

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION

February 24, 1998



FROM: GERRY NEWCOMBE, Contract Administrator
Public Services Group, Waste System Division

SUBJECT: **WASTE DELIVERY AGREEMENT (WDA) BETWEEN THE COUNTY AND THE CITY OF FONTANA; AND MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE COUNTY AND THE CITY OF FONTANA REGARDING IMPACT FEES AND MITIGATION MEASURES RELATING TO THE MID VALLEY LANDFILL**

RECOMMENDATION: 1) Approve 15 year WDA with the City of Fontana for use of the County landfill system, from February 24, 1998 to February 23, 2012. (AGREEMENT 98-105) 2) Approve MOU with City of Fontana regarding Impact Fees and Mitigation Measures for the Mid Valley Landfill (AGREEMENT 98-106).

BACKGROUND INFORMATION On November 4, 1997, the Board approved a standard WDA and directed staff to present the agreement to cities for approval and return any signed agreements to the Board for final approval. The Fontana City Council approved the WDA on February 17, 1998. Approval of Recommendation No. 1 will result in the adoption of the WDA whereby the City of Fontana is obligated to deliver all of its controllable waste to the Mid Valley Landfill for 15 years, and the County is obligated to provide capacity for that waste at a specified contract rate reimbursed by the City.

Additionally, Waste System Division (WSD) staff has been coordinating with the City of Fontana to insure all concerns related to the proposed Mid Valley Landfill Expansion are addressed. Fontana has requested a MOU between the County and the City be executed, concurrent with the WDA, regarding impact fees and other mitigation measures Fontana will receive to offset impacts of the landfill expansion project, as well as the continued operation of the existing Mid Valley Landfill. The MOU also addresses Fontana's cooperation with the County relative to the expansion of the Mid Valley Landfill. The basic elements of the MOU include:

1. County shall adhere to all mitigation measures contained in the Mid Valley Expansion EIR.
2. County shall perform the following additional mitigation measures for Fontana:
 - a) Enhanced landscaping along the western and southern perimeters of the site;
 - a) Direct all landfill and aggregate mining truck traffic away from Fontana;
 - b) Relocate the existing landfill entry facility to Alder Avenue by December 31, 1998;
 - c) Expand off-site litter control program into Walnut Village;

cc: WSD-Newcombe w/5 agreements
for signature
City of Fontana c/o WSD
Auditor
Contract Compliance
EHS-Pamella Bennett
Risk Management
PSG
File

Record of Action of the Board of Supervisors
AGREEMENTS NOS. 98-105 AND 98-106
APPROVED BOARD OF SUPERVISORS

MOTION	ABSENT	SECOND	MOVE	AYE
	1	3	4	5


EARLENE SPROAT, CLERK OF THE BOARD

BY _____

DATED : February 24, 1998



COPY



County of San Bernardino
F A S
CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

E <input checked="" type="checkbox"/>	New	Vendor Code		Dept.	Contract Number			
M <input type="checkbox"/>	Change			SC	98-105			
X <input type="checkbox"/>	Cancel			A				
County Department				Dept.	Orgn.	Contractor's License No.		
PSG-Waste System Division								
County Department Contract Representative				Ph. Ext.		Amount of Contract		
Gerry Newcombe				386-8703				
Fund	Dept.	Organization	Appr.	Obj/Rev Source	Activity	GRC/PROJ/JOB Number		
Commodity Code			Estimated Payment Total by Fiscal Year					
Project Name			FY	Amount	I/D	FY	Amount	I/D
15 Year WDA								

CONTRACTOR City of Fontana

Birth Date _____ Federal ID No. or Social Security No. _____

Contractor's Representative Frank Schuma, City Manager

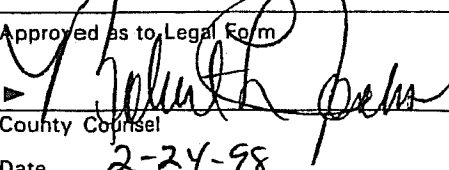
Address 8353 Seirra Avenue, Fontana, CA 92335 Phone (909) 350-7600

Nature of Contract: *(Briefly describe the general terms of the contract)*

A 15 year Waste Delivery Agreement between the County and the City of Fontana for use of the County landfill system, February 24, 1998 to February 23, 2012.

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form  County Counsel Date <u>2-24-98</u>	Reviewed as to Affirmative Action _____ Date _____	Reviewed for Processing _____ Agency Administrator/CAO Date _____
--	--	--

EXECUTION COPY

WASTE DISPOSAL AGREEMENT

Between

THE COUNTY OF SAN BERNARDINO, CALIFORNIA

and

CITY OF FONTANA

Dated: _____

County Authorization Date:

February 24, 1998

County Notice Address:

222 W. Hospitality Lane, 2nd Floor

San Bernardino CA 92415-0017

Emergency Contact:

Gerry Newcombe, Contract Administrator
Waste System Division

(909) 386-8703

City Authorization Date:

City Notice Address:

8353 Sierra Avenue

Fontana, CA 92335

Emergency Contact:

Public Services Department

(909) 350-6760

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APPENDIX 1 DESIGNATED DISPOSAL FACILITY

WASTE DISPOSAL AGREEMENT

THIS WASTE DISPOSAL AGREEMENT is made and dated as of the date indicated on the cover page hereof between the County of San Bernardino, a political subdivision of the State of California (the "County"), and the City designated on the cover page of this Agreement, a general law or charter city and political subdivision of the State of California (the "City").

RECITALS

The County owns, manages and operates a sanitary landfill system for the disposal of municipal solid waste generated in the unincorporated area within the County and which it has made available for the disposal of municipal solid waste generated within cities located within the County (the "Disposal System"). The Disposal System currently includes 12 active landfills and is expected to consist of five active landfills upon implementation of the Solid Waste Partnership Strategy and Implementation Plan.

The Disposal System is used for the disposal of municipal solid waste which is not composted, reused, recycled, transformed or otherwise diverted from landfill disposal, pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code). The Act, which mandates the diversion of 50% of waste from landfill disposal by 2000, has already reduced the volume of waste delivered to the landfills.

The County wishes to enter into an agreement with the City to accept all of the City's municipal solid waste in the Disposal System for the term and subject to the provisions of this Agreement, and the City desires to use all legal and contractual powers it possesses to deliver or cause to be delivered the municipal solid waste generated within its boundaries to the Disposal System for the term of and subject to the provisions of this Agreement.

The City, in the exercise of its police power and its powers under the Act, either (i) has entered into a franchise or other agreement with or issued permits or licenses to one or more private haulers for the collection and disposal of municipal solid waste generated within the City or (ii) collects municipal solid waste generated within the City in City owned and operated collection vehicles.

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.

The County has determined that the execution by the County of this Agreement will serve the public health, safety and welfare by providing a more stable, predictable and reliable supply of municipal solid waste and the resulting service payment revenue to the Disposal System, thereby enabling the County to plan, manage, operate and finance improvements to the Disposal System on a more prudent and sound long term, businesslike basis.

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 County on the County authorization date indicated on the cover page hereof.

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 the City authorization date indicated on the cover page hereof.

It is, therefore, agreed 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 all 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 Class III landfills under Applicable Law (including, without limitation, the Legal Entitlements for each facility).

"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 County and the City as the same may be amended or modified from time to time in accordance herewith.

"Appendix" means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

"Applicable Law" means the Act, the San Bernardino 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 Disposal System, 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 1996) 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. 1996), as amended or superseded, and the regulations promulgated thereunder.

"Change in Law" means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, operation or maintenance of the Disposal System or other matters to which Applicable Law applies:

- (1) the enactment, adoption, promulgation, issuance, material modification or written change in administrative or judicial interpretation on or after the Commencement Date of any Applicable Law (other than Applicable Law enacted by the County);

(2) the order or judgment of any Governmental Body (other than the County), on or after the Commencement Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the good faith decision not to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) the denial of an application for, delay in the review, issuance or renewal of, or suspension, termination, interruption, imposition of a new or more stringent condition in connection with the issuance, renewal or failure of issuance or renewal on or after the Commencement Date of any Legal Entitlement to the extent that such denial, delay, suspension, termination, interruption, imposition or failure materially and adversely interferes with the performance of this Agreement, if and to the extent that such denial, delay, suspension, termination, interruption, imposition or failure is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the County or of the City, whichever is asserting the occurrence of a Change in Law; provided, however that the contesting in good faith or the good faith decision not to contest any such denial, delay, suspension, termination, interruption, imposition or failure shall not be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

"Change in Law" shall not include actions taken by Governmental Bodies to enforce requirements of Applicable Law.

"City" means, as applicable, the city designated on the cover page of this Agreement and party to this Agreement.

"City Acceptable Waste" means all Acceptable Waste which was originally discarded by the first generator thereof within the geographical limits of the City, and Residue from the foregoing (or Tonnage equivalencies of such Residues, as and to the extent provided in subsection 3.1(C) hereof).

"Contract Date" means the date of delivery of this Agreement as executed by the parties hereto.

"Contract Rate" has the meaning specified in Section 4.2 hereof.

"Contract Year" means the fiscal year commencing on July 1 in any year and ending on June 30 of the following year.

"Controllable Waste" means all City Acceptable Waste with respect to which the City has the legal or contractual ability to determine the disposal location therefor and which is:

- (1) Non-Diverted City Acceptable Waste;
- (2) not generated from the operations of the Governmental Bodies which, under Applicable Law, have the independent power to arrange for the disposal of the waste they generate (such as school districts and State correctional facilities);
- (3) not Residue excluded from the Waste Delivery Covenant pursuant to Section 3.1(C);
- (4) not inert materials, construction and demolition debris, green waste and other materials which can be disposed at landfills other than Class III landfills; and
- (5) collected and hauled by Franchise Haulers.

"County" means the County of San Bernardino, a political subdivision of the State of California and party to this Agreement.

"County Waste Management Enterprise Fund" means the waste management enterprise fund established and managed by the County pursuant to Section 25261 of the Government Code separate from its other funds and accounts for receipts and disbursements in connection with the Disposal System.

"County-wide Recycling Services" has the meaning set forth in subsection 3.6(A) hereof.

"Designated Disposal Facility" means the sanitary landfill or other facility operated by or for the County as part of the Disposal System which is designated in Appendix 1 hereto as the disposal location for Controllable Waste delivered to the County pursuant hereto as of the Commencement Date, or such other additional, alternate or replacement sanitary landfills or other disposal facilities as may be designated by the County as the Designated Disposal Facility (subject to the approval of the City) in accordance with Section 3.2 hereof.

"Disposal Agreements" means each of the waste disposal agreements entered into between the County and any city within the County in accordance herewith.

"Disposal Services" means the solid waste disposal services to be provided by the County pursuant to the Service Covenant and otherwise hereunder.

"Disposal System" means all sanitary landfills and other solid waste transfer, transportation, storage, handling, processing and disposal facilities, now or at any time owned, leased, managed, operated by or under contract to the County for the acceptance, handling, processing and disposal of Acceptable Waste delivered by or on behalf of the City under this Agreement, including the Designated Disposal Facilities listed on Appendix 1 and any expansion thereof, all as more particularly described in the Solid Waste Partnership Strategy and Implementation Plan.

"Disposal System Component" means any landfill, facility, structure, work, equipment, site or other real or personal property constituting a component part of the Disposal System.

"Diverted City Acceptable Waste" means any otherwise Controllable Waste which is separated from Acceptable Waste by the generator thereof or by processing and which is "diverted" within the meaning of Section 40180 of the Public Resources Code.

"Franchise Hauler" means any hauler or collector who provides Acceptable Waste collection services within the City pursuant to, or under authority granted by, a contract, franchise or other agreement with the City. The term Franchise Hauler includes the City itself if Acceptable Waste collection and transportation services are provided directly by City operated municipal collection service.

"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.

"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. 1996); (4) the California Public Resources Code, Section 40141 (West 1996); (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.

"Imported Acceptable Waste" means Acceptable Waste that is generated outside of the geographical boundaries of the County and delivered to the Disposal System.

"In-County Processing Facility" means any Processing Facility located within the geographical boundaries of the County, whether owned and/or operated by the County, any city, or private operator.

"Independent Haulers" means those waste collection/hauler companies primarily engaged as a principal business in the collection and transportation of municipal solid waste generated in the County of San Bernardino and not under a franchise or other contract with a city in the County.

"Term" has the meaning specified in Section 6.1(A) hereof.

"Legal Entitlement" means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Disposal System or the performance of any obligation under this Agreement or the matters covered hereby.

"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.

"Out-of-County Processing Facility" means a Processing Facility located outside the geographical boundaries of the County.

"Non-Diverted City Acceptable Waste" means all City Acceptable Waste other than Diverted City Acceptable Waste.

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

"Processing Facility" means any materials recovery facility, composting facility, intermediate processing center, recycling center, incinerator or other waste management facility to which City Acceptable Waste is delivered for processing prior to disposal.

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

"Qualified Household Hazardous Waste" means waste materials determined by the Board, the Department of Health Services, the State Water Resources Control Board, or the 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.

"Residue" means any material remaining from the processing in permitted solid waste facilities or other facilities, by any means and to any extent, of City Acceptable Waste or Diverted City Acceptable 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.

"Self-Hauled Waste" means City Acceptable Waste collected and hauled by Self-Haulers.

"Self-Hauler" means any person not engaged commercially in waste haulage who collects and hauls Acceptable Waste generated from residential or business activities conducted by such person.

"Service Covenant" means the covenants and agreements of the County set forth in Sections 3.2 and 3.3 hereof.

"State" means the State of California.

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

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

"Transfer Station" means any transfer station or other waste handling or management facility to which solid waste collected for the City is delivered for transfer, processing or transformation before disposal in the Disposal System.

"Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Prohibited Medical Waste; Qualified Household Hazardous Waste separated from Acceptable Waste (or otherwise identified by the County 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; hot loads; and any waste which the Disposal System is prohibited from receiving under Applicable Law.

"Uncontrollable Circumstance" means any act, event or condition affecting the Disposal System, the County, the City, or any of their Franchise Haulers, 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. Examples of Uncontrollable Circumstances are:

(1) an act of God, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; and

(2) a Change in Law.

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 County, the City or any Subcontractor affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by the County, the City, or any Subcontractor of any tier in the performance of their obligations hereunder; (d) union work rules, requirements or demands which have the effect of increasing the number of employees employed in connection with the Disposal System or otherwise increase the cost to the County of operating and maintaining the Disposal System or providing the Disposal Services; (e) strikes, work stoppages or other labor disputes or disturbances occurring with respect to any activity performed or to be performed by the City or the County or any of the City's or County's Subcontractors in connection with the Disposal System or the Disposal Services; (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 County's construction or operating costs; or (i) changing conditions in the local, regional, or national waste disposal market.

"Unincorporated Area" means those portions of the County which are not contained within the jurisdictional boundaries of incorporated cities.

"Waste Disposal Covenant" means the covenants and agreements of the City set forth in Section 3.1 hereof.

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, all accounting determinations hereunder to be made shall be prepared 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 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 or charter 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 Conflict. Neither the execution nor the delivery by the City of this Agreement nor the performance by the City of its obligations hereunder nor the consummation by the City 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 City is a party or by which the City 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 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 COUNTY. The County represents and warrants that:

(A) Existence. The County is a political subdivision of the State of California validly existing under the Constitution and laws of the State.

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

(C) No Conflict. Neither the execution nor the delivery by the County of this Agreement nor the performance by the County of its obligations hereunder nor the consummation by the County 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 County is a party or by which the County 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 County's best knowledge, threatened against the County 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 County in connection with the transactions contemplated hereby, or which would materially and

adversely affect the performance by the County of its obligations hereunder or under any such other agreement or instrument.

**ARTICLE III
DELIVERY AND ACCEPTANCE OF WASTE
AND PROVISION OF DISPOSAL SERVICE**

SECTION 3.1. DELIVERY OF WASTE. (A) Waste Disposal Covenant. Subject to the occurrence of the Commencement Date and throughout the Term of this Agreement, the City shall exercise all legal and contractual power and authority which it may possess from time to time to deliver or cause the delivery of all Controllable Waste to the Disposal System in accordance herewith beginning on January 1, 1998.

(B) Diverted City Acceptable Waste. 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. No reduction in the amount of Controllable Waste generated in the City and delivered to the Disposal System by or on behalf of the City which may result from any such source separation or recycling program (whether or not such program meets or exceeds the diversion requirements of the Act) shall cause the City any liability hereunder and shall not constitute a breach of this Agreement.

(C) Waste Delivered to Transfer Station or Processing Facilities. Subject to the provisions of this Section, all Residue from any processing of Controllable Waste by materials recovery, composting, recycling or other means, performed at In-County Processing Facilities or Out-of-County Processing Facilities shall constitute Controllable Waste and be subject to the Waste Disposal Covenant. The County specifically acknowledges that the City shall have the right to deliver or cause the delivery of City Acceptable Waste to Out-of-County Processing Facilities, and that the City is not obligated to require that Residue from such Out-of-County Processing Facilities be delivered to the Disposal System, after final processing or re-processing of such Residue as long as such Residue from Out-of-County Processing Facilities does not exceed, in any Contract Year, the lesser of (i) 40% of the amount of City Acceptable Waste delivered to such Out-of-County Processing Facility in such Contract Year or (ii) 2% of the total amount of Controllable Waste generated in the City during such Contract Year. To the extent that Residue from the processing of Controllable Waste exceeds the amount specified in the preceding sentence, the City shall exercise all legal and contractual authority which it may possess from time to time to require that such excess Residue be delivered to the Disposal System, and shall include a requirement to that effect in any contracts, agreements or other arrangements for processing at Out-of-County Processing Facilities which it enters into or amends after the Contract Date. Where City Acceptable Waste is processed at an In-County or Out-of-County Processing Facility which concurrently processes other Acceptable Waste in a manner which produces commingled residue which cannot be traced to a geographic source, generic residues from such Processing Facility in Tonnage equal to the residues that would have been produced had City Acceptable Waste only been processed at the facility shall constitute Controllable Waste and be subject to the Waste Disposal Covenant (subject to the exclusion from Controllable Waste of the amounts of Residue from Out-of-County Processing Facilities specified in this Section 3.1(C).) Such generic residues shall be delivered to the Disposal System regularly, in approximately the same frequency as deliveries of City Acceptable Waste to the Processing Facility. (In making any determination of Residue attributable to the City, the City may rely on the reports or certifications of the owner or operator of the Transfer Station or Processing Facility.)

(D) Power to Obligate Waste Disposal and Comply with this Agreement. On or before January 1, 1998, (i) any City franchise, contract, lease, or other agreement which is lawfully in effect relating

to or affecting Controllable Waste shall provide, or shall have been amended to provide, that the City shall have the right without material restriction on and after the January 1, 1998 to direct the delivery of all Controllable Waste to a disposal location selected by the City (whether or not such Controllable Waste is delivered to a transfer station as an intermediate step prior to landfill disposal) and otherwise to comply with its obligations under this Agreement with respect to Controllable Waste and Franchise Haulers, and (ii) the City shall designate the Designated Disposal Site as the disposal location pursuant to such franchise, contract, lease or other agreement. Throughout the Term of this Agreement the City (a) shall not enter into any franchise, contract, lease, agreement or obligation, issue any permit, license or approval, or adopt any ordinance, resolution or law which is materially inconsistent with the requirements of the Waste Disposal Covenant, and (b) shall maintain non-exclusive or exclusive franchises or other contractual arrangements (or collection through City owned and operated collection services) over any City Acceptable Waste which, as of the Contract Date, is subject to non-exclusive or exclusive franchise or other contractual arrangements. The City agrees that the County shall be a third party beneficiary of the obligation of Franchise Haulers to deliver Controllable Waste to the Disposal System, and may directly enforce such obligation through any legal or means available; provided, however, that such designation of the County as a third party beneficiary does not relieve the City of its obligations hereunder to enforce the waste delivery obligation of the Franchise Haulers. The City shall notify in writing each Franchise Hauler of the County's third party beneficiary rights.

(E) Waste Flow Enforcement. The City, in cooperation with the County, shall establish, implement, carry out and enforce a waste flow enforcement program which is sufficient to assure the delivery of all Controllable Waste to the Disposal System pursuant to and in accordance with the Waste Disposal Covenant for disposal at the times and in the manner provided herein. The waste flow enforcement program shall consist of amending City franchises with all Franchise Haulers, to the extent required by this Section, and shall include in addition, to the extent necessary and appropriate in the circumstances to assure compliance with the Waste Disposal Covenant, but shall not be limited to: (1) licensing or permitting Franchise Haulers, upon the condition of compliance with the Waste Disposal Covenant, (2) providing for and taking appropriate enforcement action under any such franchise, license, or permit, such as but not limited to the suspension, revocation and termination of collection rights and privileges, the imposition of fines or collection of damages, and the exercise of injunctive relief against non-complying Franchise Haulers and (3) causing any Transfer Station to which Controllable Waste is delivered for processing to deliver certification, under the penalty of perjury, of the amounts of Controllable Waste received and Residue remaining from processing at such Transfer Station. The City acknowledges and agrees that in the event of a breach of the Waste Disposal Covenant by the City, the City shall pay the County an amount equal to 100% multiplied by the Contract Rate in effect at the time of such breach multiplied by the number of tons of Controllable Waste which were not delivered to the Disposal System as a result of the failure of the City to comply with the Waste Disposal Covenant. The parties recognize that if the City fails to meet its obligations hereunder, the County will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the parties agree that the damages specified above represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm to the County that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

(F) Legal Challenges to Franchise System. The City shall use its best efforts to preserve, protect and defend (by diligent pursuit of claims through the trial court level) its right to exercise and comply with the Waste Disposal Covenant against any challenge thereto, legal or otherwise (including any lawsuits against the City or the County, whether as plaintiff or defendant), by a Franchise Hauler or any other person, based upon breach of contract, violation of law or any other legal theory. The City shall bear

the cost and expense of any such Legal Proceeding or other challenge. In the event any such Legal Proceeding relating to the Waste Disposal Covenant or the City's exercise thereof establishes in a final determination that such covenant or exercise thereof is void, unlawful or unenforceable, or if any Franchise Hauler fails to deliver Controllable Waste to the Disposal System in breach of its franchise with the City on the grounds that a judicial determination made by any court or other Applicable Law has rendered its obligation to deliver Controllable Waste to the Disposal System void, unlawful or unenforceable on any legal grounds, with the result that actual waste deliveries of the City's Controllable Waste to the Disposal System in any Contract Year fall below 93% of the amount of the City's Controllable Waste delivered to the Disposal System during the preceding Contract Year, the County shall be entitled to terminate this Agreement upon 60 days prior written notice to the City. Such right of the County to terminate must be exercised within one year of the end of the Contract Year during which the delivery shortfalls described in this Section giving rise to the right to terminate occurred. Upon any termination by the County pursuant to the provisions of this Section, the obligations of the County pursuant to Section 7.3 hereof shall not apply to any Loss-and-Expense of the City which may arise from deliveries of waste to the Disposal System after such date of termination.

(G) Franchise Haulers. The City shall compile and provide the County with the following information concerning all Franchise Haulers: name, address and phone number; identification number; area of collection and transportation; and franchise and permit terms.

(H) Waste Information System. The City shall cooperate with the County in collecting information and otherwise monitoring Franchise Haulers in order to assure compliance with this Agreement. Such information may include, to the extent practicable, data pertaining to Controllable Waste collected, transported, stored, processed and disposed of; Diverted City Acceptable Waste collected, transported, stored, processed and marketed or disposed of; Franchise Haulers' franchise, permit or license terms, collection areas, transportation routes and compliance with Applicable Law; and all other information which may reasonably be required by the County in connection with this Agreement.

(I) City Actions Affecting County. The City agrees not to conduct any disposal services for Controllable Waste to be provided in competition with the Disposal Services provided by the County hereunder, and not to take or omit to take any action with respect to Controllable Waste or its collection, transportation, transfer, storage, treatment or disposal that may materially and adversely affect the County's ability to achieve such timely compliance. The County acknowledges that development by the City (or cooperation by the City in connection with the private development of) any materials recovery facility or transfer station located within or without the City shall not violate the provisions of this section as long as the ultimate disposal site for any Controllable Waste (or Residue therefrom) which is delivered to such materials recovery facility or transfer station is the Disposal System. Notwithstanding the foregoing, the City shall not be required to (i) approve or deny any permit or license or grant or refuse to grant any approval while exercising its police powers or (ii) waive, modify or otherwise limit in any manner the City's land use authority.

(J) No Right of Waste Substitution. Nothing in this Agreement shall authorize or entitle the City to deliver or cause the delivery to the Disposal System of Acceptable Waste originating from or generated outside the jurisdiction of the City, nor obligate the County to receive or dispose of any such Acceptable Waste. The City shall not assign in whole or in part its right to deliver or cause to be delivered Controllable Waste to the County hereunder, and shall not permit any Acceptable Waste originating from or generated outside the jurisdiction of the City to be substituted for Controllable Waste for any purpose hereunder.

(K) Annexations and Restructuring. It is the intention of the parties that this Agreement and the obligations and rights of the City hereunder, including particularly the Waste Disposal Covenant and the Contract Rate, shall, to the extent permitted by Applicable Law (and subject to any rights of waste haulers operating in such areas prior to such annexation), extend to any territory annexed by the City (or any territory with respect to which the City assumes solid waste management responsibility from a sanitary district or other public entity) and shall bind any successor or restructured Governmental Body which shall assume or succeed to the rights of the City under Applicable Law.

SECTION 3.2. PROVISION OF DISPOSAL SERVICES BY THE COUNTY. (A) Service Covenant. Commencing January 1, 1998, the County shall provide or cause the provision of the service of (1) receiving and disposing of all Controllable Waste at the Designated Disposal Facility, (2) disposing in accordance with subsection 3.2(C) hereof of Controllable Waste which, at any time and for any reason, is in excess of the disposal capacity of the Designated Disposal Facility, and (3) in accordance with subsection 3.3(C) hereof, disposing of Unacceptable Waste inadvertently accepted at the Designated Disposal Facility. The County shall do and perform all acts and things which may be necessary or desirable in connection with its covenants in this subsection, including without limitation all planning, development, administration, implementation, construction, operation, maintenance, management, financing and contract work related thereto or undertaken in connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in complying with the Service Covenant consistent with its responsibilities hereunder and under this Agreement, Applicable Law and prudent solid waste management practice and environmental considerations, so as to enable the County to provide the services hereunder at the Contract Rate.

(B) Temporary Unavailability of Designated Disposal Facility; Provision of Transfer Capacity. The County shall immediately advise the City and Franchise Hauler by telephone and facsimile of any situation, event or circumstance which results in the partial or complete inability of the County to receive Controllable Waste at the Designated Disposal Facility, its effect on the County's ability to perform its obligations hereunder, and the County's best estimate of the probable duration. The County shall confirm such advice in writing within 24 hours of the occurrence of any such inability. The County shall use its best efforts to resume normal operation of the Designated Disposal Facility as soon as possible in accordance with subsection 3.2(C) hereof. In the event that, at any time during the term hereof, the County is unable to accept City Acceptable Waste for disposal at any particular Designated Disposal Facility for a period in excess of 14 consecutive days, it shall nonetheless provide sufficient transfer capacity at such Designated Disposal Facility, and shall accept for transfer and disposal City Acceptable Waste at such Designated Disposal Facility for the Contract Rate. In the event that the County cannot provide such transfer capacity, it shall be obligated to accept such City Acceptable Waste at another facility within the Disposal System and to reimburse the City for any increased transportation cost (including without limitation, equipment rental costs, overtime and increased fuel costs resulting from the unavailability of the Designated Disposal Facility) incurred by the City or the Franchise Haulers in transporting City Acceptable Waste to another disposal facility within the Disposal System. In the event that the County cannot provide disposal capacity at another facility within the Disposal System, it shall be obligated to reimburse 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 Designated Disposal Facility) incurred by the City or the Franchise Haulers in transporting City Acceptable Waste to any other disposal facility used by the City or Franchise Hauler and (ii) the amount, if any, by which the tipping fee at the alternative facility utilized by the City or Franchise Hauler (because of the unavailability of any facility within the Disposal System) exceeds the then current Contract Rate. The invoice shall include reasonable substantiation of the amount invoiced.

(C) Termination by County in Certain Circumstances. In the event that the Designated Disposal Facility becomes unavailable pursuant to Section 3.2(B) for a period exceeding 14 days, the County shall have the right to terminate this Agreement pursuant to this Section. The County may exercise such right by

providing 10 days prior written notice thereof to the City. In the event that the County exercises such right, the County shall be obligated to pay the City an amount equal to (i) any aggregate increased transportation cost (including without limitation, equipment rental costs, overtime and increased fuel costs resulting from the unavailability of the Designated Disposal Facility) reasonably expected to be incurred by the City or the Franchise Haulers in transporting City Acceptable Waste to any other disposal facility used by the City or Franchise Hauler for a period of one year following the date of termination and (ii) the aggregate amount, if any, by which the tipping fee at the alternative facility utilized by the City or Franchise Hauler (because of the unavailability of any facility within the Disposal System) is reasonably expected to exceed the then current Contract Rate for a period of one year following the date of termination. Such amounts shall be payable by the County within 60 days of the date of termination.

(D) Change in Designated Disposal Facility by Mutual Consent. The Designated Disposal Facility has been initially designated in Appendix 1 hereto. The Designated Disposal Facility may be changed, and other Designated Disposal Facilities added, at any time with the mutual consent of the parties.

(E) Change in Designated Disposal Facility at City Request. In the event the City wishes to change the Designated Disposal Facility to another Disposal System Component, the City shall provide written notice and the reasons therefor to the County, and shall indicate whether the requested change is permanent or temporary. The County shall consider any such request in good faith and provide a response to the City within 14 days, taking into account the reasons for the request, the County's obligations to other cities which have executed Disposal Agreements, the requirements of Applicable Law, and the implications of any such change for the Disposal System as a whole. The County shall honor any such request to the extent commercially practicable based on such considerations and the overall interests of the Disposal System.

(F) Annual Notification of Remaining Disposal Capacity. At the end of each Contract Year, the City shall advise the County in writing as to the expected delivery levels of Controllable Waste during the next Contract Year, and the County shall submit to the City a statement specifying (1) the amount of disposal capacity at the Designated Disposal Facility expected to be available for use by the City during the next Contract Year; (2) the aggregate amount of Disposal System capacity expected to be available for use by the cities which have executed Disposal Agreements during the remaining Term of this Agreement; and (3) any plans the County may have with respect to redesignating the Designated Disposal Facility, increasing or decreasing the number of cities using the Designated Disposal Facility, or curtailing or expanding the use of the Designated Disposal Facility. The annual notification to be provided by the County pursuant to this Section shall also describe the status of any permits required with respect to the Designated Disposal Facility, including a description of (i) any permit revisions expected to be proposed by the County; and (ii) any abatement orders or other permit compliance or enforcement actions taken or proposed by Governmental Bodies.

SECTION 3.3. COUNTY RIGHT TO REFUSE WASTE. (A) Right of Refusal. Notwithstanding any other provision hereof, the County may refuse delivery of:

- (1) Unacceptable Waste; and
- (2) Controllable Waste delivered at hours other than those provided in the facility operating permit.

(B) Identification of Unacceptable Waste. The County shall have the right (but not the duty or the obligation) to inspect the vehicles of all Franchise Haulers delivering material to the Disposal System, and may require that the Franchise Hauler remove any Unacceptable Waste from such vehicle before it is

unloaded. If the County determines that it is impractical to separate Controllable Waste from Unacceptable Waste in any vehicle, or if the Franchise Hauler delivering such waste is unwilling to make such separation, or if any vehicle is carrying waste which may spill or leak, then the County may reject the entire vehicle, and the County shall require that the Franchise Hauler shall forthwith remove or cause the removal of the entire delivery from the Disposal System.

(C) Hazardous Waste and Hazardous Substances. The parties acknowledge that the Disposal System 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 Hazardous Waste or Hazardous Substances. Neither the County nor the City shall countenance or knowingly permit the delivery of Hazardous Waste or Hazardous Substances to the Disposal System.

(D) Disposal of Unacceptable Waste and Hazardous Waste. If Unacceptable Waste or Hazardous Waste is discovered in a vehicle at any landfill within the Disposal System, the driver of the vehicle will not be permitted to discharge the load. If a vehicle is observed unloading Unacceptable Waste or Hazardous Waste in the tipping area of a landfill within the Disposal System County 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 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 Hazardous Waste is detected at any landfill within the Disposal System, the County shall take immediate action in accordance with Applicable Law. In addition, if the County inadvertently accepts Unacceptable Waste, it shall have the right to pursue any remedies which it may against the person delivering such Unacceptable Waste to recoup the cost of handling and properly disposing of such Unacceptable Waste.

(E) Environmental Insurance. Prior to the Contract Date, the County will obtain insurance for potential CERCLA or other environmental liability of the Disposal System, in an amount equal to \$10,000,000 with deductibles of: (i) \$1,000,000 for events giving rise to coverage which events occurred prior to October 1, 1995 and (ii) \$250,000 for events giving rise to coverage which events occurred on or after October 1, 1995. The County shall maintain comparable insurance throughout the term hereof so long as commercially available on reasonable terms, as determined in the reasonable discretion of the County risk manager. The County shall notify the City in the event that the County does not maintain the insurance described in this Section.

SECTION 3.4. MISCELLANEOUS OPERATIONAL MATTERS. (A) Permit Revisions or Stipulated Orders. The County shall provide the City with any application of the County to revise the Legal Entitlements for the Designated Disposal Facility (or any draft or final stipulated notice and order relating to the Designated Disposal Facility which may be under consideration by the local enforcement agency with jurisdiction over the Designated Disposal Facility). Such applications shall be provided to the City concurrently with its submittal to the appropriate regulatory agency.

(B) Scales and Weighing. The County shall operate and maintain permanent scales at the Disposal System in compliance with Applicable Law. The County shall weigh all vehicles delivering Controllable Waste by or on behalf of the City (whether or not the County accepts such waste) and prepare a daily weight record with regard to such delivery. (In the event that scales are temporarily unavailable, the County shall reasonably estimate the weight of Controllable Waste delivered by volume.)

SECTION 3.5. OTHER USERS OF THE DISPOSAL SYSTEM. (A) Generally. The County shall have the right to enter into waste disposal agreements with other cities in the County, Sanitary Districts, Transfer Stations or Independent Haulers; provided, however, that in no event shall such

agreements have terms and provisions more favorable than the terms and provisions of this Agreement (including but not limited to the Contract Rate and availability of disposal capacity) unless the County has first offered the City such more favorable contract (or amendments to this Agreement).

(B) Receipt of Imported Acceptable Waste on a Contract Basis. The County shall have the right to enter into a contract or other agreement with any municipal or private non-County entity for the delivery of Imported Acceptable Waste on terms and conditions that the County determines to be necessary to ensure and enhance the viability of the Disposal System for the benefit of the County and the cities which have executed Disposal Agreements. The County shall not enter into any such arrangements if such arrangements would materially and adversely affect the ability of the County to receive and dispose of Acceptable Waste from the cities which have executed Disposal Agreements in accordance with the Disposal Agreements throughout the Term thereof. Any such agreements shall provide that, in the event there is insufficient capacity at the Designated Disposal Facility for both Controllable Waste and Imported Acceptable Waste, Controllable Waste shall have priority with respect to existing capacity.

SECTION 3.6. COUNTY PROVISION OF WASTE DIVERSION SERVICES.

(A) County-Wide Recycling Services. This Agreement does not require the County to provide for any source reduction, materials recovery, recycling, composting, or other waste diversion services by the County nor any payment therefor by the City, by Franchise Haulers or by ratepayers; provided, however, any County-Wide Recycling Services, or recycling services provided at any Designated Disposal Facility (such as providing drop boxes for wood waste, green waste or other recyclable materials delivered to such Designated Disposal Facility), may be funded through the County Waste Management Enterprise Fund. Any such recycling services may be expanded, contracted or modified by the County at any time in its sole discretion.

(B) Separate City-County Diversion Service Agreements. Nothing in this Agreement is intended to limit the right of the County to enter into a separate agreement with the City or any other person to provide source reduction, materials recovery, recycling, composting or other waste diversion services. Any such program conducted by the County, whether in participation with the City, any other of the cities which have executed Disposal Agreements, other cities, Sanitary Districts, Transfer Stations, Independent Haulers, Unincorporated Area or non-County entity, shall be operated, managed and accounted for as a program separate and distinct from the Disposal Services program contemplated by the Disposal Agreements and shall not be funded through the general revenues of the Disposal System.

(C) Diversion Programs in Unincorporated Areas. To the extent the County implements diversion or other related programs in the Unincorporated Area of the County, the cost of such diversion programs shall be paid by the residences and businesses receiving the benefit of such diversion programs, and shall not be payable from the revenues of the Disposal System.

**ARTICLE IV
CONTRACT RATE**

SECTION 4.1. CHARGING AND SECURING PAYMENT OF CONTRACT RATE. The City acknowledges that the County shall have the right to charge and collect a Contract Rate for the acceptance and disposal of Controllable Waste delivered to the System by any Franchise Hauler. The Contract Rate shall be calculated and established, and may be modified, as provided in Section 4.2 hereof. In addition, the City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Contract Rates. Notwithstanding Section 4.2(A), the County shall have the right to impose special charges for the receipt of hard to handle materials, such as bulky materials, construction and demolition debris, tires and sludge. Such special charges shall be calculated to reflect the reasonable incremental costs to the County of accepting such hard to handle materials.

SECTION 4.2. CONTRACT RATE. (A) Generally. Effective January 1, 1998, the Contract Rate payable by each Franchise Hauler shall be \$28.50 per ton, subject to potential adjustment necessary to reflect the circumstances set forth below:

- (i) increased costs incurred by the County (in excess of available insurance proceeds) due to the occurrence of one or more Uncontrollable Circumstances, including Changes in Law; and
- (ii) escalation during the Term of this Agreement calculated in accordance with Section 4.2 (B).

Prior to adjusting the Contract Rate as a result of any of the circumstances described in Section 4.2(A)(i), the County shall utilize the following remedy: reduce the costs of operating the Disposal System to the extent practicable.

Any adjustments to the Contract Rate permitted by this Section 4.2(A)(i) shall be calculated by the County to reflect the actual costs or expenses of addressing the circumstance or circumstances pursuant to which the adjustment is authorized, and shall also reflect, where applicable, the then remaining capacity in the Disposal System. Such adjustment may not reflect circumstances other than the circumstances described in Section 4.2(A)(i).

(B) Calculation of Escalation. For purposes of Section 4.2(A)(ii), the Contract Rate shall be adjusted in accordance with the formula described in this Section each July 1 during the term hereof, commencing July 1, 1999. The adjustment shall be calculated in accordance with the following formula:

$$\text{Contract Rate} = \text{Fixed Portion} + [\text{Escalating Portion} \times \text{Index}]$$

Where,

$$\text{Fixed Portion} = \$10.87$$

$$\text{Escalating Portion} = \$17.63$$

$$\text{Index} = \text{Price Index, which shall be determined in accordance with the following formula}$$

$$I = .7[\text{PPI}_1/\text{PPI}_2] + .3[\text{EI}_1/\text{EI}_2]$$

- PPI₁ = The Producer Price Index, Industrial Commodities, as published by the United States Department of Labor Statistics in the publication *Producer Price Indices*, Table 6, for the month of February in the year the adjustment is being made (e.g., the first adjustment will use the February, 1999 value)
- PPI₂ = Producer Price Index, Industrial Commodities for the month of February, 1998
- EI₁ = Employment Cost Index, Compensation, Private Industry Workers, as published by the United States Department of Labor Statistics in the publication *Monthly Labor Review*, Table 22 for the last quarter of the year preceding the year the adjustment is being made (e.g., the first adjustment will use the last quarter, 1998 value)
- EI₂ = Employment Cost Index, Compensation, Private Industry Workers established for the last quarter of 1997

If the Employment Cost Index or Producer Price Index are no longer published, or are otherwise unavailable, then the Cost of Living Adjustment shall be determined by using standard official statistics measuring changes to, respectively, labor costs and cost of materials, as the parties shall mutually agree.

(C) Procedure for Rate Adjustments. In the event the County determines that it is entitled to an adjustment of the Contract Rate pursuant to Section 4.2(A)(i), it shall utilize the procedures described in this Section 4.2(C). The County shall be required to provide the City with at least 60 days prior written notice of the adjustment, which notice shall identify the specific event(s) or circumstances which require the adjustment. The notice shall also specify the earliest date on which the County Board of Supervisors shall consider the proposed adjustment. At least 45 days prior to such meeting of the Board of Supervisors, the County shall provide the City with a report which shall contain the following information: a description of the specific event(s) or circumstances which require the adjustment; a description (including cost estimates) of any activities (which may include, but not be limited to capital improvements to the Disposal System) required in order to remedy such event or circumstance; certification by the County that it has implemented the remedy described in Section 4.2 prior to requiring the rate adjustment; and a description of the methodology used by the County to calculate the adjustment to the Contract Rate (hereinafter the "County Report"). In the event the City disputes the adjustment, it shall provide the County with a written description of the reason for the dispute at least 10 days prior to the meeting of the Board of Supervisors identified in the initial notice of the County (hereinafter the "City Report"). The City Report shall be provided to the Board of Supervisors for consideration at such meeting in connection with the proposed rate adjustment. At any time from and after the date that the County provides the City with the County Report, upon the request of either party, the City and County shall meet and confer in good faith to resolve any dispute that may arise regarding the proposed adjustment to the Contract Rate. In the event the Board of Supervisors approves all or a portion of the proposed rate adjustment, such rate adjustment shall become effective on the date identified in the initial notice sent by the County, but subject to potential reimbursement pursuant to Section 4.2(D).

(D) Challenges to Rate Adjustment. In the event that the City challenges a Rate Adjustment made pursuant to Section 4.2(A) and a court of applicable jurisdiction determines that any portion of the County's adjusted Contract Rate was improperly imposed, the County shall, within 30 days of the date of the statement of decision, reimburse to the City the amount improperly imposed, together with interest

calculated at the Overdue Rate. Such reimbursement may be made in the form of a reduction in the Contract Rate for a future period reasonably calculated to provide full reimbursement of the amounts described above.

SECTION 4.3. RESPONSIBILITY FOR PAYMENT OF THE CONTRACT. (A) Payment by City. In the event and to the extent (1) the City uses municipal collection forces directly for the haulage of Controllable Waste to the Disposal System or (2) the City uses non-municipal Franchise Haulers for collection but nonetheless elects to pay the Contract Rate from City revenues, the City shall have direct responsibility for payment of the Contract Rate, and shall take all such budgetary, appropriation and other action as may be necessary to provide for the timely payment of the Contract Rate. Such action may include, depending upon the means authorized by the City to provide for such payment, the levy and collection of general or special taxes, the imposition of benefit assessments, or the collection of user fees, generator charges or other similar impositions for municipal solid waste disposal. The City shall use best efforts in accordance with Applicable Law to levy and impose all such taxes, assessments, fees or charges, and will take all steps, actions and proceedings for the enforcement, collection and payment of all such amounts which shall become delinquent, to the full extent permitted by Applicable Law. To the extent provided in Section 7.5 hereof, the obligation of the City for such Contract Rate or Transfer Rates shall be limited to amounts in the City's Solid Waste Enterprise Fund. From the Commencement Date to the date of expiration or termination of this Agreement, the obligation of the City to pay the Contract Rate or Transfer Rate, to the extent the City rather than Franchise Haulers is responsible directly for payment and provided that the Service Covenant has been complied with, shall be absolute and unconditional and shall not be subject to delay or diminution by reason of set-off, abatement, counterclaim, existence of a dispute or otherwise. The obligation of the City hereunder shall be limited in all circumstances to amounts available in any enterprise fund created by the City for solid waste management purposes, and there shall be no recourse hereunder against the City's general fund or other funds not related to solid waste management purposes for amounts owed by the City hereunder.

(B) Payment by Franchise Haulers. With respect to Controllable Waste delivered by Franchise Haulers other than City municipal collection forces, the obligation to pay the Contract Rate shall rest with such Franchise Haulers and not with the City and, unless the City has agreed with the County to be responsible for Franchise Hauler payments, the City shall not be financially responsible for any delay or failure by such Franchise Hauler to pay the Contract Rate or any portion thereof when due. In the event of any such failure, the County and the City shall cooperate with each other and use their best efforts to obtain timely payment. Such efforts by the County may include, as appropriate, requiring cash payments for disposal rights from such Franchise Hauler and bringing a legal proceeding for payment and damages. Such efforts by the City shall include, as appropriate, legal proceedings to suspend, revoke or terminate the Franchise Hauler's franchise, permit or license rights.

(C) Disputes. If the City or the Franchise Hauler disputes any amount billed by the County in any Billing Statement, the City or the Franchise Hauler shall nonetheless pay undisputed amounts identified on such Billing Statement and shall provide the County with written objection within 30 days of the receipt of such Billing Statement indicating the amount that is being disputed and providing all reasons then known to the City or the Franchise Hauler for any objection to or disagreement with such amount. The County 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 or the Franchise Hauler and the County are not able to resolve such dispute within 30 days after the County's response, either party may pursue appropriate legal remedies. In addition, in the event of nonpayment by the City or Franchise Hauler, as applicable, the County shall have the right to discontinue any credit arrangements it may have had with the City or Franchise Hauler, and require cash payment for subsequent deliveries.

SECTION 4.4. BILLING OF THE CONTRACT RATE. The County shall continue to bill Contract Rate after January 1, 1998, in the same manner as it has customarily billed tipping fees. Subject to the other provisions of this Agreement, the County shall have the right to modify or amend such manner of billing on reasonable notice to affected parties.

SECTION 4.5. SOLID WASTE DISPOSAL FEE OPTION. Notwithstanding the other provisions of this Article IV, City shall have the option to adopt the following procedure:

City agrees that it or its Franchise Hauler will pay the then current Solid Waste Disposal Fee (which Fee is, at this time, set forth in Section 16.0222 of the County Code), as same may be amended from time to time, relative to the City's Controllable Waste delivered to the Disposal System. In turn, the City will receive a monthly payment from the County equal to the product of: the City's Controllable Waste delivered to the Disposal System for the month in question multiplied by the difference between the then current Solid Waste Disposal Fee and the then current Contract Rate (as the Contract Rate is determined under the provisions of this Agreement). City acknowledges that the County shall have the right to establish as part of the operating rules and regulations reasonable measures to secure the payment of all Solid Waste Disposal Fees. Further, all references to "Contract Rate" in Sections 4.3 and 4.4 shall be deemed to refer to the Solid Waste Disposal Fee.

City shall elect the option set forth in this Section 4.5 by notifying the County of such election as provided in Section 7.16. The election shall be effective on the first day of the second month following receipt of the notice by County.

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 3.1(F), Section 3.2(C), Section 5.2 and Section 5.3 hereof or as otherwise provided in this Agreement.

SECTION 5.2. CITY CONVENIENCE TERMINATION. The City shall have the right to terminate this Agreement in its sole discretion, for its convenience and without cause at any time during the Term hereof upon 90 days' written notice to the County. If the City exercises its rights to terminate the Agreement pursuant to this Section, the City shall pay the County a termination fee equal to (x) \$14.25 multiplied by (y) the amount of Controllable Waste delivered to the Disposal System during the prior Contract Year multiplied by (z) remaining term of the Waste Disposal Agreement, stated in years (assuming such termination for convenience did not occur). Upon any termination by the City pursuant to the provisions of this Section, the obligations of the County pursuant to Section 7.3 hereof shall not survive such termination, notwithstanding Section 6.1(B).

SECTION 5.3. 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 County 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 County 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 County 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 County has neither challenged in an appropriate forum (in accordance with Section 5.6) 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 County 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 County is continuing to take such steps to correct such breach).

(B) By County. Except as expressly provided herein, the County 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 County the right to terminate this Agreement for cause under this subsection unless:

(1) The County 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 County 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 5.6 the County'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 5.4. NO WAIVERS. No action of the County 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 County 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 County 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 5.5 DAMAGES. (A) City. In the event that the City terminates the Agreement pursuant to Section 5.3(A), the County shall be obligated to pay to the City as damages the amount by which the City's reasonably expected cost of transporting and disposing of City Acceptable Waste (for a period commencing on the date of termination and ending one year after such date of termination) exceeds the aggregate Contract Rate that would have been payable with respect to such City Acceptable Waste had the County met its obligations hereunder and the Agreement had not been terminated.

(B) County. In the event that the County terminates the Agreement pursuant to Section 5.3(B), the City shall pay the County as damages an amount equal to the Contract Rate in effect at the time of such termination multiplied by the number of tons of City Acceptable Waste delivered to the Disposal System during the preceding twelve months.

SECTION 5.6. 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 Disposal System 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.

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 County from the Contract Date and shall continue in full force and effect until the fifteenth anniversary of the Contract Date, unless earlier terminated in accordance with its terms.

(B) Survival: Accrued Rights. The rights and obligations of the parties hereto pursuant to Sections 3.1(E), 5.1, 5.3, 5.5, 7.2, 7.3, 7.5, 7.7, 7.8, 7.9, and 7.10 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 provided, however, that Section 7.3 shall not survive if the termination of the Waste Disposal Agreement is due to the occurrence of an Event of Default on the part of the City. 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 DISPOSAL SYSTEM. The County, at its cost and expense through the County Solid Waste Enterprise Fund, shall at all times operate, or cause to be operated, the Disposal System in accordance with Applicable Law and the operating rules and regulations of the County.

SECTION 7.2. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Performance Excused. Except as otherwise specifically provided in this Agreement, neither the County 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, (3) the estimated amount, if any, by which the Contract Rate may need to be adjusted as a result of such Uncontrollable Circumstance, (4) its estimated impact on the other obligations of such party under this Agreement and (5) potential mitigating actions which might be taken by the County or City and any areas where costs might be reduced and the approximate amount of such cost reductions. 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, reduce costs and resume performance under this Agreement. In addition, with respect to Changes in Law, the County shall diligently contest any such changes the imposition of which would have a material adverse impact on the Disposal System. While the delay continues, the County or City shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted.

(C) Impact on Contract Rate. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost to the County of meeting its obligations hereunder and providing Disposal Services to the cities which have executed Disposal Agreements in accordance herewith, the County shall be entitled to an increase in the Contract Rate as provided in Section 4.2 herein or an extension in the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. The proceeds of any insurance available to meet any such increased cost shall be applied to such purpose prior to any determination of cost increases payable under this subsection. Any cost reductions achieved through the mitigating measures undertaken by the County pursuant to subsection 7.2(B) hereof upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Contract Rate would have otherwise been increased or shall serve to reduce the Contract Rate to reflect such mitigation measures, as applicable.

SECTION 7.3. INDEMNIFICATION. The County shall indemnify, defend with competent counsel reasonably selected by the County, protect and hold harmless City, its officers, employees and assigns from and against all Loss-and-Expense, including natural resources 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 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, City or its officers or employees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) or replacement or restoration of natural resources arising from or related to Hazardous Substance or Hazardous Wastes or petroleum products at any place where County transfers, stores or disposes of municipal solid waste pursuant to this agreement, or the County's activities pursuant to this Agreement which result in a release or threatened release of Hazardous Substances or Hazardous Wastes or petroleum products into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to but not limited to Section 107(e) of the Comprehensive Environmental Response, Compensation and liability Act ("CERCLA"). 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City from liability. This indemnity shall not apply to willful, deliberate or grossly negligent delivery by the City of Hazardous Substances or Hazardous Waste to the Disposal System. This indemnity shall also not apply with respect to (i) vehicle accidents or other waste delivery activities or (ii) to any Hazardous Substances, Hazardous Waste, petroleum product or other Unacceptable Waste not accepted for disposal in the Disposal System. The City agrees that the County may provide counsel to jointly represent itself, the City and any and all other parties who disposed of waste in the Disposal System. The City hereby agrees to waive, in writing, any conflict, actual or apparent, created by the joint representation of such parties pursuant to this indemnity. The City also hereby agrees to cooperate fully and completely with the County and with counsel provided by the County in resolving any legal matter that arises pursuant to this indemnity. The City further agrees that the County has complete discretion in the conduct of any matter to which this indemnity applies, and may resolve or settle such matters to which this indemnity applies in its sole discretion without the permission or approval of the City. The County agrees that it will not bring any action against the City claiming or alleging that the City has any responsibility for matters, actions or liabilities within the scope of the indemnity provided above.

SECTION 7.4. 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 County 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.

SECTION 7.5. LIMITED RECOURSE. (D) To the City. Except in the event the City has not established or maintained a City Solid Waste Enterprise Fund, no recourse shall be had to the general funds or general credit of the City for the payment of any amount due the County hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the County for all such amounts shall be to the funds held in any such Solid Waste Enterprise Fund. All amounts held in any City Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the County. The City shall make adequate provision in the administration of any City Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

(E) To the County. No recourse shall be had to the general funds or general credit of the County for the payment of any amount due the City hereunder, or the performance of any obligation incurred hereunder, including any Loss-and-Expense of any nature arising from the performance or non-performance of the County's obligations hereunder. The sole recourse of the City for all such amounts shall be to the funds held in the County Solid Waste Enterprise Fund in accordance with the terms of this Agreement. All amounts held in the County Solid Waste Enterprise Fund shall be held for the uses permitted

and required thereby, and no such amounts shall constitute property of the City. The County shall make adequate provision in the administration of the County Solid Waste Enterprise Fund for the payment of any amount or the performance of any obligation which may be due hereunder.

SECTION 7.6. PRE-EXISTING RIGHTS AND LIABILITIES. Except as specifically set forth herein, nothing in this Agreement is intended to affect, release, waive or modify any rights, obligations or liabilities which any party hereto may have to or against the other party as of the Contract Date relating to the disposal of waste in the Disposal System or any other related matter.

SECTION 7.7. NO VESTED RIGHTS. The City shall not acquire any vested property, license or other rights in the Disposal System by reason of this Agreement.

SECTION 7.8. LIABILITY FOR COLLECTION, TRANSPORTATION AND PROCESSING. Any liability incurred by the City as a result of collecting Acceptable Waste or processing it for diversion from landfill, or as a result of causing, franchising, permitting, licensing, authorizing or arranging any of the foregoing, shall be its sole liability, except as expressly otherwise provided herein.

SECTION 7.9. NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Agreement, or the material inaccuracy of any representation made in this Agreement, whether such claims are based upon contract, tort, negligence, warranty or other legal theory.

SECTION 7.10. AMENDMENTS. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

SECTION 7.11. NOTICE OF LITIGATION. Each party shall deliver written notice to the other of any Legal Proceeding to which it is a party and which questions the validity or enforceability of this Agreement executed by the City or the County or any Legal Entitlement issued in connection herewith.

SECTION 7.12. FURTHER ASSURANCES. At any and all times the City and the County 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 7.13. ASSIGNMENT OF AGREEMENT. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party hereto without the prior written consent of the other party, which may be withheld in the other party's sole discretion. Notwithstanding the foregoing, that either party may assign this Agreement to another successor public entity, subject to the reasonable consent of the other party. In such circumstances the party not requesting the assignment shall have the right to demand assurances of the financial, technical and legal ability of the proposed assignee to undertake the responsibilities and obligations of the assigning party.

SECTION 7.14. INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, 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 7.15. 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 7.13 hereof.

SECTION 7.16. 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 set forth on the cover page of this Agreement. 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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year first above written.

CITY OF FONTANA

COUNTY OF SAN BERNARDINO

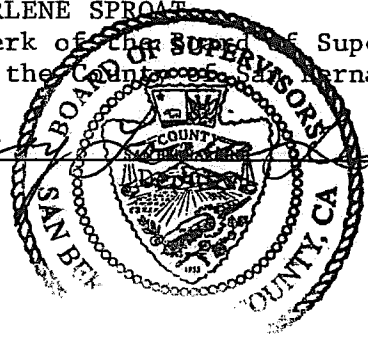
Date [Signature]
City Manager

By [Signature]
Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS CONTRACT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

EARLENE SPROAT
Clerk of the Board of Supervisors
of the County of San Bernardino

Date Linda S. Dunn - Deputy
City Clerk

By [Signature]


Date 3/9/98

Date FEB 24 1998

98-105

APPROVED AS TO FORM:
COUNTY COUNSEL
SAN BERNARDINO COUNTY, CALIFORNIA

By [Signature]

Date 2-24-98

APPENDIX 1

DESIGNATED DISPOSAL FACILITY

The designated disposal facility for controllable waste from the City of Fontana pursuant to this agreement shall be the Mid-Valley Landfill in Rialto located north of Highland Avenue between Sierra Avenue and Alder Avenue.