



# Memorandum

## MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Reviewed by:

  
General Manager

Date:

6/10/10

DATE: June 11, 2010  
 TO: General Manager  
 FROM: Assistant General Manager  
 SUBJECT: Acceptance of Regional Waste for Disposal from the City of Capitola

**RECOMMENDATION:** That the Board of Directors approve the long-term Waste Disposal Agreement for the acceptance of municipal solid waste for disposal at the Monterey Peninsula Landfill (MPL) with the City of Capitola, at a tipping fee of \$28.48 per ton, pending final review by the District Legal Counsel and final approval by the City of Capitola.

### BACKGROUND

District staff, as directed by the Board and pursuant to the shortfall of revenue from decreased incoming waste tonnages, has undertaken discussions with neighboring jurisdictions regarding the utilization of the MPL for waste disposal and as a site for other potential waste processing options. The jurisdictions are the County of Santa Cruz, the Salinas Valley Solid Waste Authority (SVSWA), and the Cities of Watsonville, Scotts Valley, and Capitola. The MPL has a permitted remaining waste capacity of approximately 39,000,000 tons. Since the signing of the contract with the County of Santa Cruz, the MPL has experienced a significant in-district decrease in tonnage, as much as thirty percent (30%) over the past three years. This in-district decrease, coupled with the delivery of far less than 100,000 tons per year of potential annual tonnage from the County of Santa Cruz, means the MPL has a reserve capacity of more than 36,000,000 tons. This represents well over 75 years of capacity at the present fill rate (Exhibit A of the enclosed Agreement). Exercising the full disposal options with all of the aforementioned jurisdictions does not violate the District's current 75-year disposal reserve policy, established in the "Guiding Principles for Acceptance of Regional Waste" (Exhibit B of the enclosed Agreement), as approved by the Board on November 16, 2007.

### DISCUSSION

Currently, the City of Capitola has no contractual obligation to deliver its franchised waste to the District. Accordingly, Capitola pays the full refuse rate for the un-contracted capacity. Capitola has proposed to guarantee the delivery of tonnage to the District in return for the reduction in the tipping fee to the accepted Regional Waste rate of \$28.48 per ton. The financial impact to the District would be a reduction in annual revenue in the approximate amount of \$177,000.

Under the proposed Agreement, the City of Capitola would guarantee to continue to deliver approximately 10,000 tons per year of waste for disposal. This tonnage would represent \$280,000 in gross revenue to the District on an annual basis. Since 2007, the Board has approved the following long-term Waste Disposal Agreements:

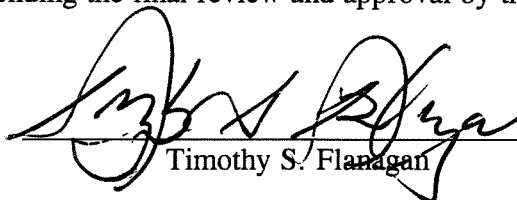
Agency	Projected Annual Waste Delivery	Actual FY 2009/10 Waste Delivery(through April 2010)
County of Santa Cruz	25,000 to 100,000 tons	98 tons
City of Watsonville	10,000 tons	11,257 tons
City of Scotts Valley	10,000 tons	1,745 tons

The City of Capitola city council approved a new hauling agreement with GreenWaste Recovery in 2008. The agreement allows for the delivery of waste to the MPL. The projected delivery of waste from Capitola at 10,000 tons per year would amount to 300,000 tons over 30 years. This represents less than 1% of the currently permitted remaining waste capacity of the MPL and would still leave the District with permitted capacity that exceeds the 75 years identified in the "Guiding Principles". Capitola anticipates developing additional recycling programs, either on their own or in conjunction with the District.

District staff has reviewed the Waste Disposal Agreement, which will be presented for approval to the City of Capitola city council on either July 8<sup>th</sup> or July 22<sup>nd</sup>, and finds it complete and similar to the Agreement approved by the District Board for the County of Santa Cruz and the Cities of Watsonville and Scotts Valley. Staff revised the Agreement for the waste from Capitola to be accepted at a rate of \$28.48 per ton, which is the same rate now paid by County of Santa Cruz and the Cities of Watsonville and Scotts Valley. An annual CPI adjustment will be made to that rate per the Agreement. The District's environmental review for the delivery of regional waste addressed delivery of waste volumes in excess of this amount. The Notice of Determination of the Supplemental Negative Declaration for Acceptance of Regional Waste was received by the District in June of 2007. As stated above, the environmental review pertaining to noise, dust, traffic and other impacts covered a traffic count of up to 2,000 vehicles per day. Since the City of Capitola currently delivers its refuse to the MPL, no additional vehicles would be entering the site. The delivery of Capitola's waste would be restricted so that no trips after 4:00 p.m. would be made to the MPL.

## CONCLUSION

It is therefore recommended that the Board approve the long-term Waste Disposal Agreement between the City of Capitola and the Monterey Regional Waste Management District for the acceptance of up to 10,000 tons per year of municipal solid waste for disposal at the MPL for up to thirty years, at an initial rate of \$28.48 per ton with a provision providing that either party may terminate the agreement for its convenience, and thereby trigger a five-year final term, pending the final review and approval by the District's Legal Counsel and the City of Capitola.

  
Timothy S. Flanagan

Enclosure

**WASTE DISPOSAL AGREEMENT  
BY AND BETWEEN THE MONTEREY REGIONAL WASTE  
MANAGEMENT DISTRICT AND THE CITY OF CAPITOLA**

**THIS WASTE DISPOSAL AGREEMENT** (hereinafter "Agreement") is made and entered into on, \_\_\_\_\_, 2010, 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 City of Capitola, a California general law city (the "City") (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 City desires to deliver all of the Non-District waste collected by its franchise hauler 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 City 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 City 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 City, 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 City shall be permitted to annually deliver up to 10,000 tons of Acceptable Waste to the Monterey Peninsula Landfill during the term of this Agreement. Annual deliveries in excess of 10,000 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 City 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 refuse collection vehicles of the City's franchised waste hauler.

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

The City shall deliver to the Monterey Peninsula Landfill one hundred percent of the Acceptable Waste generated from residential or business activities within the City and collected by the City's franchised waste hauler or any subcontractor. The delivery to any other landfill of Acceptable Waste generated from residential or business activities within the City by the City's franchised waste hauler or any subcontractor is a default under the terms of this Agreement, in which event, the District shall be entitled to reasonably estimate the amount of Acceptable Waste that would have been delivered to the Monterey Peninsula Landfill and invoice the City for such amount in accordance with Section 4.2.

### 3.2 City's Authority to Deliver Waste

The City 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 franchises, 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 City for the term of the Agreement under the conditions specified in the Agreement. The District warrants that it can receive City'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

From the commencement of the term of this Agreement, to and including June 30, 2011, the District shall charge the rate of Twenty-Eight Dollars and Forty-Eight Cents (\$28.48) per ton for provision of Disposal Services under the conditions of this Agreement. This rate is only for Acceptable Waste delivered to the Monterey Peninsula Landfill for disposal. A separate rate shall be

negotiated, and must be set forth in a prior writing, should the District agree to process and recycle mixed construction or demolition waste, mixed waste generated by commercial businesses or multi-family dwelling units, source separated green waste, commingled curbside recyclables, or wastewater treatment plant sludge.

#### 4.3 Payment for Disposal Services

The City is responsible for payment for Disposal Services and all other fees or charges under this Agreement. The District may, in its discretion, charge and accept payment from the City's franchised waste hauler for Disposal Services but responsibility for payment of any charges not paid by the City's franchised waste hauler remains the City's responsibility. 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 Section 4.2 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 or District Costs Due to New Regulatory or Statutory Mandates

If any fees or charges are imposed or increase by law or regulation after the date first written above and levied on the District by any local, state, or federal government or a local enforcement agency, the District shall have the right, upon 30-days prior written notice to the City, to increase the then current fee charged to the City hereunder in an equitable manner relative to the services

provided to the City under this Agreement. Any increased cost borne by the District due to new regulatory or statutory mandates beyond the District's control shall be allocated based on the percentage of tons of waste delivered to the District by the City compared to all other tons delivered to the District and included in the disposal fee charged.

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

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

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

The City through its franchised waste hauler 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 City's Acceptable Waste.

### **5.2 Unacceptable Waste**

The City 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-City Waste**

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

District shall, through its duly authorized agents or representatives, have the right to examine and audit records and supporting source documents maintained by City 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 City payments to District pursuant to this Agreement. If any audit of the City's or its franchised hauler's invoices or other

records reveals any variance from any invoice for waste delivered to the District in excess of three percent of the amount shown on such invoice, or if the City has failed to maintain true and complete books, records and supporting source documents in accordance with this Section, City shall immediately reimburse District for all costs and expenses incurred in conducting such audit.

#### 5.4 Hazardous Materials, Substances or Waste

The City and its franchised waste hauler shall act with reasonable due diligence to prevent the delivery of Hazardous Materials, Hazardous Substances, or Hazardous Waste to the Monterey Peninsula Landfill. Through the City's participation in the County of Santa Cruz's Household Hazardous Waste Program, City residents and small businesses utilize free drop-off collection sites for Hazardous Materials, Hazardous Waste, Hazardous Substances or Unacceptable Waste.

The City shall notify the General Manager of the District, in writing, at least 30-days prior to making any significant modifications in City's Hazardous Materials Removal Program. The District may object to any such modification in writing within 15-days of receipt. The City 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, City'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.

#### 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 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 City 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 B**, attached hereto, the "Guiding Principles for Acceptance of Regional Waste" for Disposal at the Monterey Peninsula Landfill.

### **6.3 Disposal Reporting**

The City shall supply all information necessary to comply with the District's Disposal Reporting System 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 term hereof by giving a 30-day's written notice to the other party. Upon the expiration of the 30-day notice period, a five year final term on the same terms and conditions set forth herein shall commence.

### **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 City delivers waste originating outside the City in excess of 5% (paragraph 5.3);

- ii. The City 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 City fails to comply with a Household Hazardous Waste Program that complies with state law (paragraph 8.4).

**B. Termination for Cause by City**

The City 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 City'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 City, City 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 meet 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 City, then the City

shall pay the amount demanded on time, under protest, notwithstanding that the City 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, either 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. Indemnification by City. City 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. City 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 City 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 which arise from or are connected with or are caused or claimed to be caused by the sole or active negligence or

willful misconduct of the City or its franchised waste hauler or contractor(s). All obligations under this provision are to be paid by the City as they are incurred by the District.

Without affecting the rights of the District under any provision of this Agreement or this section, the City shall not be required to indemnify and hold harmless District as set forth above for liability attributable to the active negligence of the District, its officers, employees or agents, provided such active negligence is 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 and not in instances where the City, or its franchised waste hauler or contractor(s) are solely or partially at fault or in instances where the District's active negligence accounts for only a percentage of the liability involved. In those instances, the obligation of the City 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 City agrees to obtain executed indemnity agreements from its franchised waste hauler and any contractor or any other person or entity involved by, for, with or on behalf of the City in the performance or subject matter of this Agreement. In the event the City fails to obtain such indemnity obligations from others as required here, the City 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. Indemnification by District. To the full extent permitted by law, the District shall defend, indemnify and hold harmless the City, its City Council, 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 City, court costs, interest, defense costs, including expert witness fees, and any other costs or expenses of any kind whatsoever without restriction or limitation which arise from or are connected with or are caused or claimed to be caused by the sole or active negligence or the willful misconduct of the District. All obligations under this provision are to be paid by the District as they are incurred by the City.

Without affecting the rights of the City under any provision of this Agreement or this section, the District shall not be required to indemnify and hold harmless City as set forth above

for liability attributable to the active negligence of the City, its officers, employees, contractors or agents, provided such active negligence is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City or its franchised waste hauler or contractor(s) are shown to have been actively negligent and not in instances where the District is solely or partially at fault or in instances where the City's active negligence accounts for only a percentage of the liability involved. In those instances, the obligation of the District will be for that portion or percentage of liability not attributable to the active negligence of the City, as determined by written agreement between the parties or the findings of a court of competent jurisdiction.

C. 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

City shall require its franchise waste hauler to 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 or other evidence satisfactory to the District shall be furnished in duplicate, evidencing City 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 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
Comprehensive Auto Liability (Including owned, non-owned And hired vehicles)	\$1,000,000 Combined 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

City may deliver solid waste collected by City or any other entity under subcontract to City. The District understands and agrees that up to 5% of the City's Acceptable Waste delivered to the Monterey Peninsula Landfill during any twelve month period may originate outside the City. Waste originating outside City in excess of the 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

City 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. City 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

City City of Capitola .  
Attn: City Manager  
420 Capitola Ave  
Capitola, CA 95010

#### 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.

#### 8.9 Independent Contractor Status

The District and City 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.

#### 8.13 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.

#### 8.14 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.

#### 8.15 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.

#### 8.16 Relationship of Parties

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

#### 8.17 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.

#### 8.18. 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.

#### 8.19. 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

**CITY OF CAPITOLA**

Date: \_\_\_\_\_ By \_\_\_\_\_  
City Manager

**ATTEST:**

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

Date: \_\_\_\_\_ By \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

By \_\_\_\_\_ Date: \_\_\_\_\_  
District Legal Counsel

By \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney

**APPROVED AS TO INSURANCE:**

By \_\_\_\_\_ Date: \_\_\_\_\_  
City Risk Manager

## EXHIBIT A

### **CONDITIONS & PROCEDURES FOR DELIVERY OF ACCEPTABLE WASTE BY CITY OF CAPITOLA TO MONTEREY PENINSULA LANDFILL (SEC. 5.1)**

1. The City will not deliver any Acceptable Waste to the Landfill after 4:00 P.M. Monday-Saturday except in the case of an emergency, or with prior approval of the District General Manager or his/her designee.
2. The types of vehicles to deliver Acceptable Waste will be Transfer Trucks or Refuse Collection Packer Trucks only.
3. The City will participate in a Household Hazardous Waste Program that complies with state law.

City delivery vehicles shall proceed to the Districts' regular vehicle weighing scale system upon arrival at the Monterey Peninsula Landfill for all loads accepted. District staff will invoice the City monthly based upon weight provided by the Districts' regular vehicle weighing scale system. Terms of payment will be net 30 day's upon receipt of invoice

## **EXHIBIT B**

### **Monterey Regional Waste Management District**

#### **GUIDING PRINCIPLES FOR ACCEPTANCE OF REGIONAL WASTE (SEC. 6.2)**

**September 16, 2005  
(Rev. 11/16/07)**

The “Guiding Principles for the Acceptance of Regional Waste” were developed to address the parameters for offering certain limited, excess landfill capacity to public agencies for the disposal of regional (“out-of-District”) waste at the Monterey Peninsula Landfill. Three potential buyers of this excess landfill capacity include the City of Watsonville, the Salinas Valley Solid Waste Authority (SVSWA) and the County of Santa Cruz. The purpose of the sale of excess capacity is to stabilize disposal rates to the Monterey Regional Waste Management District (MRWMD) member agencies, provide funding for future expansion of the MRWMD’s diversion and recycling programs, and to permit the City of Watsonville, the SVSWA and the County of Santa Cruz adequate time to identify and develop additional long-term disposal capacity within their respective jurisdictions.

#### **Guiding Principles for Acceptance of Regional (Out-Of-District) Waste**

1. Regional waste received will be from public agencies only, by written agreement.
2. The primary need of the public agency will be for short to intermediate-term landfill space while they work to find a long-term solution to their solid waste disposal needs.
3. The sale of the MRWMD excess landfill capacity will be subject to a contract approved by the MRWMD Board of Directors.
4. A “reserve landfill capacity” shall be established to provide an initial 75 year landfill life which will serve projected waste streams generated by the MRWMD member agencies to at least the year 2080. In other words, the amount of regional waste to be accepted will not reduce the MRWMD’s certified landfill capacity below 75 years (to 2080). Certified landfill capacity exceeding 75 years would be considered to be “excess landfill capacity”, which could be made available for sale to public agencies, such as the County of Santa Cruz and the SVSWA.
5. The regional waste brought to the MRWMD will have been subject to recycling and diversion programs acceptable to meet the State-mandated diversion goals.
6. The MRWMD will have the ability to shorten the contract term should the public agency not demonstrate adequate progress in meeting its long-term solution to solid waste disposal.
7. The acceptance of regional waste will utilize only MRWMD landfill operations and airspace. The regional waste will not require the use of any of the following MRWMD services: materials recovery facility, public recycling drop-off facility, Last Chance Mercantile reuse facility, household hazardous waste collection program, composting facility, and public awareness program.
8. The negotiated landfill disposal fee will include an escalation clause to compensate the MRWMD for future annual increases in costs. The regional waste will be transported to the MRWMD in either large transfer-trailer type trucks or waste collection packer trucks to minimize the impact on public roads and maximize the efficiency of transportation and landfill operations.