

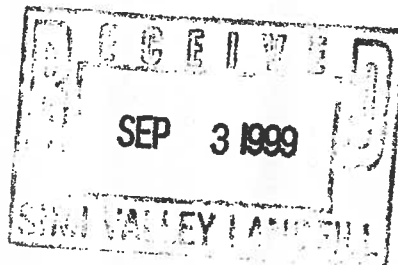


City of Thousand Oaks

CITY CLERK
NANCY A. DILLON

September 2, 1999

Region Vice President
General Manager
Waste Management of California, Inc.
9081 Tujunga Avenue
Sun Valley, CA 91352



**Re: Contract for Landfill Disposal
Contract No. 4335-99**

Enclosed for your file is the fully executed copy of the above subject contract.

This contract was approved by the Thousand Oaks City Council/Redevelopment Agency at their regular meeting which was held on July 27, 1999.

Sincerely,

CITY OF THOUSAND OAKS
Nancy A. Dillon, CMC/AAE
City Clerk

Carol Clement
Administrative Secretary

Enclosure
cco/600-30:a:waste.con

c: Public Works Dept. (4)
Finance Dept.
Simi Valley Landfill & Recycling Center



City of Portland



September 1930

City of Portland
Department of Public Works
Engineering Division
Portland, Oregon

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Department of Public Works
Engineering Division

**AGREEMENT BETWEEN THE CITY OF THOUSAND OAKS AND
WASTE MANAGEMENT OF CALIFORNIA, INC. FOR LANDFILL DISPOSAL
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APPENDIX A GUARANTY

**AGREEMENT BETWEEN THE CITY OF THOUSAND OAKS AND
WASTE MANAGEMENT OF CALIFORNIA, INC. FOR LANDFILL DISPOSAL**

This Waste Disposal Agreement is made and dated July 27, 1999, between Waste Management of California, Inc., a California corporation, (the "Contractor"), and the City of Thousand Oaks, California, a general law city and political subdivision of the State of California (the "City").

RECITALS

WHEREAS, the Contractor owns and operates the Simi Valley Landfill & Recycling Center located in Simi Valley, California (the "Landfill"), for the disposal of municipal solid waste; and

WHEREAS, the Contractor wishes to enter into an agreement with the City to accept City Waste (as defined herein) at the Landfill, subject to the provisions of this Agreement, and the City desires to provide for the potential delivery of City Waste to the Landfill subject to the provisions of this Agreement; and

WHEREAS, the City, in the exercise of its police power and its powers under the Act, has entered into franchise agreements with Franchise Haulers (as defined herein) for the collection of municipal solid waste generated within the City in collection vehicles owned and operated by the Franchise Haulers; and

WHEREAS, the City has determined that the execution of this Agreement by the City will serve the public health, safety and welfare of the City by providing greater disposal rate stability, more predictable and reliable long-term disposal service, and the continuation of sound environmental management; and

WHEREAS, concurrently with the execution of this Agreement, Waste Management, Inc. has executed the Guaranty Agreement in the form attached hereto as Appendix A, and execution of the Guaranty by Waste Management, Inc. constitutes a material element of consideration to the City for entering into this Agreement; and

WHEREAS, official action approving this Agreement and determining it to be in the public interest and authorizing its execution and delivery was duly taken by the City on July 27, 1999; and

WHEREAS, the Contractor has approved the execution and delivery of this Agreement by all requisite corporate action.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein set forth, and of the undertakings of each party to the other, the parties do hereby promise and agree as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

SECTION 1.1 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

"Acceptable Waste" means municipal solid waste, including garbage, refuse, rubbish and other

materials and substances discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection and which are normally disposed of by or collected from residential (single family and multi-family), commercial, industrial, governmental and institutional establishments which are acceptable at the Landfill under Applicable Law.

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded and replaced from time to time.

"Agreement" means this Waste Disposal Agreement between the Contractor and the City as the same may be amended or modified from time to time in accordance herewith.

"All-Inclusive Rate" shall have the meaning ascribed thereto in Section 4.2(D).

"Applicable Law" means the Act, the Ventura County Code, CERCLA, RCRA, CEQA, any Legal Entitlement and any federal or state rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having jurisdiction, applicable from time to time to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Landfill, the transfer, handling, transportation and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, mitigation monitoring plans and building codes).

"Board" means the California Integrated Waste Management Board.

"CEQA" means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 et seq. (West 1999) as amended or superseded, and the regulations promulgated thereunder.

"CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. Section 9601 et seq. (West 1995 & Supp. 1999), as amended or superseded, and the regulations promulgated thereunder.

"City" means the City of Thousand Oaks, California.

"City Waste" means Acceptable Waste which is (i) generated in the City and (ii) collected by the Franchise Haulers.

"Contract Date" means July 27, 1999.

"Contract Year" means the calendar year commencing on January 1 in any year and ending on December 31 of that year; provided, however, that the first Contract Year shall commence on the Contract Date and shall end on December 31, 1999.

"Facility Fee" has the meaning specified in Section 4.3 hereof.

"Franchise Haulers" means private haulers with which the City has entered into agreements for the exclusive collection of Acceptable Waste generated within particular areas of the City.

"Governmental Body" means any federal, State, county, city or regional legislative, executive, judicial or other governmental board, agency, authority, committee, administration, court or other body, or any officer thereof acting within the scope of his or her authority.

"Guarantor" means Waste Management, Inc.

"Guaranty Agreement" means the Guaranty Agreement from the Guarantor to the City, a copy of which is attached hereto as Appendix A.

"Hazardous Substance" has the meaning given such term in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., CERCLA, and all future amendments to either of them or as defined by California statute or by the California Environmental Protection Agency or the California Integrated Waste Management Board, or any of them.

"Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1999); (4) the California Public Resources Code, Section 40141 (West 1999); (5) CERCLA and regulations promulgated thereunder and (6) future additional or substitute Applicable Law pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Loss-and-Expense" means any and all loss, liability, obligation, damage, delay, penalty, judgment, deposit, cost, expense, claim, demand, charge, tax, or expense, including all fees and costs.

"Maximum Tipping Fee" shall have the meaning ascribed thereto in Section 4.2.

"Overdue Rate" means the post-judgment rate of interest specified by the laws of the State.

"Permits" means any permits, approvals, licenses, authorizations, consents and amendments thereof

of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Landfill or the performance of any obligation under this Agreement or the matters covered hereby.

"Prohibited Medical Waste" means any medical or infectious waste prohibited or restricted under Applicable Law from being received by or disposed at the Landfill.

"Qualified Household Hazardous Waste" means waste materials determined by the Board, the State Department of Health Services, the State Water Resources Control Board, or the California Air Resources Board to be:

- (1) Of a nature that they must be listed as hazardous in State statutes and regulations;
- (2) Toxic/ignitable/corrosive/reactive; and
- (3) Carcinogenic/mutagenic/teratogenic;

which are discarded from households as opposed to businesses. Qualified Household Hazardous Waste shall not include Unacceptable Waste.

"Qualified Alternate Solid Waste Management Facility" means any alternate disposal facility which is reasonably available to the City for disposal of City Waste.

"Resource Conservation and Recovery Act" or "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 et seq. (West 1983 & Supp 1989), as amended and superseded.

"State" means the State of California.

"Term" shall mean the Term of this Agreement specified in Section 6.1.

"Tipping Fee" shall mean the per-ton rate for the acceptance and disposal of City Waste charged by the Contractor to Franchise Haulers, pursuant to the terms and conditions of Section 4.1.

"Ton" means a "short ton" of 2,000 pounds.

"Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste (or otherwise identified by the Contractor in loads otherwise containing Acceptable Waste); explosives, ordnance, highly flammable substances, and noxious materials and lead-acid batteries (except if delivered in minimal quantities); drums and closed containers; liquid waste, oil, human wastes; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts, motor vehicles or major components thereof, agricultural equipment, trailers, marine vessels and steel cable; and any waste which the Landfill is prohibited from receiving under Applicable Law.

"Uncontrollable Circumstance" means any act, event or condition affecting the Facility, the Landfill, the Contractor, the City or their contractors or suppliers to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement (except for payment

obligations), if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Agreement; provided, however, that the contesting in good faith or the good faith decision not to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances: (a) general economic conditions, interest or inflation rates, currency fluctuations or changes in the cost of fuel, the availability of commodities, supplies or equipment; (b) changes in the financial condition of the Contractor, the City or any Subcontractor affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by the Contractor, the City, or any Subcontractor of any tier in the performance of their obligations hereunder; (d) union work rules, requirements or demands; (e) strikes, work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the Contractor or any of the Contractor's Subcontractors in connection with the Agreement or the obligations of the parties under this Agreement; (f) any failure of any subcontractor to furnish labor, materials, service or equipment for any reason (other than an Uncontrollable Circumstance); (g) equipment failure; (h) any impact of minimum wage law, prevailing wage law, customs or practices on the Contractor's construction or operating costs; or (i) changing conditions in the local, regional, or national waste disposal market.

SECTION 1.2 INTERPRETATION

In this Agreement, unless the context otherwise requires:

(A) References Hereto. The terms "hereby", "hereof", "herein", "hereunder" and any similar terms are references to this Agreement, and the term "hereafter" means after, and the term "heretofore" means before, the Contract Date.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement and, except as expressly provided otherwise herein, nothing in this Agreement is intended to confer on haulers or any other person other than the parties hereto and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

(G) Applicable Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of California.

(H) Accounting Terms. All accounting terms used but not specifically defined herein shall

be construed in accordance with generally acceptable accounting principles applied on a consistent basis.

(I) Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist, unless such invalidity frustrates the underlying primary purpose of the Agreement.

(J) Integration. This Agreement contains the entire agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the parties with respect to such transactions.

(K) Recitals. The recitals to this Agreement are not intended to bind the parties hereto. In the event of a conflict between the recitals and the operative provisions of this Agreement, the operative provisions shall prevail. The recitals shall not be used to interpret the provisions of the Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE CITY

The City represents and warrants that:

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

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

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

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

The Contractor represents and warrants that:

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

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

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

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

ARTICLE III DELIVERY AND ACCEPTANCE OF WASTE; OTHER OBLIGATIONS OF THE CITY

SECTION 3.1. WASTE ACCEPTANCE BY THE CONTRACTOR

(A) Obligation of the Contractor to Accept. Initially, the Contractor will be obligated to accept City Waste at the Landfill until June 27, 2004 in accordance with the terms of this Agreement; provided, however, that upon receipt by the Contractor of the Extension Approvals described in Section 3.5(A), the Contractor shall be obligated to accept City Waste at the Landfill until the later to occur of December 31, 2020 or the permanent closure of the Landfill. The Contractor acknowledges that the obligation of the Contractor to accept City Waste at the Landfill in accordance with this Section shall have priority over any other obligation of the Contractor to accept any other Acceptable Waste at the Landfill.

(B) Temporary Unavailability of Landfill. The Contractor shall immediately advise the City by telephone and facsimile of any situation, event or circumstance which results in the partial or complete inability of the Contractor to receive City Waste at the Landfill, its effect on the Contractor's ability to perform its obligations hereunder, and the Contractor's best estimate of the probable duration. The Contractor shall confirm such advice in writing within 24 hours of the occurrence of any such inability. The Contractor shall use its best efforts to resume normal operation of the Landfill as soon as possible. In the event that, at any time during the term hereof, the Contractor is unable to accept City Waste from Franchise Haulers for disposal at the Landfill for any reason other than Uncontrollable Circumstances, Contractor (or upon the failure of the Contractor to do so, City) shall arrange for transfer and disposal of City Waste at an alternative disposal site. To the extent that the provisions of the Franchise Agreements entitle the Franchise Haulers to additional compensation as a result of such unavailability, the Contractor shall be obligated to pay the City for

(I) any increased transportation cost (including without limitation, equipment rental costs, overtime and increased fuel costs resulting from the unavailability of the Landfill) incurred by the Franchise Haulers in transporting City Waste to any other disposal facility and (ii) the amount, if any, by which the tipping fee at the alternative facility (because of the unavailability of any facility within the Landfill) exceeds the then current Tipping Fee. The invoice shall include reasonable substantiation of the amount invoiced. In the event that the Contractor is unable to accept City Waste for disposal at the Landfill due to Uncontrollable Circumstances, the provisions of Section 7.2 shall apply during the pendency of any such Uncontrollable Circumstances.

SECTION 3.2 CONTRACTOR RIGHT TO REFUSE WASTE

(A) Right of Refusal. Notwithstanding any other provision hereof, the Contractor may refuse delivery of:

- (1) Unacceptable Waste; and
- (2) City Waste delivered at hours other than those provided in Section 3.3(B) hereof.

(B) Identification of Unacceptable Waste. The Contractor shall have the right to inspect the Franchise Haulers' vehicles delivering material to the Landfill, and may require that the Franchise Haulers remove any Unacceptable Waste from such vehicle before it is unloaded. If the Contractor determines that it is impractical to separate City Waste from Unacceptable Waste in any vehicle, or if the Franchise Haulers are unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the Contractor may reject the entire vehicle, and the Contractor shall require that the Franchise Haulers shall forthwith remove or cause the removal of the entire delivery from the Landfill.

(C) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Landfill has not been designed or permitted, and is not intended to be used in any manner or to any extent, for the handling, transportation, storage or disposal of Unacceptable Waste. Neither the Contractor nor the City shall countenance or knowingly permit the delivery of Unacceptable Waste to the Landfill.

(D) Disposal of Unacceptable Waste. If Unacceptable Waste is discovered in any Franchise Haulers' vehicle at the Landfill, the driver of the vehicle will not be permitted to discharge the load. If a Franchise Haulers' vehicle is observed unloading Unacceptable Waste in the tipping area within the Landfill, Contractor personnel will use reasonable efforts to assure that such material has been characterized, properly secured and its disposition resolved. The return or reloading on to the Franchise Haulers' delivery vehicle of any Hazardous Waste, Prohibited Medical Waste or other waste requiring handling or transportation shall be conducted in accordance with Applicable Law. Whenever Unacceptable Waste is detected at the Landfill, the Contractor shall take immediate action in accordance with Applicable Law.

SECTION 3.3. MISCELLANEOUS OPERATIONAL MATTERS

(A) Generally. The Contractor, at its cost and expense, shall at all times operate the Landfill in accordance with Applicable Law. The Contractor shall obtain and maintain all Permits required for the operation of the Landfill and for the performance by the Contractor of its obligations hereunder and shall diligently undertake any actions necessary for the issuance of the Extension Approvals described in Section 3.5(A). The Contractor shall provide the City with copies of any

applications that the Contractor submits to any Governmental Body in connection with the issuance of new Permits with respect to the Landfill or the extension, revision or modification of existing Permits (such copies to be provided at the same time as the Contractor submits the applications to any Governmental Body).

(B) Operating Hours. The Contractor shall cause the Landfill to be open for the receipt of City Waste Monday through Saturday from 7:00 a.m. to 4:00 p.m. The Contractor may modify the operating hours upon providing the City with 60 days prior written notice of any modification; provided that after such modification, if the Landfill commences operations later than 7:00 a.m. Monday through Friday or is not open at least 9 hours Monday through Friday, the City shall have the right to terminate this Agreement without any further obligation to the Contractor upon written notice to Contractor delivered within 60 days after the effective date of the modification. The Landfill may only be closed for the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

(C) Scales and Weighing. The Contractor shall operate and maintain permanent scales at the Landfill in compliance with Applicable Law. The Contractor shall weigh all vehicles delivering City Waste by the City (whether or not the Contractor accepts such waste) and prepare a daily weight record with regard to such delivery. The Contractor shall cause the scales to be calibrated and tested in accordance with Applicable Law. In the event that the scales are temporarily unavailable, the Contractor shall estimate the amount of City Waste based on historical records.

(D) Access Roads, Haul Roads and Service Roads. The Contractor shall be responsible for the construction and maintenance of all roads required on the Landfill Site for purposes of transporting City Waste to the actual point of disposal, or transporting earth materials for fill within the Landfill Site and such other roads as may be required for its convenience.

(E) Access to Tipping Area. The Contractor shall use its best efforts to build and maintain the deck surface of the active Landfill area level and reasonably free from potholes or depressions so that vehicles may have clear and safe access to the tipping areas at all times.

(F) Signs and Traffic. The Contractor shall maintain all existing and future signs on the Landfill in a clean and readable condition. The Contractor shall provide and maintain signs for the convenience of the vehicles using the Landfill and for safe and efficient traffic flow to and from the tipping area.

(G) Vehicle Procedures. The Contractor shall allow vehicles delivering City Waste to enter the Landfill, utilize the scales, and dispose of loads in the same manner and in the same priority as vehicles owned or operated by the Contractor or its affiliates or related companies. Under no circumstances may the Contractor provide preferential queuing to its own vehicles or those of its affiliates or related companies.

(H) Personnel. The Contractor shall assign personnel to perform operations on the Landfill on such days and during such hours as City Waste is being delivered and disposed, as may be required to assure a smooth and efficient operation. The Contractor shall assign adequate qualified personnel to operate equipment and direct traffic to the proper disposal area. Personnel shall be provided with operating and safety training on landfill procedures and operations. A representative of the Contractor shall be present at the Site at all times that any operations are being conducted thereon. The Contractor shall file with the City Manager or designee the name, address and telephone number of a representative who can be contacted at any time. The representative must be fully authorized and equipped to respond to reasonable requests of the City Manager or designee.

(I) Equipment. The Contractor shall provide the equipment necessary (utilizing customary operating procedures) for regular operations of the Landfill in accordance with Applicable Law. The Contractor shall properly protect the equipment and place it in the charge of competent operators. The Contractor shall repair and maintain all such equipment at its own cost and expense. The Contractor shall have available sufficient equipment as is customary in the solid waste industry for similarly sized privately owned and operated landfill operations in California.

(J) Safety. The Contractor shall operate the Landfill in a safe manner, in accordance with Applicable Law and customary industry practices.

(K) Site Accessibility and Inspection. The Contractor shall at all reasonable times allow City officials to come upon the Landfill site to determine the compliance by the Contractor with the provisions of this Agreement. Upon arrival of any such official(s) at the gate, the City's representatives shall immediately inform the Contractor's onsite representative of such arrival. While the City officials are on the Landfill site, the Contractor's representative shall be entitled to accompany such official(s). In no event will such inspection or tour be allowed to interfere with operation of the Landfill. Inspection of the work by the City shall not relieve the City or the Contractor of any obligation to perform under this Agreement.

SECTION 3.4. CERTAIN RECORDS

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

(B) Other Reports. The Contractor shall furnish the City with copies of all other reports submitted on behalf of the Contractor with respect to the Landfill in accordance with Applicable Law to other regulatory agencies (including but not limited to the LEA); provided, however, that if any particular reports exceed 10 pages in length, the Contractor may merely provide the City with notice that such report was submitted, and provide a full copy of such report only upon request of the City.

SECTION 3.5. CERTAIN OTHER OBLIGATIONS OF THE CITY

(A) Non-Opposition to Limited Modification of Permits. To the extent permitted by law, the City will not oppose the Contractor's application for modifications or extensions or Permits or related agreements (collectively, the "Extension Approvals") which would allow for the continuing operation of the Landfill beyond the currently anticipated closure date of June 27, 2004, an increase in the disposal capacity of the Landfill, and the removal of the "85 percent of the maximum permitted tons per operating day" limitation contained in the second amendment to the current Ventura County Operating Agreement; provided, however, that the provisions of this Section shall not prohibit the City from taking any action (or refraining to take any action) that is consistent with the stated positions of the cities of Simi Valley or Moorpark regarding the Extension Approvals (as such positions may exist from time to time). The City specifically reserves the right, without limitation, to take any action authorized by law with respect to the application process, including but not limited to, commenting on the application or objecting to the development plans of the Contractor with respect to the Landfill, in the event that the Contractor seeks to increase the daily permitted capacity of the Landfill above 3,000 tons.

(B) Non-Exercise of Certain Rights. The City agrees that, as long as no event of default on the part of the Contractor shall have occurred and be continuing hereunder, the City, during the term of this Agreement, shall not exercise its right pursuant to any Franchise Agreements to require Franchise Haulers which are affiliates of the Contractor to utilize a particular disposal facility; provided that to the extent current Franchise Haulers which are affiliates of the Contractor ("Affiliated Haulers") are no longer the Franchise Haulers authorized to collect all or part of the City Waste generated within the City and within the one year period following the execution of new Franchise Agreement(s) with Franchise Haulers which are not affiliates of the Contractor ("Non-affiliated Haulers"), the volume of City Waste delivered to the Landfill by the new Franchise Hauler(s) is reduced by more than 50 percent, as compared to the volume delivered by the Affiliated Haulers during the one-year period preceding the execution of the new Franchise Agreement(s), then the Contractor shall have the right to terminate this Agreement without further liability, upon 90 day notice to the City; provided further, however, that if during such 90 day period the City should direct such Non-affiliated Haulers to resume deliveries to the Landfill for the shorter of the remaining term of this Agreement or the collection Franchise Agreement, then the Contractor's termination right shall be null and void.

(C) Limitation on Contractor's Obligation to Accept City Waste. Subject to the provisions of Section 3.5(B) above, in the event that the volume of City Waste delivered by Non-affiliated Haulers during the one-year period following the execution of the new Franchise Agreement(s) is reduced, but such reduction is not more than 50 percent of the volume delivered to the Landfill by the Affiliated Haulers during the one-year period preceding the execution of the new Franchise Agreement(s), then in future Contract Years the Contractor's obligation to accept deliveries of City Waste shall be limited to the volume of City Waste delivered at the Landfill by Non-Affiliated Haulers during the one-year period following the execution of the new Franchise Agreement(s); provided, however such amount shall be increased in future Contract Years to reflect population growth in the City and/or growth in the amount of total City Waste generated.

(D) Recognition of City Diversion Obligations. Notwithstanding anything herein to the contrary, the parties hereto acknowledge the responsibility of the City to meet the recycling and landfill diversion goals contained in the Act. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City to meet or exceed such responsibilities, or to restrict the right of the residents, businesses or organizations in the City to practice source separation, source reduction, recycling, composting or other materials recovery activities, or to restrict the right of the City to conduct, sponsor, encourage or require such activities in any form. Specifically, the Contractor acknowledges that the City may direct Franchise Haulers to deliver to processing facilities any source separated recyclable materials collected in the City, or any City Waste to the extent necessary for the City to achieve recycling goals.

ARTICLE IV TIPPING FEE AND FACILITY FEE

SECTION 4.1. CHARGING AND SECURING PAYMENT OF TIPPING FEE

The City acknowledges that the Contractor shall have the right to charge and collect from Franchise Haulers the Tipping Fee for the acceptance and disposal of City Waste delivered to the Landfill. The

Tipping Fee shall be calculated and established by the Contractor; provided, however that the Tipping Fee may not exceed the Maximum Tipping Fee as provided in Section 4.2 hereof. In addition, the City acknowledges that the Contractor shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of the Tipping Fee.

SECTION 4.2. MAXIMUM TIPPING FEE

(A) Calculation of the Maximum Tipping Fee. The Tipping Fee imposed by the Contractor for the disposal of City Waste shall not exceed the Maximum Tipping Fee, which shall initially equal \$31.50 and shall be adjusted on January 1 during each Contract Year, commencing January 1, 2001 in accordance with the following formula:

Maximum Tipping Fee	=	[Maximum Tipping Fee (N-1)] + [Maximum Tipping Fee (N-1) x Index]. The Maximum Tipping Fee for the first Contract Year shall be \$31.50.
Maximum Tipping Fee (N-1)	=	Maximum Tipping Fee for the Contract Year prior to the year in which the adjustment is being made.
Index	=	Price Index, which shall be determined in accordance with the following formula:
I	=	$\frac{CPI_{(N)} - CPI_{(N-1)}}{CPI_{(N-1)}}$
CPI_N	=	The Consumer Price Index, all Urban Consumers, Los Angeles/Riverside/Orange County, as published by the United States Department of Labor Statistics in the publication <u>Consumer Price Indexes</u> , Table 3, for the month of September, in the year the adjustment is being made (e.g., the first adjustment will use the September, 2000 value).
CPI_{N-1}	=	The Consumer Price Index, all Urban Consumers, Los Angeles/Riverside/Orange County, as published by the United States Department of Labor Statistics in the publication <u>Consumer Price Indexes</u> , Table 3, for the month of September in the year prior to the year in which the adjustment is being made (e.g., the first adjustment will use the September, 1999 value).

If the Consumer Price Index is no longer published, or is otherwise unavailable, then the escalation shall be determined by using such other index as the parties shall mutually agree. Within 15 days after the publication of the relevant Consumer Price Index for the month of September each year, the City shall prepare a calculation of the index to be used for purposes of this Section, and shall send a notice to the Contractor demonstrating such calculation and specifying the Maximum Tipping Fee to be applicable commencing on January 1 of such Contract Year. If the Contractor disputes the City's calculations, it shall notify the City of such dispute within 15 days after receipt of the City's notice. In such event, the City and the Contractor shall meet and confer as soon as practicable thereafter to resolve such dispute.

(B) Other Limitations on Maximum Tipping Fee. In the event that the Maximum Tipping Fee as calculated pursuant to Section 4.2(A) exceeds the lower of (i) the Favored Rate or (ii) the Market Rate, then the Maximum Tipping Fee shall be adjusted to equal the lower of (i) the Favored Rate or (ii) the Market Rate.

(C) Calculation of Favored Rate. For purposes of Section 4.2, the "Favored Rate" shall be equal to the lowest per ton rate at which the Contractor accepts Acceptable Waste at the Landfill from any similar customer (including Acceptable Waste delivered by the Contractor or affiliates or subsidiaries of the Contractor) for substantially similar services. For purposes of this provision, "substantially similar services" shall mean the acceptance and disposal in direct haul trucks of comparable volumes (i.e., up to 1,000 tons per day) of general municipal waste. In the event that the City believes that the then current Maximum Tipping Fee exceeds the Favored Rate, it shall provide the Contractor with a written notice thereof which notice shall contain the City's calculation of the Favored Rate. In the event the Contractor disputes the City's calculation of the Favored Rate, it shall provide the City with a written description of the reason for the dispute within 30 days after receipt of the City's notice. At any time from and after the date that the City provides the Contractor with the initial notice described in this Section 4.2(C), upon the request of either party, the Contractor and the City shall meet and confer in good faith to resolve any dispute that may arise regarding the calculation of the Favored Rate. In the event that the Parties cannot mutually resolve the dispute, either party may utilize the dispute resolution procedures specified in Section 5.5 hereof.

(D) Calculation of Market Rate.

(I) Generally. For purposes of Section 4.2, the "Market Rate" shall be equal to the lowest per-ton All-Inclusive Rate for disposal of City Waste at a Qualified Alternate Solid Waste Management Facility which would commit to enter into an agreement to guarantee disposal capacity for City Waste for a period of at least three years. For purposes of this Section 4.2(D), the All-Inclusive Rate means the per ton disposal cost to the City or the Franchise Hauler, plus any additional increased transfer or transportation costs calculated on a per ton basis which the City or the Franchise Hauler would incur in order to dispose of City Waste at such Qualified Alternate Solid Waste Management Facility (in excess of the per ton transfer or transportation costs incurred by the City or Franchise Hauler in utilizing the Landfill). Notwithstanding the foregoing, the Calabasas Landfill shall not be considered for purposes of determining the Market Rate for purposes of this Section 4.2(D).

(II) Notice. In the event that the City believes that the then current Maximum Tipping Fee exceeds the then-current Market Rate, it shall provide the Contractor written notice thereof, which notice shall contain the City's calculation of the Market Rate; provided, however, that the City shall not provide such notice at any time less than five (5) years from the Contract Date or five (5) years from the date of the last such notice given to Contractor. In the event the Contractor disputes the City's calculation of the Market Rate, it shall provide the City with a written description of the reason for the dispute within 30 days after receipt of the City's notice. At any time from and after the date that the City provides the Contractor with the initial notice described in this Section 4.2(D), upon the request of either party, the Contractor and the City shall meet and confer in good faith to resolve any dispute that may arise regarding the calculation of the Market Rate. In the event that the Parties cannot mutually resolve the dispute, either Party may utilize the dispute resolution procedures specified in Section 5.5 hereof.

SECTION 4.3. FACILITY FEE

Effective on the Contract Date, the Contractor shall pay to the City a Facility Fee for each ton of City Waste delivered to the Landfill and paid for by the Franchise Haulers equal to the difference between (x) the Tipping Fee paid to the Contractor by the Franchise Haulers delivering City Waste at the Landfill and (y) \$29.00 per ton (as such amount shall be adjusted each January 1 during the term of this Agreement, commencing January 1, 2001, by application of the adjustment formula to be utilized

for the Maximum Tipping Fee pursuant to Section 4.2; provided that such Facility Fee shall never be less than \$2.50 per ton (as such amount shall be adjusted each January 1 during the term of this Agreement, commencing January 1, 2001, by application of the adjustment formula to be utilized for the Maximum Tipping Fee pursuant to Section 4.2).

SECTION 4.4. RESPONSIBILITY FOR PAYMENT OF THE FACILITY FEE

(A) Statement by Contractor. By the 15th day of each month during the term hereof, the Contractor shall provide the City with a statement (a "Delivery Statement") with respect to City Waste delivered to the Landfill during the prior month. Such Delivery Statement shall specify the number of tons of City Waste delivered by the Franchise Haulers on a daily basis and shall also specify the Tipping Fee charged for such City Waste. Upon request of the City, the Contractor shall also provide copies of weight tickets or other reasonably requested documentation substantiating deliveries at the times and in the amounts specified in the Delivery Statement.

(B) Payment by Contractor. The Contractor shall pay to the City the Facility Fee which shall be an amount calculated as the number of tons indicated on the Delivery Statement described in Section 4.4(A) multiplied by the then current Facility Fee. The Contractor shall remit the Facility Fee on or before the last day of the month following receipt by the City of the Delivery Statement.

(C) Disputes. If the City disputes any amount calculated by the Contractor in any Delivery Statement, the City shall provide the Contractor with written objection indicating the amount of the Facility Fee that is being disputed and providing all reasons then known to the City for any objection to or disagreement with such amount. The Contractor shall then respond to such written objection (providing additional documentation substantiating the amount disputed if applicable) within 30 days of receipt of the written objection. If the City and the Contractor are not able to resolve such dispute within 30 days after the Contractor's response, either party may pursue appropriate legal remedies.

ARTICLE V BREACH, ENFORCEMENT AND TERMINATION

SECTION 5.1. BREACH; REMEDIES

The parties acknowledge that the money damages provided hereunder may not be adequate to compensate either party for the other party's nonperformance. The parties agree that in the event either party breaches any obligation under this Agreement or any representation made by either party hereunder is untrue in any material respect, the other party shall have the right to take any action at law or in equity (including actions for injunctive relief, mandamus and specific performance) it may have to enforce the payment of any amounts due or the performance of any obligations to be performed hereunder. Neither party shall have the right to terminate this Agreement except as provided in Section 5.2 hereof.

SECTION 5.2. TERMINATION

(A) By City. Except as expressly provided herein, the City shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the Contractor substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the City the right to terminate this Agreement for cause under this subsection unless:

(1) The City has given prior written notice to the Contractor stating that a

specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the Contractor and which will, in its opinion, give the City the right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The Contractor has neither challenged in an appropriate forum (in accordance with Section 5.4) the City's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the Contractor shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the Contractor is continuing to take such steps to correct such breach).

(B) By Contractor. Except as expressly provided herein, the Contractor shall have no right to terminate this Agreement for cause except in the event of the repeated failure or refusal by the City substantially to perform any material obligation under this Agreement unless such failure or refusal is excused by an Uncontrollable Circumstance; except that no such failure or refusal shall give the Contractor the right to terminate this Agreement for cause under this subsection unless:

(1) The Contractor has given prior written notice to the City stating that a specified failure or refusal to perform exists which will, unless corrected, constitute a material breach of this Agreement on the part of the City and which will, in its opinion, give the Contractor right to terminate this Agreement for cause under this subsection unless such breach is corrected within a reasonable period of time, and

(2) The City has neither challenged in an appropriate forum (in accordance with Section 5.4) the Contractor's conclusion that such failure or refusal to perform has occurred or constitutes a material breach of this Agreement nor corrected or diligently taken steps to correct such breach within a reasonable period of time not more than 90 days from the date of the notice given pursuant to clause (1) of this subsection (but if the City shall have diligently taken steps to correct such breach within such reasonable period of time, the same shall not constitute a breach giving rise to the right of termination for as long as the City is continuing to take such steps to correct such breach).

SECTION 5.3. NO WAIVERS

No action of the Contractor or the City pursuant to this Agreement (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Agreement. No course of dealing or delay by the Contractor or the City in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the Contractor or the City under this Agreement shall preclude any other or further exercise thereof of the exercise of any other right, power or remedy.

SECTION 5.4. FORUM FOR DISPUTE RESOLUTION

It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Landfill or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California having appropriate jurisdiction.

SECTION 5.5. NON-BINDING MEDIATION OF DISPUTES

Prior to commencing litigation pursuant to Section 5.4, either party hereto may give the other party written notice of any dispute with respect to the performance or payment of any obligation hereunder. Such notice shall specify a date and location for a meeting of the parties hereto at which such parties shall attempt to resolve such dispute. The cost of such mediation shall be shared equally by the parties. In the event that such dispute cannot be resolved by the parties hereto within thirty (30) days, either party can commence litigation pursuant to Section 5.4.

ARTICLE VI TERM

SECTION 6.1. EFFECTIVE DATE AND TERM

(A) Term. This Agreement shall become effective, shall be in full force and effect and shall be legally binding upon the City and the Contractor from the Contract Date and shall continue in full force and effect until June 27, 2004 in accordance with the terms of this Agreement; provided, however, that upon receipt by the Contractor of the Extension Approvals described in Section 3.5(A), the Term of this Agreement shall automatically be extended until the later to occur of December 31, 2020 or the permanent closure of the Landfill.

(B) Survival; Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 5.1, 5.3, 5.4, 7.3, 7.4, 7.6, 7.7, and 7.8 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties shall terminate.

ARTICLE VII GENERAL PROVISIONS

SECTION 7.1. OPERATION AND MAINTENANCE OF THE LANDFILL

The Contractor, at its cost and expense, shall at all times operate the Landfill, or cause the Landfill to be operated, in accordance with Applicable Law and standard industry operating rules and regulations.

SECTION 7.2. UNCONTROLLABLE CIRCUMSTANCES GENERALLY

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the Contractor nor the City shall be liable to the other for any failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

(B) Notice, Mitigation. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 15 days by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known), (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed, and (3) its estimated impact on the other obligations of such party under this Agreement. Each

party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall, as promptly as reasonably possible, use its best efforts to eliminate the cause therefor and resume performance under this Agreement.

SECTION 7.3. INDEMNIFICATION

(A) **Generally.** The Contractor shall defend, indemnify and hold harmless the City and its representatives, officers, employees and subcontractors (as applicable in the circumstances), (the "City Indemnified Parties") from and against (and pay the full amount of) all Loss-and-Expenses for personal injury to, or death of, any person, or loss or damage to property to the extent arising out of (1) the negligence or intentional conduct of the Contractor or any of its officers, members, employees, agents, representatives or subcontractors in connection with its obligations or rights under this Agreement, (2) the disposal of City Waste or any other materials accepted by the Contractor at the Landfill or any other location, pursuant to this Agreement, or (3) any breach by the Contractor of its obligations hereunder. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by the City Indemnified Parties), even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, or other sums due against such indemnified persons. The City, in its sole discretion, may participate in any such defense, provided that the City's defense is in good faith and paid for by the City. The City's participation does not relieve the Contractor of its obligations under this Agreement unless the City releases the Contractor in writing from all or part of its obligations. A City Indemnified Party shall promptly notify the Contractor of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Contractor the opportunity to defend such claim, and shall not settle the claim without the approval of the Contractor. The provisions of this subsection shall survive termination or expiration of this Agreement. Notwithstanding any provisions of this Agreement to the contrary, the indemnification obligations of the Contractor specified in this Section 7.3(A) shall not apply to any City Indemnified Parties to the extent that any losses, costs, damages or claims for liability arise from the active negligence, established sole negligence or willful misconduct of any such City Indemnified Party.

(B) **CERCLA.** Without limiting the generality of the foregoing, the Contractor shall defend, indemnify and hold harmless any City Indemnified Parties from and against all Loss-and-Expense, including natural resource damages, injuries, costs, response, assessment, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to reasonable attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City Indemnified Parties to the extent arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan or replacement or restoration of natural resources at the Landfill and any other alternate disposal facility utilized by the Contractor pursuant to any provision of this Agreement, or the Contractor's activities which result in a release or threatened release of Hazardous Materials into the environment. This obligation shall include, but not be limited to, the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably approved by the City Indemnified Parties), and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties, or other sums due against such indemnified persons. The City, in its sole discretion, may participate in any such defense, provided that the City's defense is in good faith and paid for by the City. The City's participation

does not relieve the Contractor of its obligation under this Agreement unless the City releases the Contractor in writing form all or part of its obligations. A City Indemnified Party shall promptly notify the Contractor of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Contractor the opportunity to defend such claim and shall not settle the claim without the approval of the Contractor. These indemnification provisions are for the protection of the City Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection shall survive termination or expiration of this Agreement. Notwithstanding any provisions of this Agreement to the contrary, the indemnification obligations of the Contractor set forth above shall not apply to any City Indemnified Parties to the extent that any losses, costs, damages or liability arises from the negligence or intentional conduct of any such City Indemnified Party. The foregoing indemnity is intended to operate as an agreement pursuant to CERCLA, 42 U.S.C. Section 9607 (e) and California Health and Safety Code Section 25364, to defend, protect, hold harmless the City Indemnified Parties from liability.

SECTION 7.4. FUNDING OF CLOSURE/POST-CLOSURE COSTS

The Contractor acknowledges that it is solely responsible for (I) the appropriate closure and post-closure maintenance of the Landfill and (ii) the establishment and funding of any reserve funds required by Applicable Law for the purpose of providing funds for the payment of costs of closure of the Landfill (or any cell within) or post-closure maintenance relating to the Landfill. Without limitation, in no event shall the City be responsible for paying any deficiencies in such required reserves. In addition, the City shall have no responsibility to make any payments in the event that actual closure and post-closure costs relating to the Landfill exceed the amounts reserved by the Contractor for such purpose.

SECTION 7.5. INSURANCE

(A) Generally. The Contractor shall maintain or cause to be maintained commercial liability insurance with respect to the Landfill in amounts specified and shall name the City as an additional insured on such insurance. The Contractor shall furnish the City, upon request, with appropriate certificates of insurance evidencing such coverage or other appropriate proof of insurance.

(B) Environmental Insurance. Prior to the Contract Date, the Contractor will obtain insurance for potential environmental liability of the Landfill in an amount at least equal to \$5,000,000, with a deductible not to exceed \$750,000. The Contractor shall maintain comparable insurance throughout the term hereof so long as commercially available on reasonable terms, as determined in the reasonable discretion of the Contractor risk manager. The Contractor shall notify the City in the event that the Contractor does not maintain the insurance described in this Section 7.5(B). The Contractor shall furnish the City, upon request, with appropriate certificates of insurance evidencing such coverage.

SECTION 7.6. AMENDMENTS

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly executed by both parties.

SECTION 7.7. NOTICE OF THIRD PARTY LITIGATION

Each party shall deliver written notice to the other of any litigation or similar proceeding to which it is a party and which questions the validity or enforceability of this Agreement or any other contract or agreement executed by the Contractor or the City or any regulatory license, permit or approval issued in connection herewith.

SECTION 7.8. FURTHER ASSURANCES

At any and all times the Contractor and the City so far as may be authorized by law shall pass, make, do, execute, acknowledge and deliver any and every such further resolutions, acts, deeds, conveyances, instruments, assignments, transfers and assurances as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

SECTION 7.9. ASSIGNMENT AND TRANSFER OF AGREEMENT; SALE OF LANDFILL

(A) Consent of City. Neither this Agreement nor any of the rights or obligations of the Contractor hereunder may be assigned by the Contractor without the prior written consent of the City, which may be withheld in the City's sole discretion. Neither this Agreement nor any of the rights or obligations of the City hereunder may be assigned by the City without the prior written consent of the Contractor, which consent may not be unreasonably withheld. Any attempt by the City or the Contractor to effectuate any of the foregoing without the consent of the City provided herein shall be null and void.

(B) Sale of the Landfill. Any sale, transfer, mortgage or encumbrance of the Landfill, or any interest therein, by the Contractor shall be subject to the requirements that any purchaser, transferee or other party which acquires an interest in the Landfill shall be required to execute a separate Waste Disposal Agreement, on the same terms and conditions as set forth herein and provide financial assurances substantially similar (in terms of the nature of the assurances and the financial ability of the party providing such assurances) to the financial assurances represented by the Contractor's obligations hereunder and the obligations of Waste Management, Inc. pursuant to the Guaranty Agreement.

SECTION 7.10. MAINTENANCE OF CORPORATE EXISTENCE; CONSOLIDATIONS OR CHANGES IN CONTROL

(A) Maintenance of Corporate Existence. Subject to the Contractor's rights under Section 7.9(A), the Contractor covenants that during the Term of this Agreement it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not take any action in connection with its corporate existence which would materially impair the ability of the Contractor to meet its obligations under this Agreement.

(B) Consolidation, Merger, Sale, Transfer and Change in Control. The Contractor shall not consolidate with or merge with another entity, or permit one or more other entities to consolidate with or merge into it unless the net worth of the successor Contractor upon such consolidation, merger or acquisition, calculated in accordance with generally accepted accounting principles, is not less than the net worth of the Contractor immediately prior to such consolidation or merger. Notwithstanding the above, Contractor may consolidate, merge, or reorganize with a corporation affiliated with Waste Management, Inc., provided however that the parent guaranty of Waste Management, Inc. remains in full force and effect.

SECTION 7.11. PAYMENT OF CERTAIN COSTS BY CONTRACTOR

If the Contractor requests the consent of the City for any transaction described in Section 7.10 hereof, the Contractor shall reimburse the City for all costs and expenses incurred by the City in reviewing, examining and analyzing the request, including all direct and indirect administrative expenses of the City and consultants and attorneys' fees and expenses actually paid. Invoices shall be supported with evidence of the expense or cost incurred. The Contractor shall pay such invoices within thirty 30 days of receipt, after which date they shall accrue interest at the Overdue Rate.

SECTION 7.12. TERMINATION OF AGREEMENT FOR CRIMINAL ACTS

In the event any official or employee for the Contractor or an affiliate is indicted by a grand jury, named as a defendant in a felony complaint filed in any court in the United States, or is otherwise alleged to have participated in any criminal activity directly or indirectly associated with the performance of this Agreement or the operation of the Landfill, Contractor shall provide notice thereof to the City within seven (7) days of such indictment, complaint or allegation. Such notice shall contain a description of the indictment, complaint or allegation, as well as a copy of such indictment or complaint or other matters of public record related thereto. In addition to the foregoing, Contractor shall provide the City with copies of any reports required to be prepared by Contractor or an affiliate pursuant to federal securities laws, including quarterly and annual reports.

In the event any official or employee for Contractor or an affiliate who has direct responsibility for the performance of this Agreement or the operation of the Landfill is convicted, indicted by a Grand Jury, or named as a defendant in a felony complaint filed in the Superior Court or a complaint filed in Federal Court associated with the business of Contractor or its affiliates, this person shall upon written request from the City be immediately removed from any assignment whatsoever, directly associated with the performance of this Agreement or the operation of the Landfill during the pendency of trial and/or following conviction. The City shall have the right to terminate this Agreement without any further liability in the event such persons are convicted or plead guilty or enter a plea of *nolo contendere*.

SECTION 7.13. RELATIONSHIP OF THE PARTIES

Neither party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations or liabilities assumed by the other party hereto, whether accrued, absolute, contingent or otherwise, or whether due or to become due. The Contractor is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any fiduciary relationship between the parties. The work and labor herein provided for shall be performed and furnished by the Contractor as an independent contractor and under the sole supervision, management, direction and control of the Contractor in accordance with the terms and conditions of this Agreement. This Agreement shall not be construed to create a partnership, joint venture or employment relationship between the parties.

SECTION 7.14. NO VESTED RIGHTS

The City shall not acquire any vested property, license or other rights in the Landfill by reason of this Agreement.

SECTION 7.15. INTEREST ON OVERDUE OBLIGATIONS

Except as otherwise provided herein, all amounts due hereunder that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.

SECTION 7.16. BINDING EFFECT

This Agreement shall bind and inure to the benefit of the parties hereto and any successor or assignee acquiring an interest hereunder consistent with the provisions of Section 7.9 hereof.

SECTION 7.17. NOTICES

Any notice or communication required or permitted hereunder shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties specified below. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party.

Notices to the City should be sent to:

City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, California 91362
Attention: City Manager

Notices to the Contractor should be sent to:

Waste Management of California, Inc.
9081 Tujunga Avenue
Sun Valley, CA 91352
Attention: Region Vice-President and General Manager

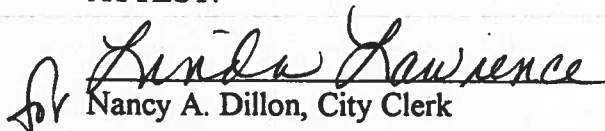
And

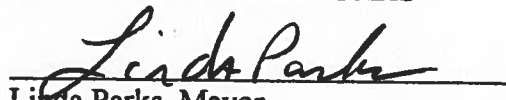
Simi Valley Landfill and Recycling Center
2801 Madera Road
Simi Valley, CA 93065
Attention: District Manager

IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the day and year first above written.

CITY OF THOUSAND OAKS

ATTEST:

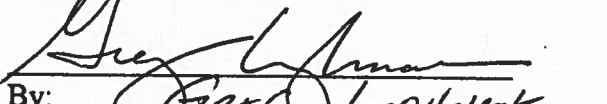

Nancy A. Dillon, City Clerk


Linda Parks, Mayor
City of Thousand Oaks, California

APPROVED AS TO FORM:


Mark G. Sellers, City Attorney

WASTE MANAGEMENT OF CALIFORNIA, INC.


By: GREG LOUGHNANE
Title: DIVISION VICE PRESIDENT

APPROVED AS TO ADMINISTRATION:


MaryJane V. Lazz, City Manager

DPW:81050\CG:c:\ndf\final8.99

