

**WASTE DISPOSAL AGREEMENT**  
**BY AND BETWEEN THE MONTEREY REGIONAL WASTE**  
**MANAGEMENT DISTRICT AND THE COUNTY OF SANTA CRUZ**

**THIS WASTE DISPOSAL AGREEMENT** (hereinafter "Agreement") is made and entered into on, \_\_\_\_\_, 2007, by and between the Monterey Regional Waste Management District, a public entity duly organized pursuant to the provisions of California Health and Safety Code sections 4170 *et seq.* (the "District"), and the County of Santa Cruz, a political subdivision of the State of California (the "County") (collectively, the "Parties"), as follows:

**RECITALS**

A. The District owns, manages, and operates a Class III sanitary landfill for the disposal of municipal solid waste and other acceptable waste streams (the "Monterey Peninsula Landfill"). District jurisdictional boundaries include the cities of Carmel-by-the-Sea, Del Rey Oaks, Marina, Monterey, Pacific Grove, Sand City, Seaside and the unincorporated areas of Big Sur, Carmel Highlands, Carmel Valley, Castroville, Corral de Tierra, Laguna Seca, Moss Landing, Pebble Beach, San Benancio and Toro Park. Municipal solid waste generated within the District historically has been and currently is delivered by commercial waste haulers and by self-haulers on behalf of the residents of the District for disposal in the Monterey Peninsula Landfill.

B. In constructing, operating, and managing the Monterey Peninsula Landfill, the District is under regulatory obligation with the State of California pertaining to landfill closure, and post closure monitoring and maintenance, and long term debt obligations with related covenants which obligate the District to properly maintain and preserve the system and operate it in an efficient, economical and business-like manner.

C. Monterey County's Integrated Waste Management Plan ("CIWMP") provides for the continued use of the Monterey Peninsula Landfill by the cities and unincorporated areas within the County of Monterey for the disposal of municipal solid waste which is not reused, recycled, or otherwise diverted from landfills pursuant to The California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

D. The waste diversion requirements of the Act, together with changes in Applicable Law and other factors, have significantly reduced the tonnage of municipal solid waste delivered to the

Monterey Peninsula Landfill on behalf of residents within the District. The result of the shortfall in the volume of waste received is under-utilization of the Monterey Peninsula Landfill, which is designed and permitted to accept approximately 3500 tons per day and presently realizes less than 1000 tons per day.

E. The District has determined that by accepting municipal solid waste generated outside of the District ("Non-District Waste" or "Out-of-District Waste") the unused capacity in the Monterey Peninsula Landfill can be utilized to generate revenue to assist in rate stabilization for the member entities, and develop alternative waste diversion technologies and practices. Acceptance of Non-District Waste can be accommodated by the existing Monterey Peninsula Landfill without negatively impacting the commercial refuse haulers and self-haulers within the District who deliver waste to the Monterey Peninsula Landfill.

F. The County desires to deliver Non-District waste to the Monterey Peninsula Landfill. Parties intend that Non-District waste collected shall be disposed of under the provisions of this Agreement.

G. The District has determined that the acceptance for disposal of Non-District Waste would have a minimal impact on the cost of operating the Monterey Peninsula Landfill. The District has further determined that acceptance of Non-District Waste would have a minimal impact on the useful life of the Monterey Peninsula Landfill.

H. The District has determined that the execution by the District of this Agreement will serve the public health, safety, and welfare of the District by providing a more stable, predictable, and reliable supply of municipal solid waste to optimize the Monterey Peninsula Landfill; and that the resulting revenue will assist in the District's rate stabilization efforts and waste diversion programs.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and County agree to the following Terms and Conditions:

## **TERMS AND CONDITIONS**

### **1. DEFINITIONS**

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

1.1 "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 is normally disposed of or collected from residential (single family or multi-family), commercial, industrial, governmental, and institutional establishments by haulers, and which is acceptable at Class III landfills under Applicable Law. "Acceptable Waste" also means solid waste that has been source separated and/or processed with reasonable due diligence to remove the following: reusable and recyclable materials; Unacceptable Waste; Hazardous Substances or Hazardous Materials; Universal Waste (as defined by State law); and Hazardous Waste.

1.2 "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.

1.3 "Applicable Law" means the Act, the Monterey County Code, CERCLA, RCRA, CEQA, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination, or order of any governmental body having jurisdiction, applicable from time to time, relating to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation, or maintenance of the Monterey Peninsula Landfill or 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, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages).

1.4 "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) as amended or superseded, and the regulations promulgated under the statute.

1.5 "CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability Act (42 U.S.C. Section 9601 *et seq.*) as amended or superseded, and the regulations promulgated under the statute.

1.6 "Disposal Services" means the solid waste disposal services to be provided to the County by the District under this Waste Disposal Agreement.

1.7 "Hazardous Material" or "Hazardous Substance" has the meaning given such terms in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and Titles 22 and 26 of the California Code of Regulations, as well as other regulations promulgated under these statutes, as they exist now and as they may be amended from time to time.

1.8 "Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical, or infectious characteristic may do any 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 when improperly treated, stored, transported or disposed of or otherwise mismanaged; 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 (RCRA) 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; (4) the California Public Resources Code, Section 40141; and (5) future additional or substitute Applicable Law pertaining to the indemnification, 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.

1.9 "Household Hazardous Waste Element" or "HHWE" means a solid waste planning document prepared by each city and unincorporated county pursuant Division 30, Section 41000 et seq. of the Act.

1.10 "Non-District Waste" also "Out-of- District Waste," means solid waste originating outside the jurisdictional boundaries of the District.

1.11 "RCRA" means the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*, as amended and superseded.

1.12 "Self-Hauler" means any person not engaged commercially in waste cartage that collects and hauls to the Monterey Peninsula Landfill Acceptable Waste generated from residential or business activities.

1.13 "Source Reduction and Recycling Element" or "SRRE" means a solid waste planning document prepared by each city and unincorporated county pursuant to Division 30, Section 41000 et seq. of the Act.

1.14 "Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Hazardous Materials; untreated medical waste; Household Hazardous Waste that has been separated from Acceptable Waste; explosives; bombs; ordnance, such as guns and ammunition; highly flammable substances; noxious

materials; drums and closed containers; liquid waste, including liquid concrete; oil; human wastes and sewage sludge; 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, including hot asphalt, and hot liquid sulfur; loads of whole tires; friable asbestos; and any waste which the Monterey Peninsula Landfill is prohibited from receiving under Applicable Law.

1.15 "Uncontrollable Circumstances" means only the following acts, events or conditions, whether affecting the County, or the District, to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement, 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 this Agreement:

1. an act of nature, hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
2. a change in law affecting either party's ability to perform an obligation or complying with any condition required of such party under this Agreement;
3. pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain.

Provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party.

## **2. TERM OF AGREEMENT**

### **2.1 Term of Agreement**

The term of this Agreement shall commence on the date first written above and shall continue for thirty years thereafter.

## **3. DELIVERY OF WASTE**

### **3.1 Commitment to Deliver Waste**

The County shall be permitted to annually deliver up to 120,000 tons of Acceptable Waste to the Monterey Peninsula Landfill during the term of this Agreement. Annual deliveries in excess of 120,000 tons require the District's prior written consent. At no time shall the delivered waste exceed 1,700 tons per day. Prior to delivering over 200 tons on any one day, the County shall give the District General Manager 24-hours advance notice by telephone, and obtain his or her agreement to any daily delivery in excess of 200 tons, unless the District General Manager waives such notice.

The parties may, by January 1 of any year, mutually agree to a higher or lower maximum daily tonnage of Acceptable Waste for the next fiscal year, beginning on July 1.

Waste shall generally be delivered by large "transfer-type" vehicles. Up to twenty-five percent of Acceptable Waste may be direct hauled by Self-Haulers to the District.

Waste shall be delivered to the Monterey Peninsula Landfill during the hours of 5:30 A.M. TO 5:00 P.M. Monday through Friday, and 8:00 A.M. to 4:30 P.M. on Saturdays.

### 3.2 County's Authority to Deliver Waste

The County warrants that it has and shall maintain during the term of this Agreement the right, power, and authority to deliver the waste to the District through contracts, permits, licenses or other arrangements.

## 4. **PROVISION OF DISPOSAL SERVICES**

### 4.1 Commitment to Provide Disposal Services

The District agrees to provide Disposal Services to the County for the term of the Agreement under the conditions specified in the Agreement. The District warrants that it can receive County's Acceptable Waste at the designated Monterey Peninsula Landfill, under the facility permit for the term of this Agreement.

### 4.2 Fee for Disposal Services

For the Term of this Agreement, the District shall charge County for provision of Disposal Services at the rate listed on the Rate Schedule in Exhibit A under the conditions of this Agreement.

### 4.3 Payment for Disposal Services

The disposal fee may be paid in cash in advance for each load at the time of delivery, or the District may elect to establish a deferred billing account under a process mutually agreed upon.

### 4.4 Annual Disposal Fee Increase Adjustment for Provision of Disposal Services

The rate specified in Exhibit A shall be increased annually in proportion to any annual increase in the Consumer Price Index (CPI) for All Urban Consumers for the San Francisco Bay Area (All Consumers-All Items - 1982-1984 Base Year) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor. Any such rate increase will be effective on July 1 of each year and will be calculated by means of the following formula:

$$A = \$ (\text{initial fee}) \times (B/C) = \text{Adjusted fee}$$

B = Monthly index for the month of April of the current year

C = Monthly index for the month of April of the previous year

Notwithstanding the foregoing, in no event shall the annual disposal fee be reduced by reason of any such adjustment, or increased by more than 6% by reason of any such adjustment. In the event that the CPI is not issued or published for the period for which the annual disposal fee is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U.S. Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the U.S. Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by mutual agreement.

#### 4.5 Increase in Governmental Fees

If any new or increased fees are levied on the District by any local, state, or federal government or a LEA (Local Enforcement Agency), the District shall have the right to increase the then current fee charged to the County hereunder to enable the District to recover its increased cost. Increased costs that are not subject to some form of regulatory or statutory increase shall be borne by the District.

### 5. **PROCEDURES FOR DELIVERY AND ACCEPTANCE OF WASTE**

#### 5.1 Procedures for Delivery and Acceptance of Out-of-District Waste

County shall deliver Acceptable Waste to the Monterey Peninsula Landfill according to the conditions and procedures in **Exhibit B.**) The General Manager of the District and the County's designee may mutually agree to modify **Exhibit B**, provided such modifications are made in a writing signed by both parties and subject to the terms and conditions of this Agreement.

The County shall bear all costs of collection, processing, transfer, transportation, taxes, permits, or impositions assessed by any governmental body related to the delivery of waste to the Monterey Peninsula Landfill. The District assumes all costs incurred as a result of the acceptance of the County's Acceptable Waste.

#### 5.2 Unacceptable Waste

The County shall act with reasonable due diligence to prevent the delivery of any waste to the Monterey Peninsula Landfill that is defined as Unacceptable Waste under this Agreement.

#### 5.3 Out of County Waste

Only waste originating inside of the County (with the exception of up to 5% of out-of-County waste per Section 8.4) may be delivered to the Monterey Peninsula Landfill pursuant to this Agreement. County shall maintain records and supporting source documents that adequately identify the origin of all "Acceptable Waste" delivered by the County to the Monterey Peninsula Landfill pursuant to this Agreement. All records and source documentation shall be maintained by the County for a minimum of five years following the termination of this Agreement. Documents shall be maintained in a location mutually acceptable to District and County.

District shall, through its duly authorized agents or representatives, have the right to examine and audit records and supporting source documents maintained by County concerning the origin of waste delivered to the Monterey Peninsula Landfill at any and all reasonable times, upon thirty (30) days written notice, for purposes of determining the accuracy of those records and of the reports provided to District pursuant to this Agreement and of the accuracy of County payments to District pursuant to this Agreement. The cost of such an audit, incurred by District, shall be borne by County if the County has failed substantially to maintain true and complete books, records, accounts and supporting source documents in accordance with this Section. Otherwise District shall bear the cost of said audit.

#### 5.4 Hazardous Materials, Substances or Waste

The County shall act with reasonable due diligence to prevent the delivery of Hazardous Materials, Hazardous Substances, or Hazardous Waste to the Monterey Peninsula Landfill. The County program for detection and removal of Hazardous Materials, Hazardous Waste, Hazardous Substances or Unacceptable Waste from Acceptable Waste ("Hazardous Materials Removal Program") is included by reference in **Exhibit C** to this Agreement.

The County shall notify the General Manager of the District, in writing, at least 30-days prior to making any significant modifications in County's Hazardous Materials Removal Program. The District may object to any such modification in writing within 15-days of receipt. The County shall give reasonable consideration to any District objections. The intentional delivery of Hazardous Waste shall constitute a material breach of this Agreement. The intentional delivery of any quantity of industrial or commercial Hazardous Waste shall constitute a material breach of this Agreement.

#### 5.5 Emergency Re-Designation of Facility

The District shall have the right to suspend acceptance of Acceptable Waste to the Monterey Peninsula Landfill at any time for up to 45-days upon the occurrence of a natural disaster or other Uncontrollable Circumstances which affect the ability of the District to accept, under Applicable Law, County's otherwise Acceptable Waste at the Monterey Peninsula Landfill.

The District will make every reasonable effort to provide advance notice; however, exigent circumstances may require re-designation of Acceptable Waste on a temporary basis without prior notice. There will be no adjustment in the disposal fee of waste redirected due to an emergency.

If the District is unable to accept Acceptable Waste for disposal for more than 45-days, District may seek modification of this Agreement for the purpose of addressing any increased costs being incurred, or which will be incurred as a result of District's inability to accept Acceptable Waste at the Monterey Peninsula Landfill.

#### 5.6 Mutual Aid

In the event of an emergency, the parties may provide mutual aid to one another through the sharing of resources.

#### 5.7 Weights for Payment

Payment shall be based upon weight provided by County on scales certified by the Santa Cruz County Agricultural Commissioner, Department of Weights and Measures, or other such regulatory authority designated for scale certification by the County. The County shall provide weight records to the District for each load, upon arrival at the Monterey Peninsula Landfill. County delivery vehicles shall be allowed to bypass the District's scale facilities upon arrival. The District may from time-to-time weigh incoming County delivery vehicles for the purpose of reconciling County supplied weight records, but such District weighing shall not exceed 10 % of the County delivery vehicle loads in any one month. In the event weight discrepancies are identified as a result of District's weight reconciliation process, both parties agree to meet and negotiate in good faith to resolve such

discrepancies. Any tonnage that is delivered in "packer style" trucks, or "collection vehicles," or by self-haulers shall be subject to weighing through the Districts' regular vehicle weighing scale system.

## **6. REGULATORY COMPLIANCE**

### **6.1 Applicable Law**

Both parties shall comply with Applicable Law at all times, throughout the term of this Agreement; and shall obtain and maintain any permits, licenses, or approvals which are required for the performance of the party's respective obligations under this Agreement.

### **6.2 Compatibility with The Act**

The actions of the County in entering into this Agreement shall be compatible with the goals, policies, and agreements of the Source Reduction and Recycling Element(s) (SRREs) of the jurisdiction(s) generating the waste which is accepted in the Monterey Peninsula Landfill, and conform generally and specifically with the conditions outlined in Exhibit \_\_\_\_\_, attached hereto, the "Guiding Principles for Acceptance of Regional Waste for Disposal at the Monterey Peninsula Landfill".

### **6.3 Disposal Reporting**

The County shall supply all information necessary to comply with the District's Disposal Reporting System, which is included in Exhibit D and incorporated by reference in this Agreement, and any other information required by the District to comply with the Act, or any other Applicable Law.

## **7. TERMINATION, DEFAULT AND REMEDIES**

### **7.1 Termination for Convenience**

Either party may terminate this Agreement for convenience during the terms hereof by giving a 90-day's written notice to the other party. If such notice of termination is given, there shall then immediately commence a 5-year final term on the same terms and conditions set forth herein.

### **7.2 Termination for Cause**

Either party may terminate this Agreement for cause for the reasons set forth below, without the commencement of a final 5-year term (as provided in paragraph 7.1). In the case of termination for cause, the terminating party shall not be liable to the non-terminating party for any damages incurred due to early termination, including, but not limited to, consequential damages.

#### **A. Termination for Cause by District**

The District may terminate for cause if:

- i. The County delivers waste originating outside the County in excess of 5% (paragraph 5.3);
- ii. The County intentionally delivers and attempts to deliver Unacceptable Waste; Hazardous Substances or Hazardous Materials or Universal Waste (as defined by State law) (paragraph 5.4); or
- iii. The County fails to maintain a Household Hazardous Waste Program that complies with state law (paragraph 8.4).

**B. Termination for Cause by County**

The County may terminate for cause if the District is unable to accept Acceptable Waste for more than 45-days and the parties are unable to reach a mutually acceptable resolution through modification of this Agreement (paragraph 5.5).

**C. Termination for Cause by Either Party**

Either party may terminate for cause if:

- i. The District is ordered by court of competent jurisdiction to cease providing Disposal Services under the terms and conditions of this Agreement. In such event District will not be liable for actual or consequential damages due to the inability to provide Disposal Services.
- ii. The other party is determined to be in violation of Applicable Law, despite reasonable due diligence.

**D. Opportunity for Cure**

If either party fails to perform any of its obligations hereunder, that party shall have 30 business days' from receipt of written notice of default from the other party within which to cure such default. However, the County's intentional delivery of industrial or commercial hazardous waste (pursuant to paragraph 5.4) or failure to maintain a Household Hazardous Waste (HHW) Management Program that complies with state law (pursuant to paragraph 8.4) may be grounds for termination in the District's discretion. Such default may be subject to termination pursuant to paragraph 7.2. In the case of a default involving HHW under paragraph 5.4 by County, County must cure the default within 24 hours of written notice of the default in compliance with applicable laws and regulations, including District ordinances and established procedures.

**7.3 Dispute Resolution**

If any dispute arises between the parties as to proper interpretation or application of this Agreement, the parties must and confer in a good faith attempt to resolve the matter between themselves. If a dispute concerns any amounts to be paid to the District by the County, then the County shall pay the amount demanded on time, under protest, notwithstanding that the County has commenced or proposes to commence the dispute resolution procedures specified herein. If a dispute is not resolved by meeting and conferring, the matter may be submitted for formal mediation to a mediator mutually agreed by the parties. The expenses of such mediation will be shared equally between the parties. If the dispute is not or cannot be resolved by mediation, the parties may mutually agree (but only as to those issues of matters not resolved by mediation) to submit their dispute to arbitration. Before commencement of the arbitration, the parties may elect to have arbitration proceed on an informal basis; however, if the parties are unable to so agree, then the arbitration may be conducted in accordance with Code of Civil Procedure §§1280 *et seq.*, and to the extent that procedural issues are not there resolved, in accordance with the rules of the American Arbitration Association. The decision of the arbitrator will be binding, unless within 30-days after issuance of the arbitrator's written decision, any party files an action in court.

## **8. GENERAL CONDITIONS**

### **8.1 Uncontrollable Circumstances**

Each party will excuse performance by the other in the event of Uncontrollable Circumstances.

### **8.2 Indemnification and Hold Harmless**

(A) County and District agree that District, its Board of Directors, officers, employees and agents, should to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorney's fees, litigation cost, defense cost, court cost or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the District. County acknowledges that District would not enter into this agreement in the absence of this commitment to indemnify and protect District as set forth herein.

To the full extent permitted by law, the County shall defend, indemnify and hold harmless District, its Board of Directors, officers, employees and agents from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by District, court costs, interest, defense costs, including expert witness fees, and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to the performance of this Agreement. All obligations under this provision are to be paid by the County as they are incurred by the District.

Without affecting the rights of the District under any provision of this Agreement or this section, the County shall not be required to indemnify and hold harmless District as set forth above for liability attributable to the active negligence or willful acts of the District, its officers, employees or agents, provided such active negligence or acts are determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the District is shown to have been actively negligent or to have acted willfully to cause the injury and not in instances where the County is solely or partially at fault or in instances where District's active negligence or willful misconduct accounts for only a percentage of the liability involved. In those instances, the obligation of the County will be for that portion or percentage of liability not attributable to the active negligence of the District, as determined by written agreement between the parties or the findings of a court of competent jurisdiction.

The County agrees to obtain executed indemnity agreements from any contractor or any other person or entity involved by, for, with or on behalf of the County in the performance or subject matter of this Agreement. In the event the County fails to obtain such indemnity obligations from others as required here, the County agrees to be fully responsible according to the terms of this section.

Failure of the District to monitor compliance with these requirements imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder and shall survive the termination of this Agreement or this section.

(B) Notice of Claims

A party seeking indemnification shall promptly notify the other party of the assertion of any claim against it for which it seeks to be indemnified, shall give the other party the opportunity to defend such claim, and shall not settle the claim without the approval of the other party. These

indemnification provisions are for the protection of the Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection shall survive termination of this Agreement.

### 8.3 Insurance

County shall maintain, and require any of its subcontractors or others hired for this Agreement to maintain, insurance coverage as described hereunder effective the date first written above and such insurance shall remain in full force at all times throughout the full term of this Agreement. Insurers providing coverage as required by this Agreement shall be acceptable to District and must be authorized to do business in the State of California.

Certificates of insurance shall be furnished in duplicate, evidencing County coverage of Workers' Compensation Insurance, Commercial General Liability, and Comprehensive Auto Liability; such certificates shall show the insurer's name, policy number, limit of coverage, and the period of the policy and cancellation conditions of these specifications. Such certificates shall state that coverage there under shall not be terminated or reduced in coverage until 30 days' written notice is given to General Manager of the District, of cancellation or reduction in coverage; allow for severability of interest of District; and be primary and non-contributing with insurance maintained or self-insured by the District.

The District shall be added, by endorsement to the policy for Commercial General Liability, Auto Liability and Employer's Liability coverage, as an additional named insured on the above-described policies, as they pertain to the operations of the named insured performed under this Agreement for the District. Entire limits of liability maintained must be certified but in no event shall limits be less than specified herein below:

<u>Coverage</u>	<u>Minimum Limit</u>
Workers' Compensation	Statutory
Employer's Liability	\$1,000,000 per accident or disease
Comprehensive General Liability	\$1,000,000 Combined
General Aggregate	\$2,000,000
	Single limit each occurrence

Commercial General Liability Pollution  
Liability Coverage Endorsement

Comprehensive Auto Liability	\$1,000,000 Combined
(Including owned, non-owned And hired vehicles)	Single limit each occurrence

Workers' Compensation Insurance Policy shall include a waiver of all rights of subrogation against the District.

8.4 Solid Waste Origin

County may deliver solid waste collected by County or any other entity under subcontract to County. The District understands and agrees that up to 5% of the County's waste may originate outside the County. Waste originating outside County, over that 5% cap, may not be delivered without the express prior written consent of the District General Manager. All waste delivered must originate from a municipality or district that has implemented an approved Household Waste Collection Program and has fully implemented its SRRE.

8.5 Non-Assignment of Agreement

County may not assign this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the District, which may be withheld at the District's sole discretion. Any person or entity to whom this Agreement is assigned shall expressly agree to be bound by all provisions of this Agreement. County will remain liable to District for all obligations under this Agreement notwithstanding any assignment made pursuant to this clause.

8.6 Notices

Any notice required or permitted by this Agreement 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 in this Agreement. Any changes to the respective addresses to which notices may be directed, may be made from time to time by any party by notice to the other party. The present addresses of the parties are:

District	Monterey Regional Waste Management District
	Attn: General Manager

Location for Direct Deliveries and Certified Mail:  
14201 Del Monte Blvd.  
P.O. Box 1670  
Marina, CA 93933-1670

County      County of Santa Cruz.  
                 Attn: Public Works Director  
                 701 Ocean Street, Room 410  
                 Santa Cruz, California 95060

8.7      Indemnification for Taxes and Contributions

Each party shall exonerate, indemnify, defend, and hold harmless the other (which for the purpose of this paragraph shall include, without limitation, its officers, agents, employees, and volunteers) from and against:

Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect each party's officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security, and payroll tax withholding).

8.8      Non-Discrimination

During and in relation to the performance of this Agreement, both parties agree as follows:

A.      Neither party shall discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. Both parties agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B.      If this Agreement provides compensation in excess of \$50,000 to District and District employs fifteen (15) or more employees, the following requirements shall apply:

(1) District shall, in all solicitations or advertisements for employees placed by or on behalf of the District, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer.

(2) In the event of District's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said District may be declared ineligible for further agreements with County.

(3) County shall cause the foregoing provisions of this Subparagraph 7B to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

#### 8.9 Independent Contractor Status

The District and County have reviewed and considered the principal test and secondary factors for determining independent contractor status and agree that this is an independent contractor arrangement and that neither party is an employee of the other. Each party is responsible for its own insurance (workers' compensation, unemployment, etc.) and all payroll-related taxes. Neither party is entitled to any employee benefits from the other. Each party shall have the right to control the manner and means of accomplishing the result contracted for herein.

#### 8.10. Amendment or Modification

This Agreement may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

#### 8.11. Further Actions

Each of the parties agrees to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Agreement.

#### 8.12. Interpretation

This Agreement has been negotiated by and between the general managers and engineers or principals of both parties, all persons knowledgeable in the subject matter of this Agreement, which was then reviewed and drafted by attorneys representing both parties, in joint consultation with both general managers and engineers or principals. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

#### 8.12 Captions

Titles or captions of sections and paragraphs contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of it.

#### 8.13 Severability

If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement, unless this Agreement without the severed provision would frustrate a material purpose of either party in entering into this Agreement.

#### 8.14 Attorneys' Fees and Costs

In the event it should become necessary for either party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

#### 8.15 Relationship of Parties

Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the parties.

#### 8.16 Waiver

No waiver of any right or obligation of either party hereto shall be effective unless made in writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Agreement or any other right at any time shall not be a bar to exercise of the same right on any subsequent or any other right at any time.

8.17. Counterparts

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

8.18. Entire Agreement

This Agreement constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates opposite their respective signatures:

**MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT**

Date: \_\_\_\_\_ By \_\_\_\_\_  
Chairperson of the Board of Directors

**COUNTY OF SANTA CRUZ**

Date: \_\_\_\_\_ By \_\_\_\_\_  
Chairperson, Board of Supervisors

ATTEST:

Date: \_\_\_\_\_ By \_\_\_\_\_  
MRWMD Board Secretary

Date: \_\_\_\_\_ By \_\_\_\_\_  
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By \_\_\_\_\_  
District Legal Counsel

Date: \_\_\_\_\_

By \_\_\_\_\_  
Assistant County Counsel

Date: \_\_\_\_\_

APPROVED AS TO INSURANCE:

By \_\_\_\_\_  
County Risk Manager

Date: \_\_\_\_\_

**EXHIBIT A**  
**RATE SCHEDULE**

<b>TONS PER YEAR</b>	<b>RATES: 2006-2036</b>	<b>REQUIRED NOTICE OF NON-RENEWAL</b>
120,000	\$27/ton	5 years

Rate is based on a calendar year. Waste may be delivered to the landfills on a 6-day schedule.  
Rates are subject to indices stated in Section 4.4