

November 3, 2022

**FIRST AMENDMENT TO THE RESTATED 2002 AGREEMENT FOR DISPOSAL OF
MUNICIPAL SOLID WASTE BETWEEN
THE CITY OF CUPERTINO AND INTERNATIONAL DISPOSAL CORP. OF CALIFORNIA, INC.**

This First Amendment to the restated 2002 Agreement for Disposal of Municipal Solid Waste Between the City of Cupertino and International Disposal Corp. of California, Inc., executed on [REDACTED] and effective November 21, 2023, is by and between the CITY OF CUPERTINO, a municipal corporation ("CITY"), and International Disposal Corp. of California, Inc., a California corporation ("Contractor"), and is made with reference to the following:

RECITALS:

- A. City and Contractor are parties to an Agreement for Disposal of Municipal Solid Waste dated November 21, 1988, as restated on September 24, 2002 (such agreement as so amended, the "Agreement").
- B. The term of the Agreement expires at 11:59 P.M. on November 20, 2023, subject to Section 4 of the Agreement.
- C. The parties wish to enter into an optional two-year extension of the Agreement and to modify Contractor compensation as specified.
- D. City and Contractor desire to modify the Agreement as set forth below, with modified terms effective on November 21, 2023.
- E. All other provisions of the Agreement shall remain in full force and effect.

AGREEMENT

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

- 1. Section 4.2 is amended to read as follows:

4.2 Termination

Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall continue in full force and effect until the first to occur of the following, unless sooner terminated in accordance with this Agreement:

- (i) November 20, 2025; or
- (ii) The City exercises its sole option to terminate the Agreement without cause upon ninety (90) days prior written notice to Contractor.

- 2. Section 5.1 is amended to read as follows:

5.1 Tipping Fee

The Tipping Fee for the disposal and/or Recycling of Municipal Solid Waste at Newby Island as of July 1, 2024, shall be the amount adjusted pursuant to Section 5.2 and 5.4 of this Agreement plus an additional \$2.00 per Ton to the adjustable portion of the Tipping Fee. The Tipping Fee for the

disposal and/or Recycling of Municipal Solid Waste at Newby Island as of July 1, 2025, shall be the amount adjusted pursuant to Section 5.2 and 5.4 of this Agreement plus an additional \$2.00 per Ton to the adjustable portion of the Tipping Fee. For clarity, \$2.00 per ton will be added on top of the annual Tipping Fee adjustment pursuant to the Agreement on the Rate Adjustment Date for years 2024 and 2025. Notwithstanding the foregoing, for Debris Boxes containing source separated loads of concrete or clean soil the City shall be charged the gate rates for concrete and clean soil, respectively, provided application of those gate rates results in a lower cost to the City.

3. Section 5.2 is restated as follows:

5.2 Annual Adjustment of Tipping Fee

The Tipping Fee (as adjusted under Section 5.4) shall be adjusted as of July 1 of each year, beginning as of July 1, 2024, (the "Rate Adjustment Date") in accordance with the following formula:

$$P = A(1.0 \times B)$$

A = The adjustable portion of the Tipping Fee (as described below) in effect as of the Rate Adjustment Date. The "adjustable portion of the Tipping Fee", as that phrase is used above, is the Tipping Fee in effect as of the Rate Adjustment Date, less the portion thereof attributable to Taxes. As of July 1, 2022, the adjustable portion of the Tipping Fee is \$26.92.

B = The net percentage change in the Consumer Price Index (CPI), All Urban Consumer (CPI-U), for San Francisco-Oakland-San Jose, California, published by the U.S. Department of Labor, Bureau of Labor Statistics.

P = The amount adjustment to the Tipping Fee for the new twelve (12) month period.

All "net percentage changes", as that phrase is used above, are to be computed as the difference between the applicable index value for the month of February immediately prior to the current Rate Adjustment Date and for the month of February immediately prior to the last Rate Adjustment Date (February 2002 in the case of the first adjustment hereunder), divided by the index value for the month of February immediately prior to the last Rate Adjustment.

Contractor shall notify City in writing of any adjustment under this Section at the earliest practicable time. On the next billing date after the receipt of Contractor's statement showing adjustment under this Section, City shall pay to Contractor or Contractor shall credit to City, as the case may be, a lump sum equal to any increase or decrease applicable to that period which has elapsed during which the new Tipping Fee is effective. Thereafter, the Tipping Fee charged by Contractor shall not be modified to reflect any change under this Section until a subsequent adjustment statement is received by City. Adjustment to the Tipping Fee will only be made in units of one cent (\$0.01). Fractions less than one cent (\$0.01) will not be considered in making adjustment.

Should the index named in this Section not be published for February of any given year, the calculations shall be performed using the index value as published for the last month immediately preceding the February in question (or, in the case of a quarterly published index, the index value for the quarter including the February in question).

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Should the index named in this Section be discontinued, a successor index shall replace same. The successor index shall be that index which is most closely equivalent to the discontinued index as recommended by the publishing agency.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first written above.

International Disposal Corp. of California, Inc.
A California Corporation

CITY OF CUPERTINO,
A Municipal Corporation

By

Kevin Divincenzo

Area President; Kevin Divincenzo

By

City Manager, Pamela Wu







Cupertino-Republic Newby Island Extension_Final

Final Audit Report

2022-11-07

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