CFL-FINAL
8-31-95

UPPER VALLEY WASTE MANAGEMENT AGENCY

AGREEMENT #95-06

CLOVER FLAT LANDFILL SOLID WASTE HANDLING FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into this 25 th day of September, 1995, by and between the UPPER VALLEY WASTE MANAGEMENT AGENCY, a joint powers authority organized under the laws of the STATE OF CALIFORNIA, hereinafter referred to as "AGENCY" and CLOVER FLAT LANDFILL, a California corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, by joint powers agreement (Napa County Agreement #3265) dated September 29, 1992 (hereinafter referred to as "JOINT POWERS AGREEMENT"), the governing bodies (hereinafter referred to jointly as"MEMBERS") of certain governmental entities located within the County of Napa formed the AGENCY as a joint powers entity to provide economical coordination of regional solid waste management services within the northern portion of the County (hereinafter referred to as AGENCY's "SERVICE AREA", described in Exhibit "A" attached hereto and incorporated by reference) including but not limited to, franchising solid waste services and providing uniform rate review and rate setting to the MEMBERS; and

WHEREAS, CONTRACTOR presently holds a franchise from Napa County for disposal at the Clover Flat Landfill of all garbage and rubbish collected within the SERVICE AREA; and

WHEREAS, to obtain uniform rate making process, the MEMBERS have amended the JOINT POWERS AGREEMENT to empower the AGENCY to act as a consolidated franchisor for solid waste handling services, including landfill disposal, throughout the SERVICE AREA and to set rates for those solid waste handling services; and

WHEREAS, CONTRACTOR and Napa County have also amended their existing franchise (Napa County Agreement #604, as amended) to assist with such a uniform rate setting process; and

WHEREAS, AGENCY now desires to enter into such a franchise with CONTRACTOR, pursuant to Public Resources Code Section 40059 for solid waste handling services at the Clover Flat Landfill with rates set pursuant to the methodology set forth in Exhibit "B" (attached hereto and incorporated by reference herein) which is designed to permit CONTRACTOR to charge rates, within certain parameters and subject to AGENCY's approval, to compensate for the costs incurred and to reward efficiencies achieved in providing these services; and

WHEREAS, this instrument is negotiated and executed by the parties hereto pursuant to the authority conferred on local agencies by Public Resources Code Sections 40059, et seq., to provide for solid waste handling services on an exclusive or non-exclusive basis and with or without competitive bidding, which has been delegated to AGENCY by the JOINT POWERS AGREEMENT pursuant to Government Code section 6500 et seq.

TERMS

NOW, THEREFORE, AGENCY AND CONTRACTOR AGREE as follows:

1. The foregoing recitals are true and correct.

2. AGENCY hereby grants CONTRACTOR an exclusive franchise to provide solid waste handling services at the Clover Flat Landfill involving WASTE (as described in Exhibit "A"), including disposal of all of the WASTE generated in the AGENCY's SERVICE AREA, in the manner and subject to the conditions set forth in Exhibit "A", at the Clover Flat Sanitary Landfill.

3. This AGREEMENT supersedes in their entirety any current franchise agreements between the MEMBERS and CONTRACTOR for solid waste handling services at the Clover Flat Sanitary Landfill.

4. Nothing in this AGREEMENT is intended to impair the right of an individual MEMBER to contract separately with CONTRACTOR or any other person or entity for services other than those described in this AGREEMENT, as long as the rates for those services are reviewed and set by AGENCY.

5. As a provision of this AGREEMENT, CONTRACTOR shall submit a rate application to the AGENCY, which shall be processed, evaluated, and considered for adoption by AGENCY pursuant to the methodology provided in Exhibit "B", within thirty days of the date above first written.

6. Except as noted in Paragraph 5, the provisions of this AGREEMENT shall be effective as of the date of adoption by the AGENCY of rates developed pursuant to the rate methodology set forth in Exhibit "B", which shall be deemed attached as Exhibit "C" upon their adoption.

IN WITNESS WHEREOF, this AGREEMENT is executed by the parties hereto as of the date first above written.

UPPER VALLEY WASTE
MANAGEMENT AGENCY

BY: _____
MEL VARRELMAN, Chair of the Board of Directors of the Upper Valley Waste Management Agency

"AGENCY"

CLOVER FLAT LANDFILL

BY _____

BY _____

"CONTRACTOR"

BY: _____
ATTEST: JILL PAHL, Manager of the Board of Directors

BY: _____
APPROVED AS TO FORM: Margaret Woodbury, Agency Legal Counsel

AYES: Varrelman, Negri, Gard, Jefferson Oyarzo

NOES: None

ABSTAIN: None

EXHIBIT A TO AGENCY AGREEMENT #95-06

UPPER VALLEY WASTE MANAGEMENT AGENCY
SOLID WASTE HANDLING FRANCHISE AGREEMENT FOR THE CLOVER FLAT LANDFILL

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UPPER VALLEY WASTE MANAGEMENT AGENCY SOLID WASTE HANDLING FRANCHISE AGREEMENT FOR THE CLOVER FLAT LANDFILL

SECTION 1. DEFINITIONS

The terms defined in this Section that are capitalized in this AGREEMENT. have the following meanings:

"ACT" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.) and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

"AGREEMENT" means this franchise AGREEMENT, as it may be amended from time to time.

"AGENCY" means the Upper Valley Waste Management Agency, a joint exercise of powers authority created by the MEMBERS.

"CONTRACTOR" means Clover Flat Landfill.

"CUSTOMER" or "CUSTOMERS" means any or all accounts of CONTRACTOR for provision of SOLID WASTE HANDLING SERVICES, including all residential, commercial and industrial accounts.

"DIVERSION" means any technique for diverting SOLID WASTE from landfill disposal, including source reduction, recycling, reuse, reprocessing, and composting.

"DIVERTIBLE MATERIAL" means discarded material processed for disposition other than disposal by landfill. DIVERTIBLE MATERIALS, listed herein, may change from time to time with the approval of AGENCY by resolution.

"FACILITY" or "FACILITIES" means the land and all those improvements necessary to carry out the SOLID WASTE HANDLING SERVICES described in this AGREEMENT at the LANDFILL.

"HOUSEHOLD HAZARDOUS WASTE ELEMENT" or "HHWE" means the element prepared pursuant to the ACT, which identifies a program for the safe collection, recycling, treatment and disposal of hazardous wastes which are generated by households within a jurisdiction and which should be separated from the SOLID WASTE stream.

"JOINT POWERS AGREEMENT" means Napa County Agreement No. 3265, as it may be amended from time to time.

"LANDFILL" means the Clover Flat Sanitary Landfill, including any accessory FACILITIES related thereto.

"MANAGER" means the person, MEMBER agency or firm hired or contracted by AGENCY Board of Directors as AGENCY's administrative officer to manage the affairs of AGENCY and to effect the policies of AGENCY.

"MEMBER" means any of the governing bodies of the signatories to the JOINT POWERS AGREEMENT and "MEMBERS" means all of the governing bodies of the signatories to the JOINT POWERS AGREEMENT.

"NAPA COUNTY SOLID WASTE SERVICE ZONE THREE (3)" means that area defined in the Second Amendment to the JOINT POWERS AGREEMENT, as it may be amended from time to time.

"NON-DISPOSAL FACILITY ELEMENT" or "NDFE" means the element which describe new facilities and the expansion of existing facilities, which will be needed to implement a jurisdiction's SRRE.

"PERMITTED CAPACITY" means that capacity approved in the LANDFILL's most current approved California Integrated Waste Management Board Solid Waste Facility Permit.

"SERVICE AREA" means those incorporated areas of Calistoga City, St. Helena City and Yountville Town, and those unincorporated areas within NAPA COUNTY SOLID WASTE SERVICE ZONE THREE.

"SOLID WASTE" means the type of materials commonly collected including putrescible and nonputrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. SOLID WASTE also includes source separated recyclable or compostable materials, and other DIVERTIBLE MATERIALS intended for collection as part of this AGREEMENT. SOLID WASTE does not include any wastes defined as "hazardous wastes" or "medical wastes" under federal or state laws or regulations.

"SOLID WASTE HANDLING SERVICE" or "SOLID WASTE HANDLING SERVICES" means those service or services provided, including FACILITY(IES) owned, operated or used by CONTRACTOR for the collection, transportation, processing, storage, transfer and/or disposal of SOLID WASTE generated in the SERVICE AREA.

"SOURCE REDUCTION AND RECYCLING ELEMENT" or "SRRE" means the element prepared pursuant to the ACT, which includes a program for management of SOLID WASTE generated within a jurisdiction, consistent with the California Integrated Waste Management Board's waste management hierarchy.

"WASTE" means those materials that are delivered for disposal at the LANDFILL with no further processing intended other than burial and/or natural decomposition.

SECTION 2. PURPOSE

2.1 General. While the franchise granted herein to CONTRACTOR to provide SOLID WASTE HANDLING SERVICES is exclusive as to WASTE, nothing in this AGREEMENT shall affect or limit the right of any person to sell any DIVERTIBLE MATERIAL or other valuable commodity to CONTRACTOR or to any other person lawfully doing business within the SERVICE AREA in lieu of depositing such commodity in an authorized location for receipt by CONTRACTOR under this AGREEMENT. The purpose of this AGREEMENT is not to affect or limit the right of any person to sell any valuable commodity to CONTRACTOR or to any other person lawfully doing business within the SERVICE AREA. Any person or her/his agent or employee may provide similar services to CONTRACTOR's SOLID WASTE HANDLING SERVICES for her/his own SOLID WASTE. CONTRACTOR hereby agrees, for and during the term of this AGREEMENT, to furnish all labor, equipment, FACILITIES and services necessary to provide those SOLID WASTE HANDLING SERVICES described herein, at the times, in the manner as stated herein, and at the rates set forth in Exhibit C, developed in accordance with the methodologies set forth in Exhibit B, said exhibits being attached hereto and incorporated by reference herein.

SECTION 3. RATES

3.1 Rate Setting. In accordance with the rate methodologies set forth in Exhibit B, AGENCY shall establish and may unilaterally amend at any time by resolution all rates, tolls, tipping fees, other fees, and other charges for those SOLID WASTE HANDLING SERVICES provided by CONTRACTOR as described herein. Such resolutions shall be deemed automatically incorporated into this AGREEMENT as Exhibit "C-[*date of resolution*]", with the currently-effective rates being those in the

resolution bearing the latest date. No such changes in rates by AGENCY shall be effective until a certified copy of the resolution approving such changes has been delivered or otherwise sent to CONTRACTOR as provided in Section 5.9 (Notices).

3.2 Concurrent Changes in Customer Rates. All new or revised rate(s), tolls, tipping fees, rentals and other fees and charges set in accordance with Section 3.1 shall be passed on to CUSTOMERS through a corresponding addition or revision in the rates charged by CONTRACTOR to those CUSTOMERS receiving the affected SOLID WASTE HANDLING SERVICES, and such pass-through shall be effective concurrently with the effective date of the changes approved under Section 3.1.

3.3 Increases in Expenses Resulting from this AGREEMENT. In this AGREEMENT there are Paragraphs requiring CONTRACTOR to perform services, acquire property or equipment, or purchase services at the expense of CONTRACTOR. Reimbursement of all such additional expenses shall be evaluated according to the provisions of the Rate Methodology set forth in Exhibit B. In the case of conflict between this AGREEMENT and the Rate Methodology, the Rate Methodology shall prevail over this AGREEMENT.

SECTION 4. TERM

4.1 The term of this AGREEMENT shall commence on the date first above written and shall expire at the end of day on July 1, 2020. The AGREEMENT can be thereafter be renewed for succeeding ten (10) year terms provided that the permitted life of the LANDFILL has been extended for at least ten additional years thirty-six (36) months before the termination date of this AGREEMENT and written notice of intent to renew is given by AGENCY to CONTRACTOR at least thirty-six (36) months prior to the next termination date, or unless otherwise terminated as provided in Section 6.

SECTION 5. GENERAL PROVISIONS

5.1 Independent Contractor. CONTRACTOR shall perform this AGREEMENT as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, AGENCY employees for any purpose, including workers' compensation. CONTRACTOR shall, at his own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this AGREEMENT shall be performed; provided however that AGENCY may monitor the work performed by CONTRACTOR. CONTRACTOR shall be entitled to none of the benefits accorded to a AGENCY employee. AGENCY shall not deduct or withhold any amounts whatsoever from the compensation paid to

CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. CONTRACTOR alone shall be responsible for all such payments.

5.2 Specific Performance. Because the services to be performed by CONTRACTOR under the terms of this AGREEMENT relate to preservation of the health and safety of persons residing, working, and visiting Napa County and, if not provided in a timely and proper manner could result in immediate hazard to such persons and to the economy of the County as a whole, which cannot be reasonably or adequately compensated in damages in an action of law, in addition to any other rights or remedies which AGENCY may possess, shall be entitled to injunctive and other equitable relief through arbitration under Section 7 herein, to prevent a breach, either major or minor, of this AGREEMENT by CONTRACTOR.

5.3 No Waiver. The waiver by either party of any breach or violation of any requirement of this AGREEMENT shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this AGREEMENT.

5.4 Amendment. Except as specifically provided herein, this AGREEMENT may be modified or amended only in writing and with the prior written consent of both parties.

5.5 Interpretation. The headings used herein are for reference. The terms of the AGREEMENT are set out in the text under the headings. This AGREEMENT shall be governed by the law of the State of California.

5.6 Severability. If any provision of this AGREEMENT, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this AGREEMENT.

5.7 Law Compliance. In providing the SOLID WASTE HANDLING SERVICES required by this AGREEMENT, CONTRACTOR shall observe and comply with all applicable federal and, state laws, regulations and codes regarding the provision of the SOLID WASTE HANDLING SERVICES described herein, as such may be amended from time to time, including where required by such laws, the funding and maintenance of sufficient closure and post-closure maintenance financial assurances for any landfill operated or utilized by CONTRACTOR for disposal of the SOLID WASTE. Any violation of this Paragraph shall constitute a major breach.

5.8 Attorney's Fees. In the event that either party commences legal action of any kind or character to either enforce the provisions of this AGREEMENT or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

5.9 Notices. All notices which CONTRACTOR or AGENCY may wish to give in connection with this AGREEMENT shall be in writing and shall be served by personal delivery or fax during usual business hours at the principal office of CONTRACTOR or AGENCY, to an officer or person apparently in charge of that office, or by depositing the same in the United States mail, postage prepaid, and addressed to CONTRACTOR or AGENCY at its principal office, or to such other address as AGENCY or CONTRACTOR may designate from time to time by written notice given to CONTRACTOR in the manner specified in this Section. Service of notice pursuant to this Section shall be deemed complete on the day of service by personal delivery or fax (if received during normal business hours, or the next business day if received after normal business hours), or three (3) days after mailing if deposited in the United States mail. Until changed by written notice to AGENCY and CONTRACTOR, notice shall be delivered as follows:

AGENCY:

Upper Valley Waste Management Agency
c/o Environmental Management Department
1195 Third Street, Room 101
Napa, CA 94559
FAX (707)253-4545

CONTRACTOR:

Clover Flat Landfill
1285 Whitehall Lane
P.O. Box 382
St. Helena, CA 94574
FAX (707)963-7641

5.10 Indemnification. CONTRACTOR, for itself, and its successors in interest, if any, agrees to indemnify and save harmless AGENCY, its officers, employees, and agents, from claim, suit, liability including without limitation, those for personal injury (including death) or damage to property, or action made or brought against AGENCY, its officers, employees, and agents, for any injuries or damages resulting from or caused by the acts of CONTRACTOR, or its officers, employees, and agents, in the performance of any work and the rendering of any service provided for under this AGREEMENT. Such indemnification shall include CONTRACTOR holding harmless and indemnifying AGENCY for any action brought against AGENCY, its officers, employees, and agents, under any federal or state anti-trust laws, environmental laws, or laws such as "Superfund" which impose financial liability for cleanup of

contaminated landfill sites. Indemnification under this Section shall include all attorneys' fees and other expenses incurred by AGENCY, its officers, employees, and agents, in the course of the defense of any such claim, suit, or action.

5.11 Entirety of AGREEMENT. This AGREEMENT constitutes the entire agreement between the parties relating to the subject of this AGREEMENT and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

5.12 Assignments. A consideration of this AGREEMENT is the past record, experience, and local knowledge of the needs of the SERVICE AREA by CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this AGREEMENT, or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of AGENCY. AGENCY may not unreasonably withhold its consent to assignment to a substitute contractor who is possessed of similar or greater experience and financial responsibility. No consent shall be required for assignment of an interest in CONTRACTOR to a relative of a shareholder of CONTRACTOR, but notification of such assignment must be provided to the AGENCY within thirty (30) days of the assignment. Any violation of this Paragraph shall constitute a minor breach.

5.13 Payment of Subcontractors and Agents. Unless a reasonable dispute exists concerning payment, CONTRACTOR shall promptly pay all subcontractors, suppliers, or laborers engaged for purposes of this AGREEMENT in accordance with the contract or agreement between that Party and CONTRACTOR. Any violation of this Paragraph shall constitute a minor breach.

5.14 Taxes and Fees. CONTRACTOR shall be responsible and liable for payment of all federal, state and local taxes and fees, and surcharges of every kind, that apply to any and all persons, property, income, equipment, materials, supplies, structures, or activities that are involved in the performance of this AGREEMENT, including but not limited to, any income taxes, real property, excise, sales and use taxes, surcharges imposed by AGENCY under the ACT, business and occupation taxes and fees that arise in connection with the AGREEMENT. Any violation of this Paragraph shall constitute a minor breach.

5.15 Non-Discrimination. CONTRACTOR and its officers, employees, agents and subcontractors shall not deny the benefits of this AGREEMENT to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age or sex.

CONTRACTOR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Any violation of this Paragraph shall constitute a minor breach.

5.16 Fair Employment and Housing Act. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, Section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such may be amended from time to time. Any violation of this Paragraph shall constitute a minor breach.

SECTION 6. PERFORMANCE VIOLATIONS/BREACHES AND TERMINATION

6.1 Performance Bond. CONTRACTOR shall obtain and maintain during the term of this AGREEMENT at its own expense from a corporate surety entitled to do business in the State of California and provide to the AGENCY a performance bond in the amount of no less than twenty five thousand dollars ($25,000), securing full and faithful performance by CONTRACTOR of all of its obligations under this AGREEMENT, including payment of any penalties/liquidated damages assessed for violations of this AGREEMENT under Paragraph 6.9. The form of said bond shall be subject to the prior approval of AGENCY and may be in the form of a corporate surety bond, an irrevocable letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of AGENCY as trustee for CONTRACTOR, with all interest distributed to the CONTRACTOR. Said bond shall be renewed annually during the life of this AGREEMENT and evidence of said renewal shall be furnished to AGENCY prior to the expiration of the bond then in effect. Any violation of this Paragraph shall constitute a major breach.

6.2 Breaches of this AGREEMENT: General. CONTRACTOR shall be required to comply with the provisions of this AGREEMENT and its failure to fulfill in a timely and proper manner CONTRACTOR's obligations under this AGREEMENT shall constitute a breach of this AGREEMENT. A breach of this AGREEMENT shall fall into one of two categories, major or minor.

6.3 Breach Notification. In the event AGENCY finds that CONTRACTOR has violated any provision of this AGREEMENT, AGENCY shall provide CONTRACTOR with written notice of the violation, by certified mail to the CONTRACTOR, including all relevant details and an opportunity to cure the violation within a reasonable period of time. The notice referred to in this paragraph, shall have no effect if it comes from a

MEMBER of the AGENCY. In order to have effect it must come from the AGENCY after a duly noticed meeting of the AGENCY Board of Directors. The written notice shall state the nature of the breach and whether it is considered major or minor by the AGENCY.

6.4 Major Breaches. Major breaches shall be identified under the provisions of this AGREEMENT and shall be grounds for revocation of this AGREEMENT. AGENCY shall give written notice of a major breach of this AGREEMENT and this AGREEMENT may be revoked if CONTRACTOR has failed to correct such breach within six (6) months after notice. However, AGENCY may require a longer or shorter period of time for correction depending on the circumstances, and immediate compliance may be required by AGENCY to the extent any problem represents a substantial and immediate threat to the public health and safety.

6.5 Minor Breaches. Minor breaches of this AGREEMENT shall not constitute grounds for revocation. CONTRACTOR shall correct such minor breach within thirty (30) days after written notification from the AGENCY of such breach. If such breach is not corrected within thirty (30) days AGENCY may impose a penalty appropriate to the nature and extent of the breach which may not be passed through to the CUSTOMERS as an expense under the rate methodology.

6.6 Appeal of Breach. CONTRACTOR may request a hearing regarding the alleged breach by filing a written request with the AGENCY Board of Directors. Such request shall be filed not more than fifteen (15) calendar days after notice of the breach. If such request is received, the AGENCY shall set the matter for public hearing on a date not more than sixty (60) calendar days following receipt of such written request, and shall give CONTRACTOR at least fifteen (15) calendar days written notice of the time, date and place of the hearing. AGENCY shall issue its written decision and findings within thirty (30) calendar days after the date of the close of the hearing.

6.7 Arbitration. Contest of any decision made under Paragraph 6.6 shall be subject to the arbitration provisions of Section 7 of this AGREEMENT. If the parties differ over the question of whether or not the breach has been cured, the question shall be resolved by arbitration under the provisions of Section 7 of this AGREEMENT.

6.8 Cure of Breach. Notwithstanding the above, CONTRACTOR shall be entitled to cure the problem(s) to the satisfaction of the MANAGER at any time prior to the hearing before AGENCY Board of Directors. In the event of such cure of the default, the hearing shall be canceled and the suspension or revocation shall not become effective.

6.9 Penalties. For the purposes of this Section, penalties shall be in the nature of Liquidated Damages. If the violation is reasonably curable within thirty (30) days of receipt of AGENCY's written notice, and if CONTRACTOR has not commenced appropriate corrective action within that thirty (30) day period, or provided a plan to correct the violation in accordance with subsection (b) below, then AGENCY may proceed to assess damages for CONTRACTOR's individual or repeated willful violation of a material franchise requirements of up to One Hundred Dollars ($100) per day, or per incident, for all minor breach violations, and up to Five Hundred Dollars ($500) per day, or per incident, for major breach violations, provided that all such violations of similar nature occurring at the same time shall be deemed one (1) incident.

(a) In the event any stated violation is not reasonably curable within thirty (30) days, damages shall not be assessed if the CONTRACTOR has provided, within the said thirty (30) days, a plan, satisfactory to the AGENCY, to remedy the violation and continues to demonstrate good faith in seeking to correct said violation.

(b) In determining which remedy or remedies for CONTRACTOR's violation are appropriate, AGENCY shall take into consideration the nature of the violation, whether the violation was chronic, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further such violations and such other matters as the AGENCY may deem appropriate.

6.10 Termination Due to Insolvency. If at anytime during the term of this AGREEMENT, CONTRACTOR shall become "insolvent" as hereinafter defined, then this AGREEMENT, and all of the rights and privileges granted thereby, shall immediately cease, be forfeited, and canceled without notice and without suit or other proceeding. For purposes of this Section, "insolvent" shall mean any one of the following events:

(a) Bankruptcy proceedings as commenced by or against CONTRACTOR, its parent corporation or owner; or

(b) The appointment of a receiver for any property of CONTRACTOR, parent corporation or owner; or

(c) Assignment, whether voluntary or involuntary, for the benefit of CONTRACTOR's creditors or creditors of CONTRACTOR's parent corporation or owner.

6.11 Termination - Significant Change in Circumstances. This AGREEMENT may also be terminated in the event that any of the following significant changes in circumstances occurs:

(a) Court Decisions. This AGREEMENT is approved pursuant to Section 40059 of the California Public Resources Code. If that provision should be declared invalid by a court of competent jurisdiction in Napa County or by an appellate court whose decisions are binding within Napa County, or such a court determines that this AGREEMENT could have been entered into only after AGENCY complied with Section 49200 of the Public Resources Code, then all rights under this AGREEMENT shall be deemed terminated as of the date of entry of the judgment containing such determination, without notice and without suit or other proceeding by AGENCY or CONTRACTOR, and without any right of compensation by either party against the other for losses incurred as a result of such termination.

(b) Undue Hardship on Rate Payers as Result of Unexpected Change in Laws, Markets, or Technologies. If, as the result of an unexpected change in the laws, markets or technologies applicable to the SOLID WASTE HANDLING SERVICES, the continued existence of this AGREEMENT would result in an increase in LANDFILL rates greater than fifteen percent (15%) higher than those disposal or transfer station rates charged at other solid waste facilities in Napa County, AGENCY may, in its discretion and after no less than one year written notice to CONTRACTOR and after consultation with CONTRACTOR, unilaterally terminate this AGREEMENT without obligation to CONTRACTOR for any additional losses, which were not approved by the AGENCY, incurred by CONTRACTOR as a result of such termination. Specifically, AGENCY shall be obligated to continue to provide for the funding of its obligations concerning payment of the CONTRACTOR's approved closure and post-closure cost estimates at the level included in the rates over the remaining length of the term of this AGREEMENT. The AGENCY shall determine and provide for the expenses incurred by CONTRACTOR for providing the SOLID WASTE HANDLING SERVICES described herein, for the original remaining term of this AGREEMENT. If any costs are recovered or avoided by CONTRACTOR concerning the above obligations and expenses paid by the AGENCY, CONTRACTOR shall reimburse AGENCY those appropriate amounts. AGENCY shall not be entitled to terminate this AGREEMENT if the rates are greater than fifteen percent (15%) higher than those Napa County disposal or transfer station rates if the difference is due to anything other than an unexpected change in the law, markets or technology. Apecifically, this

AGREEMENT may not be terminated if the difference in rates is due to lower volume at the LANDFILL or higher volume at those Napa County disposal or transfer stations, or any other change due to competition.

6.12 AGENCY Disbands. If the AGENCY disbands for any reason, its MEMBERS shall be bound by the provisions of this AGREEMENT pursuant to the JOINT POWERS AGREEMENT.

SECTION 7. ARBITRATION

7.1 Settlement by Arbitration. Any matter arising out of or relating to this AGREEMENT, other than claims for personal injury or property damage or hold harmless/indemnification for such claims, shall be settled by arbitration conducted in compliance with the provisions of the California Arbitration Act, commencing with Section 1280 of the California Code of Civil Procedure.

7.2 Panel. Each arbitration shall be conducted by a panel of three (3) impartial arbitrators. One arbitrator shall be appointed by CONTRACTOR, one arbitrator shall be appointed by AGENCY, and the third arbitrator, who shall be the chairperson of the panel, shall be appointed by the other two arbitrators. If the other two arbitrators are unable to agree upon an appointment, the third arbitrator shall be appointed by the Presiding Judge of the Superior Court in Napa County. The chairperson of the arbitration panel shall be an attorney licensed to practice within the courts of the State of California. No member of the panel shall be an officer, employee, agent or attorney of CONTRACTOR, or any affiliate of CONTRACTOR or AGENCY.

7.3 Appointments. CONTRACTOR and AGENCY shall each appoint its arbitrator and mail notice to the other of its selection not later than fifteen (15) calendar days following filing of a notice of appeal to arbitration or mailing of the initiation of arbitration. The third arbitrator shall be appointed not later than thirty (30) calendar days following filing of the notice of appeal to arbitration or mailing of the initiation of arbitration.

7.4 Meetings. The chairperson of the arbitration panel shall select the site of the hearing, retain a stenographic reporter (or recording mechanism authorized at the time of the arbitration to officially record proceedings in the Napa County Courts) to report the hearing, and, in consultation with the other members of the panel and the parties, schedule the hearing. The hearing shall be scheduled to commence no later than seventy-five (75) calendar days following filing of the notice of appeal to arbitration or mailing of the initiation of arbitration. The chairperson of the panel shall mail written notice of the time, date and place of the hearing to the other two arbitrators,

AGENCY and CONTRACTOR not later than twenty (20) calendar days in advance of the hearing.

7.5 Non-Chairperson Compensation and Expenses. The compensation and expenses of the arbitrator appointed by CONTRACTOR shall be borne and paid solely by CONTRACTOR. The compensation and expenses of the arbitrator appointed by AGENCY shall be borne and paid solely by AGENCY. CONTRACTOR and AGENCY shall each bear and solely pay its own costs and attorney's fees, expert and other witness fees and other expenses incurred in the preparing and prosecuting their respective cases. In proceedings where the record of a public hearing of AGENCY Board of Directors is to constitute by the arbitration panel, the costs of transcribing, typing and copying the record shall be borne and paid equally by CONTRACTOR and AGENCY.

7.6 Chairperson Compensation and Expenses. The compensation and expenses of the chairperson of the arbitration panel, rental, if any, for the place of the hearing, per diem costs of the stenographic reporter (or other authorized recording system), costs of transcribing and costs of the arbitration proceeding not otherwise identified in this AGREEMENT shall be divided equally between, borne and paid by CONTRACTOR and AGENCY. The arbitration panel shall not be empowered to order a division of costs, fees or expenses different from that prescribed by this Section.

7.7 Award. The arbitration award shall be determined by a majority of the members of the arbitration panel, and shall be in writing. If it is necessary for the panel to make determinations of fact, it shall include findings of fact and conclusions with the award. The award shall be issued and mailed to the parties not later than sixty (60) calendar days following the close of the arbitration hearing.

7.8 Powers. The arbitration panel shall have no authority to add to, delete or alter any provisions of the AGREEMENT, but shall limit its interpretation to the express terms of the AGREEMENT. All decisions of the arbitration panel shall be prospective only and the panel shall have no power to award either party monetary damages for past actions, whether by way of set-off, counterclaim, directly or otherwise, against either party or the officers, agents or employees of either party. However, notwithstanding other provision of this AGREEMENT, the arbitration panel shall have the power to award the prevailing party as monetary damages from the non-prevailing party the prevailing party's full costs incurred in connection with the arbitration, including but not limited to, that party's share of the panel and hearing expenses, attorney's fees, and expert witness fees, if the panel concludes that the request for arbitration made by the non-prevailing party was frivolous and without significant merit.

7.9 Enforcement of Award. The arbitration award may be judicially enforced, shall be final, binding and conclusive upon the parties and shall not be subject to judicial review or vacation except on ground set forth in Sections 1286.2 and 1286.6 of the Code of Civil Procedure.

SECTION 8. RESERVATION OF RIGHTS

8.1 Regulation. AGENCY reserves its right to regulate or further regulate aspects of SOLID WASTE HANDLING SERVICES including, but not limited to, level of service, charges and fees, nature, location and extent of providing SOLID WASTE HANDLING SERVICES.

8.2 SOLID WASTE generated outside of the SERVICE AREA. CONTRACTOR reserves the right to accept SOLID WASTE from areas other than the SERVICE AREA at or above rates set by the AGENCY. However, CONTRACTOR shall at all times maintain permitted LANDFILL capacity for the approved AGENCY's estimated WASTE disposal needs at LANDFILL over the term of this AGREEMENT. If CONTRACTOR desires to accept SOLID WASTE from areas other than the SERVICE AREA at rates other than those described above, prior approval of those rates must be obtained from the AGENCY. AGENCY will not withhold its consent if there is a benefit to the AGENCY's ratepayers. Any such violation shall constitute a major breach.

8.3 Other Activities. CONTRACTOR reserves the right to conduct other activities at the LANDFILL which are either regulated or not regulated by the AGENCY, provided that such activities do not interfere with CONTRACTOR's duties hereunder and provided that such activities are lawful under Federal and State laws and regulations.

SECTION 9. ACCIDENTS AND COMPLAINTS

9.1 Accident Notification. CONTRACTOR shall be responsible for all injuries, accidents and other mishaps associated with its operations. CONTRACTOR shall report any accidents resulting from the performance of this AGREEMENT to AGENCY as soon as practicable by telephone or messenger. For purposes of this Section, "accident" shall include the death of any person, any personal injury resulting in inpatient hospitalization or out-patient treatment by a physician, or damage to any real or personal property exceeding $10,000. CONTRACTOR shall report, in writing, to AGENCY, within seven (7) days of knowledge that the accident exceeds ten thousand dollars ($10.000), complete details of the accident, including witness statements. Any violation of this reporting requirement shall constitute a minor breach.

9.2 Legal Action Response. CONTRACTOR shall respond in a reasonable manner to legal actions, complaints, charges and allegations related to CONTRACTOR's performance under this AGREEMENT within thirty (30) days of receipt of that legal action, complaint, charge, or allegation, including but not limited to, those legal actions made or actions brought by citizens, citizen groups and public agencies. In the event any legal action is filed against CONTRACTOR, CONTRACTOR shall report, in writing, to AGENCY, within seven (7) days of the legal action filing, complete details of the action, including the nature of the response. Any violation of this reporting requirement shall constitute a minor breach.

9.3 Other Complaints. CONTRACTOR shall keep a log of complaints if reasonably practical. If AGENCY requires activities which result in a rate increase which causes excessive complaints, CONTRACTOR shall be excused from logging complaints relative to those activities for a period of three (3) months from the effective date of the increase, but shall refer complainants to the MANAGER. CONTRACTOR shall not be required to keep a log of complaints related to any legal complaint. If complaints are deemed reasonable, CONTRACTOR shall take whatever action it deems necessary to respond to such complaint. Any violation of this Paragraph shall constitute a minor breach.

SECTION 10. CLOSURE AND POST-CLOSURE FUNDS

10.1 Responsibility. CONTRACTOR shall be responsible for all closure and thirty years of post-closure costs relating to the LANDFILL. CONTRACTOR shall establish and maintain at its sole expense any closure and post-closure trust fund now or hereafter required under any applicable federal, or state law or regulation. Any violation of this Paragraph shall constitute a major breach.

10.2 Closure and Post-Closure. CONTRACTOR shall comply with the provisions of Title 14 Article 3.5 and following of the California Code of Regulation in the manner required by the California Integrated Waste Management Board and the AGENCY. Any violation of this Paragraph shall constitute a major breach.

(a) Trust Fund. In the event a "trust fund" and\or an "enterprise fund" is created and funds are collected from the rate payers for closure and post-closure costs, CONTRACTOR shall collect such funds and hold such funds as trustee for AGENCY and shall not own such funds and shall not be required to include such funds in its income for tax purposes. CONTRACTOR shall use such funds for closure and post-closure only and only as trustee for AGENCY. In the event that the value of the trust fund is greater than the required amount of coverage minus the amount of coverage demonstrated by other mechanisms,

and in the further event that such excess funds are released to CONTRACTOR under the provisions of CRC 18284 (c), then such funds will become revenue for the CONTRACTOR and an appropriate adjustment shall be made in applying the Rate Methodology attached in Exhibit B. Treatment of Trust Funds created prior to this AGREEMENT for LANDFILL financial assurance may be treated differently concerning ownership of those trust funds than that which is outlined in this paragraph.

(b) In the event CONTRACTOR proposes to use other financial mechanisms for providing financial assurance for closure and post-closure, prior approval of such financial mechanism and the associated impacts to this agreement, including the attached Rate Methodology and Rates, shall be required by the AGENCY. Such approval shall not be unreasonably withheld if such mechanisms comply with State and Federal laws and regulations.

10.3 Operating Liability. CONTRACTOR shall make the contributions required pursuant to the ACT to provide for the Operating Liability. If a trust fund is used, such fund shall be considered a Third Party Trust Fund according to the Rate Methodology (Exhibit B). If CONTRACTOR proposes to use other financial mechanisms for providing the Operator Liability required pursuant to State and Federal laws and regulations, such financial mechanism shall be subject to approval by the AGENCY. Any violation of this Paragraph shall constitute a major breach.

SECTION 11. FACILITIES

11.1 Acquisition. As reasonably required by AGENCY, CONTRACTOR agrees to acquire and maintain in good repair all FACILITIES, vehicles, LANDFILL scales, and all other equipment necessary to meet its obligations herein, including, but not limited to, administrative offices, as well as buildings and other improvements for storage and maintenance of vehicles and equipment, for the DIVERSION of SOLID WASTE, including yard waste, and for the transfer of WASTE and/or DIVERTIBLE MATERIALS if necessary. CONTRACTOR agrees to promptly remove or have removed any liens or encumbrances that, because of any act or default of CONTRACTOR, its officers, employees, or agents, or of CONTRACTOR's subcontractors or sub-subcontractors, or material suppliers, or equipment owners are filed against the LANDFILL or other FACILITY. CONTRACTOR reserves the right to contest liens prior to their payment. Any violation of this Paragraph shall constitute a major breach.

11.2 Use. The FACILITIES may be used for activities unrelated to this AGREEMENT including, but not limited to, other contracts or franchises with other governmental agencies, private agencies, other businesses related to the SOLID WASTE business and businesses unrelated to the SOLID WASTE business, provided that such other uses do not prevent, hamper or delay uses reasonably necessary for performance by CONTRACTOR of its obligations under the AGREEMENT. Any violation of this Paragraph shall constitute a major breach.

SECTION 12. QUALITY OF PERFORMANCE

12.1 CONTRACTOR shall coordinate and schedule in an orderly manner and manage all work done by CONTRACTOR's officers, employees, subcontractors. CONTRACTOR and subcontractors shall perform every act or service under this AGREEMENT in a skillful and competent manner in accordance with the standards of the SOLID WASTE HANDLING SERVICES industries. All workers and subcontractors shall be skilled in their trades. All operators shall be licensed or otherwise qualified as required by law. Any violation of this Paragraph shall constitute a minor breach, unless the violation results in personal injury or property damage, or a significant threat of the same, in which case the violation may constitute a major breach.

SECTION 13. CONTRACTOR REPRESENTATIONS AND WARRANTIES

13.1 CONTRACTOR makes the following representations and warranties to and for the benefit of AGENCY:

(a) CONTRACTOR is duly organized and validly existing as a corporation in good standing under the laws of the State of California and is duly qualified to do business in the State of California.

(b) CONTRACTOR has full legal right, power and authority to execute and deliver, and perform its obligations under this AGREEMENT, and has duly authorized the execution and delivery of this AGREEMENT. This AGREEMENT has been duly executed and delivered by CONTRACTOR and constitutes a legal, valid and binding obligation of CONTRACTOR enforceable against CONTRACTOR in accordance with its terms.

(c) Neither the execution or delivery by CONTRACTOR of this AGREEMENT, the performance by CONTRACTOR of its obligations hereunder, nor the fulfillment by CONTRACTOR of the terms and conditions hereof:

(i) conflicts with, violates or results in a breach of any applicable law; or

(ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or to the best of CONTRACTOR's knowledge, any agreement or instrument, to which CONTRACTOR is a party or by which CONTRACTOR or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with, any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this AGREEMENT by CONTRACTOR, except such as has been duly obtained or made or such as CONTRACTOR has given AGENCY adequate assurance will be obtained or made before the commencement of services by CONTRACTOR under this AGREEMENT.

(e) Except as herein stated, CONTRACTOR holds, or is expressly licensed to use, all patents, rights, licenses, and franchises necessary or appropriate to operate and maintain all FACILITIES and vehicles pursuant to and in accordance with the terms of the AGREEMENT.

(f) A misrepresentation or breach under this Section shall constitute a minor breach, unless expressly designated by this AGREEMENT as a major breach.

SECTION 14. PERMITS, LICENSES, ETC.

14.1 CONTRACTOR shall obtain, maintain and pay for, at CONTRACTOR's sole expense, all permits, licenses and approvals required by federal and state law for its operations and activities under this AGREEMENT. CONTRACTOR shall file with AGENCY a list of all such permits, licenses and approvals designating the issuing agency, the dates of issuance, the expiration of those permits, and shall file a copy of all current permits. CONTRACTOR shall be solely liable for all fines or civil penalties that may be imposed by any regulatory agency for CONTRACTOR-caused violations of permits, laws, or regulations; AGENCY shall not be liable for and shall not reimburse CONTRACTOR for payment of those fines or civil penalties. CONTRACTOR reserves the right to contest any fine in an administrative proceeding or in court prior to its payment. Any violation of this Section shall constitute a major breach.

SECTION 15. INSURANCE

15.1 Insurance. CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this AGREEMENT the following insurance coverage:

(a) Workers' Compensation insurance. CONTRACTOR shall provide, to the extent required by law, workers' compensation insurance in the performance of any of CONTRACTOR's duties under this AGREEMENT; including but not limited to, workers' compensation and disability, and shall provide AGENCY with certification of all such coverages upon request by AGENCY.

(b) General Liability insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this AGREEMENT commercial or comprehensive general liability insurance policy (bodily injury and property damage) of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence, issued by a company duly and legally licensed to transact business in the State of California, covering liability for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this AGREEMENT.

(c) Comprehensive Motor Vehicle Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this AGREEMENT, a motor vehicle liability insurance policy (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than Two Million Dollars ($2,000,000) combined single limit per occurrence.

(d) Insurance Required by Statutes or Regulations. CONTRACTOR shall also obtain and maintain in full force and effect during all periods required by statutes or regulations any insurance coverage required by federal or state laws or regulations or as a condition of any local land use permits, which may include but is not limited to, environmental liability/operator insurance required of the operator of a landfill.

(e) All insurance coverages referenced above in (b), (c) and (d) above shall be evidenced by a Certificate of Coverage which shall be filed with the MANAGER of AGENCY prior to commencement of performance of any of CONTRACTOR's duties, shall name AGENCY, its officers, employees, and agents as additional insureds, shall be kept current during the term of this AGREEMENT; shall provide that AGENCY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other

termination, or material change; shall provide that the insurance provided is primary coverage to AGENCY with respect to any insurance or self-insurance programs maintained by AGENCY; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability. Upon request of AGENCY, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies.

(f) Any deductibles or self-insured retentions shall be declared to, and be approved by, AGENCY. At the option of AGENCY, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects AGENCY, its officers, employees and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

SECTION 16. RECORDS AND REPORTS

16.1 Accurate and Accessible Records. CONTRACTOR shall keep accurate records of all transactions connected with this AGREEMENT including, but not limited to, all correspondence and invoices, transaction tickets, or receipts issued at all FACILITIES. CONTRACTOR shall at all times maintain an accounting system acceptable to AGENCY's Auditor-Controller that uses generally accepted accounting principles for all services rendered and materials supplied, including additional and deleted work, in connection with this AGREEMENT. The records of CONTRACTOR will be open to inspection at any reasonable times by a representative to be designated by AGENCY. Persistent and/or multiple violations of this Paragraph shall constitute a major breach.

16.2 Monthly Reports. CONTRACTOR shall provide to AGENCY, in a manner and format mutually agreed upon by AGENCY and the CONTRACTOR, a report for the preceding reporting period summarizing routine and extraordinary activities during the prior reporting period, including information necessary to evaluate program effectiveness and comply with solid waste plans, laws and regulations, and plans and schedules for future activities. It is the intent of the AGENCY that the CONTRACTOR shall be responsible for collecting and complying data pursuant to solid waste planning requirements and that such activities shall be included in the Rate Methodology set forth in Exhibit B. Any violation of this Paragraph shall constitute a minor breach.

SECTION 17. THE ACT

17.1 Compliance. The ACT requires that the MEMBERS or AGENCY adopt a SRRE, which will identify how the MEMBERS or AGENCY will reduce landfill disposal by source reduction, recycling, and/or composting. CONTRACTOR agrees to satisfactorily carry out its responsibilities stated in the SRRE and HHWE as identified in those documents, or as modified by the AGENCY. Further, CONTRACTOR agrees to use its best efforts to meet or exceed the ACT's requirements or such modified requirements as may be promulgated by the State of California in the future. CONTRACTOR shall submit a plan for complying with the implementation of the SRRE and HHWE. Any violation of this Section shall constitute a major breach.

SECTION 18. SOLID WASTE HANDLING SERVICES

18.1 Disposal. All WASTE which is not diverted shall be removed and deposited at the LANDFILL. CONTRACTOR shall have the right to salvage materials prior to disposal, pursuant to the limitations of its solid waste facility permit. These salvaged materials then become DIVERTIBLE MATERIALS.

18.2 Billing. CONTRACTOR shall conduct all billings for the SOLID WASTE HANDLING SERVICES authorized under this AGREEMENT in a uniform and regular manner.

18.3 LANDFILL Operations. In conducting the disposal operations at the LANDFILL, CONTRACTOR will apply modern standards of WASTE disposal practices. All WASTE shall be disposed of at the LANDFILL or such other landfill or transfer facility that is designated by AGENCY as the appropriate disposal site.

18.4 LANDFILL Hours. CONTRACTOR will operate said LANDFILL in such a fashion as to permit public access and use six (6) days per week, Tuesdays through Sundays, weekly, and to be closed on Mondays and the following holidays: New Years Day, Memorial Day, Fourth of July, Thanksgiving and Christmas.

18.5 LANDFILL Collection Center. CONTRACTOR shall provide a collection center for both buy-back and drop-off of listed DIVERTIBLE MATERIALS, as defined in the separate franchise agreement with Upper Valley Disposal Service (Authority Agreement #95-08), as that list may be amended, and for the following additional materials:

(a) Motor Oil;
(b) Latex Paint;
(c) Antifreeze (when permitted); and
(d) Automobile Batteries.

All of these materials shall be accepted at LANDFILL without charge from households, or as reflected in the current rates listed in Exhibit C. AGENCY may add or delete materials upon notification by the AGENCY. Hours of operation shall be Tuesday through Sunday 9:00 a.m. to 3:30 p.m. These materials shall be treated and reported in the manner pursuant to Authority Agreement #95-08 with Upper Valley Disposal Service.

18.6 Household Hazardous Waste. CONTRACTOR shall cooperate with AGENCY and MEMBERS in the conduct of hazardous waste collection days and related Public Awareness programs.

18.7 Special Handling Materials. CONTRACTOR shall accept materials at the LANDFILL which require special handling, such as tires and white metals, at rates established by the AGENCY which reflect the additional costs associated with handling those materials.

18.8 WASTE Disposal. WASTE may be disposed at sites other than the LANDFILL only upon the written agreement of the AGENCY and the CONTRACTOR.

18.9 Violations. Any violation of this Section shall constitute a minor breach.

CFL-FINAL
8-31-95

EXHIBIT B TO
AGENCY AGREEMENT #95-06
CLOVER FLAT LANDFILL RATE METHODOLOGY

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CLOVER FLAT LANDFILL RATE METHODOLOGY

I. INTRODUCTION

The Rate Methodology contained herein is intended to provide a consistent framework for establishing the Rates to the Franchisee, the Clover Flat Landfill (the "CONTRACTOR") by the Rate Setting Agency, the Upper Valley Waste Management Agency (the "AGENCY"). The methodology has been designed to accomplish several goals:

- To provide a fair and reasonable return to the CONTRACTOR.
- To minimize the regulation and calculations for the Rate Setting Agency.
- To provide incentives for the CONTRACTOR to reduce its expenses.
- To allow the Clover Flat Landfill users to benefit from reductions in expenses.

To accomplish these goals, the AGENCY, and the CONTRACTOR have agreed on a methodology which incorporates the use of a "band" of allowable Operating Ratios which will govern the return to the CONTRACTOR. This methodology has been developed in consultation with the members of the AGENCY, recognizing the importance of Landfill Rates at Clover Flat Landfill on the overall costs of waste management for the ratepayers within the AGENCY's MEMBER Jurisdictions.

The Operating Ratio Band is the range of Operating Ratios bounded by the Minimum and Maximum Operating Ratios as determined by the AGENCY and the CONTRACTOR with the adoption of this methodology. The Operating Ratios within the band determine the range of percentages which, when divided into the Allowable Expenses, will yield the amount retained by CONTRACTOR as Net Revenue.

$$\text{Net Revenue} = \frac{\text{Allowable Expenses}}{\text{Maximum Operating Ratio}} \text{ to } \frac{\text{Allowable Expenses}}{\text{Minimum Operating Ratio}}$$

The methodology assumes that the Base Year Rate will be set and then be subject only to minor adjustments for a predetermined period of time (the Operating Period). Net Revenues are initially calculated by applying the Minimum Operating Ratio (the largest numerical percentage) to Allowable Expenses.

Once the Operating Ratio Band methodology has been adopted and the Rate has been established, the Rate will be subject only to Index Adjustment increases for a period of three (3) years (except as provided for under Emergency Relief). Important considerations in determining the length of the Operating Period include:

a. The time frame between adjustments must be long enough, under the Operating Ratio Band methodology, to provide CONTRACTOR adequate opportunity to reduce expenses and to provide them with a sufficient incentive (through a period of recouping these cost savings) to take advantage of the opportunity.

b. The period between Rate adjustments must be short enough to allow the AGENCY to capture a portion of the savings derived from CONTRACTOR's cost reduction incentives and pass these savings on to the Clover Flat Landfill users through Base Year Rate revisions.

II. RATE SETTING PROCESS

1. Periods for which Rates are set (Operating Period)

Rates will be set for a period of three (3) years commencing January 1 of the first Rate Year. During this period, the Rate will only be adjusted to reflect increases in the costs of inputs, materials or services faced by CONTRACTOR, as defined later in this methodology under "Index".

2. Dates for Rate Applications and Rate Setting

Rate applications will be submitted April 1 of the final Rate Year of each Operating Period. Applications will be submitted irrespective of whether a Rate revision is requested. An application submitted must include, but is not limited to the following:

a. Audited financial statements prepared in accordance with Generally Accepted Accounting Principles for CONTRACTOR for the prior Operating Period, with actual financial data reflecting performance up to the month ended no more than thirty (30) days prior to the date of application.

b. Supporting documentation, including an audited schedule, for transactions with affiliated companies.

c. Supporting documentation (invoices) for purchases of fixed assets.

d. Supporting documentation for other adjustments to income or expense.

e. A list of all assets owned by CONTRACTOR and all assets leased or rented to CONTRACTOR by related parties, for which depreciation is claimed as an expense of operations in the Rate proposal. This list is to include asset descriptions, costs, dates of acquisitions, and current depreciation.

f. A forecast of the next Operating Period's financials.

g. Any other information required by staff for the review of the application and its supporting documentation.

Once a complete application has been submitted by CONTRACTOR, the AGENCY will begin the review process, request clarifications and any additional information, and the AGENCY will calculate the Base Year Rate. If clarifications and responses for additional information are not completed in a timely manner, the effective dates for setting the Rate may change. Any delays in the effective dates of the Rates will be applied to the Revenue Surplus/Deficiency Account. The Rate will be subject to regular annual adjustment during the Operating Period to appropriately compensate CONTRACTOR for the escalation of certain expenses associated with the service provided, as described herein relative to the Index Adjustment Factor and the Landfill Adjustment Factor.

It is not the intent of the AGENCY to include all types of expenses as recoverable through Rates. Increases in expenses due to CONTRACTOR inefficiencies should not be borne by the ratepayers.

3. One Year Methodology Review

After the first anniversary of the adoption of the Rate Methodology, CONTRACTOR and the AGENCY will jointly conduct a review of the methodology and its effects on the CONTRACTOR's revenues. The scope of this review will be jointly determined by the AGENCY and CONTRACTOR prior to its inception. One focus of this review will be to ensure that the adoption of the methodology has not had significant negative effects or excessive increases on the revenue received by CONTRACTOR. The AGENCY and CONTRACTOR agree that if the methodology has had unanticipated revenue consequences, a list of recommendations will be prepared which will address these consequences without triggering the resetting provisions detailed under the provisions for Emergency Relief (Section II. 4.).

4. Emergency Relief

The Rate will be subject to regular annual adjustment during the Operating Period to appropriately compensate CONTRACTOR for the escalation of certain expenses associated with the service provided, as described herein relative to the Index Adjustment Factor and the Landfill Adjustment Factor. In addition, CONTRACTOR may appeal for an emergency Rate increase to cover unanticipated and non-controllable expense increases. Such an application will end the then current Operating Period at the effective date of any emergency Rate increase and new Rates will be established following the normal procedures for setting Rates at the beginning of an Operating Period.

5. Adjustments to Rate Setting Process

If either the AGENCY or CONTRACTOR wishes to propose adjustments to the Rate setting process once the methodology has been adopted, a written proposal of these amendments shall be submitted by the party desiring the changes and distributed to all interested parties. Both parties will review the proposed adjustments in a timely manner and notify the other party as to their decision of whether to adopt or not adopt the amendment to the Rate Methodology. The adoption process will follow that of the original Rate Methodology adoption process.

6. Anticipated Development Expenses and Financial Assurances

For each Operating Period, CONTRACTOR will prepare and submit a three year capital budget which forecasts expenses greater than five thousand dollars ($5,000.00) related to development, expansion, other capital improvements at the LANDFILL, or funding for financial assurance. Once these expenses have been identified, a funding mechanism for each will be established. Annual budgets will capture expenses associated with the selected mechanism and will include either 1) pay-as-you-go expenses, 2) pre-funding deposits to be held in Third Party Trust Funds as collected through tipping fees, or 3) debt service on borrowed funds.

All reasonable means must be employed to anticipate these capital costs in order to mitigate Rate shock. Anticipated expenses would begin to be captured through Rates several years in advance of their actual incurrance. When future expenses are pre-funded with current tipping fees, all such funds shall be deposited as collected monthly into Third Party Trust Funds, in a manner acceptable to the AGENCY Auditor.

These cost estimates must be substantiated by formal analysis of the project, either by an outside consultant approved by the AGENCY or by employees of CONTRACTOR, as reviewed by the AGENCY. The term of the amortization of these expenses will be determined on a case by case basis, depending on the size and nature of each expense.

Any change in the use of funds must be pre-approved by the AGENCY. To allow for delays in actual expenses and the approval of the expense by the AGENCY, half of the depreciation expense will be allowed for use in the first Rate Year the expense is anticipated in, with the full expense being allowed in the following Rate Years.

III. DEFINITIONS

In addition to the Definitions stated in Exhibit A of this AGREEMENT, Section 1, the following definitions, that have the first letter capitalized in this Exhibit B, have the following meanings:

Allowable Expenses: all expenses found to be reasonable and necessary in providing quality service to the LANDFILL users represented by the AGENCY and over which CONTRACTOR has a strong degree of control and over which CONTRACTOR will receive an Operating Ratio. Allowable Expenses also include certain expenses which have been previously included for the purposes of recovering an Operating Ratio but which are capped (and for which additional expenses will be treated as Recoverable Expenses). Interest expense (other than that provided for herein), Federal or State income taxes, contributions, entertainment and promotional expenses are explicitly excluded from Allowable Expenses. The Allowable Expenses will include:

a. Wages and Related Benefits: salaries and benefits (including AGENCY approved "profit sharing" retirement plans) as paid to employees of CONTRACTOR and payroll taxes paid on such. Benefits include fees associated with group insurance. Officers salaries and benefits may not exceed Fiscal Year 1994-95 levels, except for those amounts which are subject to Index increases which are Allowable.

b. Repair and Maintenance Expenses: all expenses related to the maintenance of the site or equipment owned by CONTRACTOR and which is used to provide LANDFILL service.

c. Depreciation on CONTRACTOR Owned Assets: expenses related to depreciation of all owned assets of CONTRACTOR as calculated, using an actual or historical cost, on a straight-line depreciation basis. Vehicles shall be determined to have a useful life of five (5) years for depreciation purposes. All

other assets owned by CONTRACTOR, excluding structures and leasehold improvements, shall have their useful life determined upon purchase or renovation, in accordance with generally accepted accounting principles. Structures and leasehold improvements shall be determined to have a useful life of thirty (30) years.

d. Administrative Expenses: all expenses related to the office operations and administration of CONTRACTOR including those expenses attributable to supplies, postage, office equipment maintenance, and other miscellaneous administrative expenses not covered in other categories. Administrative services provided to affiliates of CONTRACTOR must be documented and reimbursed by those affiliates.

e. Leases

i. Third Party Leases - All third-party leases (including real and personal property) are Allowable Expenses. Lease payments will be considered reasonable only if the monthly lease payment is less than or equal to the sum of the straight line depreciation plus the interest payment that would have been made had the asset been purchased rather than leased. The interest payment will be determined by amortizing the fair market value of the asset on the date of the purchase over the asset's potential depreciable life using an interest rate that does not exceed the current Fiscal Year's July prime rate plus one percent (1%).

ii. Intercompany Leases - Intercompany leases for real property entered into prior to the adoption of this methodology are Allowable, but escalation will be limited to current market value at the time of a Rate application. Proposed increases in the amount for current intercompany leases to adjust for changes in fair market value will be reviewed at the time of any Rate application for an Operating Period and will be subject to substantiation. (See Recoverable Expenses for leases entered into after the adoption of this methodology)

f. Consultant Expenses: expenses for consultant services including legal, accounting and other professional services up to seventy five thousand dollars ($75,000.00) (and not to exceed $15,000 for legal expenses, $50,000 for engineering services or $35,000 for accounting services).

g. Site Closure, Post-closure and Engineering Expenses: expenses for closure, post-closure or engineering services ("CPE Expenses") performed by employees of CONTRACTOR are Allowable Expenses for application of the Operating Ratio, as described herein. Services which are performed by outside

consultants or contractors will be considered Recoverable Expenses. For development and closure costs, CONTRACTOR will receive the Operating Ratio (on services performed by CONTRACTOR employees). The Operating Ratio will be recognized at the time that the money is collected through Rates for pre-funding of development or closure, or for the payment of debt service. For post-closure costs, the amount generated by the Operating Ratio will be placed in the post-closure care third party trust fund and will be released concurrent with expenditures from such fund (if CONTRACTOR continues to be the owner of the Landfill; otherwise monies will be released to the AGENCY). The funds established for the pre-funding of CPE Expenses will be set up as Third Party Trust Funds, and are defined further herein. The interest component of any debt service associated with CPE Expenses will be treated as a Recoverable Expense and will not be eligible for application of the Operating Ratio.

h. Operational Fees: includes all necessary licenses, permits and fees not specifically defined as "Recoverable Expenses".

i. Other Operating Expenses: All other operating expenses, including such items as gas, diesel, and oil. Repair and Maintenance Items shall be listed separately and are Allowable Expenses.

j. Insurance Expenses: All insurance expenses, including liability , worker's compensation, vehicle, and umbrella liability insurance (excluding the expenses of all insurance and benefits related to stockholders.

k. Hazardous Waste Clean-up and Extraordinary Expenses: Clean-up costs associated with hazardous wastes, household hazardous waste programs, or other extraordinary expenses imposed on CONTRACTOR by the AGENCY. All such expenses shall be deemed "Allowable" only at such point the expense become excessive, and is subject to review and approval by the AGENCY.

l. Allowance for Interest Expense (Income) on Cost Deficiency (Over Collection): This annual allowance shall equal the annual average balance of the Revenue Deficiency/Surplus amount outside of the Operating Ratio Band at the interest rate equal to the Napa County Treasurer's annual average rate of return for the respective Rate Years.

Base Year: the first year of an Operating Period and for which the Base Year Rate is set.

Base Year Rates: average Rates for service which are calculated according to the methodology set forth herein for the first Rate Year of each Operating Period.

County: the County of Napa.

Expected Waste Flow: the tonnages anticipated to be accepted by CONTRACTOR as of the date of a Rate application or of the calculation of Rates which shall be charged during the next Rate Year.

Index: the factor by which Recoverable Expenses and Allowable Expenses are adjusted to address increasing costs of inputs. The Index is defined as 75% of the April Consumer Price Index (CPI, the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers, as reported for April of each given year), not to exceed 8% in any given Rate Year (and therefore Index not to exceed 6% per year, or 75% of 8%).

Indexed Year: any year which is not the Base Year within the Operating Period.

Maximum Operating Ratio: the maximum percentage (the smallest numerical value) of Allowable Expenses CONTRACTOR may recover as Net Revenues. The Maximum Operating Ratio is eighty four percent (84%) of Allowable Expenses.

Minimum Operating Ratio: the minimum percentage (the largest numerical value) of Allowable Expenses CONTRACTOR may recover as Net Revenues. The Minimum Operating Ratio is used to determine the initial Rate at the commencement of the Operating Period, once actual financial data has been evaluated. The Minimum Operating Ratio is eighty nine percent (89%) of Allowable Expenses.

Net Revenues: the difference between Total Revenues and Allowable plus Recoverable Expenses.

Net Revenue Deficiency/Surplus: the sum of all prior annually calculated Net Revenue Deficiencies/Surpluses not yet accounted for in the prior Operating Period Base Year Rate reset calculation. The calculation will include all but the final Rate Year of the current Operating Period plus the final Rate Year of the prior Operating Period.

Non-Recoverable Expenses: all expenses which are neither Allowable Expenses nor Recoverable Expenses, including, but not limited to, intercompany leases for personal property, officers salaries and benefits in excess of Fiscal Year 1994-95 levels (except those amounts subject to Index increases which are Allowable), dues and subscriptions, fines and penalties, and donations. Expenses and revenues associated with services provided for non-MEMBER Customers or non-uniform MEMBER services must be accounted for separately. If similar resources (i.e. personnel, vehicles, etc.) are used for MEMBERS services and non-MEMBER services, accurate estimates of the percentage use of all of those resources must be developed by CONTRACTOR and approved by the AGENCY.

Operating Period: the period of time between Rate adjustments (currently three years).

Operating Ratios: the ratios of Allowable Expenses divided by Net Revenues (based on Allowable Expenses).

Operating Ratio Band: the band bounded by the Maximum and Minimum Operating Ratios used to calculate Net Revenues. At the commencement of the Operating Period the Base Year Rate will be set so as to minimize Net Revenues (the higher numerical percentage of the Operating Ratio Band) and during the Operating Period CONTRACTOR may operate so as to minimize Allowable Expenses and thus maximize Net Revenues (at any level within the Operating Ratio band, down to and including the Maximum Operating Band).

Rate: Rate for service which is calculated according to the methodology set forth herein for each Rate Year of the Operating Period.

Rate Methodology: the method and steps set forth in this document which shall be used to govern the calculation of solid waste disposal Rates by the AGENCY.

Rate Year: a one year period beginning July 1 and ending the subsequent June 31.

Recoverable Expenses: expenses which may be reimbursed to CONTRACTOR but upon which CONTRACTOR will not receive an Operating Ratio. These may include:

a. Consultant Services: consultant services in excess of seventy five thousand dollars ($75,000.00) per annum, as adjusted by the Index. No legal or accounting expenses in excess of the amount treated as Allowable Expenses will be Recoverable Expenses.

b. Federal and California State Taxes, Assurances and Fees: All such taxes, assurances and fees including such items as State Superfund Requirements, State Department Requirements for financial assurances and financial liability claims.

c. County Taxes and Fees: All such taxes and fees including County environmental fees.

d. Real Property Intercompany Leases: entered into after the adoption of this methodology will be Recoverable Expenses subject to demonstration of fair market value rent. Lease payments will be considered reasonable only if the monthly lease payment is less than the sum of the straight line depreciation plus the interest payment that would have been made had the asset been purchased rather than leased. The interest payment will be determined by

amortizing the fair market value of the asset on the date of the purchase over the asset's potential depreciable life using an interest rate that does not exceed the current prime rate plus one percent (1%).

e. Bad Debts

f. Principal and Interest of all Debt Service (other than that provided for by Allowable Expenses)

g. Site Closure, Post-closure and Engineering Expenses (performed by outside consultants or contractors): expenses for closure, post-closure or engineering services ("CPE Expenses") performed by outside consultants or contractors will be considered Recoverable Expenses, above those amounts listed as Allowable Expenses for Consultant Expenses.

h. Surety Bonds

Revenue Deficiency: any shortfall which exists in a given Rate Year between the actual Total Revenues received by CONTRACTOR for services provided in such Rate Year and the Total Revenues required to compensate CONTRACTOR for Recoverable Expenses, Allowable Expenses and Net Revenues (calculated at the Minimum Operating Ratio).

Revenue Surplus: any surplus which exists in a given Rate Year between the actual Total Revenues received by CONTRACTOR for services provided in such Rate Year and the Total Revenues required to compensate CONTRACTOR for Recoverable Expenses, Allowable Expenses and Net Revenues (calculated at the Maximum Operating Ratio).

Total Rate Revenues: all revenues recognized from the Rate charged for incoming waste during one Rate Year.

Total Revenues: all revenues recognized by CONTRACTOR during one Rate Year, including, but not limited to, those revenues derived from Rates, insurance refunds or dividends, sales of fixed assets, service charges assessed on delinquent accounts, diverted materials sale and all other revenues related to CONTRACTOR's operating activities (including intercompany revenues).

Third Party Trust Funds: those funds established and held by the AGENCY to be used for such expenses as the development of LANDFILL capacity, and for the payment of closure and post-closure care expenses. Interest earned of these funds will be released to CONTRACTOR on an annual basis and will be counted in Total Revenue for the purposes of calculating Rates in subsequent years. These funds will not be included in the calculations of the Revenue Deficiency or Revenue Surplus accounts.

IV. RATE SETTING IMPLEMENTATION AND GUIDELINES

Initial Rate Calculation Steps

1. Once the Rate Methodology has been adopted, CONTRACTOR will submit the most current actual audited financial statements available for CONTRACTOR for at least the prior three fiscal years and actual financial data reflecting performance up to a month ended no more than thirty (30) days prior to the date of application. CONTRACTOR will also submit a plan which incorporates calculations for amounts needed to be collected over the Operating Period for the pre-funding of closure and post-closure, cost studies of anticipated expansion, development or improvement plans to be amortized over the Operating Period and the amount of debt service (principal and interest) which will be incurred during the Operating Period.

2. Values for Recoverable Expenses and Allowable Expenses will be calculated by summing their components as identified in Section III. DEFINITIONS. If similar resources (i.e. personnel, vehicles, etc.) are used for MEMBER services and non-MEMBER services, accurate estimates of the percentage use of all of those resources must be developed by CONTRACTOR and approved by the AGENCY.

3. Recoverable Expenses and Allowable Expenses (other than CPE Expenses) from the most current financial statements will be indexed to adjust for the lag between the time of the financial audit and the projected Rate Year. The Index, as defined in Section III. DEFINITIONS, will be the factor used to adjust these expenses for the last two years of the Operating Period.

4. Once the Index has been applied, Base Year Rate values will be calculated for both Recoverable Expenses (including the recoverable portion of CPE Expenses) and Allowable Expenses.

5. Net Revenues will be calculated by dividing the Minimum Operating Ratio into the Base Year Rate Allowable Expenses (including the allowable portion of CPE Expenses) and then subtracting the Base Year Allowable Expenses.

6. Base Year Rate will be calculated by allocating the Total Revenue requirements (Allowable Expenses, Recoverable Expenses and Net Revenue) across the Expected Waste Flow.

Indexed Year Rate Calculation Steps

1. The Index, as defined in Section III. DEFINITIONS, will be the factor used to adjust these expenses for the last two years of the Operating Period. Rates will be adjusted from prior year Rates according to the following formula:

((Total Revenue requirements for Year 1	- Capped) Expenses	*	(1 + Index))	+ Capped Expenses	=	Indexed Total Revenue requirements

2. The new Rate will be calculated by allocating the Indexed Total Revenue requirements across the Expected Waste Flow for the subsequent year.

Subsequent Operating Period Rate Calculation Steps

1. CONTRACTOR will submit audited financial statements for each Rate Year of the Operating Period for which statements have been completed. CONTRACTOR will also submit a plan which incorporates calculations for amounts needed to be collected over the Operating Period for the pre-funding of closure and post-closure, cost studies of anticipated expansion, development or improvement plans to be amortized over the Operating Period and the amount of debt service (principal and interest) which will be incurred during the Operating Period.

2. For each of the Rate Years in the Operating Period for which audited financial statement are available values for Recoverable Expenses and Allowable Expenses will be calculated by summing their components as identified in Section III. DEFINITIONS.

3. Net Revenues will be calculated for each of the Rate Years of the Operating Period by subtracting Allowable and Recoverable Expenses from Total Revenues.

4. Annual Net Revenues will be compared to the minimum and maximum Net Revenue allowance corresponding to the limits of the band (the Minimum and Maximum Operating Ratios). Any revenues exceeding the maximum Net Revenue allowance will be recorded as a Revenue Surplus and any shortfalls below the respective Minimum Operating Ratio Net Revenue as a Revenue Deficiency.

5. Annual Net Revenue Deficiency/Surplus results will be summed to result in the final Net Revenue Deficiency/Surplus as defined.

6. Recoverable Expenses and Allowable Expenses (other than CPE Expenses) from the most current financial statements will be indexed to adjust for the lag between the time of the financial audit and the projected Rate Year. The Index, as defined in Section III. DEFINITIONS, will be the factor used to adjust these expenses for the last two years of the Operating Period.

7. Once the Index has been applied, Rate Year values will be calculated for both Recoverable Expenses (including the recoverable portion of CPE Expenses) and Allowable Expenses.

8. Net Revenues will be calculated by dividing the Minimum Operating Ratio into the Rate Year Allowable Expenses (including the allowable portion of CPE Expense) and then subtracting the Base Year Allowable Expenses.

9. The new Rate will be calculated by allocating the Total Revenue requirements (Allowable Expenses, Recoverable Expenses and Net Revenue) across the Expected Waste Flow.

ATTACHMENT 1

TO EXHIBIT B

SAMPLE CALCULATION

CLOVER FLAT LANDFILL
RATE METHODOLOGY
Calculation of Rate

		Financial Audit Ending 1992	Year 1	Year 2	Year 3
Minimum Operating Ratio	91%				
Maximum Operating Ratio	86%				
Allowable Expenses					
Wages and Related Benefits		184,434	191,350		
Officers' Salaries		122,790	122,790		
Repair and Maintenance Expenses		38,639	38,013		
Depreciation on Owned Assets		157,838	163,446		
Administrative Expenses		58,231	60,415		
Leases		57,908	60,080		
Consultant Expenses up to $75,000		75,000	77,813		
Legal (Maximum $15,000)					
Engineering (Maximum $50,000)					
Accounting (Maximum $25,000)					
Site Closure, Post-Closure and Engineering Expenses			—		
Operational Fees		55,663	57,750		
Utilities, Gas, Oil and Diesel Expenses		4,721	4,898		
Amortization of Landfill Expansion Permit Expenses		33,043	34,282		
Workman's Compensation Insurance		1,526	1,583		
TOTAL ALLOWABLE EXPENSES		10,112	10,491		
		797,805	822,911		
Operating Ratio on Allowable Expenses					
Minimum Ratio	91%				
Recoverable Expenses		71,784	74,062		
Consultant Services					
Expenses in Excess of $75,000 (excl. legal & accng. over lmt.)					
Engineering Expenses in Excess of $50,000		0	0		
California State Taxes & Fees		87,479	90,759		
County Taxes and Fees		56,500	58,619		
Real Property Intercompany Leases		2,709	2,811		
Bad Debts		0	0		
Interest Component of Closure/Development Related Debt Service		3,806	3,949		
Site Closure, Post-Closure and Engineering Expenses (by outside consultants)					
TOTAL RECOVERABLE EXPENSES		150,494	156,138		
Total Expenses		1,019,883	1,052,110		
less: Non-Indexed Expenses (for inflation from base year)		0	0		
Total Indexed Expenses (for Years 2 and 3)			1,053,110	1,092,602	1,133,574
plus: Non-Indexed Expenses			0	0	0
Total Costs for Expenses Calculation			1,053,110	1,092,602	1,133,574
ACTUAL REVENUE COLLECTED					
Actual Net Revenue			1,075,000		
Expected Waste Flow (Tons)			95,952		
Cost Per Ton		31,380	30,300	30,300	30,300
Index Calculation		32.50	34.76	38.08	37.41
CPI - San Francisco-Oakland-San Jose Metropolitan Area					
CPI for all Urban Consumers - APRIL		5.00%			
Index - 75% of CPI		3.75%			
Minimum/Maximum Net Revenue Calculation					
Actual Net Revenue		N/A	95,952		
Minimum Calculated Net Revenue Allowance	0.91		74,062		
Maximum Calculated Net Revenue Allowance	0.86		115,207		
Difference ((deficiency)/surplus)			In Range		

Prepared by Public Financial Management, Inc.

7/12/94

CFL-FINAL
8-31-95

95-08

EXHIBIT C- September 25, 1995:

CLOVER FLAT LANDFILL

RATES

RESOLUTION NO. 95-08

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE UPPER VALLEY WASTE MANAGEMENT AGENCY, STATE OF CALIFORNIA ADJUSTING RATES FOR THE OPERATION OF THE CLOVER FLAT LANDFILL

WHEREAS, on September 25, 1995 the Upper Valley Waste Management Agency (the "AGENCY") entered into a certain Franchise Agreement with Clover Flat Landfill; and

WHEREAS, pursuant to AGENCY Agreement #95-06 with Clover Flat Landfill, the Clover Flat Landfill is preparing a rate application, and until such application is reviewed, the AGENCY must establish rates to be charged at the Clover Flat Landfill; and

WHEREAS, on March 21, 1995, the Board of Supervisors of Napa County revised the rates at the Clover Flat Landfill as stated below and the AGENCY desires to continue such rates ("interim fees") in effect until a rate application prepared under the AGENCY's new rate methodology can be processed and approved; and

WHEREAS, at least ten days prior to the date this resolution is to be considered, data was made available to the public indicating the amount of the interim fees, or estimated fees, required to provide the service for which the fee or service charge is levied; and

WHEREAS, at least fourteen days prior to the date this resolution is to be considered, notice was mailed to those persons who had requested same; and

WHEREAS, notice of the hearing on the proposed interim fees was published twice in the manner set forth in section 6062a of the Government Code.

NOW, THEREFORE BE IT RESOLVED, that the Board of Directors of the Upper Valley Waste Management Agency hereby adopts the following interim fees to be effective on the effective date of AGENCY Agreement #95-08 and to continue in effect until approval by the AGENCY of rates pursuant to Exhibit "B" of AGENCY AGREEMENT #95-06:

(a) Vehicles with a container or trailer size of 15 cubic yards and greater, or compacted material will be charged by the ton $35.00/ton

(b) Vehicles with a container or trailer size of less than 15 cubic yards, and uncompacted materials will be charged by the cubic yard and with a minimum rate of.....$8.00/cu.yd.

(c) Tires

Inside diameter less than 16 inches.....$4.00 per tire
Inside diameter more than 16 but less than 22 inches.....$12.00 per tire
Inside diameter more than 22 inches, then the rate is based on the outside diameter..... $5.65 per foot
Additional fee for tires on rims..$2.00 per tire

(d) Trees, Timbers, Stumps, Concrete:

3 to 5 inches in diameter.....$7.15 per cu. yd.
6 to 8 inches in diameter.....$12.00 per cu. yd.
More than 8 inches in diameter..$37.50 per cu. yd.
Any timber more than 10 feet in length.....1.50 per lin. ft.

(e) Sludge.....Not Applicable

(f) Special Handling of Materials.....$30.00 surcharge (Burying immediately, etc.)

(g) Off Loading of non-hazardous material

Assistance in unloading by landfill personnel.....$65.00 per hour
Minimum.....$25.00

(h) Recyclable Household Hazardous Waste.....No fee (Motor oil, latex paint, automobile batteries dropped off at the landfill site)

(i) Manufactured goods, such as appliances with certified removal of CFCs, bed springs, water heaters or assorted large furniture or furnishing items will be charged per item.....$10.00 per item

(j) Manufactured goods without a certification of removal of the CFCs.....$25.00 per item

(k) Any contractor or individual delivering non-friable asbestos material.....$25.00 per cu. yd.

(l) Upon approval of the County, the Operator may charge variable rates on a case by case basis for specific materials, such a clean soils, based on criteria determined by the County.

BE IT FURTHER RESOLVED that the above interim fees include the current sixty cents per ton landfill inspection fee, the thirty one cents per ton monthly household hazardous waste fee, and a one dollar and seventy five cents per ton monthly Upper Valley Waste Management Agency fee.

BE IT FURTHER RESOLVED that the Board finds this resolution is categorically exempt from the California Environmental Quality Act pursuant to Title 14, California Code of Regulations, section 15273(a)(1) and (2) as fees or rates reasonably necessary to pay for the cost of providing existing services.

The foregoing resolution was duly adopted at a regular meeting of said Board of Directors of the Upper Valley Waste Management Agency, State of California, held on the 25th day of September, 1995 by the following vote:

ATTEST:

Jill Pahl
Clerk of the Board

AYES: Varrelman, Negri
Card, Ovarzo, Jefferson

NOES: None

ABSENT: None

APPROVED AS TO FORM:

Marian Woodbury
Office of the Legal Counsel