materials that have been Transported to the Facility or an Alternative Facility and have been received by the Contractor for Disposal, in accordance with Permits and Applicable Law.

Act means the California Integrated Waste Management Act of 1989 set forth in PRC Section 40000, *et seq.*

Advanced Clean Fleets Rule means 13 CCR Sections 2013, 2013.1, 2013.2, 2013.3, 2013.4, 2014, 2014.1, 2014.2, 2014.3, 2015, 2015.1, 2015.2, 2015.3, 2015.4, 2015.5, 2015.6, and 2016 as amended, supplemented, superseded, and replaced from time to time.

Affiliate means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interests or common management shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used herein. An Affiliate shall include a business in which Contractor Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in Contractor, and/or a business which is also Owned, controlled, or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For purposes of determining whether an indirect Ownership interest exists, the constructive Ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and, (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect Ownership under Section 318(a), Ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the Ownership interest represents, whichever is greater.

Agreement means this Agreement between City and Contractor, including all exhibits, schedules, and attachments, which are incorporated in this Agreement by reference, as this Agreement may be amended and supplemented.

Alternative Daily Cover or **ADC** has the same meaning as in Section 20690 of Title 27 of the California Code of Regulations.

Alternative Facility(ies) means the Vasco Road Landfill Facility] located at 4001 North Vasco Road, Livermore CA 94550 and Ox Mountain Landfill Facility located at 12310 San Mateo Rd, Halfmoon Bay, CA 94019 proposed by Contractor and approved by City to Accept and Dispose of City's Delivered Materials should the Facility be unable to Accept Delivered Material as provided in Section 4.12 of the Agreement.

Alternative Intermediate Cover or **AIC** has the same meaning as in Section 20700 of Title 27 of the California Code of Regulations.

Annual Report means the report described in Section 4.14.

Applicable Law means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, Processing, and Disposal of Recyclable Materials, Organic Materials, C&D Debris, disaster debris, and Solid Waste that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. The Parties acknowledge that, as of the date of this Agreement, the Governor has recently signed legislation or taken executive actions including, but not limited to, AB 1201, SB 54, SB 343, and the Advanced Clean Fleets Rule, for which development of regulatory requirements or related rule making is in process as of the Effective Date.

Approved Facility(ies) means the Newby Island Sanitary Landfill Facility located at 1601 Dixon Landing Road, San Jose, CA 95131 proposed by Contractor and approved by City to Accept and Dispose of City's Delivered Materials under this Agreement.

Assign (Assignment) means:

1. selling, exchanging, or otherwise transferring effective control of management of the Contractor (through sale, exchange, or other transfer of outstanding stock or otherwise);
2. issuing new stock or selling, exchanging, or otherwise transferring twenty percent (20%) or more of the then outstanding common stock of the Contractor;
3. any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which results in a change of Ownership or change of control of Contractor;
4. any Assignment by operation of law, including insolvency or bankruptcy, making Assignment for the benefit of creditors, writ of attachment of an execution, being levied against Contractor, appointment of a receiver taking possession of any of Contractor's tangible or intangible property, or transfer occurring in the event of a probate proceeding;
5. any combination of the forgoing (whether or not in related or contemporaneous transactions) which has the effect of any that transfer or change of Ownership or change of control of Contractor.

Calendar Year means a successive period of twelve (12) months commencing on January 1 and ending on December 31.

CALGreen means the California the California Green Building Standards Code, as originally adopted under Cupertino Municipal Code Section 16.58.010, as it may be amended.

CCR means California Code of Regulations.

CERCLA means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9600 *et. Seq.*).

Change in Law means the occurrence of any event or change in Applicable Law as follows:

1. the adoption, promulgation, repeal, modification, amendment, or other change in Applicable Law or change in judicial or administrative interpretation thereof occurring after the Effective Date, *other than* laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board (other than franchise fees levied by City) or employment taxes; or,
2. any order or judgment of any federal, State, or local court, administrative agency, or governmental body issued after the Effective Date:
 - a. the order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and,
 - b. the Party relying thereon, unless excused in writing from so doing by the other Party, will make or have made, or will cause or have caused to be made, Reasonable Business Efforts to contest the order or judgment (it being understood that contesting in good faith an order or judgment will not constitute or be construed as a willful misconduct or negligent action of the Party); or
3. the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the date of this Agreement; or
4. the failure of a governmental authority or agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption, or termination of, any Permit after the date of this Agreement; *provided* the failure to issue or the suspension or termination of any Permit is not the result of negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible.

City means the City of Cupertino acting through its City Council or its authorized officers or employees.

City Reimbursements means all fees payable to the City identified and referenced in Article 7 of this Agreement. Contractor acknowledges that City Reimbursements are a cost of doing business not eligible for profit in the City. Both Parties acknowledge that all City Reimbursements are an allowable cost of business similar to any license or permit required by the Contractor to perform the services required under this Agreement and will be recovered by Contractor through the Per-Ton Rates.

City Representative means the City's Director of Public Works, who is responsible for the administrative management of this Agreement, or their designee.

Clean Wood means wood that is not painted, stained, coated, pressure treated, or chemical treated. Clean Wood may include dimensional lumber, pallets, crates, chop sticks, toothpicks, stir sticks, and wooden utensils. Clean Wood excludes creosote, lumber treated with chromated copper arsenate (CCA), melamine coated furniture, and manufactured wood products such as plywood, particle board, oriented strand board, and medium density fiberboard. Clean Wood is a subset of Organic Materials.

Closure means closure of the Facility or portions of the Facility in accordance with Applicable Law, including all planning, design, regulatory approvals, plan implementation, construction, and monitoring.

Collection Agreement means the Agreement for the collection of City's discarded materials between the City and Recology Cupertino, dated December 3, 2020, as it may be amended or replaced.

Collection Contractor means the Person that City directs pursuant to the Collection Agreement to Collect and deliver Delivered Materials to the Facility.

Commencement Date means November 21, 2025, the date that landfill disposal Services provided by the Contractor will commence.

Compost, Composted, or Composting means a controlled biological decomposition of Organic Waste yielding a safe and nuisance-free Compost Product.

Compost Product means the product resulting from the controlled biological decomposition of Organic Wastes that are Source Separated from the Solid Waste stream, or which are separated at a centralized facility; or as otherwise defined in 14 CCR Section 17896.2(a)(4).

Compostable Paper means paper products that are directed or approved by the City for Collection or Processing as Organic Waste.

Construction and Demolition Materials, C&D Materials includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair, or demolition operations on any pavements, excavation projects, houses, commercial buildings, or other structures, excluding Unpermitted Waste. Construction and Demolition Materials includes rocks, soils, tree remains and other Yard Trimmings that result from land clearing or land development operations in preparation for construction.

Contract Manager means the Person designated by the Contractor to be the City's primary point of contact related to this Agreement and associated Services provided. Contractor's Contract Manager may negotiate and bind Contractor with respect to changes in scope, dispute resolution, compensation adjustments, and Service-related matters.

Contractor means International Disposal Corporation of California, Inc., a corporation organized and operating under the laws of the State of California.

Contractor Compensation means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 5.

Contractor Component has the meaning provided in Section 5.02.

Conviction means a criminal conviction, permanent mandatory or prohibitory injunction, or a final judgment or order from a court or regulatory agency of competent jurisdiction with respect to Criminal Activity.

County means the County of Santa Clara.

Criminal Activity means any of the following:

1. Any criminal offense in connection with obtaining, attempting to obtain, procuring, or performing a public or private agreement related to Recyclable Materials, Organic Waste, Yard Trimmings, or Solid Waste services of any kind (including Collection, Transport, Transfer, Processing, Composting, or Disposal), including this Agreement.
2. Bribery or attempting to bribe a public officer or employee of a local, State, or federal agency.
3. Fraud, embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification, or destruction of Records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony.
4. Unlawful disposal of Hazardous Materials, Designated Waste, or Unpermitted Waste.
5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to inflation of waste collection, hauling, or disposal rates or fees.

Day means calendar day.

Delivered Materials means Solid Waste, either individually or collectively, to be delivered to the Facility under this Agreement by Collection Contractor, or by Stewardship Organizations or Extended Producer Responsibility Program participants

Designated Waste means non-Hazardous Material that may pose special Disposal problems because of its potential to contaminate the environment. Designated Waste may be Disposed of only in Class II Disposal sites, or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services or pursuant to applicable Permits. Designated Waste consists of those substances classified as Designated Waste by the State, in CCR Title 23, Section 2522.

Direct Costs means the sum of:

1. payroll costs directly related to the Contractor's performance, or supervision of any obligation pursuant to the provisions of this Agreement, or City's administration and enforcement of this Agreement, comprised of compensation and fringe benefits, including vacation, sick leave, Holidays, retirement, workers compensation insurance, federal and State unemployment taxes, and all medical and health insurance benefits, plus
2. the costs of materials, Services, direct rental costs and supplies, plus
3. the reasonable costs of any payments to Subcontractors necessary to and in connection with the performance under or administration and enforcement of this Agreement; plus
4. any other cost or expense which is directly or normally associated with the task performed.

Such Direct Costs are to be substantiated by (i) a certificate signed by the principal financial officer of the Contractor or the authorized representative of City or their designee, as the case may be, setting forth the amount of the cost and the reason why the cost is properly chargeable to City or the Contractor, as the

case may be, and representing that the cost is an arm's length and competitive price, if there are competitive prices, for the Service or materials supplied; and, (ii) if City or the Contractor requests, as the case may be, additional back-up documentation as may be available to reasonably substantiate any Direct Cost, including invoices from suppliers and Subcontractors. Direct Costs exclude Non-Allowable Costs.

Disaster Response Plan means the plan provided for in Section 4.20 and Exhibit B-2.

Disposal (or Dispose or other variation thereof) means the final disposition of Solid Waste in accordance with this Agreement at the Facility.

Diversion (Divert) means to divert from landfill Disposal or transformation through source reduction, reuse, Recycling, Composting, or other means within the meaning of the Public Resources Code Section 41780.

Edible Food means food intended for human consumption, as defined in 14 CCR Section 18982(a)(18). For the purposes of this Agreement, Edible Food is not Solid Waste or Food Scraps if it is recovered as intended. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code portion of the California Health and Safety Code.

Effective Date means the date on which this Agreement is fully executed by both Parties.

Event of Default has the meaning provided in Section 7.01.

Excluded Waste(s) means Hazardous Substances, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State, or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance, or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include Used Motor Oil and Filters, latex paint in its original container, or Household Batteries when properly placed for Collection by a Generator as set forth in the Collection Agreement.

Extended Producer Responsibility Program or EPR Program means an environmental program or policy codified, enforced, and/or monitored by local, State, or Federal governments in which a producer's, distributor's, or retailer's administrative, financial, operational, and/or physical responsibility for a product is extended to the post-consumer stage of a product's life cycle. Extended Producer Responsibility Programs may be implemented by individual producers, collective industry organizations such as a producer responsibility organization or Stewardship Organization, or other regulated entities specified under the program. Such programs may cover individual products or categories of products, using one (1) or more funding mechanisms, as defined in the regulation(s) establishing the program.

Facility (Facilities) means Newby Island Sanitary Landfill] located at 1601 Dixon Landing Road, San Jose, CA 95131 as proposed by Contractor and approved by City.

Food Scraps means discarded food that will decompose and or/putrefy including: (i) all kitchen and table food; (ii) animal or vegetable waste that is generated during or results from the storage, preparation,

cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings, and other organic waste common to the occupancy of Residential dwellings and some commercial kitchen operations.

Generator means any Person whose act or process produces Solid Waste, C&D, Organic Waste, Recyclable Materials, or Unpermitted Waste or other material that becomes part of the overall waste stream.

Goods and Services means all goods and services used in providing Services, including labor, leases, subleases, equipment, supplies, and capital related to furnishing Services; insurance, bonds, or other credit support if the insurer is an Affiliate or a captive of Contractor or any Affiliate; and, legal, risk management, general, and administrative services.

Government Fees are fees or taxes imposed by governmental entities upon the Facility without regard to the specific site characteristics or operational history of those facilities, and may include franchise fees, regulatory fees, mitigation fees, surcharges, governmental impositions, and/or taxes. "Government Fees" are not amounts imposed upon the Facility in connection with the repair, remediation, improvement, addition, or expansion of the Facility.

Governmental Fee Component has the meaning provided in Section 5.02.

Guarantor means [REDACTED], a corporation duly organized and existing in good standing under the laws of the State of California.

Guaranty Agreement is the agreement in substantially the form attached as Exhibit D executed by the Guarantor.

Hazardous Substances, Hazardous Waste are materials that by reason of their quality, concentration, composition, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise mismanaged; or any waste that is regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, and:

1. "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., including 23 CCR Sections 2521 and 2522; and
2. materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and
3. materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; and
4. materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., and

5. materials regulated under any future additional or substitute federal, State, or local laws and regulations pertaining to the identification, transportation, treatment, storage, or disposal of toxic substances or hazardous waste, and
6. Any substance the presence of which at the Facility is prohibited by Applicable Law.

If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of “hazardous waste”, for purposes of collection, transportation, Processing, and/or disposal, the broader, more restrictive definition is employed for purposes of this Agreement.

Holidays are defined as Christmas Day, Thanksgiving Day, and New Year’s Day.

Indemnities or **Indemnification** means all defense, hold harmless, and indemnification requirements under this Agreement.

Infectious Waste means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in the California Health and Safety Code Section 25117.5.

Liabilities means all liabilities, including:

1. Actions;
2. Awards, judgments, and damages, both: (i) actual damages, whether special and consequential, in contract or in tort, such as natural resource damages, damage for injury to or death of any Person, and damage to property; and, (ii) punitive damages;
3. Contribution or Indemnity claimed by Persons other than the Parties;
4. Injuries, losses, debts, liens, liabilities,
5. Costs, such as response remediation and removal costs,
6. Interest,
7. Fines, charges, penalties, forfeitures, and
8. Expenses such as attorney’s and expert witness fees, expenditures for investigation and remediation, and costs incurred in connection with defending against any of the foregoing or in enforcing Indemnities.

Liquidated Damages means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 7.06 and Exhibit E.

Maximum Vehicle Turnaround Time means a twenty (20) minute average monthly vehicle Turnaround Time. The average monthly vehicle Turnaround Time shall be calculated by summing the actual vehicle Turnaround Time for each load of City’s Delivered Materials delivered by the Collection Contractor in a given month divided by the number of loads of City’s Delivered Materials delivered by the Collection Contractor in the given month.

Municipal Code means the City of Cupertino Municipal Code.

Non-Allowable Costs include the following:

1. fines, penalties, assessments, and other amounts paid for Violations or noncompliance with Applicable Law or in settlement of claims or allegations of noncompliance with Applicable Law;
2. any costs of Indemnifications, including Indemnification, Liabilities, or any mediation, arbitration, or judicial proceeding, whether formal or informal;
3. any contributions or donations to any Person (including charitable, non-profit, service or other community groups, and elected officials), including cash, property, and services in kind;
4. lobbying costs, whether cash, property, or services in kind, such as:
 - a. costs incurred in any direct or indirect attempt to influence the outcome of any federal, State, or local election, referendum, initiative, or similar process by citizen electorate or vote upon resolutions, ordinances, or other action items by elected officials (including members of a city council or a county board of supervisors), through cash contributions, endorsements, publicity, or other Action;
 - b. establishing, administering, contributing to, or paying the expense of a candidate, political party, campaign, political action committee, or other Person or organization established for the purpose of influencing the outcomes of elections or vote, including votes on resolutions, ordinances, or other actions by elected bodies such as a city council or a county board of supervisors;
 - c. attempts to influence (i) the introduction of federal, State, or local legislation, or (ii) the enactment or modification of any pending federal, State, or local legislation through communication with any member of employee of Congress, a State legislature, or local governing body, or by preparing, distributing, or using publicity;
 - d. legislative liaison activities when those activities are carried on in support of, or in knowing preparation for, an effort to engage in unallowable activities;
5. costs of preparing documentation, including cost, financial, and accounting books and Records, upon request of City or any accountant, auditor, financial analyst, or rate consultant retained by City, incurred to substantiate Direct Costs, or allocation thereof.

Notice (or Notify) means a notice given in accordance with Section 8.09.

Operations Plan(s) means the plan(s) submitted by the Contractor with its proposal, attached hereto as Exhibit B-1.

Organic Material(s) means Yard Trimmings, Food Scraps, Compostable Paper, and Clean Wood, individually or collectively. Organic Materials may also include manure from herbivores (horses, cows, goats, sheep, rabbits, etc.). No Discarded Material shall be Organic Material unless it is separated from Recyclable Materials and Solid Waste.

Organic Waste means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

Ownership has the meaning provided under the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986 *except* that (1) ten percent (10%) is substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; (2) Section 318(a)(5)(C) is disregarded; (3) ownership interest of less than ten percent (10%) is disregarded; and, (4) percentage interests is determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

Party or Parties refers to City and Contractor, individually or together.

Per-Ton Rate means the per-unit Contractor Compensation owed Contractor by Collection Contractor for each Ton of Delivered Materials as payment for all Disposal Services, provided under this Agreement. Initial Per-Ton Rates are provided in Exhibit B-3. Beginning in Year Two, Per-Ton Rates are adjusted annually as provided in Article 5.

Permits means all federal, State, County, City, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be obtained or maintained by any Person with respect to Services, as renewed or amended from time to time.

Person(s) includes an individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, local governments, municipalities, special purpose districts, and other entities.

Pleas means the Contractor or any of its Contract Managers has pled “guilty” or entered a plea of “*nolo contendere*” or “no contest” to Criminal Activity occurring within City or relating to this Agreement.

Post-Closure means post-closure of the Facility or portions of the Facility in accordance with Applicable Law, including all maintenance and monitoring.

PRC means the California Public Resources Code.

Premises means any land or building in the City where C&D Materials or Solid Waste are generated or accumulated.

Process, Processing means the controlled separation, Recovery, volume reduction, conversion, or Recycling of Solid Waste and other discarded materials including, but not limited to, organized, manual, automated, or mechanical sorting, cleansing, treating or reconstituting or use of other methods, for the purpose of making such material available for Recycling or reuse and/or marketing as a Recyclable Materials, Organic Material, or C&D product.

Rate Period means a twelve- (12-) month period, commencing February 1 and concluding January 31 with the exception of the first year which will be November 21, 2025 to January 31, 2027 as noted in 5.03. .

RCRA means the Resource Conservation and Recovery Act (42 U.S.C. Section 6900 *et. seq.*).

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of that Person’s business judgment, intending in good faith to take steps calculated to satisfy the obligation that that Person has undertaken to satisfy.

Records means all ledgers, book of account, invoices, vouchers, canceled checks, logs, correspondence, and other Records or documents evidencing or relating to Per-Ton Rates, Tonnage of Solid Waste and other materials handled, satisfaction of Contractor’s obligations under this Agreement and performance of the terms of this Agreement, damages payable under this Agreement, and Events of Defaults, including, but not limited to, those Records described in Sections 4.02, 4.03, 4.04, 4.09, 4.13, 4.14, 4.17, 4.18, 8.13, 8.14, 8.15, and 10.01.

Recover (or any variation thereof) means the picking, pulling, sorting, separating, classifying, and recovery of Recyclable Materials, Organic Materials, or other discarded materials from Solid Waste whether by manual or mechanical means, after Acceptance of those materials and before marketing of Recovered Materials, including Recycling, material reuse and recovery, mulching, Composting, or land application.

Recovered Materials means Recyclable Materials, Organic Waste, or other materials that are Recovered.

Recyclable Materials means materials that are reused, remanufactured, or processed. Recyclable Materials includes, but is not limited to, those materials accepted under the City’s Collection Agreement.

Recycle or Recycling (or any variation thereof) means the process of sorting, cleansing, treating, and reconstituting, at a C&D Materials Processing Facility or a Secondary Processing Facility, materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products. Recycling does not include any thermal or chemical conversion methods.

Regulatory Agency means any federal, State, or local governmental agency that regulates Transfer, Transportation, and Disposal of Solid Waste, including California Department of Transportation, California Department of Motor Vehicles, EDD, U.S. Immigration and Naturalization Services, California Air Resources Board, regional water quality management districts, California Department of Toxic Substances, CIWMB, the Local Enforcement Agency, federal and State Environmental Protection Agencies, and other federal or State health and safety department, applicable to Services.

Residue means those materials which, after Processing, are Disposed rather than Recovered due to either the lack of markets for materials or the inability of the Processing Facility to capture and Recover the materials.

SB 54 means California Senate Bill 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act (Allen, Chapter 75, Statutes of 2022), amending Section 41821.5 of the California Public Resources Code to add Chapter 3 (commencing with Section 42040) to Part 3 of Division 30, as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

SB 343 means California Senate Bill 343, the Environmental Advertising: Recycling Symbol: Recyclability: Products and Packaging Act (Allen, Chapter 507, Statutes of 2021) amending Sections 17580, 17580.5 of the California Business and Professions Code, amending Sections 18015 and 42355.5 of, and adding Section 42355.51 to, the California Public Resources Code, as amended, supplemented, superseded, and replaced from time to time, and all implementing regulations.

SB 1383 means Senate Bill 1383 (Lara, Chapter 395, Statutes of 2016) adding Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the California Health and Safety Code, and adding Chapter 13.1 (commencing

with Section 42652) to Part 3 of Division 30 of the California Public Resources Code, as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions implementing regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

Self Haul means the collection and Transportation of Solid Waste or C&D Materials by Persons other than the Collection Contractor, including the Generator thereof and the owner or occupant of residential or commercial Premises located in City where materials were generated.

Service or Services mean all obligations of Contractor under and in accordance with this Agreement.

Solid Waste means and includes all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, dewatered, treated, or chemically-fixed sewage sludge which is not Hazardous Waste, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, biosolids, and other discarded solid and semisolid wastes, as defined in California Public Resources Code §40191 as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste, or low-level radioactive waste, medical waste, Recyclable Materials, Construction and Demolition Materials, or Organic Waste.

Source Separated means the segregation, by the Generator, of materials by material type designated for separate Collection for Recycling, Composting, recovery, or reuse.

Standard Industry Practice means (1) the then-current development and operations practices and standards of the California Solid Waste management industry with respect to Recovery, Diversion, Transfer, Transport, and Disposal services that are in full compliance with Applicable Law, and (2) the then-current development, operations, Closure, and Post-Closure practices and Solid Waste Association of North America (or any successor organization) Manager of Facility Operations standards in meeting Contractor’s obligations under this Agreement for Recovery, Diversion, and Disposal services.

State means the State of California.

Stewardship Organization means a Person(s) that is approved or designated under Applicable Law or by a relevant governing body, including, but not limited to, CalRecycle, the California Air Resources Board, the County, or the City, to manage, coordinate, fund, or otherwise oversee one or more Extended Producer Responsibility Programs, and that is selected by the City. The applicable Stewardship Organization for each Extended Producer Responsibility Program under this Agreement shall be designated or approved by the City Representative, at their sole discretion.

Subcontractor means a Person who has entered into a contract, express or implied, with Contractor for the performance of an act that is necessary for Contractor’s fulfillment of its obligations for providing service under this Agreement. Notwithstanding any other provision in this Agreement, Vendors providing materials, supplies, or professional services to Contractor shall not be considered Subcontractors for any purpose under this Agreement (except as explicitly provided in Section 4.01C of this Agreement).

Term is defined in Section 2.02.

Third-Party C&D Materials Processing Accreditor means a City-approved private, non-profit, or government entity that reviews, assesses, verifies, and accredits a C&D Materials Processing Facility(ies)

on its ability to ensure effective diversion of C&D Materials from landfills, by providing a certification after assessment, and requiring regular re-certification.

Ton (or any variation thereof) means a unit of weight equal to 2,000 pounds.

Transfer (or **Transferring** or other variations thereof) means transferring collected material from Collection vehicles to larger long-haul vehicles.

Transport (or **Transportation**) means the act of conveying Delivered Materials from one (1) location to another.

Turnaround Time means the duration of time for each vehicle (i.e., load) of City's Delivered Materials delivered by Collection Contractor that elapses from the vehicle's arrival time upon entry to the Facility property until the vehicle's departure time when it exits the Facility property.

Uncontrollable Circumstances has the meaning provided in Section 8.12.

Unpermitted Waste means wastes or other materials that the Facility may not receive under their Permits, including:

1. All materials that the Facility is not permitted to accept, *excluding* white goods with chlorinated fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely handles, Recycles, or Disposes.
2. Friable asbestos, unless otherwise approved by applicable regulatory agencies, consisting of materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Material if it contains more than one percent (1%) asbestos.
3. Hazardous Materials.
4. Untreated Infectious Waste or untreated medical wastes (as defined by Chapter 6.1, Division 20 of the State Health and Safety Code) that have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including untreated pathological and surgical wastes, untreated medical clinic wastes, untreated wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious disease.
5. Liquid wastes that are not spadeable including cannery and food Processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, and those liquid wastes that may be Hazardous Wastes.
6. Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation.

This definition will be promptly amended to reflect any applicable changes in Permits or Applicable Law.

Violation means any Notice, assessment, or determination of non-compliance with Applicable law from any Regulatory Agency to Contractor, whether or not a fine or penalty is included, assessed, levied, or attached.

Working Days (or **Work Day** or other variations thereof) means Days during which City offices are open to do business with the public.

Yard Trimmings means those discarded materials that will decompose and/or putrefy (including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of Organic Waste) resulting from normal yard and landscaping maintenance. Yard Trimmings are a subset of Organic Waste.

EXHIBIT B: CONTRACTOR'S PLANS AND RATE PERIOD ONE RATES

B-1 OPERATIONS PLAN

See Exhibit B-1 Operations Plan attached.

B-2 DISASTER PLAN

See Exhibit B-2 Disaster Plan attached.

B-3 RATE PERIOD ONE PER-TON RATES

Following are the initial Rate Period One Per-Ton Rates as described in Article 5.

Per-Ton Rate for Rate Period One (Effective November 21, 2025)

	Per-Ton Rate
Contractor Component	
Total Contractor Component	\$36.00
Governmental Fee Component	
1. City of San Jose Business Tax	\$13.00
2. City of San Jose Enforcement Fee	\$0.22
3. County of Santa Clara Solid Waste Planning Fee	\$0.78
4. County of Santa Clara AB939 Fee	\$4.10
5. Stat AB 1220 Fee	\$1.40
Total Governmental Fee Component	\$19.50
Total Per-Ton Rate	\$55.50

* All government taxes and fees are assessed on a per-Ton basis for all Tons delivered unless otherwise noted, and the amounts shown above are the fees as of the Effective Date.

EXHIBIT C: INSURANCE

- A. **General Liability** shall be provided with coverage at least as broad as Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001. \$10,000,000 per occurrence, \$10,000,000 general aggregate, and \$10,000,000 products and completed operations for bodily injury, personal injury, and property damage. An excess liability policy may be used to obtain required limit.

The Commercial General Liability policy must contain blanket-form endorsements in substantially the following form, or the policy form must include:

1. Thirty (30) Days' prior written Notice shall be given to the City in the event of cancellation, material, or non-renewal of this policy. Such Notice shall be sent to:

Director of Public Works
City of Cupertino
10300 Torre Ave.
Cupertino, CA 95014

2. The City, its officers, employees, and agents are additional insureds on this policy. The City requires blanket-forms equivalent to both CG2010 0413 and 2037 0413.
3. This policy will allow and be endorsed primary and non-contributory insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only.
4. Coverage shall allow and be endorsed to include a waiver of subrogation in favor of the City and its officers, officials, employees, and agents
5. Inclusion of the City as an additional insured shall not affect City's rights as respects any claim, demand, suit, or judgment brought or recovered against the Contractor. This policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's Liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one (1) Party had been named as an insured.

- B. **Automobile Liability** Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto.

\$10,000,000 combined single limit per accident for bodily injury and property damage. An excess liability policy may be used to obtain required limit.

1. The Automobile Liability policy must contain the same blanket-form additional insured endorsement as broad as CA 20 01, including coverage provided by CA 99 48 Broadened Auto Pollution Liability and MCS 90 upset and overturn coverage.

EXHIBIT C: INSURANCE

2. Coverage shall allow and be endorsed to include a waiver of subrogation in favor of the City and its officers, officials, employees, and agents
- C. **Workers Compensation and Employers Liability Insurance.** Workers' compensation limits as required by State Labor Code Section 2700. Employers Liability Insurance in the amount of \$1,000,000 per accident/disease.
1. The Workers' Compensation policy must contain a blanket-form endorsement in substantially the following form:
 2. The insurer must waive all rights of subrogation against City, its officers, employees, and volunteers for losses arising from work performed by the Contractor for City, except for the sole negligence of City.
- D. **Pollution Legal Liability** in the amount of \$10,000,000 per claim covering Liability arising from the release of pollution at the Facility. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations."
1. The policy shall provide and be endorsed to include the City, its officers, employees, and agents as insureds.

EXHIBIT D: GUARANTY AGREEMENT

THIS GUARANTY (the “Guaranty”) is given as of the ____ day of ____, ____

A. THIS GUARANTY is made with reference to the following facts and circumstances:

1. International Disposal Corp. of California, Inc, hereinafter (“CONTRACTOR”) is a corporation organized under the laws of the State of California, and is a wholly owned subsidiary of Browning-Ferris Industries, LLC (Guarantor).
2. CONTRACTOR and the City of Cupertino C (“CITY”) have negotiated an Agreement for Solid Waste Disposal Services, (hereinafter “Agreement”). A copy of this Agreement is attached hereto.
3. It is a requirement of the Agreement, and a condition to the CITY entering into the Agreement, that Guarantor guaranty CONTRACTOR’S performance of the Agreement.
4. Guarantor is providing this Guaranty to induce CITY to enter into the Agreement.

B. NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to CITY the complete and timely performance, satisfaction and observation by CONTRACTOR of each and every term and condition of the Agreement, which CONTRACTOR is required to perform, satisfy, or observe. In the event that CONTRACTOR fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully cause performance, satisfy or observe them in the place of CONTRACTOR or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to CITY of any damages, costs, or expenses which might become recoverable by CITY from CONTRACTOR due to its breach of the Agreement.
2. Guarantor’s Obligations Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional, and unlimited, and with respect to any payment obligation of CONTRACTOR under the Agreement, shall constitute a guarantee of payment and not of collection. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to CONTRACTOR in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).
3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under this Guaranty for any reason whatsoever, including, without limitation: (1) the insolvency,

bankruptcy, reorganization or cessation of existence of CONTRACTOR; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of CITY'S rights or remedies against CONTRACTOR; or (4) any merger or consolidation of CONTRACTOR with any other corporation, or any sale, lease or transfer of any or all the assets of CONTRACTOR. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code §2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code §2846, 2849, and 2850 as may be amended from time to time, including without limitation, the right to require CITY to (a) proceed against CONTRACTOR, (b) proceed against or exhaust any security or collateral CITY may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that CITY may proceed against Guarantor for the obligations guaranteed herein without taking any action against CONTRACTOR or any other guarantor or pledge or and without proceeding against or exhausting any security or collateral CITY may hold now or hereafter hold. CITY may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against CONTRACTOR or any other guarantor or pledge or without impairing CITY'S rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of CITY to the extent now or then permitted by Applicable Law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one (1) or more of the following shall not affect the Liability of the Guarantor hereunder: (a) at any time or from time to time, without Notice the Guarantor, performance, or compliance herewith is waived; (b) any other of any provision of its Agreement Indemnification with respect to CONTRACTOR'S obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any Assignment of the Agreement is effected which does not require CITY'S approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all Notices whatsoever, including, but not limited to, Notices of non-payment or non-performance, Notices of protest, Notices of any breach or default, and Notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from CITY as a preference, fraudulent transfer or otherwise, irrespective of (a) any Notice of revocation given by Guarantor or CONTRACTOR prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by CITY of any performance bond or other collateral to assure the performance of CONTRACTOR'S

obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by CITY against CONTRACTOR arising out of the Agreement based on CONTRACTOR'S failure to perform which has not been settled or discharged.

5. No Waivers. No delay on the part of CITY in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No Notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of CITY to take other or further action without Notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by CITY and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.
6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by CITY in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder, providing CITY is the prevailing party, otherwise, in all instances in which Guarantor is the prevailing party, Guarantor shall be entitled to recover from City its reasonable attorney's fees and reasonable costs and expenses incurred by the Guarantor in defending this Guaranty against CITY.
7. Governing Law. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any suit, action, and other proceeding brought by CITY or other party to enforce this Guaranty may be brought and concluded in the courts of the State of California, in Santa Clara County or Federal District court for northern California, which shall have exclusive jurisdiction over such suit, action, or proceeding. Guarantor appoints the following Person as its agents for service of process in California: CT Corporation System.
8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will not have effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.
9. Binding on Successors. This Guaranty shall inure to the benefit of CITY and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.
10. CITY. Guarantor represents and warrants that it has the corporate power and the authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the CITY: Director of Public Works
 City of Cupertino
 10300 Torre Ave.
 Cupertino, CA 95014

with a copy to CITY Attorney at the same address.

To the Guarantor: Browning-Ferris Industries, LLC
 Attn: Chief Legal Officer
 18500 N. Allied Way
 Phoenix, Arizona 85054

With a copy to the CONTRACTOR:

 General Manager
 Attn. Enrique Perez
 International Disposal Corp. of California
 Newby Island Landfill
 1601 Dixon Landing Road
 Milpitas, CA 95035

GUARANTOR
Browning-Ferris Industries, LLC

By: _____

Title: _____

EXHIBIT E: PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

The following table lists the events that constitute breaches of the Agreement's standard of performance warranting the imposition of Liquidated Damages. The table describes the incident(s) or event(s) that trigger Liquidated Damages, the methods by which occurrences will principally be tracked by Contractor or City, and the dollar amounts of Liquidated Damages that the City may assess for Contractor's failure to meet the performance requirements specified in this Agreement. In the event that the City Representative determines that Contractor has failed to meet the performance standard by this Agreement and described below, the City may assess Liquidated Damages pursuant to Section 7.06 of the Agreement.

Event of Non-Performance	Definition	Liquidated Damage Amount
Failure to meet vehicle turnaround guarantees specified in Section 4.08.	Contractor shall operate the Approved Facilities such that vehicle turnaround times do not exceed the maximum vehicle turnaround time identified in Section 4.08.B	For Collection Contractor vehicles: \$100 per vehicle delayed.
Failure to receive vehicles during operating hours specified in Section 4.06.	Failure of the Contractor to open the Approved Facility to the Collection Contractor during operating days and hours specified in Section 4.06.	\$1,000 per hour that the Approved Facility is not open to receive the Collection Contractor.
Timeliness of submissions of reports to the City.	Failure to submit any report on time to the City (any report shall be considered late until such time as a correct and complete report is received by the City).	\$500 per day for each day a report is late.
Failure to make records available upon request.	Failure of Contractor to make reports and records collected and retained by the Contractor accessible to the City or its authorized representatives within five (5) Business Days of making a records request.	\$500 per day for each day that the requested records are not available to the City.
Failure of the Contractor to notify the City of intent to use Subcontractor(s).	Failure of Contractor to notify the City anytime that a Subcontractor is used to perform any obligations of the Agreement.	\$1,000 per incident that the Contractor fails to notify the City of its intent to use a Subcontractor.
Failure of Contractor to provide an accurate written response to information requested by the City.	Failure of Contractor to provide a complete and accurate written response to the City's request within the timeframe specified in the Agreement (which shall not be less than ten (10) Business Days) if no timeframe is specified in the Agreement.	\$500 per day for each day that the requested information is late.
Contractor Failure to Accept City Delivered Materials at any Approved Facility under this Agreement	Inability of Contractor to Accept City-Delivered Materials at the appropriate Approved Facility for that material type for any reason other than an event of force majeure, and without prior arrangement for use of an Alternate Facility.	\$500/Ton
Delivery to Non-Approved Facility	Each individual occurrence of delivering City-Delivered Materials to a facility other than the Approved Facility(ies) designated for each material type under Article 4 of this Agreement.	\$500 per failure

Failure to Provide Adequate Capacity	Failure to provide adequate primary and alternate capacity to accept and Process City Delivered Materials.	\$1,000/Day
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By placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions at the time that the Agreement was made.

Contractor

City

Initial Here: _____

Initial Here: _____

§10.8.1

Landfill Operations Plan

(Excerpted from REPORT OF COMPOSTING SITE INFORMATION)

SECTION B.5

COVER

(27 CCR, SECTION 21600(b)(6)(A))

B.5 COVER **(27 CCR, SECTION 21600(b)(6)(A))**

B.5.1 COVER MATERIALS (27 CCR, SECTION 21600(b)(6)(A))

Soil stockpiling operations for daily cover use have been and will continue to be conducted concurrent with refuse disposal throughout the development of the landfill. All near term soil requirements for daily and intermediate cover uses are anticipated to be met with onsite soils generated from previous excavation, and stockpiling activities or import.

Stockpiling operations are conducted so as not to interfere with disposal and other ancillary operations. Proper drainage control is maintained and the stockpile areas are graded to promote lateral run-off of precipitation into drainage control facilities. In addition, NISL has a SWPPP prepared to comply with the National Pollutant Discharge Elimination System (NPDES) requirements and a General Permit for Industrial Activities.

B.5.2 COVER FREQUENCY (27 CCR, SECTION 21600(b)(6)(C))

Daily cover is placed at the active fill area of the NISL at the end of each operating day. The purpose of daily cover soil or an equivalent alternative daily cover (ADC), as approved by the LEA, is to provide a suitable barrier to the emergence of vectors, deter burrowing rodents and animals, prevent windblown trash and debris, minimize the escape of odors, prevent or minimize excess infiltration of surface water into the refuse and prevent potential ignition or combustion of refuse at the active disposal fill areas. Daily cover in the form of soil material is placed on the deck areas while ADC may substitute soil material cover and is placed over exposed refuse on the face or slopes. The time of placement of the daily cover layer is scheduled for a 3-hour period after the last load of waste is received each working day. Daily cover consisting of soil is compacted to a minimum thickness of six inches. Placement and compaction of ADC is discussed below.

B.5.2.1 ALTERNATIVE DAILY COVERS (27 CCR, SECTION 21600(b)(6)(B))

ADCs approved by the LEA and RWQCB for year-round use at NISL are dredged and non-hazardous contaminated soils, biosolids and sludges, green waste, and C&D waste. This reduces the onsite soil cover demands and maximizes refuse capacity. Approximate tonnage ranges for the use of each individual ADC are provided below assuming that the entire working face is covered with that ADC. The actual amount of each material used on a daily basis will vary dependent on availability.

- **Dredged and Non-Hazardous Contaminated Soils**

The use of dredged and non-hazardous contaminated soils, which are currently accepted as special wastes as described in Section B.2.2.4, was described to the LEA in a letter report (PRAG; February 6, 1995) and subsequently approved by the LEA; the letter report is contained in Appendix B.

Assuming a working face size of 160 feet by 160 feet, a material density of 1 ton per cubic yard, and a cover material thickness of 6 to 12 inches of compacted material, the potential daily use of this material ranges from 474 to 948 tons per day.

- **Biosolids/Sludges**

Biosolids and sludges greater than 50 percent solids by weight are either stockpiled or used immediately for covering waste. Sludges and biosolids are spread in a manner similar to clean soil over the waste and track walk compacted with a dozer. The functional equivalent of this ADC has been established at 10 inches thick.

Assuming a working face size of 160 feet by 160 feet, a material density of 1 ton per cubic yard, and a cover material thickness of 6 to 12 inches of compacted material, the potential daily use of this material ranges from 474 to 948 tons per day.

- **Green Waste**

Green waste surplus from the adjacent compost facility is used as alternative daily cover (ADC) at the NISL. Green waste is delivered to the tipping area and stockpiled until the end of the operating day when it is used to cover the waste. Green waste material will be restricted to a minimum compacted thickness of 6 inches and an average compacted thickness of less than or equal to 12 inches in accordance with 27 CCR, Section 20690(b)(3)(C).

All green waste delivered to the Recyclery's composting operation is processed to prepare it for composting. Quantities of processed materials that exceed the capacity of the compost windrows are diverted to the landfill for use as alternative daily cover. After composting, the greenwaste is screened to separate small particles for sale as soil amendment. The portion of the material too large for use as soil amendment is delivered to the landfill for application as alternative daily cover.

Assuming a working face size of 160 feet by 160 feet, a material density of 775 pounds per cubic yard, and a cover material thickness of 6 to 12 inches of compacted material, the potential daily use of this material ranges from 184 to 367 tons per day.

- **Construction and Demolition Waste (C&D)**

C&D waste is received from two sources at the NISL. The first source is the residuals from the Construction and Demolition recovery and salvage area and the second source are loads that are not acceptable for salvage or recovery and come directly from the entrance scales. Both sources of material are processed in accordance with State regulations prior to being utilized as ADC. C&D ADC is then spread and compacted over the waste. The functional equivalent of this ADC is approximated at between 6 and 18 inches.

Assuming a working face size of 160 feet by 160 feet, a material density of 850 pounds per cubic yard, and a cover material thickness of 6 to 18 inches of compacted material, the potential daily use of this material ranges from 201 to 604 tons per day.

B.5.2.2 BENEFICIAL REUSE WASTE TYPES

Beneficial reuse wastes used for purposes other than ADC are received at the facility. The largest category of beneficial reuse materials is for alternative daily and intermediate cover with the remainder utilized for other on-site uses such as liner operations layer, construction fill, road base, wet weather operations pads, access roads, and soil amendments for erosion control and landscaping. Imported soils used for covering waste are not being included in the permitted refuse tonnage totals.

Construction and demolition wastes such as broken asphalt, concrete, and other inert debris is used to prepare wet weather pads, temporary access roads and other site improvements. The broken material is spread approximately two to three feet thick over a proposed wet weather pad or internal access roads and then using heavy equipment is crushed and compacted to about 18 inches to two feet thick. These materials may be stockpiled in areas adjacent to where the material will be utilized. The amount of material consumed for beneficial uses varies on a daily basis depending on which projects are being conducted at the time. When wet weather pads or new lined cells are being constructed the demand is quite high. For example, approximately 6,000 to 9,000 tons of material is needed for a wet weather pad and associated internal road. These wet weather support areas will typically need to be re-constructed twice more during the storm season to ensure continued all weather access.

Another example of beneficial reuse consists of green waste and biosolids being used to enhance the operations layer during the construction of a new refuse cell. When a new refuse cell of approximately 7 acres is constructed, as much as 7,000 tons of materials may be integrated into the operation layer prior to waste placement.

The FEIR evaluated environmental impacts based on a recorded high tonnage day of 14,021 tons. Actual refuse tonnage disposed that day was 2,226 tons with the rest of the materials entering the site for purposes other than refuse disposal. The total incoming tonnage limit is set at 14,021 tpd (maintaining the currently permitted 4,000 tpd for disposal) along with the associated peak traffic volume of 1,269 vehicles per day. The remaining 10,021 tpd (or more if less than 4,000 tpd of refuse

is received) allows sufficient flexibility to accommodate a decline in disposed waste and increases in recycling and beneficial reuse materials delivered to the NISL.

B.5.3 INTERMEDIATE COVER PLACEMENT (27 CCR, SECTION 21600(b)(6)(D))

Intermediate cover is defined in 27 CCR, Section 20164, as cover material on areas where additional cells are not to be constructed for 180 days or more to control vectors, fires, odors, blowing litter, scavenging and drainage. In accordance with 27 CCR, Section 20700, a minimum 12-inch thick layer of suitable soil cover material is placed over the top, side slopes and working face of an advancing lift, refuse cell or portions of the disposal area where no additional refuse is to be deposited within 180 days.

B.5.4 ALTERNATIVE INTERMEDIATE COVER

Intermediate cover generally consists of soil placed and compacted to a depth of at least 12 inches. 27 CCR, Section 20700, allows an operator to place alternative materials or alternative thicknesses of intermediate cover as approved by the LEA with the concurrence of CalRecycle. The proposed use of an alternative intermediate cover (AIC) would require a site-specific demonstration project and approval of the RWQCB. An alternative intermediate cover consisting of ground green waste from the compost processing facility and Class A biosolids are placed on interim slopes for winterization to reduce erosion in inactive areas of the landfill and act as a soil amendment for vegetation establishment.

B.5.5 FINAL COVER (27 CCR, SECTION 21090(a)(2))

The purposes of a final cover are to ensure waste containment, minimize surface water intrusion, accommodate settlement and subsidence, isolate wastes from the surface (and human contact), reduce the potential for odors and landfill gas emissions, and to reduce air intrusion into the refuse prism preventing subsurface fire. The cover also provides a base for vegetation, which will reduce drainage velocities and minimize erosion and abrasion of the cover. The State minimum standard prescriptive design for a landfill requires a single low-permeability soil layer cover or a cover which meets the permeability of the bottom liner system.

Several factors were taken into consideration in evaluating the cover design for the NISL to ensure adequate performance of the final cover. These factors included

regulatory requirements, the geometry of the landfill, local climatic conditions, potential landfill settlement, erosion protection, vegetative growth, and end use at closure. The following Section B.5.6 and Section E.1.3 of Part E include information regarding the proposed final cover design at the NISL.

B.5.6 ALTERNATIVE FINAL COVER DESIGN CONSIDERATIONS (27 CCR, SECTION 20080(b))

Federal regulations under 40 CFR, Section 258.60, and State regulations under 27 CCR, Section 20080(b), allow an operator to propose an alternative final cover design in lieu of the prescriptive standards provided the discharger demonstrates equivalent or superior performance of the alternative design relative to the prescriptive standard. To date, within the Northern California area, alternative final cover designs have gained acceptance and some have been approved by the local RWQCBs, CalRecycle, and the LEA's, as well as other agencies. Two of these sites, Keller Canyon Landfill and the Vasco Road Landfill have been approved for an alternative final cover design by the regulatory agencies. Approval of the alternative final cover design for these sites was based, in part, on final cover performance modeling performed by GLA and documented in the design reports. The alternative final cover modeling documented in these reports has demonstrated that the infiltration performance of the constructed alternative final cover is equivalent or superior to that of the prescriptive standard. The Forward Landfill North Stage 1A partial final closure area has been monitored for over 3 years and the data collected from post-closure monitoring of the closure area demonstrates that these types of final cover systems can perform as designed.

Based on the above mentioned demonstration and approved alternative final cover designs, it is proposed that a similar alternative final cover system be designed for the NISL which will include a 4-foot thick soil cover composed of two feet of on-site soils from the NISL site (lower two feet consisting of one foot of in-place interim cover and an additional foot placed at the time of closure) and additional imported borrow soils that meet the minimum specified engineering characteristics, as described in the Alternative Final Cover Evaluation Report: Newby Island Sanitary Landfill (see Appendix I). The upper three feet of the monolithic four foot thick alternative final cover will be constructed of approved soils with the following characteristics: a maximum particle size of 3-inches, a minimum of 45 percent passing the No. 200 sieve, and a minimum of 15 percent finer than 5-micron for the running average of ten consecutive tests. In addition, these soils shall yield a

maximum hydraulic conductivity of 1×10^{-5} cm/sec, as measured by a field collected lab perm sample or an in-situ field permeability test. Following completion of the alternative final cover engineered fill construction, the site should be vegetated with native plant species that will enhance the cover performance, as described in the alternative final cover design report.

An alternative final cover design (four-foot monolithic evapotranspiration cover, which includes the assumed one foot thick intermediate cover), is proposed for the NISL (see Figure 7). IDC plans to import acceptable final cover materials for the NISL closure. Prior to use of these soils for closure, all necessary geotechnical laboratory tests will be conducted to verify that the proposed final cover materials meet or exceed the minimum design requirements as were described in the alternative final cover design report. The design parameters are documented in the alternative final cover design report (Appendix I).

Seven acres of the ten-acre D-shaped parcel have been closed as of May, 2012. The final grades remained approximately the same as existing grades in the “D-shaped” parcel area, and the soil balance remained status quo because no additional import was required (see Figures 3 and 4). Approval of the closure design was received from the RWQCB in their letter dated December 22, 2011 and the LEA concurred with the RWQCB’s approval in their letter dated February 7, 2012 (see Appendix B). The remaining area is potentially slated for closure in 2016. An alternative final cover design (low permeability asphalt cover with Petromat®), was installed over the majority of the D-shaped parcel at the NISL. This final cover consists of the following layers from bottom to top (Figure 7):

- 8 ounce geotextile separator/reinforcement
- Minimum six (6) inches of aggregate base that will contain a geogrid reinforcement layer (as needed per pavement design)
- Subgrade enhancement geotextile (SEG) beneath the asphalt that will contain a geotextile reinforcement layer (as needed per pavement design)
- Minimum two (2) inches of asphalt
- Petromat®
- Minimum two (2) inches of asphalt

The final cover was selected in lieu of the prescriptive cover due to the planned use

of the area subsequent to closure. The closed D-shaped parcel area is utilized for facility parking and roll-off bin storage. A prescriptive cover was infeasible due to the anticipated traffic volume which would preclude the growth of vegetation and result in excessive erosion, rutting, and deterioration of the final cover. This would have required constant repair and maintenance with associated high costs and disruption of the end uses. The final cover is consistent with the performance goal of the prescriptive cover and provides equivalent protection against water quality impairment.

Closure areas that are not used for parking and bin storage received a monolithic evapotranspirative (ET) cover as shown on Figure 7. The cover consists of a four-foot monolithic cover section using on-site soils from the excavation of future cells to be placed above the intermediate cover already in place. The concrete pad of the existing fueling station, located on the western side of the “D-shaped” parcel (see Figure 4), was closed with a low permeability concrete final cover. The existing concrete pad for the fueling station was treated with a sealant in order to reduce the permeability of the Portland cement concrete material. Sealant will be reapplied to the concrete periodically during the post-closure care period to maintain the low permeability quality.

Section B.3.8, describes potential uses of the D-shaped area to support ancillary facilities for disposal operations at NISL and recycling activities at The Recyclery.

During construction of the alternative final cover, construction quality assurance (CQA) observation, monitoring and testing of the final cover soils will be conducted as detailed in the CQA Plan for closure of the NISL site (Appendix C of Appendix I). The CQA Plan for the Petromat® final cover is included in Appendix Y. CQA observation, testing and geotechnical field and laboratory testing will be conducted pursuant to the CQA plans and the project drawings, plans and specifications.

SECTION B.6

HANDLING

(27 CCR, SECTION 21600(b)(7))

B.6 HANDLING (27 CCR, SECTION 21600(b)(7))

B.6.1 PUBLIC HEALTH DESIGN PARAMETERS (27 CCR, SECTION 21600(b)(7)(A))

The NISL has been designed to minimize the propagation or harborage of flies, rodents or other vectors and the creation of nuisances caused by solid wastes being deposited at the site. Factors taken into consideration include air and water quality, noise, odor and public safety. Measures established by IDC to ensure that these parameters are protected or controlled are discussed in detail in Section B.7.

B.6.2 SALVAGING ACTIVITIES (27 CCR, SECTION 21600(b)(7)(B))/ VOLUME REDUCTION ACTIVITIES (27 CCR, SECTION 21600(b)(7)(C))

Recycling and resource recovery operations are important to conserving landfill space and reducing the need to landfill throughout the State of California. Legislation under AB 939 was enacted in 1990 to establish mandatory recycling goals. The current SWFP No. 43-AN-0003 allows salvaging of recyclables; the weight of recyclable materials removed from the waste stream is deducted from the permitted allowable tonnage totals.

The recycling goals of Assembly Bill 939 (AB 939) are met at the NISL through materials recovery and composting at The Recyclery, diversion of recyclable C&D material, use of alternative daily covers, battery, CRT, and waste tire diversion.

B.6.2.1 SALVAGING

Salvageable recyclables recovered at the dumping area include white goods, scrap metal, cardboard, wood, mattresses, and paper products. A landfill employee is used to spot recyclable waste loads and either removes the materials at the active filling area or directs the disposer to unload at a designated area. Only those recyclable materials, which can be recovered from the waste stream in a safe and efficient manner, are salvaged. Salvaging operations are supervised by the Site Manager. Site traffic and disposal operation are not hindered by the salvaging operations.

The salvaging operations conducted at NISL are discussed in a document titled “C&D Processing Operation” included in Appendix J. Also, listed below is a more detailed description of the processing of recyclable construction materials that enter the site.

Recyclable Construction Material

Source Separated Inert Loads

Inert loads entering the landfill consisting of source separated waste materials such as asphalt, concrete, dirt, and rock are currently diverted from the main waste stream and stockpiled on various portions of the landfill. The inert waste stockpile material is then used for road surfacing, working pads tipping decks, working pads for various pads and applications, and other construction applications. Ground green waste received at the site is used for erosion control and vegetative amendment on intermediate cover.

Mixed Construction and Demolition Loads

Loads entering the landfill consisting of mixtures of construction and demolition waste (typically referred to as CST loads) are identified at the landfill scales and directed to a construction and demolition salvage/recovery area. Typically these mixtures consist of various proportions of the following materials:

- Metal (all forms)
- Concrete
- Asphalt
- Dirt
- Soil
- Rock
- Drywall and other Sheeting Materials
- Wood (all forms)
- Roofing Materials
- Cardboard and other Construction Paper Products
- Plastics associated with the Construction Industry

Due to the composition of these loads, they must be processed to extract the salvageable components of the mixtures. For this reason, these loads are directed to the CST areas. Currently the CST area is in the central portion of the site but is

periodically moved depending on site logistics and proximity of the tipping area. At the CST area loads are received, tipped, and inspected for any hazardous material. The loads are initially processed to remove large pieces of materials using an excavator and/or rubber tire loader and sorters (laborers). Large items are by material type, which currently includes, metal, unpainted/untreated wood, concrete, asphalt, gypsum board, rock, soil, insulation, foam, cardboard, carpet, roofing materials, and waste materials (residuals). Categories are expected to vary depending on the economic viability of end markets.

Material from the initial sorting is either stockpiled or loaded directly into trailers or debris boxes for transport to various markets. Residuals are sorted into two components; the first is material that meets or exceeds current regulatory standards for use as alternative daily cover. The second portion of the residuals that cannot be used as alternative daily cover is weighed and disposed at the landfill.

The material remaining after the initial sort is further sorted utilizing a portable elevated picking station. These remaining materials are loaded into an infeed hopper and transferred via conveyor to an elevated platform where sorters (laborers) pull materials from a moving flat conveyor (picking station). At the picking station, materials are positively or negatively sorted depending on the predominant material in the feedstock. Materials are removed along the picking station by sorters (laborers) and placed in debris boxes or hoppers below the picking station. Material is removed periodically from below the picking station and placed in stockpiles or directly into either trailers or debris boxes for transport to various markets. The picking station provides an increase in the recovery rate for material and a safer work condition for processing the smaller components of the feedstock.

Materials recovered at the site will vary over time but currently consist of the following:

- Scrap Metal (all forms)
- Cardboard and other Construction Paper Products
- Unpainted/Untreated Wood
- Unpainted/Untreated Gypsum Wallboard
- Carpet and Carpet Padding
- Concrete, Asphalt, Rock, Dirt
- Asphalt Roofing Shingles
- Wood Roofing Shingles

Loads shipped to off-site customers are weighed out at the landfill scale, entered in the computer system for tracking, and entered on the month-end report. A monthly report of total incoming tonnages, diverted tonnages and disposed tonnages can be supplied to each jurisdiction.

Depending on outlet market demands various materials will be subsequently processed after sorting. These materials will vary but currently include:

- Processing concrete, rock, and asphalt to produce aggregate base products; and
- Processing wood materials to produce a more uniformly sized product to ease transportation.

B.6.2.2 STORAGE OF SALVAGE

Salvaged recyclable materials are stockpiled near the dumping area or other designated area to minimize risk of fire, nuisance, and safety issues.

B.6.2.3 REMOVAL OF SALVAGE

Salvaged recyclable materials are trucked off-site for recycling on a periodic basis depending on the accumulation rate and shipping method.

B.6.2.4 NON-SALVAGEABLE ITEMS

Drugs, cosmetics, foods, beverages, hazardous chemicals, poisons, medical wastes, syringes, needles, pesticides, or other materials capable of impairing public health are not salvaged. If any of these materials is present, recyclables in the same load are not salvaged.

B.6.3 EQUIPMENT (27 CCR, SECTION 21600(b)(7)(D))

B.6.3.1 ONSITE EQUIPMENT

A variety of equipment is used for the refuse disposal operation at the NISL. Onsite equipment meets disposal and site maintenance needs to allow operations of the NISL to be conducted in an environmentally sound manner and to comply with all applicable regulatory requirements. Onsite equipment is routinely maintained to provide ongoing compliance with State minimum standards. The numbers and types of equipment utilized to meet operational requirements is adjusted as necessary based on landfill development and refuse inflow rates. Below is a list of the existing onsite equipment. The listed equipment is adequate to handle all site operations in a safe manner and in compliance with all applicable permits and regulations, at maximum permitted tonnage levels.

- 3 CAT 836H Compactors
- 2 CAT D8T Bulldozers
- 1 CAT D6R Bulldozer
- 1 Liebherr PR736 Bulldozer
- 1 CAT 140M Motor Grader
- 2 Excavators (CAT 336 & CAT 330)
- 1 Water Truck
- 1 CAT 966M Rubber Tire Loader
- 1 CAT 740C All Terrain Dump Truck
- 2 CAT 730C All Terrain Dump Truck

B.6.3.2 EQUIPMENT MAINTENANCE PROCEDURES

All site equipment is kept in good operating condition by a mechanic on duty at all times the landfill is in operation. Periodic preventative maintenance and inspection of all site equipment is performed. Preventative maintenance, minor repairs, and major repairs are performed by site personnel and/or outside contractor at the maintenance building located in the central portion of the site, as shown on Figure 3.

B.6.3.3 OPERATING SITE MAINTENANCE PROCEDURES

In addition to the equipment maintenance procedures discussed above, 27 CCR, Section 20750, requires a landfill operator to implement a preventative maintenance program to monitor and promptly repair all defective or deteriorating support facilities, environmental controls and containment systems for the landfill. All environmental monitoring and control facilities, ancillary features (i.e., access roads, signs, gates, fencing, landscaping), containment areas and all other onsite structures are inspected routinely and maintained as necessary.

B.6.4 WASTE HANDLING (27 CCR, SECTION 21600(b)(7)(E))

The average working face of the landfill is approximately 160 feet wide, 160 feet long and approximately 20 to 30 feet in height. The haulers are directed to the working face by laborers who serve as traffic controllers. Refuse is unloaded and spread in layers approximately 2 to 4 feet in depth on the active working face. All non-hazardous refuse is handled as a mixture and combined together into the landfill at the working face. The refuse is continually compacted and graded. In general, each waste cell is constructed by pushing waste off the tipping deck to a horizontal pad where spreading and compaction occurs. The equipment used on-site to spread and compact the waste, compactors and dozers, is listed in Section B.6.3. All wastes delivered to the site are scrutinized utilizing the load checking program discussed in the following sections.

B.6.4.1 LOAD CHECKING PROGRAM

No radioactive, hazardous, PCB, or liquid waste is allowed or accepted at NISL. A Hazardous Waste Load Checking Program, contained in Appendix G and approved by the associated regulatory agencies, is implemented to prohibit hazardous waste from entering the site and describes procedures to be followed in the event of unauthorized hazardous waste disposal or attempted disposal.

The scale house operator questions all incoming refuse loads as to the source of the waste when they arrive at the scales. When visual inspection is feasible due to open-top containers and truck beds, a visual inspection is performed by the scale house operator. A scintillometer is also used at the scales to detect radioactive wastes. Site personnel trained to recognize hazardous wastes also watch for unacceptable wastes at the active dumping areas.

The procedures for random load checks and the associated inspection form are located in the site's Hazardous Waste Load Checking Program. The site is required to perform five (5) random load checks per month. The inspections are performed by the Operations Superintendent or in his absence, his designee. All employees who conduct inspections have been properly trained in the Load Checking Program.

If unacceptable waste is found, response steps and emergency and regulatory agency phone numbers are listed in the Load Checking Program. The LEA, CalRecycle, RWQCB, Santa Clara County Environmental Health Department, and the DTSC will be notified depending on the severity of the incident and type of material recovered. Additionally, the hazardous waste contractor to contact for response, cleanup, packaging, transport, and disposal of the waste is listed.

B.6.4.2 INCLEMENT WEATHER OPERATIONS

Rain and/or high winds are the predominant inclement weather conditions at NISL which may cause the operator to adjust onsite waste handling and disposal procedures. Landfill operations are typically not hampered by light rains. Wet weather operations are performed effectively through the use of proper road construction methods and by locating the active face of the landfill where access is via the shortest hauling distance practically possible.

For high wind conditions, the unloading area is typically reduced in size and, whenever possible, placed in a portion of the landing that affords some protection from the wind. Additional equipment may be utilized to expedite the spreading and compacting of the refuse as soon as it is unloaded. Cover operations may also be implemented prior to the end of the working day to reduce the area of exposed refuse on the working face. In addition, portable litter fencing is in-place and is used downwind around the unloading areas. Litter control procedures are discussed in Section B.7.1.6.

SECTION B.7

CONTROLS

(27 CCR, SECTION 21600(b)(8))

B.7 CONTROLS (27 CCR, SECTION 21600(b)(8))

B.7.1 NUISANCE CONTROL (27 CCR, SECTION 21600(b)(8)(A))

The following sections describe those measures established by IDC to eliminate and/or minimize those nuisances associated with the operation of NISL to meet the intent of 27 CCR, Section 21600(b)(8)(A).

B.7.1.1 FIRE CONTROL (27 CCR, SECTION 21600(b)(8)(B))

Fire suppressing materials available on-site consist of stockpiled soil near the active face and a water truck. Fire potential at the working face is diminished by maintaining a small working face, proper compaction and covering with daily cover. Fire extinguishers are maintained on all site equipment, at the employee trailer, the maintenance building, the hazardous waste storage bin, the outside oil and fuel tanks and at the scale houses. All disposal processing equipment has been updated with fire suppression systems in the event of an equipment fire. Site personnel are trained in methods of handling accidental fires on the active face of the landfill in accordance with the site emergency response plan (see Appendix H). A telephone is available at the scale house to contact local fire departments and other agencies in the event of an emergency and all employees have radios/phones for communication purposes. NISL, which is completely surrounded by water, does not require firebreaks.

If the WTSA is constructed at NISL, fire control measures will include 62-foot wide fire lanes on all sides of each of the eight (8) waste tire storage piles, in accordance with State regulations. No vegetation or any other potentially flammable materials will be located within 40 feet of the WTSA and access area.

B.7.1.2 LEACHATE (27 CCR, SECTION 21600(b)(8)(C))

Leachate is generated when water passing through the refuse reacts chemically and biologically with refuse contents. Potential sources of water for leachate formation at NISL include infiltration of rainfall, surface water from surrounding areas draining into the landfill, groundwater infiltration to unlined areas of the waste mass and water contained within the solid waste placed in the landfill. The composition of leachate is highly dependent upon the wastes contained in the landfill and varies

significantly within a landfill over time. The leachate management system for NISL is intended to contain and collect generated leachate, and reclaim or dispose of wastewater collected in the leachate control system.

B.7.1.2.1 LEACHATE HANDLING SYSTEMS

The unlined portions of the NISL are not equipped with a functioning LCRS. However, they are adjacent to the newer lined cells that were excavated to greater depths (-40 msl) creating a hydraulic potential for leachate to migrate from the unlined cells to the adjacent deeper, newer cells that are lined, thus creating an inward gradient.

As shown on Figure 8, LCRS Plan, approximately 52 acres in the central portion of the site is underlain by an LCRS consisting of a gravel blanket drain sloped at approximately 0.5 percent towards leachate collection trenches. Eight cells (Subareas 1 through 8) were constructed according to this LCRS design (Purcell, Rhoades & Associates; October 1, 1986) in the locations shown on Figure 8. As-built construction plans and test data reports were prepared and approved by the RWQCB. Leachate from these eight cells is collected at three sumps located along the boundary of the pre-Subtitle D LCRS area, as shown on Figure 8. Leachate is removed from these sumps with pumps set in 24" diameter HDPE vertical riser pipes which extend to the top of the waste fill.

Beginning in 1994, landfill construction at NISL commenced pursuant to the provisions of 40 CFR, part 258, commonly referred to as RCRA Subtitle D. Two disposal cells were constructed that year, called Subareas 9A and 9B. Subarea 9C was constructed in 2002 and 2003, followed by Subarea 10 in 2005, Subarea 11 in 2006, Subarea 12 in 2007, Subarea 13 in 2008 and Subarea 14 in 2009, Subarea 15 in 2011, Subarea 16 in 2013 and Subarea 17 and Station 6 in 2017. See Figure 8 for the location of these cells. The LCRS in the Subtitle D area consists of a 1-foot thick gravel blanket (bottom) or geocomposite drainage net (side slope) draining to a network of HDPE pipes which convey leachate toward a series of leachate collection sumps located along the south side of the landfill. All remaining permitted disposal areas are being constructed with an LCRS in accordance with Subtitle D.

Leachate is currently pumped from the discharge sumps and collection areas to tanks located on the D-Shaped parcel, east of the flare compound. The leachate is

then pumped into tanker trucks and transported to the San Jose/ Santa Clara Pollution Control Plant for treatment and disposal.

Two leachate-level monitoring points are located in the northern portion of the site, as shown on Figure 9, and are monitored in accordance with WDR Order No. R2-2005-0020.

B.7.1.2.2 LEACHATE VOLUMES

Leachate is currently collected in two sets of enclosed sumps (Figure 8):

- One set of three sumps collect leachate from subareas 1 through 8, the 51-acre LCRS in the central portion of the site, as well as from the adjacent northern area of the landfill, which has no LCRS; this leachate flows toward the LCRS area in a cascading manner.
- Leachate from the Subtitle D lined areas is currently collected in four sumps located in subareas 9C, 11, 13, and 15 along the southern edge of the site.

Leachate from all sumps is pumped to storage tanks located adjacent to the landfill maintenance shop, where it is loaded into tanker trucks for transport to a permitted treatment plant. The site currently processes approximately 35,000 gallons of leachate per day, 7 days per week.

The objectives and criteria in designing the LCRS and its components are to:

- Keep leachate levels to 1 ft or less at all points above the liner system except in the sumps;
- Collect and remove twice the anticipated maximum daily volume of leachate;
- Long-term performance in a leachate environment under the expected maximum landfill loading condition.
- Rapidly transport collected leachate from the liner to the leachate collection sump.

B.7.1.2.3 LCRS DESIGN

The LCRS pipe sizes (main line and laterals), layout, and the leachate collection sumps will be designed during the detailed design of each subarea using a maximum flow of 5.49 gallons per acre per minute as determined by the HELP analyses (see Appendix K). The minimum hydraulic conductivity and thickness for the LCRS granular layer shall be 1×10^{-2} cm/sec and 0.75 feet, respectively. The LCRS piping design and layout for each future subarea will be designed to maintain the leachate head to 1-foot or less at all points over the liner system as well as handle twice the anticipated maximum daily volume of leachate.

B.7.1.3 DUST CONTROL (27 CCR, SECTION 21600(b)(8)(D))

The dust control program primarily consists of asphalt paving of the main internal haul roads, proper maintenance and watering of the haul roads and, if applicable, water spraying of soil cover work areas when conditions exist which may result in the formation of fugitive dust. Daily and intermediate covering (inactive areas) of waste with clayey soils and temporary vegetation also assist in dust control.

B.7.1.4 VECTORS (27 CCR, SECTION 21600(b)(8)(E))

Daily and intermediate soil covering of the active and inactive waste placement areas is used to control the presence of birds and vectors. Birds are also controlled by maintaining a small working face. If vector problems become apparent, a licensed pest control professional is contracted to eliminate the problem. If the WTSA is constructed, breeding and harborage of mosquitoes, rodents, or other vectors will be prevented using the following measures, in accordance with 14 CCR, Section 17353:

- All tire piles, active or inactive, will be covered with a plastic tarp that is tear, puncture, UV and chemical resistant. Other than when the tires are being transferred from the roll-off container to the pile, the covers will remain in place at all times anchored with tie-downs, sand bags, or soil to prevent wind from blowing the covers off the piles. In the event of rain, waste tires will be stored in the roll-off container at the working face until dry weather allows for the tires to be transferred to the piles; at no time during wet weather will the tire piles be uncovered.
- Tires will be processed to eliminate the water holding capacity of the waste tires.

- Under the direction of the County of Santa Clara – Vector Control District (CSC-VCD), IDC will inspect active tire piles at least once per week for the presence of vectors. If any water is captured in the tires, a sample will be collected and inspected for the presence of mosquito larvae. If any vectors are evident, the CSC-VCD will be notified and the appropriate abatement measures will be taken. In addition, the mosquito species *Aedes albopictus* is of utmost concern and interest to the CSC-VCD, and will be specifically inspected for and notification of its presence will be made immediately. The CSC-VCD will be allowed to independently inspect and monitor the WTSA for vectors; any control or abatement measures suggested by the CSC-VCD will be taken.

B.7.1.5 DRAINAGE AND EROSION (27 CCR, SECTION 21600(b)(8)(F))

The NISL is protected from exterior floodwater inundation, run-on, and tidal waters by a perimeter levee system. The perimeter levee, at approximately 14 feet above msl adjacent to Coyote Creek, protects the NISL from the 100-year flood with a design flood stage of 9 feet above msl and tidal influences.

Stormwater runoff and sub drain water within the active portion of the facility is diverted and channeled within a series of drainage ditches and berms, which then empty into one of the stormwater basins in the southern and western portions of the site. Collected stormwater is discharged off-site, provided analyses show that no constituents of concern are present. The remaining runoff from the northern portion of the site flows directly to Coyote Creek. In compliance with the WDRs, stormwater runoff adjacent to the working face of the landfill is collected separately and disposed with the leachate.

The interim stormwater management system at the NISL has been designed to be capable of handling the runoff resulting from a 24-hour, 100-year storm. Storm water runoff is contained within the conveyance channels and discharged to the basins. Runoff from both the D-shaped parcel area and The Recyclery is conveyed toward vegetated swales located along the north side of the main access road on either side of the landfill gas flare station. These swales are periodically maintained and are designed to provide removal of total suspended solids as the water flows towards the main stormwater basin. Since the current basin is located below sea level, the collected stormwater is pumped in order to discharge off-site. In the event of a 100-year storm or greater, the pumps in the basin will be run more frequently to remove the collected run-off. If necessary, additional pumps can be obtained and placed on-line to maintain collection and runoff control.

As the site is developed, drainage swales, ditches, berms, and piping will be constructed and maintained to prevent ponding on-site and to control run-off and erosion. Unpaved roads are graded to assist in water sheeting and flow. The interior drainage system is maintained to be clear of sediment or debris. On intermediate slopes, temporary overside drains that extend from the top of slope to the bottom of slope are used to convey run-off to drainage swales with a minimal amount of erosion.

At final build-out of the landfill, similar drainage and erosion control measures will be employed but will be permanent rather than temporary, and transitional in nature. Vegetation on fill slopes will be used for erosion control. In addition to the above, waddles, silt fences and other measures are to be used as needed in designated areas until vegetation or other more permanent erosion control measures are established.

Post-closure drainage is discussed in the Preliminary Closure and Post-Closure Maintenance Plan (Section E.1.7); generally, after final grades are reached, runoff will be directed to a collection trench at the perimeter levee and discharged to one of two onsite stormwater basins. These basins discharge directly to Coyote Creek and Mud Slough through standpipes. The standpipes are designed to empty the basins within 72 hours. Details for standpipes have been provided in Figures 10 and 11.

The facility is subject to the NPDES General Industrial Stormwater Permit for California and implements a Storm Water Pollution Prevention Plan (SWPPP) under that program for the control of pollutants in storm water runoff. The SWPPP describes the specific erosion control measures used on-site and is reviewed annually and updated as needed.

B.7.1.6 LITTER (27 CCR, SECTION 21600(b)(8)(G))

The primary cause for litter around the landfill is wind, which at times carries refuse (primarily plastic bags and paper) away from the tipping area and from vehicles transporting wastes to the site. A Litter Control and Prevention Plan (see Appendix L) has been prepared for the site to prevent wind blown litter from leaving the landfill property. The plan is divided into four components as follows:

- High wind control measures;
- Portable, temporary, and permanent litter fences;
- Inspections; and
- Site contacts.

B.7.1.7 NOISE (27 CCR, SECTION 21600(b)(8)(H))

Site operations are conducted in compliance with Cal-OSHA regulations for noise. Noise levels of on-site equipment are controlled by installation and proper maintenance of mufflers on all motorized vehicles. Noise from on-site operations is not likely to create a health hazard for persons (customers) using the site due to their limited exposure. Site personnel are provided with earplugs to reduce impacts from continued exposure to on-site noise levels.

The relocation or construction of new buildings would generate short-term construction noise impacts. Typical hourly average construction generated noise levels are about 81 to 88 dBA measured at a distance of 50 feet from construction activities. Operational and/or physical changes necessary to comply with existing and new regulations could result in an incremental increase in noise levels on the site. Specific future operational and/or physical changes are unknown at this time; however, there are no sensitive land uses (*e.g.*, residences, parks) adjacent to the site. While there would be a temporary increase in noise from construction on the project site, it is anticipated that the noise levels from the proposed project site would not be distinguishable from the existing noise generated by I-880, which is located closer to the sensitive land uses (*i.e.*, the residences located to the east of I880) than the project site.

B.7.1.8 ODOR CONTROL

As bacterial decomposition proceeds, odorous compounds can escape from the landfill surface through cracks in the surface cover. Other possible sources of odors are the actual wastes. Some household and consumer products contain substances with distinctive odors. Because offensive odors rarely cause any physical harm and no requirements for their control are included in state or federal air quality regulations, the BAAQMD does not currently have any rules or regulations that place quantifiable limitations on emissions of odorous substances. Any actions related to odors are based on citizen complaints to local governments and BAAQMD.

Currently, NISL employs a comprehensive approach to controlling odors by utilizing several odor control measures (OCMs). The utilization of landfill gas collection and control systems, daily cover, water trucks, odor eliminating additives, meteorological stations, and the proper maintenance of windrows, when employed in concert, can

be effective in reducing the creation as well as the transport of offensive odors. In addition to the measures utilized at the landfill, the composting facility has an established Odor Impact Minimization Plan (dated March 2008) in place to control and address odor complaints.

B.7.2 GAS MANAGEMENT PLAN (27 CCR, SECTION 21600(b)(4)(E))

Landfills which receive organic wastes in some significant quantity eventually produce landfill gas. The decomposition of organic wastes within the refuse prism generates landfill gas as a by-product. This landfill gas generally consists of equal amounts of methane and carbon dioxide along with traces of other constituents. The production of landfill gas within the refuse cell is of interest primarily due to the explosivity of methane in concentrations between 5 and 15 percent by volume in air. Landfill gas controls are implemented to prevent surface emissions in excess of State and Federal regulations. State and Federal regulations also require the control of landfill gas to prevent it from migrating into onsite structures and beyond the landfill boundaries and accumulating in offsite structures.

B.7.2.1 LANDFILL GAS COLLECTION SYSTEM

The existing landfill gas (LFG) collection system meets all BAAQMD regulations for construction and monitoring and is permitted through the Major Facility Review Permit, facility #A9013 and #A5472 (see Appendix C).

Landfill gas produced at the site is collected and destroyed in the NISL's flares. Figure 12, Gas System Plan, shows the current extent and layout of the collection system for landfill gas. Three to six-inch diameter gas collection wells, at depths of 40 to 143 feet, are currently used to recover landfill gas. Two electrical generation plants, referred to as Newby 1 and Newby 2, are located at the NISL. As discussed in Section B.3.7.3, these facilities have been phased out and decommissioned. The gas export plant, referred to as Newby 3, has been shut down. There are currently two enclosed flares (Flares A-2 and A-3) with maximum permitted capacities of 2,400 scfm and 5,000 scfm, respectively (see Figure 12). The A-1 Flare was decommissioned in March 2015. On May 29, 2015, Republics submitted a notification to the BAAQMD regarding the permanent decommission of the A-1 Flare. The A-1 Flare has been removed from the site.

As refuse placement progresses, gas collection wells will be placed on the newer fill areas when appropriate. Condensate is collected in a series of collection sumps

along the header lines and routed to the leachate tanks where it is discharged into tanks and stored for later transport by truck to an off-site permitted treatment plant.

B.7.2.2 PERIMETER MONITORING NETWORK REGULATORY COMPLIANCE (27 CCR, SECTION 20925 (a) through (d))

As of September 20, 2007, new regulations for Gas Monitoring and Control at Active and Closed Disposal Sites became effective. For disposal sites which receive greater than 20 tons of waste per day, compliance was required by October 18, 2009. Based on an internal determination that the former perimeter landfill gas monitoring probe network at the NISL did not meet the current requirements of Title 27, Republic initiated efforts to bring the network into compliance. As part of this effort, Republic contracted with SCS Engineering to prepare and submit the *Perimeter Gas Migration Monitoring Plan, Newby Island Landfill (SWIS 43-AN-0003)*, dated December 12, 2008; and the *Addendum to Revised Perimeter Gas Migration Monitoring Plan, Newby Island Landfill (SWIS 43-AN-0003)*, dated September 2, 2009. The Monitoring Plan and addendum were reviewed and approved by the City of San Jose and the CIWMB (currently CalRecycle). Ten (10) perimeter landfill gas monitoring probes were installed at the NISL. The newly installed perimeter probes were constructed in accordance with 27 CCR, Division 2, Chapter 3, Subchapter 4, Article 6, Section 20925. In addition, eight (8) existing perimeter probes, that were not compliant with 27 CCR, were abandoned. Ten remaining existing probes remained in place as they meet the 27 CCR requirements. The perimeter landfill gas monitoring probe network consists of GP-1R through GP-6R, GP-8R, GP-11R, and GP-12 through GP-23 as shown on Figure 13.

All perimeter probes (GP-1R through GP-6R, GP-8R, GP-22 and GP-23) were constructed of 3/4-inch diameter, Schedule 80 PVC blank casing, and Schedule 80 PVC screened casing with a slot size of 0.020". Blank casing was installed from the ground surface to between 5 and 8 feet bags, depending on conditions at each location with the screened section being installed from this point to the bottom of the well.

A granular filter pack consisting of No. 3 Monterey type sand was placed in the annular space between the screen and the borehole wall. Filter pack was placed in each boring to approximately 1 foot below the bottom of the screen and 1 foot above the top of the screen. A low permeability seal, consisting of between 2 and 8 feet of Environ-Plug medium betonies chips, was placed immediately above the filter pack. Construction details are shown on the Boring Logs and presented on Table 1 in Appendix M.

A total of eight (8) non-compliant perimeter landfill gas monitoring probes, GP-1 through GP-6, GP-8 and GP-11 were abandoned. Of these, only GP-11 was drilled out using a hollow stem auger drill rig. All GP-11 probe materials were removed to the original installation depth of 10 feet bags, creating a borehole of equivalent diameter to the original. Medium bentonite chips were backfilled through the annulus of the augers to 3 feet bags. The chips were hydrated with clean water per manufactures instructions (i.e. 5 gallons of water to every bag of chips placed in the borehole as recommended by Woy-Ben Industries).

The remaining probes were located on a slope above the surrounding marsh and were not accessible by the hollow stem auger drill rig performing the abandonments. As a result, these probes were abandoned by cutting the steel casing down to approximately 2 to 3 feet bags, and filling the casing with bentonite chips, that were hydrated in-place with clean tap water. Following placement and hydration of the bentonite chips, the interval from the top of casing to the surface was backfilled with soil. Abandonment details are presented on Table 2 of Appendix M.

In a memorandum dated February 18, 2013 (see Appendix B), the Engineering Support Branch of CalRecycle addressed the request for the exclusion of perimeter monitoring, with the exception of the probes surrounding the D-shaped parcel. The exclusion request is based on demonstration that there is no potential for adverse impacts on the public health and safety and the environment. In specific, perimeter probes GP-1R through GP-6R, GP-11R, and GP-12 through GP-21 have been excluded from the 5% by volume methane compliance level. These probes will continue to be monitored to demonstrate performance of the expanded landfill gas collection system, including the installation of the pneumatic pumps to remove liquids to ensure acceptable functioning of the extraction wells.

B.7.2.3 MONITORING

Perimeter and surface landfill gas at NISL are monitored at NISL in accordance with CFR 258.23 (Subtitle D) and the BAAQMD Regulation 8, Rule 34.

B.7.2.3.1 METHOD AND FREQUENCY

Perimeter and surface landfill gas monitoring are conducted on a quarterly basis. Surface and perimeter landfill gas concentration is measured with a portable Flame Ionization Detector (FID), or equivalent, in accordance with EPA Reference Method 21 (40 CFR 60).

B.7.2.3.2 PERIMETER GAS MONITORING

The results of perimeter landfill gas monitoring at the NISL have shown that there is no landfill gas migration off-site. The perimeter landfill gas monitoring probes were designed and spaced according to 27 CCR requirements.

B.7.2.3.3 REPORTING

The RWQCB and LEA do not require the results of perimeter landfill gas monitoring to be reported. Results of quarterly landfill gas monitoring are maintained in the operating record for inspection at the IDC office. Semi-Annual reporting is required by the BAAQMD as indicated in the Major Facility Review Permit, facility #A9013 and #A5472 (see Appendix C).

B.7.2.4 STRUCTURE MONITORING

Onsite structures at the NISL are monitored monthly, in accordance with 27 CCR, Section 20931, for detection of potential landfill gas migrating into building structures. The regulatory threshold is 1.25 percent methane by volume.

B.7.2.5 LANDFILL GAS MONITORING AND CONTINGENCY COLLECTION SYSTEM FOR THE D-SHAPED PARCEL

Methane gas is not anticipated to be detected in the D-shaped parcel area in the future as the D-shaped parcel area was previously utilized primarily as a burn dump. Additionally, boring logs from the D-shaped parcel area show no municipal solid waste, the decomposition of which generates landfill gas as a by-product. Furthermore, monitoring results from probes indicate no methane. In order to ensure no methane collects beneath the landfill cover, a landfill gas monitoring and contingency collection system was installed as part of the partial closure of the D-shaped parcel.

The monitoring and collection system (see Figure 25) consists of evenly spaced high permeability trenches (graded to gravity flow from the north to the south) with perforated HDPE pipes (Figure 7). Each lateral trench and pipe has a stub out (monitoring point for the pipe) and a liquids collection sump at the perimeter of the cap system. Quarterly monitoring is conducted to monitor for the presence of methane and liquids. Recent quarterly monitoring (October 2013) resulted in no methane concentrations in exceedance of one percent methane and no liquids.

Should landfill gas be detected during routine monitoring, the contingent landfill gas collection system in the D-shaped parcel would be modified by connecting it to the landfill gas collection/control system. Should any liquid be detected in a quarterly monitoring event, then the system would be modified by installing air-powered pumps in the sumps, discharging to the existing leachate storage tanks for eventual transport for off-site disposal.

B.7.3 GROUNDWATER MONITORING SYSTEM

Groundwater at the NISL is monitored in accordance with 40 CFR 258.50-58 (Subtitle D), and the DMP prescribed by the RWQCB in WDR Order No. R2-2005-0020 (see Appendix C).

B.7.3.1 GROUNDWATER MONITORING LOCATIONS

The current groundwater monitoring system at NISL, as shown on Figure 9, consists of the following:

- One (1) background (upgradient) groundwater monitoring well (MW-11);
- Eleven (11) down-gradient groundwater monitoring wells (MW-2 through MW-4A, MW-5R, MW-6 through MW-8, MW-9A, MW-10, MW-13, and R-2R); and
- Eight (8) piezometers used to measure groundwater/leachate levels underlying the site (W-SW, GR-2A, GR-7, LPZ-1R2, LPZ-2R, LPZ-3, LPZ-4R, and LPZ-5R).

Boring and construction logs for all groundwater monitoring wells are contained in Appendix N of this JTD. Previously existing groundwater wells MW-5 and R-2 and piezometers R-1, R-3 and R-4 were abandoned and replaced by groundwater wells MW-5R and R-2R in March, 2012 as part of the closure of the D-shaped parcel. The

“As-Built Groundwater Well Installation and Abandonment Report” is included in Appendix N-1. In addition, well MW-13 was destroyed by heavy equipment in September 2018. A replacement well (MW-13R) was installed on September 3, 2019.

B.7.3.2 SAMPLING AND ANALYTIC PROCEDURES

Groundwater monitoring, analysis, and reporting at NISL is completed in accordance with the Detection Monitoring Program (DMP) prescribed in WDR Order No. R2-2005-0020, which is contained in Appendix C. Groundwater levels are measured quarterly in all groundwater monitoring wells in accordance with WDR Order No. R2-2005-0020.

B.7.3.3 SURFACE WATER MONITORING

Surface water at NISL, including stormwater runoff and collected subdrain water, is monitored in accordance with the Self Monitoring Program (SMP) prescribed by the RWQCB in WDR Order No. R2-2005-0020 (see Appendix C). Surface water monitoring points at NISL, shown on Figure 9, are as follows:

- The stormwater/subdrain water basin south of the maintenance building at Upper Pond monitoring point SW-1;
- South Mud Slough at monitoring point SW-2; and
- Coyote Creek at monitoring point SW-3.

The SMP also fully describes surface water sampling procedures, field sampling and laboratory QA/QC, and all laboratory tests.

B.7.3.4 VADOSE ZONE MONITORING SYSTEM

Due to site geologic and hydrogeologic conditions, monitoring of the vadose zone is not required.

B.7.3.5 NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER MONITORING PROGRAM (SMP)

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of pollutants to waters of the United States from any point source is effectively prohibited unless the discharge is in compliance with the National Pollutant Discharge Elimination System (NPDES) permit. The CWA was amended in 1989 and codified as final regulations in 1990 in 40 CFR, Part 122, the State Water Resources Control Board (SWRCB) elected to issue a statewide General Permit that would apply to all discharges covered under the new regulations, except municipal storm drain systems and storm water discharges from construction activities, which are covered under state-wide permits. The California General Permit (CGP) was initially issued in November 1991 under Water Quality Order No. 91-31-DWQ.

The SWRCB issued a revised CGP under Order No. 97-03-DWQ (Waste Discharge Requirements- WDR) in April 17, 1997 to replace the existing CGP issued under Order No. 91-13-DWQ. This CGP was issued to revise some of the provisions of the expired permit in accordance with federal regulations.

The NISL is a Class III municipal solid waste landfill which complies with the NPDES – California General Permit No. CAS000001 requirements. The NISL had developed and is continuously implementing the approved Storm Water Pollution Prevention Plan (SWPPP) and the Monitoring Program and Reporting Requirements (MPRR) in accordance with federal and state regulations. A copy of the current SWPPP is included in Appendix AA. Please note that heavy equipment washing is performed at the working face.

B.7.3.6 REPORTING

Republic conducts compliance monitoring and submits associated reports in accordance with WDRs for the NISL. Republic also submits semi-annual DMP monitoring reports and annual compliance statements.

B.7.4 TRAFFIC (27 CCR, SECTION 21600(b)(8)(I))

After entering the facility, site users stop at the scale houses and scales to be weighed, pay fees, and receive directions before proceeding to the active dumping area. Traffic control and speed limit signs are provided to direct site users. IDC maintains a full-time employee to direct traffic and enforce safety regulations at the active working face and public dumping area. All landfill haul roads are of sufficient width to allow two-way traffic. Traffic flow is not significantly impeded during peak loading periods at the gate or in the area of the active working face. Also, sufficient vehicle on-site stacking capacity is available at the scales and at the active working face. No turns across traffic are required.

B.7.4.1 TYPES AND NUMBERS OF VEHICLES ANTICIPATED TO ENTER THE FACILITY

An all weather access road extends approximately 2,500 feet from the McCarthy Ranch Road/Dixon Landing Road intersection to the gatehouse and scale. A gate at the intersection is locked when the facility is closed to restrict unauthorized entry. Vehicles stop at the scale house, are inspected and pay fees and receive directions before proceeding to the active working face or recycling areas. Traffic control signs are provided to direct site users. The operator maintains a full-time employee to direct traffic and enforce safety regulations at the active working face and recycling areas. Traffic flow is not significantly impeded during peak loading periods (usually Mondays) at the gate or in the area of the active working face. Also, sufficient vehicle stacking capacity is available at the gatehouse and at the active working face.

Site traffic was studied in 2008. This study represented the typical traffic at the site and characterized the maximum traffic that would occur when peak tonnages enter the landfill and the Recyclery. The study found no significant impacts to transportation systems around the facility even at peak tonnages. In general, peak traffic occurs during periods of the year when city clean up activities, creek maintenance and household disposal activities increase traffic to the facility. The maximum number of vehicles anticipated to enter the facility including the landfill and the Recyclery is 1,546 per day. This only includes those vehicles bringing materials to the landfill (1,269 vehicles) and the Recyclery (277 vehicles) and does not include employees, visitor, vendors, regulatory personnel, construction or other vehicles not hauling waste and recyclables to the facility.

The types of vehicles entering the facility include the following:

- 3-axle and 5-axle Refuse Collection Packer Trucks
- 10-Wheel Dump Trucks
- 18-Wheel Tilt-up Trucks
- Belly-dump Tractor Trailers
- Public Customer Automobiles and Pick-up Trucks
- Employee Automobiles and Pick-up Trucks
- Equipment Service and Maintenance Vehicles
- Fuel Transport Vehicles
- Leachate Transport Vehicles
- Supply Vendor Vehicles

B.7.5 HAZARDOUS WASTE (27 CCR, SECTION 21600(b)(8)(J))

No radioactive, hazardous, PCB, or liquid waste is allowed or accepted at the NISL. A Hazardous Waste Load Checking Program, contained in Appendix G and approved by the associated regulatory agencies, is implemented to prohibit hazardous waste from entering the site and describes procedures to be followed in the event of unauthorized hazardous waste disposal or attempted disposal.

The scale house operator questions all incoming refuse loads as to the source of the waste when they arrive at the scales. When visual inspection is feasible due to open-top containers and truck beds, a visual inspection is performed by the scale house operator. A scintillometer is also used at the scales to detect radioactive wastes. Site personnel trained to recognize hazardous wastes also watch for unacceptable wastes at the active dumping areas.

The procedures for random load checks and the associated inspection form are located in the site's Hazardous Waste Load Checking Program. The site is required to perform five (5) random load checks per month. The inspections are performed by the Operations Superintendent or in his absence, his designee. All employees who conduct inspections have been properly trained in the Load Checking Program.

If unacceptable waste is found, response steps and emergency and regulatory agency phone numbers are listed in the Load Checking Program. The LEA, CalRecycle, RWQCB, Santa Clara County Environmental Health Department, and the DTSC will be notified depending on the severity of the incident and the type of waste

encountered. Additionally, the hazardous waste contractor to contact for response, cleanup, packaging, transport, and disposal of the waste is listed.

Commercial contracts are processed through Republic's Special Waste Department which has developed sampling and testing protocols to ensure that waste profiles meet acceptance criteria for the site. Incoming loads are subject to random inspections and video surveillance at the gate to verify that material conforms to approved contract profiles. Unacceptable material identified at the working face is removed and isolated for proper disposal at an appropriate third party disposal facility.

APPENDIX H

EMERGENCY ACTION PLAN



A handwritten signature in blue ink, appearing to read "Rachel K. Hiber".

Signature

2/27/2020

Date

Safety Manual

Emergency Action Plan

NEWBY ISLAND SANITARY LANDFILL

I. PURPOSE

This Emergency Action Plan is designed to provide guidance to personnel in the event of an emergency and outlines the required procedures for responding to emergencies. Emergencies both man-made and natural may require this facility to be evacuated or shelter-in-place. These may include, but are not limited to, fires, explosions, floods, earthquakes, hurricanes, tornados, toxic material release, radiological and biological accidents, civil disturbances, and workplace violence.

This plan has been developed to provide direction in responding to these and other types of emergencies and ensure the facility's compliance with OSHA 29 CFR 1910.38, Emergency Action Plans.

II. DEFINITIONS

None

III. RESPONSIBILITY

The Facility Manager is in charge of any emergency at this facility. All communication, questions, etc., are to be directed to the Facility Manager, who has full authority, including the management decisions listed within this plan.

The Facility Manager is responsible for:

- a. Assigning alternates to serve in his/her absence, they are listed on the Emergency Contact List in Appendix B.
- b. Designating the appropriate emergency response personnel for the various types of emergencies outlined in this plan, and who will assist the Facility Manager in the evaluation and response to emergencies.
- c. Ensuring that all personnel are trained on the procedures outlined in this plan.
- d. Making the decision to shut down operation and whether to shelter-in-place or evacuate during an emergency

To Do:

- Annual training to employees
- Conduct mock fire drill
- Update evac map (if changes)
- Update Appendix A,B,C

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Emergency Action Plan

- e. Directing the shelter-in-place, evacuation and search of the facility, and recall of personnel during an emergency
- f. Communicating with local law enforcement and local emergency response personnel to review this plan, the facility, and communicate with them during an emergency.
- g. Conducting mock emergency drills to train personnel and test this plan at least annually.
- h. Ensuring that this plan and the contact personnel are kept up to date with current work practices and contacts.

IV. EMERGENCY ACTION PLAN OVERVIEW

Depending on the circumstances and the type of emergency, the first important decision is whether to stay at the facility (shelter-in-place) or evacuate. Facility management will use all available information to determine if there is an immediate danger. In any emergency, local authorities may or may not immediately be able to provide information on what is happening and what the facility should do.

Facility management will make the decision to either shelter-in-place or evacuate in the absence of direction from outside agencies. This plan is designed to account for both possibilities. Facility management will use available information to assess the situation. If there is a large amount of debris in the air, or if local authorities say the air is badly contaminated, the decision may be to "shelter-in-place." Information will be gathered from watching TV, listening to the radio, or checking the Internet often for information or official instructions as it becomes available. There are numerous emergencies that may prompt personnel to shelter-in-place. Examples of these types of emergencies include; terrorist attacks, toxic material releases, radiological and biological accidents, civil disturbances, workplace violence, and tornados.

If told to evacuate or seek medical treatment from the authorities, the facility will do so immediately.

In preparation for these events the facilities has designed the following plans to help instruct personnel on who to contact, where to go, and the basic emergency supplies information.

1. Emergency Information List (Appendix A)

The emergency information list contains emergency responders, contact phone numbers, emergency assembly locations, and shelter-in-place locations. It outlines the basic actions that must be taken in the event of an emergency.

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2. Emergency Contact List (Appendix B)

The emergency contact list is posted in multiple locations around the facility so to be used to initiate this emergency action plan. This list contains the home and work phone numbers of key staff and support personnel (e.g., corporate staff, police, fire, emergency medical support, and relevant government agencies). It also contains the names and/or titles of those individuals who are assigned to serve as the facility's Emergency Coordinator, spokesperson, and their designated alternates.

3. Spill Response Information (Appendix C)

The spill response information contains information on chemicals stored on site, storage amounts, spill cleanup supplies, personal protective equipment, and the names of personnel trained in spill response procedures.

4. Site Evacuation Map

The site evacuation map(s) (Appendix D) contain the emergency escape routes for the buildings and/or area. In addition fire extinguishers, first aid kits, spill response kits, and other emergency response equipment are indicated. Upon notification of an evacuation, all personnel who are not directly involved in responding to the emergency must go directly to the emergency assembly location(s) indicated on this map. Once at the emergency assembly location point, a headcount will be conducted to account for all personnel at the facility.

The emergency assembly areas were selected because there is sufficient area to accommodate all personnel. They are located away from busy streets and out of the way where they will not interfere with rescue and emergency response operations. The location is also up-wind from the most common or prevailing wind direction from the potentially hazardous areas on site.

5. Employee Personal Information

Personal emergency response information is kept with the human resources department. This information, which may be needed in the event of an emergency includes:

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- a. Home telephone numbers
- b. Names and telephone number of next of kin, and
- c. Medical information

This information is maintained in such a way that it can be readily retrieved in the event of an emergency.

6. Rescue

Rescue operations at this facility will only be performed by outside agencies that have professionally trained, equipped, and certified personnel to perform rescue operations.

7. Detailed Procedures

Below are detailed procedures for each of the following events:

- a. Fire Response Procedures
- b. Shelter-in-Place Procedure
- c. Evacuation Procedure
- d. Medical
- e. Weather
- f. Spill Response Plan
- g. Bomb Threat

V. FIRE RESPONSE PROCEDURES

This outlines when it is safe, and not safe, to fight a fire with a fire extinguisher. Promptly reporting a fire is always the first response. This is to alert everyone and make sure they are evacuated to the emergency assembly location if necessary.

1. Report Fires Immediately

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Activate the emergency alarm system and report all fires immediately to the facility manager or the nearest member of management and notify the fire department.

2. Small Fires

Personnel who have completed annual fire extinguisher training may attempt to extinguish small fires. A small fire is defined as a fire that can be controlled or extinguished by the use of portable fire extinguishers without the need for personal protective equipment. Individuals must use their judgment based on their training and experience to determine whether or not it is safe to fight a fire with portable fire extinguishers.

The following is provided as general guidance in helping personnel in making this decision.

3. When it may be safe to extinguish a fire using a fire extinguisher

- a. Size of the Fire – if the fire is limited to the original material ignited, it is contained (such as in a waste basket) and has not spread to other materials. The flames are no higher than the firefighter's head.
- b. Condition of the Air in the Area – if the fire has not depleted the oxygen in the room and is producing only small quantities of toxic gases and no respiratory protection equipment is required.
- c. Amount of Smoke and Heat – if heat is being generated, but the room temperature is only slightly increased. Smoke may be accumulating on the ceiling, but visibility is good and no special personal protective equipment is required
- d. Evacuation Path - there is a clear evacuation path that is behind you as you fight the fire.

4. When it is not safe to use a fire extinguisher to fight a fire:

- a. Type, size, and location of the fire - If the fire involves flammable solvents, has spread over more than 60 square feet, or is partially hidden behind a wall or ceiling, or can not be reached from a standing position.
- b. Condition of the air - if the smoke and products of combustion from the fire require respiratory protection in the area
- c. Amount of Heat – If the radiated heat is easily felt on exposed skin making it difficult to approach within 10-15 feet of the fire (or the effective range of the extinguisher)
- d. Visibility - If the person must crawl on the floor due to heat or smoke. Smoke is quickly filling the room, decreasing visibility.
- e. Evacuation Path - If the fire is not contained, and fire, heat, or smoke may block the evacuation path

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VI. SHELTER-IN-PLACE PROCEDURE

1. Shelter-in-Place Rooms

To “shelter-in-place,” an interior room(s) is selected that is above the ground floor, with the fewest windows or vents. The room(s) should have adequate space for everyone to be able to sit. Overcrowding is avoided by selecting additional rooms if necessary. Large storage closets, utility rooms, pantries, copy and conference rooms without exterior windows work well. Avoid selecting a room with mechanical equipment like ventilation blowers or pipes, because this equipment may not be able to be sealed from the outdoors. It is ideal to have a hard-wired telephone in the room(s) you select. Cellular telephone equipment may be overwhelmed or damaged during an emergency.

2. Emergency Supplies

Shelter-in-place disaster supplies may include items such as nonperishable food, bottled water, battery-powered radios, first-aid supplies, flashlights, batteries, duct tape, plastic sheeting, and plastic garbage bags.

3. Shelter-in-Place Emergency Action Plan

The following is a basic outline of the typical procedures used for sheltering-in-place. When authorities provide directions to shelter-in-place, they want everyone to take these steps immediately.

- a. Close the facility.
- b. If there are customers, clients, or visitors at the facility, provide for their safety by asking them to stay. Instruct these people that it is best for their safety not to leave their current location. Do not drive or walk outdoors.
- c. Unless there is an imminent threat, ask employees, customers, clients, and visitors to call their emergency contact (i.e. family member, etc.) and let them know where they are sheltering (staying) and that they are safe.
- d. Turn on call-forwarding or alternative telephone answering systems or services. If the business has voice mail or an automated attendant, change the recording to indicate that the business is closed, and that staff and visitors are remaining in the building until authorities advise it is safe to leave.

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- e. Quickly lock exterior doors and close windows, and air vents. Have employees familiar with your building's mechanical systems turn off all fans, heating and air conditioning systems. Some systems automatically provide for exchange of inside air with outside air. These systems, in particular, need to be turned off, sealed, or disabled. Close or tape-off all vents in the "shelter-in-place" room(s).
- f. If you are told there is danger of an explosion, close the window shades, blinds, or curtains.
- g. Take your emergency supplies and go into the designated shelter-in-place room(s). Seal all windows, doors, and vents with plastic sheeting and duct tape or anything else you have on hand.
- h. Consider precutting plastic sheeting (heavier than food wrap) to seal windows, doors, and air vents. Each piece should be several inches larger than the space you want to cover so that it lies flat against the wall. Label each piece with the location of where it fits.
- i. Call emergency contacts and have the phone available if you need to report a life-threatening condition.
- j. Write down the names of everyone in the room, and call the designated emergency response coordinator to report who is in the room(s) with you, and their affiliation with your business (employee, visitor, client, or customer).
- k. Listen to the radio, watch television, or use the Internet for further instructions until you are told all is safe or to evacuate. Local officials may call for evacuation in specific areas at greatest risk in your community.

VII. EVACUATION PROCEDURE

1. Activate Emergency Alarm System

Employees are notified of the need for an emergency notification by sounding of an alarm, announcement over the building communication system, or by notification initiated by their supervisor.

2. Shut Off Equipment

Equipment or operations will only be shut off if time permits and only if your personal safety is not at risk. Critical operations that need to be shut down are included in the Facility Emergency Information List.

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3. Use Designated Exit Routes

Plans/maps that identify designated emergency exits, routes and the locations of fire extinguishers and fire hoses are posted in key locations within the Facility. Employees must always evacuate through an exit closest to your location in the event of an emergency or fire requiring evacuation. Each supervisor, or in his/her absence an individual designated by the supervisor, is responsible to ensure that all assigned evacuation routes and exits are clear from obstructions that could hinder evacuation during an emergency.

4. Clear the Building / Area

Supervisors are responsible in the event of an evacuation to ensure that all employees and visitors safely evacuate from the supervisor's assigned work area. Supervisors are also responsible for ensuring that any disabled person located in the supervisor's work area is either evacuated with other employees or is relocated to a designated (on the evacuation map) location for evacuation by emergency response personnel. Those supervisors whose assigned work areas include restrooms and other inside rooms are responsible to ensure that those areas have been evacuated.

5. Evacuation Precautions

When evacuating during a fire, do not open doors if the doors or knobs are hot. If they are cool, open doors slowly. If smoke is encountered when exiting, kneel down on the floor and crawl to escape. Never use an elevator during a fire. Smoke and heat rises so the elevator may be filled with smoke.

6. Proceed Immediately to Assembly Locations

Employees are instructed to quickly exit the building and to assemble at the primary or secondary assembly locations. See Facility Specific Emergency Information List for the primary and secondary locations.

7. Conduct Headcount

Supervisors, with the assistance of employees, are to take headcounts at the assembly area. Emergency personnel are to be notified of names and last known location of any missing personnel who might require rescue.

Emergency personnel or the facility manager will make the decision once a headcount is taken if the situation warrants a further evacuation. This may require sending personnel home by normal means or providing them with transportation to an offsite location.

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8. Do Not Re-Enter Building / Area Until Authorized

Once emergency response personnel or the General Manager or Designee has given the "all clear" to employees and their supervisors, they may reenter the facility and proceed to their designated work areas.

9. Review Plan

Senior management will conduct a formal critique of the incident and associated actions, to identify necessary recommendations for improvement.

VIII. MEDICAL EMERGENCIES

1. Reporting a Medical Emergency

During normal working hours, evenings, or weekends:

- a. Report minor injuries to your supervisor or designated first aid provider.
- b. Drivers are to call dispatch.
- c. Serious or life threatening injuries, call 911/Fire Department, and facility management.

2. Emergency First Aid Assistance

First aid is only to be provided by designated first aid providers who have received first aid and/or CPR training, and whose job description duties include providing first aid. Additionally, the Republic Services contract medical provider has established a procedure to provide post-exposure treatment in the event that an employee is exposed to blood or other potentially infectious substances when voluntarily providing emergency assistance or first-aid. Refer to the Safe Work Procedures – First Aid for additional details.

Note: Employees who have received Republic Services provided first aid or CPR training, and are not designated as first aid providers are instructed that their job does not require that they perform first aid services.

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IX. WEATHER – TORNADOS, HURRICANES, FLASH FLOODS

The Facility Manager will make the determination to shut down operations if threatening weather is in the area. The Facility Manager will decide whether it will be better to leave the facility if time permits or “shelter-in-place.”

1. Monitor Weather Conditions

When threatening weather suggests that a tornado, or other dangerous weather condition, could occur in the vicinity, the Emergency Response Coordinator (ERC) will monitor local news/weather radio broadcasts for warnings issued for areas in or around the Facility.

2. Proceed to Designated Shelters

When a weather-related warning is issued for the area the ERC will notify all supervisors to be prepared to move their employees to their assigned shelter areas. At the first sign of an approaching tornado or threatening weather, supervisors must direct their employees to shelter. If time permits, turn off your equipment, prior to proceeding to the designated shelter area.

3. If Designated Shelter is Not Available

Personnel who are unable to reach designated shelters are instructed to use the following guidance to seek alternative shelter. Shelters should ideally be below grade, or if not feasible, above grade in an area without windows and of substantial construction. Typically, fire stairwells and washrooms are examples of appropriate shelter areas. Interior corridors are less desirable as past incidents have indicated that they can become filled with flying shrapnel. If the above shelters are not readily available, cover should be sought under heavy furniture, on the lowest floor, and away from windows, glass doors, etc. All office trailers should be evacuated, and those personnel should move to a more permanent shelter or lie flat in the nearest depression or ditch. Personnel who are outdoors and cannot get to shelter should seek a low-lying area, ditch, depression or low area.

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4. Headcount and Recovery

After the threat of threatening weather has passed, supervisors, with the assistance of employees, are to take headcount to determine that all employees are safe and uninjured. Remain in the shelter area until instructed to return to your work area by the ERC.

5. Call For Emergency Assistance

Call 911 or the Fire Department if any employee requires medical assistance or rescue. Give the Fire Department the appropriate address and the exact location where assistance is required.

X. SPILL RESPONSE

1. Pre - Planning

Chemicals used or stored at the facility are stored and labeled in approved containers according to the requirements of the Facility's Hazard Communication (Right-To-Know) Program. Material Safety Data Sheets (MSDS) are available for each of these chemicals. Each supervisor is responsible for ensuring that his/her employees are aware of the hazardous chemicals that are used in their work area.

Employees are advised, depending on their work assignment, to either leave from the area of a spill and notify the appropriate personnel of the spill/release, or to respond to the spill/release by stopping, containing, or cleaning up the spill. Appendix C contains a list of chemicals and the amounts if spilled that would require personnel to leave the area.

2. Reporting a Spill

a. Minor Spill

If the spill/release is small (i.e., not large enough to require employees to leave the area) report it immediately to your supervisor.

b. Moderate Spill

Leave the area of the spill/release, then immediately notify your supervisor or a designated spill responder. They will initiate the actions that are required to stop, cleanup, or otherwise

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respond to the spill/release.

c. Major Spill

Leave the area of the spill, then immediately notify your supervisor or the Facility Manager, and contact the proper authorities or spill responders.

3. Limits of Response

Appendix C contains a list of spill supplies, personal protective equipment to be used for spill responses, and list of personnel who are the designated spill responders for small and moderate sized spills.

a. Minor Spill

Most employees have received routine Hazard Communication training and have been provided with supplemental training on how to use spill cleanup supplies and additional personal protective equipment which will allow them to cleanup minor spills/releases as a part of their routine work assignments. Moderate and larger spills/releases are either handled by moderate spill responders or by Hazardous Materials (HAZMAT) responders.

b. Moderate Spill

Responders for moderate sized spills are used at this facility for leak prevention and cleanup, where conditions do not exceed the thresholds established in this plan for HAZMAT response. Employees who have been assigned to respond to moderate sized spills have received routine Hazard Communication training and have been provided with supplemental training to use spill cleanup supplies and additional personal protective equipment. In the event of a moderate spill/release employees are either:

- Required to leave the area until the situation is corrected; or
- Trained and qualified, as a member of the spill response team, to stop the leak and/or cleanup the spill/release.

c. Major Spill

HAZMAT responders are required whenever release of the hazardous chemical creates conditions in the spill/release area that:

- Are life or injury threatening;
- Pose a fire or explosion hazard;

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- Present an oxygen deficient atmosphere; or
- Cause high levels of a toxic substance.

Professional fire and emergency assistance are requested (see emergency contact list) where either the facility does not have a HAZMAT response team or when backup assistance is required for the facility's HAZMAT response team

XI. BOMB THREAT

1. Bomb Threat Analysis

Proper response to the threat involves at least three continuous and related but distinct steps:

- a. Analysis of the threat and estimate of the need for response.
- b. Decision on what is the proper response.
- c. Implementing the response decision within the allowable time frame.

2. Procedure To Be Followed After A Bomb Threat Has Been Received

The person who receives the threat should immediately contact the Facility Manager or the designated alternate.

The person receiving the threat should then immediately fill out a Bomb Threat Checklist (Form 1019, or an equivalent form). This Checklist should be completed for each threat received, noting the time and, if possible, the exact words used in the threat.

In the case of a phone threat, record the conversation if possible and consider taping subsequent calls.

Once he/she is notified the Facility Manager will:

- a. Notify the local law enforcement agency, or where the facility has a security officer, contact security to notify local law enforcement (where a security service or security office is used it is recommended that the shift commander be requested, to insure confidentiality);
- b. Notify all supervisors and instruct them whether to evacuate the facility and/or conduct a search. The Bomb Threat Search Procedure is contained in Bomb Threat Checklist (Form 1019).

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If any employee is so concerned that he/she wants to leave the facility because of the bomb threat, he/she shall be allowed to do so. Such employee will be instructed to punch out upon leaving the facility and will not be paid for the remainder of the shift. Employees will further be instructed not to report for work until the beginning of his/her next shift.

If a decision is made to evacuate the facility, supervisors will be responsible for shutting down in the normal manner. Employees will be instructed to proceed to the emergency assembly locations and to remain there for further instructions.

When a decision has been made to return to work, employees will be advised to return to work. Procedures should be in place to contact employees. Supervisors should turn in the names of any missing personnel to their managers or the facility manager.

XII. TRAINING

Training employees is a critical component of this plan in preparing personnel in how to respond to an emergency. All employees are trained, on their first day of employment, on the actions that they are required to follow during an emergency. Additional training, as appropriate, is provided:

- For employees who are assigned to assume additional responsibilities during an emergency;
- Whenever employee's responsibilities or designated actions under the plan change
- Whenever the plan is changed, and
- As necessary to maintain the required skills of personnel.

The training program provided to personnel covers this emergency action plan and includes the following topics:

- Individual roles and responsibilities;
- Potential threats, hazards, and protective actions;
- Notification, warning, and communications procedures;
- Means for locating family members in an emergency;
- Emergency response procedures;
- Evacuation locations, shelter-in-place locations, and accountability procedures;
- Location and use of common emergency equipment; and
- Emergency shutdown procedures.

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XIII. ANNUAL DRILLS AND PERIODIC UPDATES

This facility conducts a test of this emergency action plan at least annually so personnel become familiar with the emergency procedures, the evacuation routes, emergency assembly locations, and shelter locations. The facility reviews this plan with other companies in the area to ensure emergency response efforts are coordinated between neighboring facilities.

Additionally, the plan is reviewed with local emergency response officials to help facilitate the coordination of emergency response efforts. A relationship has been promoted with the local fire department and ambulance provider so they know the layout of the facility, potential hazards, and are familiar with site emergency response personnel.

The plan is stored in a location and manner that can be readily reviewed by employees or their designated representatives. This plan is routinely updated as changes occur.

XIV. PROGRAM ENFORCEMENT

The Facility Manager is responsible for enforcement of this Emergency Action Plan. Anyone who directs someone to violate, or has knowledge of a violation, and takes no corrective action will receive appropriate disciplinary action.

All personnel are responsible for following the procedures in this program. Personnel found in violation of this program will be subject to disciplinary action.

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Emergency Action Plan

Appendix A - Emergency Information List

Emergency Responders, Phone Numbers, & Assembly Locations

Facility Name: Newby Island Sanitary Landfill

Emergency Response Coordinator (ERC): Tony Boccaleoni

Address: 1601 Dixon Landing Road, Milpitas, Ca. 95035

Office Phone Number: (408) 354-2430

Fire Department: City of Milpitas

Phone Number: (408) 586 - 2800 or Emergency dial 911.

1. Fire and Evacuation

Equipment needed to be shut down in an emergency:

1. All Heavy Equipment
2. _____
3. _____

Responsible persons to shutdown equipment:

1. Tony Boccaleoni (408) 586-2430
2. Rachelle Huber (408) 586-2263

Emergency assembly locations:

Primary: Parking Lot

Secondary: D-Shaped Parcel across the driveway.

2. Medical

Medical assistance personnel (if other than fire department): 911

Number of minutes it takes for professional medical assistance to reach this facility is 15 minutes.

The facility does not have designated and trained employees to serve as first aid responders.

Location of first aid supplies: Office Break Room

3. Spill Response

The facility does not have designated and trained employees as HAZMAT responders. If yes, list names: Haz Mat Emergency Response Line: (925) 646-1112



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Appendix B - Emergency Contact List

Facility Name: NEWBY ISLAND LANDFILL, CA

Address: 1 DIXON LANDING ROAD, MILPITAS, CA

Title/Agency	Contact	Business Hours Phone	After-Hours Phone
Emergency Response Coordinator (ERC)	Tony Boccaleoni	(510) 354-2430	(650) 670-0678
First Alternate ERC	James Galicia	(408) 586-2313	(510) 461 -5850
Second Alternate ERC	Rachelle Huber	(408) 586-2263	(510) 298 -7892
Police Department	City of Milpitas	(408) 586-2400	911
Fire Department	City of San Jose	(408) 586-2800	911
Emergency Medical Services	Fire Department	(408) 586-2800	911
Safety Department	Priscilla Lomeli	(714) 471-5187	
Insurance Company	CCMSI	(480) 384-5864	
OSHA Area Office	Cal-OSHA	(510) 794-2521	
Regional Water Quality Control Board	SF Bay Water Board	(510) 622-2300	
Certified Unified Program Agency	CUPA	(408) 918-3400	

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Appendix C - Spill Response Information

Spills/releases of the following chemicals, at the following locations, in excess of the listed amounts, will require an employee to leave the area:

Location N/A

Chemical (Product) Name	Size of spill (lbs., gallons, etc.)
Unleaded Fuel	42 gallons
_____	_____
_____	_____

In the event of this type of a spill, go to The Evacuation Meeting Area
until advised to return.

Location N/A

Chemical (Product) Name	Size of spill (lbs., gallons, etc.)
Red Dye Diesel	42 gallons
_____	_____
_____	_____

In the event of this type of a spill, go to _____
until advised to return.

Location N/A

Chemical (Product) Name	Size of spill (lbs., gallons, etc.)
_____	_____
_____	_____
_____	_____

In the event of this type of a spill, go to _____
until advised to return.

Responders for Minor Spills

The following **supplies** are maintained for minor spill response:

Location	Type of Supply	Minimum On-Hand Quantity
Maintenance Shop	Spill Kit	2 complete spill kit
D-Shape Parcel	Spill Kit	1 complete spill kit



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The following **personnel** are assigned as moderate spill responders:

Job Title/Description

Job Title/Description

Tony Boccaleoni –

Division Manager

Rachelle Huber –

Environmental Manager



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Emergency Management Program

Appendix D - Site Evacuation Map

The site evacuation map(s) contains the emergency escape routes for this building and/or area. In addition, fire extinguishers, first aid kit, and spill response kit and equipment are indicated. All personnel who are not directly involved in responding to the emergency upon notification of an evacuation are to go directly to the emergency assembly location(s) indicated on this map.

Once at the emergency assembly location point, a headcount will be conducted to account for all personnel at the facility. See uploaded document for Site Evacuation Map.

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Bomb Threat Checklist

1. When the Threat is Called In:

- a) Keep the caller on the line as long as possible. If possible, record the conversation.

Use pages 2 and 3 of this form to note all relevant information from the call.

- b) If not indicated, ask the caller for the location of the bomb and the time of possible detonation.
- c) Inform the caller that the building is occupied, and the detonation of a bomb could result in death or serious injury to many innocent people.
- d) Pay particular attention to peculiar background noises such as motors running, music, and any other noise, which may give a clue as to the location of the caller.
- e) Listen closely to the voice (male or female), voice quality (calm, excited), accents, unique phrasing, and speech impediments. Does this voice immediately remind you of a certain individual? If so, list that.
- f) Report the call and gathered information immediately to the _____ Division Manager _____.
(Facility Manager or designee).
- g) The _____ Division Manager _____ will notify local police and fire department
(Facility Manager or designee).
- h) Follow the directions given by the local police or fire department.

2. Written Threats

- a) Save all materials, including any envelope or container.
- b) Once the message is recognized as a threat, further unnecessary handling should be avoided. Every possible effort must be made to retain evidence such as fingerprints, handwriting or typing, paper, and postal marks that are essential to tracing the threat and identifying the writer.
- c) Report the call and gathered information immediately to the _____ Division Manager _____.
(Facility Manager or designee).
- d) The _____ Division Manager _____ will notify local police and fire department
(Facility Manager or designee).
- e) Follow the directions given by the local police or fire department.

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Bomb Threat Checklist

IF A TELEPHONE BOMB THREAT IS RECEIVED, THE PERSON TAKING THE CALL SHOULD REMAIN CALM AND TRY TO GET AS MUCH INFORMATION AS POSSIBLE

- Key Points:**
- 1. Keep the caller talking – Do not interrupt!**
 - 2. Ask the caller to speak louder.**
 - 3. Ask the caller to repeat.**
 - 4. Write out the caller's message entirely, if possible.**

Date: _____

Time: _____AM/PM

Received By: _____

Exact Words of Caller: _____

Questions to ask:

1. When is bomb going to explode? _____
2. Where is it located? _____
3. What does it look like? _____
4. What kind of bomb is it? _____
5. Why did you place the bomb? _____
6. What do you hope to accomplish? _____
7. What is your name? _____
8. Where are you calling from? _____

Information Regarding the Call and Caller:

Voice Characteristics:

Familiar	_____	Male	_____	Female	_____
Child	_____	Nasal	_____	Loud	_____
Soft	_____	High	_____	Raspy	_____
Deep	_____	Pleasant	_____		
Other	_____				

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Bomb Threat Checklist

Speech Characteristics:

Fast	_____	Slow	_____	Intoxicated	_____
Stutter	_____	Slurred	_____		
Other	_____				

Accent Characteristics:

Local	_____	Region	_____	Foreign	_____
Other	_____				

Manner of Caller:

Calm	_____	Angry	_____	Deliberate	_____
Emotional	_____	Laughing	_____	Incoherent	_____
Righteous	_____	Rational	_____	Coherent	_____
Other	_____				

Origin of Call:

Internal	_____	External	_____	Cell Phone	_____
Local	_____	Long Distance	_____		
Did the caller appear to be familiar with the facility?		Yes	_____	No	_____
Number/extension at which the call was received: _____					
Other _____					

Background Noises:

Office Machines	_____	Street Traffic	_____	Voices	_____
Factory Machines	_____	Airplanes	_____	Trains	_____
Animals	_____	Trucks	_____	Music	_____
Quiet	_____	Party	_____	Static	_____
Other _____					

People Contacted:

	Yes	No	Time
Facility Manager	_____	_____	_____
Police Department	_____	_____	_____
Fire Department	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____

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Bomb Threat Checklist

Bomb Threat Search Procedure

a. Authorization and Report

1. Your supervisor will instruct you when to search and the specific area to be covered. Your supervisor should also give you a time limit when to stop searching.
2. Report back to your supervisor when the search is complete or at a prearranged time.

b. Search Team

1. A minimum of two persons and a maximum of three should be used. (Should normally include supervisor and one other person familiar with the area.)

DO NOT TOUCH ANY SUSPICIOUS ITEMS OR UNIDENTIFIABLE PACKAGES

c. Search Technique

1. Take your time and use caution.
2. Be systematic, use upward coverage method: first, floors; then machines; then windows, shelves; then ceiling; then desks.
3. Always be as quiet as possible, listening for timing devices.
4. Search high-potential areas first.
 - i. Toilets (check all closed and locked stalls)
 - ii. Lunchrooms
 - iii. Stairwells
 - iv. Elevators (top of car) and elevator shafts (pits)
 - v. Utility rooms, closets, janitors' supply areas
 - vi. Areas open or near to exterior doors, lobbies, etc
 - vii. Indoor trash receptacles
 - viii. Utilities

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Bomb Threat Checklist

d. Unidentifiable Package

1. A bomb device may be in any shape; lunch boxes, briefcases, cigar boxes, lead pipes, shoe boxes, and paper bags are the most common.
 - i. The rule of thumb to follow during a search is to attempt to answer the question; "Does this item look like it belongs here?"
 - ii. An expensive looking briefcase, for example, in an executive's office might not be cause for alarm. Found in a locked toilet stall, however, it could indicate the presence of a device.
 - iii. By the same token, a cigar box placed under a stairwell would likewise be indicative of a device.
2. If a suspected device is located, one member of the search team is required to report by phone or in person to the Facility Manager, or designated alternate, who will then investigate to determine how likely the suspected device is to be a bomb.
 - i. Keep your cool when suspicious objects are found.
 - ii. No attempt should be made by the employee to remove or inspect the item!
 - iii. No radio or walkie-talkie transmissions should be made as the keying of a microphone could detonate a device.
3. The Facility Manager, or designated alternate, will direct that appropriate personnel from the area in question and be questioned regarding concerning the suspected device

The Facility Manager, or designated alternate, will make the necessary arrangements for the police bomb disposal squad to investigate.



A handwritten signature in blue ink, appearing to read "Rachel K. Hiber".

Signature

2/27/2020
Date

Safety Manual

Emergency Action Plan

NEWBY ISLAND RECYCLERY

I. PURPOSE

This Emergency Action Plan is designed to provide guidance to personnel in the event of an emergency and outlines the required procedures for responding to emergencies. Emergencies both man-made and natural may require this facility to be evacuated or shelter-in-place. These may include, but are not limited to, fires, explosions, floods, earthquakes, hurricanes, tornados, toxic material release, radiological and biological accidents, civil disturbances, and workplace violence.

This plan has been developed to provide direction in responding to these and other types of emergencies and ensure the facility's compliance with OSHA 29 CFR 1910.38, Emergency Action Plans.

II. DEFINITIONS

None

III. RESPONSIBILITY

The Facility Manager is in charge of any emergency at this facility. All communication, questions, etc., are to be directed to the Facility Manager, who has full authority, including the management decisions listed within this plan.

The Facility Manager is responsible for:

- a. Assigning alternates to serve in his/her absence, they are listed on the Emergency Contact List in Appendix B.
- b. Designating the appropriate emergency response personnel for the various types of emergencies outlined in this plan, and who will assist the Facility Manager in the evaluation and response to emergencies.
- c. Ensuring that all personnel are trained on the procedures outlined in this plan.
- d. Making the decision to shut down operation and whether to shelter-in-place or evacuate during an emergency

To Do:

- Annual training to employees
- Conduct mock fire drill
- Update evac map (if changes)
- Update Appendix A,B,C

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Emergency Action Plan

- e. Directing the shelter-in-place, evacuation and search of the facility, and recall of personnel during an emergency
- f. Communicating with local law enforcement and local emergency response personnel to review this plan, the facility, and communicate with them during an emergency.
- g. Conducting mock emergency drills to train personnel and test this plan at least annually.
- h. Ensuring that this plan and the contact personnel are kept up to date with current work practices and contacts.

IV. EMERGENCY ACTION PLAN OVERVIEW

Depending on the circumstances and the type of emergency, the first important decision is whether to stay at the facility (shelter-in-place) or evacuate. Facility management will use all available information to determine if there is an immediate danger. In any emergency, local authorities may or may not immediately be able to provide information on what is happening and what the facility should do.

Facility management will make the decision to either shelter-in-place or evacuate in the absence of direction from outside agencies. This plan is designed to account for both possibilities. Facility management will use available information to assess the situation. If there is a large amount of debris in the air, or if local authorities say the air is badly contaminated, the decision may be to "shelter-in-place." Information will be gathered from watching TV, listening to the radio, or checking the Internet often for information or official instructions as it becomes available. There are numerous emergencies that may prompt personnel to shelter-in-place. Examples of these types of emergencies include; terrorist attacks, toxic material releases, radiological and biological accidents, civil disturbances, workplace violence, and tornados.

If told to evacuate or seek medical treatment from the authorities, the facility will do so immediately.

In preparation for these events the facilities has designed the following plans to help instruct personnel on who to contact, where to go, and the basic emergency supplies information.

1. Emergency Information List (Appendix A)

The emergency information list contains emergency responders, contact phone numbers, emergency assembly locations, and shelter-in-place locations. It outlines the basic actions that must be taken in the event of an emergency.

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2. Emergency Contact List (Appendix B)

The emergency contact list is posted in multiple locations around the facility so to be used to initiate this emergency action plan. This list contains the home and work phone numbers of key staff and support personnel (e.g., corporate staff, police, fire, emergency medical support, and relevant government agencies). It also contains the names and/or titles of those individuals who are assigned to serve as the facility's Emergency Coordinator, spokesperson, and their designated alternates.

3. Spill Response Information (Appendix C)

The spill response information contains information on chemicals stored on site, storage amounts, spill cleanup supplies, personal protective equipment, and the names of personnel trained in spill response procedures.

4. Site Evacuation Map

The site evacuation map(s) (Appendix D) contain the emergency escape routes for the buildings and/or area. In addition fire extinguishers, first aid kits, spill response kits, and other emergency response equipment are indicated. Upon notification of an evacuation, all personnel who are not directly involved in responding to the emergency must go directly to the emergency assembly location(s) indicated on this map. Once at the emergency assembly location point, a headcount will be conducted to account for all personnel at the facility.

The emergency assembly areas were selected because there is sufficient area to accommodate all personnel. They are located away from busy streets and out of the way where they will not interfere with rescue and emergency response operations. The location is also up-wind from the most common or prevailing wind direction from the potentially hazardous areas on site.

5. Employee Personal Information

Personal emergency response information is kept with the human resources department. This information, which may be needed in the event of an emergency includes:

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- a. Home telephone numbers
- b. Names and telephone number of next of kin, and
- c. Medical information

This information is maintained in such a way that it can be readily retrieved in the event of an emergency.

6. Rescue

Rescue operations at this facility will only be performed by outside agencies that have professionally trained, equipped, and certified personnel to perform rescue operations.

7. Detailed Procedures

Below are detailed procedures for each of the following events:

- a. Fire Response Procedures
- b. Shelter-in-Place Procedure
- c. Evacuation Procedure
- d. Medical
- e. Weather
- f. Spill Response Plan
- g. Bomb Threat

V. FIRE RESPONSE PROCEDURES

This outlines when it is safe, and not safe, to fight a fire with a fire extinguisher. Promptly reporting a fire is always the first response. This is to alert everyone and make sure they are evacuated to the emergency assembly location if necessary.

1. Report Fires Immediately

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Activate the emergency alarm system and report all fires immediately to the facility manager or the nearest member of management and notify the fire department.

2. Small Fires

Personnel who have completed annual fire extinguisher training may attempt to extinguish small fires. A small fire is defined as a fire that can be controlled or extinguished by the use of portable fire extinguishers without the need for personal protective equipment. Individuals must use their judgment based on their training and experience to determine whether or not it is safe to fight a fire with portable fire extinguishers.

The following is provided as general guidance in helping personnel in making this decision.

3. When it may be safe to extinguish a fire using a fire extinguisher

- a. Size of the Fire – if the fire is limited to the original material ignited, it is contained (such as in a waste basket) and has not spread to other materials. The flames are no higher than the firefighter's head.
- b. Condition of the Air in the Area – if the fire has not depleted the oxygen in the room and is producing only small quantities of toxic gases and no respiratory protection equipment is required.
- c. Amount of Smoke and Heat – if heat is being generated, but the room temperature is only slightly increased. Smoke may be accumulating on the ceiling, but visibility is good and no special personal protective equipment is required
- d. Evacuation Path - there is a clear evacuation path that is behind you as you fight the fire.

4. When it is not safe to use a fire extinguisher to fight a fire:

- a. Type, size, and location of the fire - If the fire involves flammable solvents, has spread over more than 60 square feet, or is partially hidden behind a wall or ceiling, or can not be reached from a standing position.
- b. Condition of the air - if the smoke and products of combustion from the fire require respiratory protection in the area
- c. Amount of Heat – If the radiated heat is easily felt on exposed skin making it difficult to approach within 10-15 feet of the fire (or the effective range of the extinguisher)
- d. Visibility - If the person must crawl on the floor due to heat or smoke. Smoke is quickly filling the room, decreasing visibility.
- e. Evacuation Path - If the fire is not contained, and fire, heat, or smoke may block the evacuation path

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VI. SHELTER-IN-PLACE PROCEDURE

1. Shelter-in-Place Rooms

To “shelter-in-place,” an interior room(s) is selected that is above the ground floor, with the fewest windows or vents. The room(s) should have adequate space for everyone to be able to sit. Overcrowding is avoided by selecting additional rooms if necessary. Large storage closets, utility rooms, pantries, copy and conference rooms without exterior windows work well. Avoid selecting a room with mechanical equipment like ventilation blowers or pipes, because this equipment may not be able to be sealed from the outdoors. It is ideal to have a hard-wired telephone in the room(s) you select. Cellular telephone equipment may be overwhelmed or damaged during an emergency.

2. Emergency Supplies

Shelter-in-place disaster supplies may include items such as nonperishable food, bottled water, battery-powered radios, first-aid supplies, flashlights, batteries, duct tape, plastic sheeting, and plastic garbage bags.

3. Shelter-in-Place Emergency Action Plan

The following is a basic outline of the typical procedures used for sheltering-in-place. When authorities provide directions to shelter-in-place, they want everyone to take these steps immediately.

- a. Close the facility.
- b. If there are customers, clients, or visitors at the facility, provide for their safety by asking them to stay. Instruct these people that it is best for their safety not to leave their current location. Do not drive or walk outdoors.
- c. Unless there is an imminent threat, ask employees, customers, clients, and visitors to call their emergency contact (i.e. family member, etc.) and let them know where they are sheltering (staying) and that they are safe.
- d. Turn on call-forwarding or alternative telephone answering systems or services. If the business has voice mail or an automated attendant, change the recording to indicate that the business is closed, and that staff and visitors are remaining in the building until authorities advise it is safe to leave.

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- e. Quickly lock exterior doors and close windows, and air vents. Have employees familiar with your building's mechanical systems turn off all fans, heating and air conditioning systems. Some systems automatically provide for exchange of inside air with outside air. These systems, in particular, need to be turned off, sealed, or disabled. Close or tape-off all vents in the "shelter-in-place" room(s).
- f. If you are told there is danger of an explosion, close the window shades, blinds, or curtains.
- g. Take your emergency supplies and go into the designated shelter-in-place room(s). Seal all windows, doors, and vents with plastic sheeting and duct tape or anything else you have on hand.
- h. Consider precutting plastic sheeting (heavier than food wrap) to seal windows, doors, and air vents. Each piece should be several inches larger than the space you want to cover so that it lies flat against the wall. Label each piece with the location of where it fits.
- i. Call emergency contacts and have the phone available if you need to report a life-threatening condition.
- j. Write down the names of everyone in the room, and call the designated emergency response coordinator to report who is in the room(s) with you, and their affiliation with your business (employee, visitor, client, or customer).
- k. Listen to the radio, watch television, or use the Internet for further instructions until you are told all is safe or to evacuate. Local officials may call for evacuation in specific areas at greatest risk in your community.

VII. EVACUATION PROCEDURE

1. Activate Emergency Alarm System

Employees are notified of the need for an emergency notification by sounding of an alarm, announcement over the building communication system, or by notification initiated by their supervisor.

2. Shut Off Equipment

Equipment or operations will only be shut off if time permits and only if your personal safety is not at risk. Critical operations that need to be shut down are included in the Facility Emergency Information List.

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3. Use Designated Exit Routes

Plans/maps that identify designated emergency exits, routes and the locations of fire extinguishers and fire hoses are posted in key locations within the Facility. Employees must always evacuate through an exit closest to your location in the event of an emergency or fire requiring evacuation. Each supervisor, or in his/her absence an individual designated by the supervisor, is responsible to ensure that all assigned evacuation routes and exits are clear from obstructions that could hinder evacuation during an emergency.

4. Clear the Building / Area

Supervisors are responsible in the event of an evacuation to ensure that all employees and visitors safely evacuate from the supervisor's assigned work area. Supervisors are also responsible for ensuring that any disabled person located in the supervisor's work area is either evacuated with other employees or is relocated to a designated (on the evacuation map) location for evacuation by emergency response personnel. Those supervisors whose assigned work areas include restrooms and other inside rooms are responsible to ensure that those areas have been evacuated.

5. Evacuation Precautions

When evacuating during a fire, do not open doors if the doors or knobs are hot. If they are cool, open doors slowly. If smoke is encountered when exiting, kneel down on the floor and crawl to escape. Never use an elevator during a fire. Smoke and heat rises so the elevator may be filled with smoke.

6. Proceed Immediately to Assembly Locations

Employees are instructed to quickly exit the building and to assemble at the primary or secondary assembly locations. See Facility Specific Emergency Information List for the primary and secondary locations.

7. Conduct Headcount

Supervisors, with the assistance of employees, are to take headcounts at the assembly area. Emergency personnel are to be notified of names and last known location of any missing personnel who might require rescue.

Emergency personnel or the facility manager will make the decision once a headcount is taken if the situation warrants a further evacuation. This may require sending personnel home by normal means or providing them with transportation to an offsite location.

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8. Do Not Re-Enter Building / Area Until Authorized

Once emergency response personnel or the General Manager or Designee has given the "all clear" to employees and their supervisors, they may reenter the facility and proceed to their designated work areas.

9. Review Plan

Senior management will conduct a formal critique of the incident and associated actions, to identify necessary recommendations for improvement.

VIII. MEDICAL EMERGENCIES

1. Reporting a Medical Emergency

During normal working hours, evenings, or weekends:

- a. Report minor injuries to your supervisor or designated first aid provider.
- b. Drivers are to call dispatch.
- c. Serious or life threatening injuries, call 911/Fire Department, and facility management.

2. Emergency First Aid Assistance

First aid is only to be provided by designated first aid providers who have received first aid and/or CPR training, and whose job description duties include providing first aid. Additionally, the Republic Services contract medical provider has established a procedure to provide post-exposure treatment in the event that an employee is exposed to blood or other potentially infectious substances when voluntarily providing emergency assistance or first-aid. Refer to the Safe Work Procedures – First Aid for additional details.

Note: Employees who have received Republic Services provided first aid or CPR training, and are not designated as first aid providers are instructed that their job does not require that they perform first aid services.

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IX. WEATHER – TORNADOS, HURRICANES, FLASH FLOODS

The Facility Manager will make the determination to shut down operations if threatening weather is in the area. The Facility Manager will decide whether it will be better to leave the facility if time permits or “shelter-in-place.”

1. Monitor Weather Conditions

When threatening weather suggests that a tornado, or other dangerous weather condition, could occur in the vicinity, the Emergency Response Coordinator (ERC) will monitor local news/weather radio broadcasts for warnings issued for areas in or around the Facility.

2. Proceed to Designated Shelters

When a weather-related warning is issued for the area the ERC will notify all supervisors to be prepared to move their employees to their assigned shelter areas. At the first sign of an approaching tornado or threatening weather, supervisors must direct their employees to shelter. If time permits, turn off your equipment, prior to proceeding to the designated shelter area.

3. If Designated Shelter is Not Available

Personnel who are unable to reach designated shelters are instructed to use the following guidance to seek alternative shelter. Shelters should ideally be below grade, or if not feasible, above grade in an area without windows and of substantial construction. Typically, fire stairwells and washrooms are examples of appropriate shelter areas. Interior corridors are less desirable as past incidents have indicated that they can become filled with flying shrapnel. If the above shelters are not readily available, cover should be sought under heavy furniture, on the lowest floor, and away from windows, glass doors, etc. All office trailers should be evacuated, and those personnel should move to a more permanent shelter or lie flat in the nearest depression or ditch. Personnel who are outdoors and cannot get to shelter should seek a low-lying area, ditch, depression or low area.

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4. Headcount and Recovery

After the threat of threatening weather has passed, supervisors, with the assistance of employees, are to take headcount to determine that all employees are safe and uninjured. Remain in the shelter area until instructed to return to your work area by the ERC.

5. Call For Emergency Assistance

Call 911 or the Fire Department if any employee requires medical assistance or rescue. Give the Fire Department the appropriate address and the exact location where assistance is required.

X. SPILL RESPONSE

1. Pre - Planning

Chemicals used or stored at the facility are stored and labeled in approved containers according to the requirements of the Facility's Hazard Communication (Right-To-Know) Program. Material Safety Data Sheets (MSDS) are available for each of these chemicals. Each supervisor is responsible for ensuring that his/her employees are aware of the hazardous chemicals that are used in their work area.

Employees are advised, depending on their work assignment, to either leave from the area of a spill and notify the appropriate personnel of the spill/release, or to respond to the spill/release by stopping, containing, or cleaning up the spill. Appendix C contains a list of chemicals and the amounts if spilled that would require personnel to leave the area.

2. Reporting a Spill

a. Minor Spill

If the spill/release is small (i.e., not large enough to require employees to leave the area) report it immediately to your supervisor.

b. Moderate Spill

Leave the area of the spill/release, then immediately notify your supervisor or a designated spill responder. They will initiate the actions that are required to stop, cleanup, or otherwise

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respond to the spill/release.

c. Major Spill

Leave the area of the spill, then immediately notify your supervisor or the Facility Manager, and contact the proper authorities or spill responders.

3. Limits of Response

Appendix C contains a list of spill supplies, personal protective equipment to be used for spill responses, and list of personnel who are the designated spill responders for small and moderate sized spills.

a. Minor Spill

Most employees have received routine Hazard Communication training and have been provided with supplemental training on how to use spill cleanup supplies and additional personal protective equipment which will allow them to cleanup minor spills/releases as a part of their routine work assignments. Moderate and larger spills/releases are either handled by moderate spill responders or by Hazardous Materials (HAZMAT) responders.

b. Moderate Spill

Responders for moderate sized spills are used at this facility for leak prevention and cleanup, where conditions do not exceed the thresholds established in this plan for HAZMAT response. Employees who have been assigned to respond to moderate sized spills have received routine Hazard Communication training and have been provided with supplemental training to use spill cleanup supplies and additional personal protective equipment. In the event of a moderate spill/release employees are either:

- Required to leave the area until the situation is corrected; or
- Trained and qualified, as a member of the spill response team, to stop the leak and/or cleanup the spill/release.

c. Major Spill

HAZMAT responders are required whenever release of the hazardous chemical creates conditions in the spill/release area that:

- Are life or injury threatening;
- Pose a fire or explosion hazard;

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- Present an oxygen deficient atmosphere; or
- Cause high levels of a toxic substance.

Professional fire and emergency assistance are requested (see emergency contact list) where either the facility does not have a HAZMAT response team or when backup assistance is required for the facility's HAZMAT response team

XI. BOMB THREAT

1. Bomb Threat Analysis

Proper response to the threat involves at least three continuous and related but distinct steps:

- a. Analysis of the threat and estimate of the need for response.
- b. Decision on what is the proper response.
- c. Implementing the response decision within the allowable time frame.

2. Procedure To Be Followed After A Bomb Threat Has Been Received

The person who receives the threat should immediately contact the Facility Manager or the designated alternate.

The person receiving the threat should then immediately fill out a Bomb Threat Checklist (Form 1019, or an equivalent form). This Checklist should be completed for each threat received, noting the time and, if possible, the exact words used in the threat.

In the case of a phone threat, record the conversation if possible and consider taping subsequent calls.

Once he/she is notified the Facility Manager will:

- a. Notify the local law enforcement agency, or where the facility has a security officer, contact security to notify local law enforcement (where a security service or security office is used it is recommended that the shift commander be requested, to insure confidentiality);
- b. Notify all supervisors and instruct them whether to evacuate the facility and/or conduct a search. The Bomb Threat Search Procedure is contained in Bomb Threat Checklist (Form 1019).

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If any employee is so concerned that he/she wants to leave the facility because of the bomb threat, he/she shall be allowed to do so. Such employee will be instructed to punch out upon leaving the facility and will not be paid for the remainder of the shift. Employees will further be instructed not to report for work until the beginning of his/her next shift.

If a decision is made to evacuate the facility, supervisors will be responsible for shutting down in the normal manner. Employees will be instructed to proceed to the emergency assembly locations and to remain there for further instructions.

When a decision has been made to return to work, employees will be advised to return to work. Procedures should be in place to contact employees. Supervisors should turn in the names of any missing personnel to their managers or the facility manager.

XII. TRAINING

Training employees is a critical component of this plan in preparing personnel in how to respond to an emergency. All employees are trained, on their first day of employment, on the actions that they are required to follow during an emergency. Additional training, as appropriate, is provided:

- For employees who are assigned to assume additional responsibilities during an emergency;
- Whenever employee's responsibilities or designated actions under the plan change
- Whenever the plan is changed, and
- As necessary to maintain the required skills of personnel.

The training program provided to personnel covers this emergency action plan and includes the following topics:

- Individual roles and responsibilities;
- Potential threats, hazards, and protective actions;
- Notification, warning, and communications procedures;
- Means for locating family members in an emergency;
- Emergency response procedures;
- Evacuation locations, shelter-in-place locations, and accountability procedures;
- Location and use of common emergency equipment; and
- Emergency shutdown procedures.

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XIII. ANNUAL DRILLS AND PERIODIC UPDATES

This facility conducts a test of this emergency action plan at least annually so personnel become familiar with the emergency procedures, the evacuation routes, emergency assembly locations, and shelter locations. The facility reviews this plan with other companies in the area to ensure emergency response efforts are coordinated between neighboring facilities.

Additionally, the plan is reviewed with local emergency response officials to help facilitate the coordination of emergency response efforts. A relationship has been promoted with the local fire department and ambulance provider so they know the layout of the facility, potential hazards, and are familiar with site emergency response personnel.

The plan is stored in a location and manner that can be readily reviewed by employees or their designated representatives. This plan is routinely updated as changes occur.

XIV. PROGRAM ENFORCEMENT

The Facility Manager is responsible for enforcement of this Emergency Action Plan. Anyone who directs someone to violate, or has knowledge of a violation, and takes no corrective action will receive appropriate disciplinary action.

All personnel are responsible for following the procedures in this program. Personnel found in violation of this program will be subject to disciplinary action.

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Emergency Action Plan

Appendix A - Emergency Information List

Emergency Responders, Phone Numbers, & Assembly Locations

Facility Name: BFI The Recyclery

Emergency Response Coordinator (ERC): Anthony Wright

Address: 1601 Dixon Landing Road, Milpitas, Ca. 95035

Office Phone Number: (408) 586-2298

Fire Department: City of Milpitas

Phone Number: (408) 586 - 2800 or Emergency dial 911.

1. Fire and Evacuation

Equipment needed to be shut down in an emergency:

1. All Sorting Lines
2. Bailer
3. Ventilation System

Responsible persons to shutdown equipment:

1. Richard Elkins (408) 586-2298
2. Jay O'Neal (408) 586-2285

Emergency assembly locations:

Primary: Parking lot.

Secondary: D-Shaped Parcel across the driveway.

2. Medical

Medical assistance personnel (if other than fire department): 911

Number of minutes it takes for professional medical assistance to reach this facility is 15 minutes.

The facility does not have designated and trained employees to serve as first aid responders.

Location of first aid supplies: Office Break Room

3. Spill Response

The facility does not have designated and trained employees as HAZMAT responders. If yes, list names: Haz Mat Emergency Response Line: (925) 646-1112

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Appendix B - Emergency Contact List

Facility Name: NEWBY ISLAND LANDFILL, CA

Address: 1 DIXON LANDING ROAD, MILPITAS, CA

Title/Agency	Contact	Business Hours Phone	After-Hours Phone
Emergency Response Coordinator (ERC)	Richard Elkins	(408) 586-2285	(408) 250-1626
First Alternate ERC	Jay ONeal	(408) 586-2242	(480) 376-5608
Second Alternate ERC	Larry Goldberg	(408) 601-7650	
Police Department	City of Milpitas	(408) 586-2400	911
Fire Department	City of Milpitas	(408) 586-2800	911
Emergency Medical Services	Fire Department	(408) 586-2800	911
Safety Department	Priscilla Lomeli	(714) 471-5187	
Insurance Company	CCMSI	(480) 384-5864	
OSHA Area Office	Cal-OSHA	(510) 794-2521	

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Emergency Management Program

Appendix C - Spill Response Information

Spills/releases of the following chemicals, at the following locations, in excess of the listed amounts, will require an employee to leave the area:

Location N/A

Chemical (Product) Name
Diesel Fuel

Size of spill (lbs., gallons, etc.)
100 gal

In the event of this type of a spill, go to The Evacuation Meeting Area
until advised to return.

Location N/A

Chemical (Product) Name

Size of spill (lbs., gallons, etc.)

In the event of this type of a spill, go to _____
until advised to return.

Location N/A

Chemical (Product) Name

Size of spill (lbs., gallons, etc.)

In the event of this type of a spill, go to _____
until advised to return.

Responders for Minor Spills

The following **supplies** are maintained for minor spill response:

Location	Type of Supply	Minimum On-Hand Quantity
<u>Lube Station</u>	<u>Spill Kit</u>	<u>1 complete spill kit</u>
_____	_____	_____



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Emergency Management Program

The following **personnel** are assigned as moderate spill responders:

Job Title/Description

Job Title/Description

Jay O'Neal – Maintenance Shop Manager

Richard Elkins Division Manager



Safety Manual

Emergency Management Program

Appendix D - Site Evacuation Map

The site evacuation map(s) contains the emergency escape routes for this building and/or area. In addition, fire extinguishers, first aid kit, and spill response kit and equipment are indicated. All personnel who are not directly involved in responding to the emergency upon notification of an evacuation are to go directly to the emergency assembly location(s) indicated on this map.

Once at the emergency assembly location point, a headcount will be conducted to account for all personnel at the facility.

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Bomb Threat Checklist

IF A TELEPHONE BOMB THREAT IS RECEIVED, THE PERSON TAKING THE CALL SHOULD REMAIN CALM AND TRY TO GET AS MUCH INFORMATION AS POSSIBLE

- Key Points:**
- 1. Keep the caller talking – Do not interrupt!**
 - 2. Ask the caller to speak louder.**
 - 3. Ask the caller to repeat.**
 - 4. Write out the caller's message entirely, if possible.**

Date: _____

Time: _____AM/PM

Received By: _____

Exact Words of Caller: _____

Questions to ask:

1. When is bomb going to explode? _____
2. Where is it located? _____
3. What does it look like? _____
4. What kind of bomb is it? _____
5. Why did you place the bomb? _____
6. What do you hope to accomplish? _____
7. What is your name? _____
8. Where are you calling from? _____

Information Regarding the Call and Caller:

Voice Characteristics:

Familiar	_____	Male	_____	Female	_____
Child	_____	Nasal	_____	Loud	_____
Soft	_____	High	_____	Raspy	_____
Deep	_____	Pleasant	_____		
Other	_____				

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Bomb Threat Checklist

Speech Characteristics:

Fast	_____	Slow	_____	Intoxicated	_____
Stutter	_____	Slurred	_____		
Other	_____				

Accent Characteristics:

Local	_____	Region	_____	Foreign	_____
Other	_____				

Manner of Caller:

Calm	_____	Angry	_____	Deliberate	_____
Emotional	_____	Laughing	_____	Incoherent	_____
Righteous	_____	Rational	_____	Coherent	_____
Other	_____				

Origin of Call:

Internal	_____	External	_____	Cell Phone	_____
Local	_____	Long Distance	_____		
Did the caller appear to be familiar with the facility?		Yes	_____	No	_____
Number/extension at which the call was received: _____					
Other _____					

Background Noises:

Office Machines	_____	Street Traffic	_____	Voices	_____
Factory Machines	_____	Airplanes	_____	Trains	_____
Animals	_____	Trucks	_____	Music	_____
Quiet	_____	Party	_____	Static	_____
Other _____					

People Contacted:

	Yes	No	Time
Facility Manager	_____	_____	_____
Police Department	_____	_____	_____
Fire Department	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____

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Bomb Threat Checklist

Bomb Threat Search Procedure

a. Authorization and Report

1. Your supervisor will instruct you when to search and the specific area to be covered. Your supervisor should also give you a time limit when to stop searching.
2. Report back to your supervisor when the search is complete or at a prearranged time.

b. Search Team

1. A minimum of two persons and a maximum of three should be used. (Should normally include supervisor and one other person familiar with the area.)

DO NOT TOUCH ANY SUSPICIOUS ITEMS OR UNIDENTIFIABLE PACKAGES

c. Search Technique

1. Take your time and use caution.
2. Be systematic, use upward coverage method: first, floors; then machines; then windows, shelves; then ceiling; then desks.
3. Always be as quiet as possible, listening for timing devices.
4. Search high-potential areas first.
 - i. Toilets (check all closed and locked stalls)
 - ii. Lunchrooms
 - iii. Stairwells
 - iv. Elevators (top of car) and elevator shafts (pits)
 - v. Utility rooms, closets, janitors' supply areas
 - vi. Areas open or near to exterior doors, lobbies, etc
 - vii. Indoor trash receptacles
 - viii. Utilities

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Bomb Threat Checklist

d. Unidentifiable Package

1. A bomb device may be in any shape; lunch boxes, briefcases, cigar boxes, lead pipes, shoe boxes, and paper bags are the most common.
 - i. The rule of thumb to follow during a search is to attempt to answer the question; "Does this item look like it belongs here?"
 - ii. An expensive looking briefcase, for example, in an executive's office might not be cause for alarm. Found in a locked toilet stall, however, it could indicate the presence of a device.
 - iii. By the same token, a cigar box placed under a stairwell would likewise be indicative of a device.
2. If a suspected device is located, one member of the search team is required to report by phone or in person to the Facility Manager, or designated alternate, who will then investigate to determine how likely the suspected device is to be a bomb.
 - i. Keep your cool when suspicious objects are found.
 - ii. No attempt should be made by the employee to remove or inspect the item!
 - iii. No radio or walkie-talkie transmissions should be made as the keying of a microphone could detonate a device.
3. The Facility Manager, or designated alternate, will direct that appropriate personnel from the area in question and be questioned regarding concerning the suspected device

The Facility Manager, or designated alternate, will make the necessary arrangements for the police bomb disposal squad to investigate.



Signature

2/27/2020

Date

Safety Manual

Emergency Action Plan

NEWBY ISLAND HAULING COMPANY

- Annual training to employees
- Conduct mock fire drill
- Update evac map (if changes)
- Update Appendix A,B,C

I. PURPOSE

This Emergency Action Plan is designed to provide guidance to personnel in the event of an emergency and outlines the required procedures for responding to emergencies. Emergencies both man-made and natural may require this facility to be evacuated or shelter-in-place. These may include, but are not limited to, fires, explosions, floods, earthquakes, hurricanes, tornados, toxic material release, radiological and biological accidents, civil disturbances, and workplace violence.

This plan has been developed to provide direction in responding to these and other types of emergencies and ensure the facility's compliance with OSHA 29 CFR 1910.38, Emergency Action Plans.

II. DEFINITIONS

None

III. RESPONSIBILITY

The Facility Manager is in charge of any emergency at this facility. All communication, questions, etc., are to be directed to the Facility Manager, who has full authority, including the management decisions listed within this plan.

The Facility Manager is responsible for:

- a. Assigning alternates to serve in his/her absence, they are listed on the Emergency Contact List in Appendix B.
- b. Designating the appropriate emergency response personnel for the various types of emergencies outlined in this plan, and who will assist the Facility Manager in the evaluation and response to emergencies.
- c. Ensuring that all personnel are trained on the procedures outlined in this plan.
- d. Making the decision to shut down operation and whether to shelter-in-place or evacuate during an emergency
- e. Directing the shelter-in-place, evacuation and search of the facility, and recall of personnel during an emergency

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- f. Communicating with local law enforcement and local emergency response personnel to review this plan, the facility, and communicate with them during an emergency.
- g. Conducting mock emergency drills to train personnel and test this plan at least annually.
- h. Ensuring that this plan and the contact personnel are kept up to date with current work practices and contacts.

IV. EMERGENCY ACTION PLAN OVERVIEW

Depending on the circumstances and the type of emergency, the first important decision is whether to stay at the facility (shelter-in-place) or evacuate. Facility management will use all available information to determine if there is an immediate danger. In any emergency, local authorities may or may not immediately be able to provide information on what is happening and what the facility should do.

Facility management will make the decision to either shelter-in-place or evacuate in the absence of direction from outside agencies. This plan is designed to account for both possibilities. Facility management will use available information to assess the situation. If there is a large amount of debris in the air, or if local authorities say the air is badly contaminated, the decision may be to "shelter-in-place." Information will be gathered from watching TV, listening to the radio, or checking the Internet often for information or official instructions as it becomes available. There are numerous emergencies that may prompt personnel to shelter-in-place. Examples of these types of emergencies include; terrorist attacks, toxic material releases, radiological and biological accidents, civil disturbances, workplace violence, and tornados.

If told to evacuate or seek medical treatment from the authorities, the facility will do so immediately.

In preparation for these events the facilities has designed the following plans to help instruct personnel on who to contact, where to go, and the basic emergency supplies information.

1. Emergency Information List (Appendix A)

The emergency information list contains emergency responders, contact phone numbers, emergency assembly locations, and shelter-in-place locations. It outlines the basic actions that must be taken in the event of an emergency.

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2. Emergency Contact List (Appendix B)

The emergency contact list is posted in multiple locations around the facility so to be used to initiate this emergency action plan. This list contains the home and work phone numbers of key staff and support personnel (e.g., corporate staff, police, fire, emergency medical support, and relevant government agencies). It also contains the names and/or titles of those individuals who are assigned to serve as the facility's Emergency Coordinator, spokesperson, and their designated alternates.

3. Spill Response Information (Appendix C)

The spill response information contains information on chemicals stored on site, storage amounts, spill cleanup supplies, personal protective equipment, and the names of personnel trained in spill response procedures.

4. Site Evacuation Map

The site evacuation map(s) (Appendix D) contain the emergency escape routes for the buildings and/or area. In addition fire extinguishers, first aid kits, spill response kits, and other emergency response equipment are indicated. Upon notification of an evacuation, all personnel who are not directly involved in responding to the emergency must go directly to the emergency assembly location(s) indicated on this map. Once at the emergency assembly location point, a headcount will be conducted to account for all personnel at the facility.

The emergency assembly areas were selected because there is sufficient area to accommodate all personnel. They are located away from busy streets and out of the way where they will not interfere with rescue and emergency response operations. The location is also up-wind from the most common or prevailing wind direction from the potentially hazardous areas on site.

5. Employee Personal Information

Personal emergency response information is kept with the human resources department. This information, which may be needed in the event of an emergency includes:

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- a. Home telephone numbers
- b. Names and telephone number of next of kin, and
- c. Medical information

This information is maintained in such a way that it can be readily retrieved in the event of an emergency.

6. Rescue

Rescue operations at this facility will only be performed by outside agencies that have professionally trained, equipped, and certified personnel to perform rescue operations.

7. Detailed Procedures

Below are detailed procedures for each of the following events:

- a. Fire Response Procedures
- b. Shelter-in-Place Procedure
- c. Evacuation Procedure
- d. Medical
- e. Weather
- f. Spill Response Plan
- g. Bomb Threat

V. FIRE RESPONSE PROCEDURES

This outlines when it is safe, and not safe, to fight a fire with a fire extinguisher. Promptly reporting a fire is always the first response. This is to alert everyone and make sure they are evacuated to the emergency assembly location if necessary.

1. Report Fires Immediately

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Activate the emergency alarm system and report all fires immediately to the facility manager or the nearest member of management and notify the fire department.

2. Small Fires

Personnel who have completed annual fire extinguisher training may attempt to extinguish small fires. A small fire is defined as a fire that can be controlled or extinguished by the use of portable fire extinguishers without the need for personal protective equipment. Individuals must use their judgment based on their training and experience to determine whether or not it is safe to fight a fire with portable fire extinguishers.

The following is provided as general guidance in helping personnel in making this decision.

3. When it may be safe to extinguish a fire using a fire extinguisher

- a. Size of the Fire – if the fire is limited to the original material ignited, it is contained (such as in a waste basket) and has not spread to other materials. The flames are no higher than the firefighter's head.
- b. Condition of the Air in the Area – if the fire has not depleted the oxygen in the room and is producing only small quantities of toxic gases and no respiratory protection equipment is required.
- c. Amount of Smoke and Heat – if heat is being generated, but the room temperature is only slightly increased. Smoke may be accumulating on the ceiling, but visibility is good and no special personal protective equipment is required
- d. Evacuation Path - there is a clear evacuation path that is behind you as you fight the fire.

4. When it is not safe to use a fire extinguisher to fight a fire:

- a. Type, size, and location of the fire - If the fire involves flammable solvents, has spread over more than 60 square feet, or is partially hidden behind a wall or ceiling, or can not be reached from a standing position.
- b. Condition of the air - if the smoke and products of combustion from the fire require respiratory protection in the area
- c. Amount of Heat – If the radiated heat is easily felt on exposed skin making it difficult to approach within 10-15 feet of the fire (or the effective range of the extinguisher)
- d. Visibility - If the person must crawl on the floor due to heat or smoke. Smoke is quickly filling the room, decreasing visibility.
- e. Evacuation Path - If the fire is not contained, and fire, heat, or smoke may block the evacuation path

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VI. SHELTER-IN-PLACE PROCEDURE

1. Shelter-in-Place Rooms

To “shelter-in-place,” an interior room(s) is selected that is above the ground floor, with the fewest windows or vents. The room(s) should have adequate space for everyone to be able to sit. Overcrowding is avoided by selecting additional rooms if necessary. Large storage closets, utility rooms, pantries, copy and conference rooms without exterior windows work well. Avoid selecting a room with mechanical equipment like ventilation blowers or pipes, because this equipment may not be able to be sealed from the outdoors. It is ideal to have a hard-wired telephone in the room(s) you select. Cellular telephone equipment may be overwhelmed or damaged during an emergency.

2. Emergency Supplies

Shelter-in-place disaster supplies may include items such as nonperishable food, bottled water, battery-powered radios, first-aid supplies, flashlights, batteries, duct tape, plastic sheeting, and plastic garbage bags.

3. Shelter-in-Place Emergency Action Plan

The following is a basic outline of the typical procedures used for sheltering-in-place. When authorities provide directions to shelter-in-place, they want everyone to take these steps immediately.

- a. Close the facility.
- b. If there are customers, clients, or visitors at the facility, provide for their safety by asking them to stay. Instruct these people that it is best for their safety not to leave their current location. Do not drive or walk outdoors.
- c. Unless there is an imminent threat, ask employees, customers, clients, and visitors to call their emergency contact (i.e. family member, etc.) and let them know where they are sheltering (staying) and that they are safe.
- d. Turn on call-forwarding or alternative telephone answering systems or services. If the business has voice mail or an automated attendant, change the recording to indicate that the business is closed, and that staff and visitors are remaining in the building until authorities advise it is safe to leave.

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- e. Quickly lock exterior doors and close windows, and air vents. Have employees familiar with your building's mechanical systems turn off all fans, heating and air conditioning systems. Some systems automatically provide for exchange of inside air with outside air. These systems, in particular, need to be turned off, sealed, or disabled. Close or tape-off all vents in the "shelter-in-place" room(s).
- f. If you are told there is danger of an explosion, close the window shades, blinds, or curtains.
- g. Take your emergency supplies and go into the designated shelter-in-place room(s). Seal all windows, doors, and vents with plastic sheeting and duct tape or anything else you have on hand.
- h. Consider precutting plastic sheeting (heavier than food wrap) to seal windows, doors, and air vents. Each piece should be several inches larger than the space you want to cover so that it lies flat against the wall. Label each piece with the location of where it fits.
- i. Call emergency contacts and have the phone available if you need to report a life-threatening condition.
- j. Write down the names of everyone in the room, and call the designated emergency response coordinator to report who is in the room(s) with you, and their affiliation with your business (employee, visitor, client, or customer).
- k. Listen to the radio, watch television, or use the Internet for further instructions until you are told all is safe or to evacuate. Local officials may call for evacuation in specific areas at greatest risk in your community.

VII. EVACUATION PROCEDURE

1. Activate Emergency Alarm System

Employees are notified of the need for an emergency notification by sounding of an alarm, announcement over the building communication system, or by notification initiated by their supervisor.

2. Shut Off Equipment

Equipment or operations will only be shut off if time permits and only if your personal safety is not at risk. Critical operations that need to be shut down are included in the Facility Emergency Information List.

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3. Use Designated Exit Routes

Plans/maps that identify designated emergency exits, routes and the locations of fire extinguishers and fire hoses are posted in key locations within the Facility. Employees must always evacuate through an exit closest to your location in the event of an emergency or fire requiring evacuation. Each supervisor, or in his/her absence an individual designated by the supervisor, is responsible to ensure that all assigned evacuation routes and exits are clear from obstructions that could hinder evacuation during an emergency.

4. Clear the Building / Area

Supervisors are responsible in the event of an evacuation to ensure that all employees and visitors safely evacuate from the supervisor's assigned work area. Supervisors are also responsible for ensuring that any disabled person located in the supervisor's work area is either evacuated with other employees or is relocated to a designated (on the evacuation map) location for evacuation by emergency response personnel. Those supervisors whose assigned work areas include restrooms and other inside rooms are responsible to ensure that those areas have been evacuated.

5. Evacuation Precautions

When evacuating during a fire, do not open doors if the doors or knobs are hot. If they are cool, open doors slowly. If smoke is encountered when exiting, kneel down on the floor and crawl to escape. Never use an elevator during a fire. Smoke and heat rises so the elevator may be filled with smoke.

6. Proceed Immediately to Assembly Locations

Employees are instructed to quickly exit the building and to assemble at the primary or secondary assembly locations. See Facility Specific Emergency Information List for the primary and secondary locations.

7. Conduct Headcount

Supervisors, with the assistance of employees, are to take headcounts at the assembly area. Emergency personnel are to be notified of names and last known location of any missing personnel who might require rescue.

Emergency personnel or the facility manager will make the decision once a headcount is taken if the situation warrants a further evacuation. This may require sending personnel home by normal means or providing them with transportation to an offsite location.

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8. Do Not Re-Enter Building / Area Until Authorized

Once emergency response personnel or the General Manager or Designee has given the "all clear" to employees and their supervisors, they may reenter the facility and proceed to their designated work areas.

9. Review Plan

Senior management will conduct a formal critique of the incident and associated actions, to identify necessary recommendations for improvement.

VIII. MEDICAL EMERGENCIES

1. Reporting a Medical Emergency

During normal working hours, evenings, or weekends:

- a. Report minor injuries to your supervisor or designated first aid provider.
- b. Drivers are to call dispatch.
- c. Serious or life threatening injuries, call 911/Fire Department, and facility management.

2. Emergency First Aid Assistance

First aid is only to be provided by designated first aid providers who have received first aid and/or CPR training, and whose job description duties include providing first aid. Additionally, the Republic Services contract medical provider has established a procedure to provide post-exposure treatment in the event that an employee is exposed to blood or other potentially infectious substances when voluntarily providing emergency assistance or first-aid. Refer to the Safe Work Procedures – First Aid for additional details.

Note: Employees who have received Republic Services provided first aid or CPR training, and are not designated as first aid providers are instructed that their job does not require that they perform first aid services.

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IX. WEATHER – TORNADOS, HURRICANES, FLASH FLOODS

The Facility Manager will make the determination to shut down operations if threatening weather is in the area. The Facility Manager will decide whether it will be better to leave the facility if time permits or “shelter-in-place.”

1. Monitor Weather Conditions

When threatening weather suggests that a tornado, or other dangerous weather condition, could occur in the vicinity, the Emergency Response Coordinator (ERC) will monitor local news/weather radio broadcasts for warnings issued for areas in or around the Facility.

2. Proceed to Designated Shelters

When a weather-related warning is issued for the area the ERC will notify all supervisors to be prepared to move their employees to their assigned shelter areas. At the first sign of an approaching tornado or threatening weather, supervisors must direct their employees to shelter. If time permits, turn off your equipment, prior to proceeding to the designated shelter area.

3. If Designated Shelter is Not Available

Personnel who are unable to reach designated shelters are instructed to use the following guidance to seek alternative shelter. Shelters should ideally be below grade, or if not feasible, above grade in an area without windows and of substantial construction. Typically, fire stairwells and washrooms are examples of appropriate shelter areas. Interior corridors are less desirable as past incidents have indicated that they can become filled with flying shrapnel. If the above shelters are not readily available, cover should be sought under heavy furniture, on the lowest floor, and away from windows, glass doors, etc. All office trailers should be evacuated, and those personnel should move to a more permanent shelter or lie flat in the nearest depression or ditch. Personnel who are outdoors and cannot get to shelter should seek a low-lying area, ditch, depression or low area.

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4. Headcount and Recovery

After the threat of threatening weather has passed, supervisors, with the assistance of employees, are to take headcount to determine that all employees are safe and uninjured. Remain in the shelter area until instructed to return to your work area by the ERC.

5. Call For Emergency Assistance

Call 911 or the Fire Department if any employee requires medical assistance or rescue. Give the Fire Department the appropriate address and the exact location where assistance is required.

X. SPILL RESPONSE

1. Pre - Planning

Chemicals used or stored at the facility are stored and labeled in approved containers according to the requirements of the Facility's Hazard Communication (Right-To-Know) Program. Material Safety Data Sheets (MSDS) are available for each of these chemicals. Each supervisor is responsible for ensuring that his/her employees are aware of the hazardous chemicals that are used in their work area.

Employees are advised, depending on their work assignment, to either leave from the area of a spill and notify the appropriate personnel of the spill/release, or to respond to the spill/release by stopping, containing, or cleaning up the spill. Appendix C contains a list of chemicals and the amounts if spilled that would require personnel to leave the area.

2. Reporting a Spill

a. Minor Spill

If the spill/release is small (i.e., not large enough to require employees to leave the area) report it immediately to your supervisor.

b. Moderate Spill

Leave the area of the spill/release, then immediately notify your supervisor or a designated spill responder. They will initiate the actions that are required to stop, cleanup, or otherwise

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respond to the spill/release.

c. Major Spill

Leave the area of the spill, then immediately notify your supervisor or the Facility Manager, and contact the proper authorities or spill responders.

3. Limits of Response

Appendix C contains a list of spill supplies, personal protective equipment to be used for spill responses, and list of personnel who are the designated spill responders for small and moderate sized spills.

a. Minor Spill

Most employees have received routine Hazard Communication training and have been provided with supplemental training on how to use spill cleanup supplies and additional personal protective equipment which will allow them to cleanup minor spills/releases as a part of their routine work assignments. Moderate and larger spills/releases are either handled by moderate spill responders or by Hazardous Materials (HAZMAT) responders.

b. Moderate Spill

Responders for moderate sized spills are used at this facility for leak prevention and cleanup, where conditions do not exceed the thresholds established in this plan for HAZMAT response. Employees who have been assigned to respond to moderate sized spills have received routine Hazard Communication training and have been provided with supplemental training to use spill cleanup supplies and additional personal protective equipment. In the event of a moderate spill/release employees are either:

- Required to leave the area until the situation is corrected; or
- Trained and qualified, as a member of the spill response team, to stop the leak and/or cleanup the spill/release.

c. Major Spill

HAZMAT responders are required whenever release of the hazardous chemical creates conditions in the spill/release area that:

- Are life or injury threatening;
- Pose a fire or explosion hazard;

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- Present an oxygen deficient atmosphere; or
- Cause high levels of a toxic substance.

Professional fire and emergency assistance are requested (see emergency contact list) where either the facility does not have a HAZMAT response team or when backup assistance is required for the facility's HAZMAT response team

XI. BOMB THREAT

1. Bomb Threat Analysis

Proper response to the threat involves at least three continuous and related but distinct steps:

- a. Analysis of the threat and estimate of the need for response.
- b. Decision on what is the proper response.
- c. Implementing the response decision within the allowable time frame.

2. Procedure To Be Followed After A Bomb Threat Has Been Received

The person who receives the threat should immediately contact the Facility Manager or the designated alternate.

The person receiving the threat should then immediately fill out a Bomb Threat Checklist (Form 1019, or an equivalent form). This Checklist should be completed for each threat received, noting the time and, if possible, the exact words used in the threat.

In the case of a phone threat, record the conversation if possible and consider taping subsequent calls.

Once he/she is notified the Facility Manager will:

- a. Notify the local law enforcement agency, or where the facility has a security officer, contact security to notify local law enforcement (where a security service or security office is used it is recommended that the shift commander be requested, to insure confidentiality);
- b. Notify all supervisors and instruct them whether to evacuate the facility and/or conduct a search. The Bomb Threat Search Procedure is contained in Bomb Threat Checklist (Form 1019).

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If any employee is so concerned that he/she wants to leave the facility because of the bomb threat, he/she shall be allowed to do so. Such employee will be instructed to punch out upon leaving the facility and will not be paid for the remainder of the shift. Employees will further be instructed not to report for work until the beginning of his/her next shift.

If a decision is made to evacuate the facility, supervisors will be responsible for shutting down in the normal manner. Employees will be instructed to proceed to the emergency assembly locations and to remain there for further instructions.

When a decision has been made to return to work, employees will be advised to return to work. Procedures should be in place to contact employees. Supervisors should turn in the names of any missing personnel to their managers or the facility manager.

XII. TRAINING

Training employees is a critical component of this plan in preparing personnel in how to respond to an emergency. All employees are trained, on their first day of employment, on the actions that they are required to follow during an emergency. Additional training, as appropriate, is provided:

- For employees who are assigned to assume additional responsibilities during an emergency;
- Whenever employee's responsibilities or designated actions under the plan change
- Whenever the plan is changed, and
- As necessary to maintain the required skills of personnel.

The training program provided to personnel covers this emergency action plan and includes the following topics:

- Individual roles and responsibilities;
- Potential threats, hazards, and protective actions;
- Notification, warning, and communications procedures;
- Means for locating family members in an emergency;
- Emergency response procedures;
- Evacuation locations, shelter-in-place locations, and accountability procedures;
- Location and use of common emergency equipment; and
- Emergency shutdown procedures.

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XIII. ANNUAL DRILLS AND PERIODIC UPDATES

This facility conducts a test of this emergency action plan at least annually so personnel become familiar with the emergency procedures, the evacuation routes, emergency assembly locations, and shelter locations. The facility reviews this plan with other companies in the area to ensure emergency response efforts are coordinated between neighboring facilities.

Additionally, the plan is reviewed with local emergency response officials to help facilitate the coordination of emergency response efforts. A relationship has been promoted with the local fire department and ambulance provider so they know the layout of the facility, potential hazards, and are familiar with site emergency response personnel.

The plan is stored in a location and manner that can be readily reviewed by employees or their designated representatives. This plan is routinely updated as changes occur.

XIV. PROGRAM ENFORCEMENT

The Facility Manager is responsible for enforcement of this Emergency Action Plan. Anyone who directs someone to violate, or has knowledge of a violation, and takes no corrective action will receive appropriate disciplinary action.

All personnel are responsible for following the procedures in this program. Personnel found in violation of this program will be subject to disciplinary action.

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Emergency Action Plan

Appendix A - Emergency Information List

Emergency Responders, Phone Numbers, & Assembly Locations

Facility Name: Allied Waste Services of Santa Clara County – Hauling Company

Emergency Response Coordinator (ERC): Rowie Sizemore

Address: 1601 Dixon Landing Road, Milpitas, Ca. 95035

Office Phone Number: (408) 586-2264

Fire Department: City of Milpitas

Phone Number: (408) 586 - 2800 or Emergency dial 911.

1. Fire and Evacuation

Equipment needed to be shut down in an emergency:

1. _____
2. _____
3. _____

Responsible persons to shutdown equipment:

1. Rowie Sizemore (408) 586-2264
2. Dan North (408) 586-2281

Emergency assembly locations:

Primary: Parking Lot

Secondary: D-Shaped Parcel across the driveway.

2. Medical

Medical assistance personnel (if other than fire department): 911

Number of minutes it takes for professional medical assistance to reach this facility is 15 minutes.

The facility does not have designated and trained employees to serve as first aid responders.

Location of first aid supplies: Office Break Room

3. Spill Response

The facility does not have designated and trained employees as HAZMAT responders. If yes, list names: Haz Mat Emergency Response Line: (925) 646-1112



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Appendix B - Emergency Contact List

Facility Name: NEWBY ISLAND LANDFILL, CA

Address: 1 DIXON LANDING ROAD, MILPITAS, CA

Title/Agency	Contact	Business Hours Phone	After-Hours Phone
Emergency Response Coordinator (ERC)	Rowie Sizemore	(408) 586-2264	(408) 398-7203
First Alternate ERC	Dan North	(408) 586-2281	(408) 386-5641
Second Alternate ERC	Nancy Clement	(408) 586-2241	
Police Department	City of Milpitas	(408) 586-2400	911
Fire Department	City of San Jose	(408) 586-2800	911
Emergency Medical Services	Fire Department	(408) 586-2800	911
Safety Department	Priscilla Lomeli	(714) 471-5187	
Insurance Company	CCMSI	(480) 384-5864	
OSHA Area Office	Cal-OSHA	(510) 794-2521	
Regional Water Quality Control Board	SF Bay Water Board	(510) 622-2300	
Certified Unified Program Agency	CUPA	(408) 918-3400	

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Appendix C - Spill Response Information

Spills/releases of the following chemicals, at the following locations, in excess of the listed amounts, will require an employee to leave the area:

Location N/A

Chemical (Product) Name
Diesel Fuel

Size of spill (lbs., gallons, etc.)
100 gal

In the event of this type of a spill, go to The Evacuation Meeting Area
until advised to return.

Location N/A

Chemical (Product) Name

Size of spill (lbs., gallons, etc.)

In the event of this type of a spill, go to _____
until advised to return.

Location N/A

Chemical (Product) Name

Size of spill (lbs., gallons, etc.)

In the event of this type of a spill, go to _____
until advised to return.

Responders for Minor Spills

The following **supplies** are maintained for minor spill response:

Location	Type of Supply	Minimum On-Hand Quantity
<u>Maintenance Shop</u>	<u>Spill Kit</u>	<u>1 complete spill kit</u>
_____	_____	_____



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The following **personnel** are assigned as moderate spill responders:

Job Title/Description

Job Title/Description

Rowie Sizemore –

Fleet Manager

Evan Boyd –

General Manager

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Appendix D - Site Evacuation Map

The site evacuation map(s) contains the emergency escape routes for this building and/or area. In addition, fire extinguishers, first aid kit, and spill response kit and equipment are indicated. All personnel who are not directly involved in responding to the emergency upon notification of an evacuation are to go directly to the emergency assembly location(s) indicated on this map.

Once at the emergency assembly location point, a headcount will be conducted to account for all personnel at the facility.

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Bomb Threat Checklist

1. When the Threat is Called In:

- a) Keep the caller on the line as long as possible. If possible, record the conversation.

Use pages 2 and 3 of this form to note all relevant information from the call.

- b) If not indicated, ask the caller for the location of the bomb and the time of possible detonation.
- c) Inform the caller that the building is occupied, and the detonation of a bomb could result in death or serious injury to many innocent people.
- d) Pay particular attention to peculiar background noises such as motors running, music, and any other noise, which may give a clue as to the location of the caller.
- e) Listen closely to the voice (male or female), voice quality (calm, excited), accents, unique phrasing, and speech impediments. Does this voice immediately remind you of a certain individual? If so, list that.
- f) Report the call and gathered information immediately to the _____ Division Manager _____.
(Facility Manager or designee).
- g) The _____ Division Manager _____ will notify local police and fire department
(Facility Manager or designee).
- h) Follow the directions given by the local police or fire department.

2. Written Threats

- a) Save all materials, including any envelope or container.
- b) Once the message is recognized as a threat, further unnecessary handling should be avoided. Every possible effort must be made to retain evidence such as fingerprints, handwriting or typing, paper, and postal marks that are essential to tracing the threat and identifying the writer.
- c) Report the call and gathered information immediately to the _____ Division Manager _____.
(Facility Manager or designee).
- d) The _____ Division Manager _____ will notify local police and fire department
(Facility Manager or designee).
- e) Follow the directions given by the local police or fire department.

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Bomb Threat Checklist

IF A TELEPHONE BOMB THREAT IS RECEIVED, THE PERSON TAKING THE CALL SHOULD REMAIN CALM AND TRY TO GET AS MUCH INFORMATION AS POSSIBLE

- Key Points:**
- 1. Keep the caller talking – Do not interrupt!**
 - 2. Ask the caller to speak louder.**
 - 3. Ask the caller to repeat.**
 - 4. Write out the caller's message entirely, if possible.**

Date: _____

Time: _____AM/PM

Received By: _____

Exact Words of Caller: _____

Questions to ask:

1. When is bomb going to explode? _____
2. Where is it located? _____
3. What does it look like? _____
4. What kind of bomb is it? _____
5. Why did you place the bomb? _____
6. What do you hope to accomplish? _____
7. What is your name? _____
8. Where are you calling from? _____

Information Regarding the Call and Caller:

Voice Characteristics:

Familiar	_____	Male	_____	Female	_____
Child	_____	Nasal	_____	Loud	_____
Soft	_____	High	_____	Raspy	_____
Deep	_____	Pleasant	_____		
Other	_____				

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Bomb Threat Checklist

Speech Characteristics:

Fast	_____	Slow	_____	Intoxicated	_____
Stutter	_____	Slurred	_____		
Other	_____				

Accent Characteristics:

Local	_____	Region	_____	Foreign	_____
Other	_____				

Manner of Caller:

Calm	_____	Angry	_____	Deliberate	_____
Emotional	_____	Laughing	_____	Incoherent	_____
Righteous	_____	Rational	_____	Coherent	_____
Other	_____				

Origin of Call:

Internal	_____	External	_____	Cell Phone	_____
Local	_____	Long Distance	_____		
Did the caller appear to be familiar with the facility?		Yes	_____	No	_____
Number/extension at which the call was received: _____					
Other _____					

Background Noises:

Office Machines	_____	Street Traffic	_____	Voices	_____
Factory Machines	_____	Airplanes	_____	Trains	_____
Animals	_____	Trucks	_____	Music	_____
Quiet	_____	Party	_____	Static	_____
Other _____					

People Contacted:

	Yes	No	Time
Facility Manager	_____	_____	_____
Police Department	_____	_____	_____
Fire Department	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____

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Bomb Threat Checklist

Bomb Threat Search Procedure

a. Authorization and Report

1. Your supervisor will instruct you when to search and the specific area to be covered. Your supervisor should also give you a time limit when to stop searching.
2. Report back to your supervisor when the search is complete or at a prearranged time.

b. Search Team

1. A minimum of two persons and a maximum of three should be used. (Should normally include supervisor and one other person familiar with the area.)

DO NOT TOUCH ANY SUSPICIOUS ITEMS OR UNIDENTIFIABLE PACKAGES

c. Search Technique

1. Take your time and use caution.
2. Be systematic, use upward coverage method: first, floors; then machines; then windows, shelves; then ceiling; then desks.
3. Always be as quiet as possible, listening for timing devices.
4. Search high-potential areas first.
 - i. Toilets (check all closed and locked stalls)
 - ii. Lunchrooms
 - iii. Stairwells
 - iv. Elevators (top of car) and elevator shafts (pits)
 - v. Utility rooms, closets, janitors' supply areas
 - vi. Areas open or near to exterior doors, lobbies, etc
 - vii. Indoor trash receptacles
 - viii. Utilities

Safety Manual

Bomb Threat Checklist

d. Unidentifiable Package

1. A bomb device may be in any shape; lunch boxes, briefcases, cigar boxes, lead pipes, shoe boxes, and paper bags are the most common.
 - i. The rule of thumb to follow during a search is to attempt to answer the question; "Does this item look like it belongs here?"
 - ii. An expensive looking briefcase, for example, in an executive's office might not be cause for alarm. Found in a locked toilet stall, however, it could indicate the presence of a device.
 - iii. By the same token, a cigar box placed under a stairwell would likewise be indicative of a device.
2. If a suspected device is located, one member of the search team is required to report by phone or in person to the Facility Manager, or designated alternate, who will then investigate to determine how likely the suspected device is to be a bomb.
 - i. Keep your cool when suspicious objects are found.
 - ii. No attempt should be made by the employee to remove or inspect the item!
 - iii. No radio or walkie-talkie transmissions should be made as the keying of a microphone could detonate a device.
3. The Facility Manager, or designated alternate, will direct that appropriate personnel from the area in question and be questioned regarding concerning the suspected device

The Facility Manager, or designated alternate, will make the necessary arrangements for the police bomb disposal squad to investigate.