UPPER VALLEY WASTE MANAGEMENT AGENCY SIXTH AMENDMENT TO AGREEMENT #95-09

UPPER VALLEY DISPOSAL SERVICE SOLID WASTE HANDLING FRANCHISE AGREEMENT

THIS SIXTH AMENDMENT TO AGENCY AGREEMENT #95-09 is made and entered into this 17 day of Dec, 2012 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 UPPER VALLEY DISPOSAL SERVICE, a California corporation, hereinafter referred to as "CONTRACTOR".

WHEREAS, the AGENCY acts as a consolidated franchisor for solid waste handling services throughout the SERVICE AREA and sets rates for those solid waste handling services; and

WHEREAS, AGENCY and CONTRACTOR originally entered into Agreement #95-09 on September 25, 1995 for Solid Waste Handling Services throughout the AGENCY Service Area; and

WHEREAS, Agreement #95-09 was previously amended five times with respect to the rate setting methodology, term of contract, implementation of a C&D recycling program, and actual rates imposed; and

WHEREAS, AGENCY and CONTRACTOR now desire to amend AGENCY Agreement #95-09 for a sixth time to provide changes to rate methodology regarding fuel pricing and regarding franchise services provided to each MEMBER; 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 AGREEMENT #95-09 is hereby amended for a sixth time to read in full as set forth in Exhibits A through C, as attached hereto.

3. This sixth Amendment to AGENCY AGREEMENT #95-09 shall be effective as

of Board approval.

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

UPPER VALLEY WASTE MANAGEMENT AGENCY

BY: _____
MARK LUCE, Chair of the Board of Directors of the Upper Valley Waste Management Agency

"AGENCY"

BY: _____
ATTEST:
STEVEN LEDERER, Agency Manager

UPPER VALLEY DISPOSAL SERVICE

BY: _____
Title:

BY: _____
Title:

"CONTRACTOR"

BY: _____
APPROVED AS TO FORM:
ROB PAUL, Agency Legal Counsel

EXHIBIT A
TO SIXTH AMENDMENT TO
AGENCY AGREEMENT #95- 09

UPPER VALLEY WASTE MANAGEMENT AGENCY
SOLID WASTE HANDLING FRANCHISE AGREEMENT
FOR
UPPER VALLEY DISPOSAL SERVICE

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UPPER VALLEY WASTE MANAGEMENT AGENCY
SOLID WASTE HANDLING FRANCHISE AGREEMENT
FOR
UPPER VALLEY DISPOSAL SERVICE

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.

"AGENCY Approved CDP Depreciable Assets" means only those assets approved by the AGENCY, purchased by the CONTRACTOR and valued at up to $964,285.

"Construction and Demolition Debris Program" or "CDP" means the debris recycling program located at CFL as described in Section 18 of this agreement.

"Clover Flat Landfill" or "CFL" means generally the business and location of the landfill used by UVDS for disposal of its waste and for certain other recycling and diversion activities.

"CONTRACTOR" means Upper Valley Disposal Service, Inc.

"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, excluding the LANDFILL which is subject to a separate franchise agreement.

"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 describes new facilities and the expansion of existing facilities, which will be needed to implement a jurisdiction's SRRE.

"SERVICE AREA" means those incorporated areas of the Cities of Calistoga, St. Helena, the Town of Yountville, 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 collected 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 his/her agent or employee may provide similar services to CONTRACTOR's SOLID WASTE HANDLING SERVICES for his/her 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.

2.2 Individual MEMBER services. MEMBERS may obtain the following additional services from CONTRACTOR:

(a) Service as a consideration of granting this franchise. CONTRACTOR previously provided each MEMBER a total of seventy five thousand dollars ($75,000.00) credit for SOLID WASTE HANDLING SERVICES over the term of this AGREEMENT. CONTRACTOR hereby grants each MEMBER an additional credit of fifty thousand dollars ($50,000) for SOLID WASTE HANDLING SERVICES, which shall be added to the balance of each MEMBERS' unused portion of the initial seventy five thousand dollar ($75,000) credit. Current credit balances for each MEMBER after inclusion of the fifty thousand ($50,000) additional credit, are as follows as of December 17, 2012:

Calistoga	$ 50,000
Napa County	65,359
St. Helena	90,024
Yountville	50,000
Total	$ 255,383

Only ten thousand dollars ($10,000) of these services shall be available to each MEMBER each year, unless a larger amount is mutually agreed to by CONTRACTOR and MEMBER.

The cost to CONTRACTOR of these services will be considered Non-Recoverable

expenses for purposes of the Rate Methodology attached as Exhibit B.

(b) Additional Services. Any of the MEMBER(S) may individually or jointly enter into contracts having maximum terms of three (3) years with CONTRACTOR for SOLID WASTE HANDLING SERVICES other than those provided for in this AGREEMENT or any other contract between AGENCY and CONTRACTOR, as long as the MEMBER(S) and CONTRACTOR agree that AGENCY shall set the rates to be charged for such additional services, in order to maintain rate uniformity and consistency throughout the SERVICE AREA. The MEMBER shall initiate the rate setting process with the AGENCY, which shall be coordinated with the regular rate setting process.

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, rentals (including toter rentals) 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 September 25, 1995 and shall expire at the end of day on July 1, 2025. The AGREEMENT shall thereafter be renewed automatically for succeeding ten (10) year terms unless otherwise terminated as provided in Section 6 or unless written notice of intent not to renew is given by AGENCY to CONTRACTOR at least thirty-six (36) months prior to the next termination date.

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 its 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 an 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. A breach of this Paragraph shall constitute a major breach.

5.8 [Reserved]

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:

Upper Valley Disposal Service
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. 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 under the ACT BY THE AGENCY, business and occupation taxes and fees that arise in connection with the AGREEMENT. Nothing in this Section 5.14 shall limit the right of CONTRACTOR to adjust the amount of Intentionally Over Collected Revenues (IOCR) as provided in Section 18.3 (m) of this 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 may require immediate compliance of any problem which 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 form 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 requirement 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 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.

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. Arbitrators shall be required to have a minimum or five (5) years experience solid waste collection services and the recycling industry. 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. 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 Flow Control. All WASTE which is not diverted shall be removed and deposited at the LANDFILL pursuant to the terms of this AGREEMENT and that separate franchise agreement with Clover Flat Landfill (AGENCY Agreement #95-06). In the event that the LANDFILL is unable to accept all of part or the WASTE for reasons beyond the control of the AGENCY, AGENCY reserves the right to manage flow control of AGENCY's SOLID WASTE stream, including the right to direct deliveries to designated processing facilities, transfer stations or disposal sites, to require DIVERSION in addition to what is otherwise required by this AGREEMENT, to require waste to energy undertakings, and to require such other enterprises and undertakings as may be based upon future technologies and new concepts in the field of SOLID WASTE management, DIVERSION, energy projects, and WASTE disposal.

8.2 Regulation. AGENCY reserves its right to regulate or further regulate aspects of SOLID WASTE HANDLING SERVICES including, but not limited to, frequency of collections, means of collection and transportation, delivery point, level of service, charges and fees, nature, location and extent of providing SOLID WASTE HANDLING SERVICES.

8.3 Other Activities. CONTRACTOR reserves the right to conduct other activities at the FACILITIES 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. Political mailers and other inserts not directly associated with CONTRACTOR's duties herein shall not be included with billing statements sent to customers without AGENCY Board approval.

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. FACILITIES

10.1 Acquisition. As reasonably required by AGENCY, CONTRACTOR agrees to acquire and maintain in good repair all FACILITIES, vehicles, 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 any FACILITY. CONTRACTOR reserves the right to contest liens prior to their payment. Any violation of this Paragraph shall constitute a major breach.

10.2 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 11. QUALITY OF PERFORMANCE

11.1 CONTRACTOR shall coordinate and schedule in an orderly manner and manage all work done by CONTRACTOR's officers, employees, and 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 such violation 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 12. CONTRACTOR REPRESENTATIONS AND WARRANTIES

12.1 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) CONTRACTOR has been unable to obtain permits from the Bay Area Air Management District which may or may not be necessary for its facility on Whitehall Lane. CONTRACTOR is also in litigation over the adequacy of the Environmental Impact Report for the Whitehall Lane facility, alleged nuisances and other matters. Nothing in this litigation or the ultimate outcome shall constitute a violation of this AGREEMENT, unless it prevents CONTRACTOR from legally performing the SOLID WASTE SERVICES required by this AGREEMENT, in which case such violation may constitute a major breach.

(g) A misrepresentation or breach under this Section shall constitute a minor breach, except as stated in Subparagraph (f), or where expressly designated by this AGREEMENT as a major breach.

SECTION 13. PERMITS, LICENSES, ETC

13.1 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. CONTRACTOR's failure to obtain permits from the Bay Area Air Management District which may or may not be necessary shall not constitute a breach of this AGREEMENT. Any violation of this Section shall constitute a major breach.

SECTION 14. INSURANCE

14.1 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.

(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 15. RECORDS AND REPORTS

15.1 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 time by a representative to be designated by AGENCY. Persistent and/or multiple violations of this Paragraph shall constitute a major breach.

15.2 Route Analysis. CONTRACTOR shall conduct in a manner mutually agreed upon by AGENCY and CONTRACTOR, and submit to AGENCY in a format mutually agreed to by AGENCY and CONTRACTOR, the results of route audits for all of CONTRACTOR's routes. Any violation of this Paragraph shall constitute a minor breach.

15.3 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 compiling 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 16. THE ACT

16.1 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 Paragraph shall constitute a major breach.

16.2 Public Awareness Program. Within the first month of the effective date of this AGREEMENT, CONTRACTOR shall submit a report stating the Public Awareness efforts which have been completed within the last two years. CONTRACTOR shall annually submit, for approval by the AGENCY, a plan for a Public Awareness Program to seek and secure the mutual benefits to both parties of a successful DIVERSION program through ongoing promotion and education. Upon approval by AGENCY of such plan and the costs thereof, CONTRACTOR will engage in and coordinate with AGENCY such public awareness activities as are contained in the plan. The Public Awareness Program shall include, but is not limited to, distribution of billing inserts or flyers; distribution of posters and flyers to schools, community centers, libraries, and other public facilities; speeches and slide shows to community schools; preparation of community service announcements; and displays at community festivals located in AGENCY's SERVICE AREA. As part of each year's plan for approval, CONTRACTOR shall submit a report stating the Public Awareness activities that were completed in the prior year. Any violation of this Paragraph shall constitute a minor breach.

SECTION 17. SOLID WASTE HANDLING SERVICES

17.1 Time of Collection. CONTRACTOR shall make systematic collections in such a manner that the CUSTOMER receiving the service can predict the day on which collection will be made. All materials collected shall be collected on the same day at the roadside. Charge for the costs of collection distances beyond the roadside will be provided in the rates. If the day for collection falls on a holiday, CONTRACTOR may make the collection on the day preceding or the day following the regular collection day, if adequate advance notice is provided to the affected CUSTOMERS.

17.2 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.

17.3 Residential Recycling Containers. CONTRACTOR shall provide and distribute to all single and all multi-unit (less than five units) residential CUSTOMERS at least one recycling container per residential living unit, and any amount of additional containers upon CUSTOMER request. CUSTOMERS will not be charged for such containers. The cost of supplying, repairing, and replacing such recycling containers shall be borne by CONTRACTOR and become a part of the rate review process. Ownership of the recycling containers purchased by CONTRACTOR under this AGREEMENT shall be and remain with CONTRACTOR.

17.4 Other Residential Recycling Containers. CONTRACTOR shall work in good faith with the owners and residents of residential multi-units with five or more living units, to provide recycling services in containers appropriately sized for the CUSTOMER. These may be individual containers for each living unit or centralized collection containers. The cost of supplying, repairing, and replacing such recycling containers shall be borne by CONTRACTOR and become a part of the rate review process. Ownership of the recycling containers purchased by CONTRACTOR under this AGREEMENT shall be and remain with CONTRACTOR.

17.5 Other Recycling Containers. CONTRACTOR shall provide recycling containers to industrial/commercial CUSTOMERS which are appropriately sized for the service to be provided, and at a rate set by the AGENCY. The cost of supplying, repairing, and replacing such recycling containers shall be reflected in the rate set by AGENCY for this service. Ownership of the recycling containers purchased by CONTRACTOR under this AGREEMENT shall be and remain with CONTRACTOR. Depending on the materials collected and the service provided, a collection rate may also be set.

17.6 Materials Collected. CONTRACTOR shall collect and remove on at least a weekly basis, regardless of the weather conditions, the following SOLID WASTE from all CUSTOMERS:

(a) WASTE;

(b) DIVERTIBLE MATERIALS: DIVERSION services shall be made available to

all CUSTOMERS. Those commingled materials that are segregated from WASTE and placed in or adjacent to recycling containers by CUSTOMERS, unless such collection presents substantial difficulties to CONTRACTOR and that determination by CONTRACTOR is approved by the AGENCY. The operational details of the program shall be approved by the AGENCY.

(i) For all CUSTOMERS, these materials include:

(1) Bundled or bagged newspaper;

(2) Corrugated cardboard broken down and contained in a manner determined by CONTRACTOR;

(3) Glass;

(4) Aluminum and Tin containers;

(5) Plastic containers of #1, #2, #3, and #4; and

(6) Ferrous metal cans and containers.

17.7 DIVERTIBLE MATERIALS.

(a) CONTRACTOR Additions. CONTRACTOR, throughout the term of this AGREEMENT, shall negotiate in good faith to increase the scope of the DIVERSION efforts as new technologies and options become available. Such additions shall require adjustment pursuant to the Rate Methodology set forth in Exhibit B.

(b) Other Additions or Deletions. MANAGER may direct CONTRACTOR to add or delete specific DIVERTIBLE MATERIALS, depending on new technology and market values. It is expected that the industry will change during the term of this AGREEMENT. CONTRACTOR may apply to suspend a particular item from the DIVERTIBLE MATERIAL list. The MANAGER will render its decision within thirty (30) calendar days, and inform CONTRACTOR, MEMBERS and AGENCY Board of Directors of the decision.

(c) DIVERSION. All DIVERTIBLE MATERIALS shall be recycled. CONTRACTOR may not dispose of segregated DIVERTIBLE MATERIALS at any landfill without approval of the MANAGER. Should CONTRACTOR breach this provision, no expenses related to the transportation to, delivery to, or disposal of DIVERTIBLE MATERIALS by landfill shall be allowed.

(d) DIVERTIBLE MATERIALS Sale. CONTRACTOR shall make every attempt to sell all DIVERTIBLE MATERIALS pursuant to this AGREEMENT at or above current fair market value. All revenues derived from the sale of DIVERTIBLE MATERIALS collected shall be accounted for and offset costs in determining the rates.

17.8 Additional DIVERTIBLE MATERIALS.

(a) For single and all multi-unit residential CUSTOMERS, these materials include:

(i) Magazines;

(ii) Chipboard;

(iii) Motor Oil; and

(iv) Yard Waste.

(b) For industrial/commercial CUSTOMERS, these materials include:

(i) Magazines;

(ii) Chipboard;

(iii) Yard Waste; and

(iv) Office Paper including computer, white and mixed paper.

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

17.10 Additional Collection Center(s). Upon request of AGENCY, CONTRACTOR shall provide additional collection centers for the deposit of DIVERTIBLE MATERIALS and/or other materials. The location and operation of such additional centers shall be subject to AGENCY approval, at which time the costs associated with this service shall be determined and approved.

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

17.12 Breach. Any violation of the provisions of this Section shall constitute a minor breach.

SECTION 18. CONSTRUCTION AND DEMOLITION DEBRIS PROGRAM

18.1 Purpose. The purpose of this Section is to address the development of a Construction and Demolition Debris Program (CDP) at the CFL by CONTRACTOR. AGENCY and CONTRACTOR agree that CONTRACTOR shall develop and operate a CDP at CFL in accordance with the parameters provided in the Construction and Demolition Debris study approved by the Board at their November 19, 2007 meeting in order to maximize the amount of diversion of such debris from the landfill. It is anticipated that Phase 1 of the CDP shall be operational on or before September 1, 2008. The CDP program is sometimes referred to as the "Program."

18.2 (a) Joint Development with CFL. After obtaining AGENCY Manager concurrence, and using funds designated for this purpose, the CONTRACTOR shall acquire all of the equipment necessary for the CDP and shall pay for 75% of the operating and capital costs of the CDP. AGENCY Manager will approve expenditure of funds only after the following items are provided by CONTRACTOR on or before May 31,2008 and reviewed by AGENCY or it's representative to be fair and reasonable:

- A complete list of required equipment and costs therefore have been provided and sufficient reasonable information has been provided by UVDS that the equipment and other capital costs being proposed are the most appropriate and most cost effective choice and,
- reasonable assurances have been provided that the facility can obtain all necessary permits needed to implement the program, as demonstrated by the submittal of a completed permit application to the Local Enforcement Agency, and
- a schedule showing the key activities that must be accomplished in order to open the facility and when these activities are scheduled to occur.
- a complete detailed projection of operation and maintenance costs including fuel, wages and related benefits that can reasonably achieve expected throughputs and recovery rates mutually agreed to by the AGENCY and the CONTRACTOR
- written confirmation of CFL's agreement to share Twenty Five Percent (25%) of the capital and operational costs of the Program

(b) CFL has agreed to pay for 25% of the operating and capital costs of the CDP from CFL revenues. The parties may revisit the sharing of operating and capital costs between CONTRACTOR and CFL by mutual agreement. The CDP shall perform the services and shall be developed generally in accordance with the provisions of this Section.

(c) CONTRACTOR's Seventy Five Percent (75%) share of the program shall be funded through the rates as provided in Section 18.3, below. AGENCY may, for just cause (which could include, but not be limited to, financial, operational, or efficiency issues), cease providing for funding of the Program through the rates after giving at least 12 months notice to CONTRACTOR provided that CONTRACTOR shall be allowed to continue recovering AGENCY Approved CDP Depreciation for the shorter of one year after CDP operations cease or the date on which the assets of the CDP are fully depreciated. In the event that the AGENCY elects to cease funding the CDP prior to CONTRACTOR's realization of the full amount of AGENCY Approved CDP Depreciation, and CONTRACTOR elects to sell assets for which AGENCY Approved CDP Depreciation has been allowed, and the sale price for such assets is less than the remaining unrecovered AGENCY Approved CDP Depreciation for such assets, then CONTRACTOR shall be fully compensated in the rates for such loss to the extent of the unrecovered AGENCY Approved CDP Depreciation. In the event that the sale price for such asset is greater than the remaining unrecovered AGENCY Approved CDP Depreciation, such additional revenue shall be included in Total Revenue in establishing rates hereunder.

18.3 Special Rate Setting Provisions

(a) Costs to be Included in Rate Model. The parties agree that CONTRACTOR' share of the capital and operating costs of the CDP, including a reasonable rental for occupancy pursuant to a written lease agreement approved by the AGENCY, shall be included in the rate setting model that is set forth at Exhibit B to the Fourth Amendment to AGENCY Agreement #95-90 (the "Rate Model") subject to and in accordance with the terms of this Section.

(b) AGENCY may, from time to time, elect to establish the rates as provided in Exhibit B hereto at a level that allows CONTRACTOR to collect funds in excess of the amounts that would otherwise be allowed under the Rate Methodology for the purpose of accumulating funds for investment in the CDP or such other purposes as to which CONTRACTOR and AGENCY may agree. In order to accomplish the collection of such funds, AGENCY may establish the rates at a level that is projected to produce a particular amount of excess revenue. Intentionally Over Collected Revenues ("IOCR") means ninety nine per cent (99%) of the amount of CONTRACTOR's projected revenue in the Rate Model that exceeds the revenue that would otherwise be allowable under the Rate Model to CONTRACTOR. IOCR shall be established as a percentage of revenue, excluding materials revenue.

(c) To the extent that CONTRACTOR earns revenue that is greater than or less than the revenues, including IOCR, such excess revenues or revenue shortfalls shall not be included in the calculation of IOCR.

(d) IOCR is projected to occur from and after July 1, 2007. There is no IOCR from periods prior to January 1, 2007. IOCR is not part of Total Revenues defined in Exhibit B, Section III. Projected IOCR, if any, will be calculated at the time that rates are set for an Operating Period (July 1 through June 30) under the Rate Model and CONTRACTOR shall deposit one fourth of such projected IOCR amount quarterly into an account to be held separately in accordance with Section 18.3(l). At the end of each annual Operating Period, CONTRACTOR shall calculate the actual amount of IOCR and increase or decrease the amount theretofore deposited into such account to reflect the actual IOCR for the operating period.

(e) CONTRACTOR's operations for the year ending on December 31, 2006, produced net revenue, before adjustment for taxes as provided at Section 18.3 (m) below in excess of the amount of net revenue projected in the Rate Model. CONTRACTOR has agreed to invest $964,285 in the CDP from such revenues under special terms as provided herein. The $964,285, as adjusted pursuant to Section 18.3 (n), below, is sometimes referred to herein as "2006 Over Collected Revenue."

(f) CONTRACTOR Interest Expense Limitation. CONTRACTOR shall not seek nor shall it receive reimbursement for any costs of borrowing associated with capital purchases funded by 2006 Over Collected Revenue or from IOCR in future years for the design and construction of the initial phase of the AGENCY Approved CDP Depreciable Assets.

(g) CONTRACTOR Right to CDP Depreciation. CONTRACTOR shall invest the 2006 Over Collected Revenue in the design, construction and acquisition of equipment for the CDP in order to facilitate implementation of the Program. In light of the special provisions of this Fourth Amendment under which CONTRACTOR does not receive credit for interest associated with its investment of the 2006 Over Collected Revenue in the Program, CONTRACTOR shall be entitled to recover One Hundred Percent (100%) of the amount of the 2006 Over Collected Revenue invested in AGENCY Approved CDP Depreciable Assets over their useful lives. The depreciation shall be treated as Major Allowable Expenses under the Rate Model.

(h) CONTRACTOR Expenses Allowable. CONTRACTOR's 75% share of the revenue and expenses associated with the CDP shall be included in the rates established by the Authority hereunder in accordance with the provisions of Exhibit B hereto and, in particular but not by way of limitation, Article V of Exhibit B.

(i) Accounting. CONTRACTOR shall establish a separate cost center accounting and reporting system for the CDP, which will include accounting for all of the revenue, capital, and operational costs of the CDP. CONTRACTOR shall include data regarding the CDP in all of the reports required under the Franchise Agreement and shall make data from the CDP available to the AGENCY at all reasonable times.

(j) Reporting Requirements. Audited financial statements prepared in accordance with Generally Accepted Accounting Principles for CONTRACTOR shall include a supplemental schedule of UVDS's portion of the CDP. Income from the sale of materials from the CDP shall be reported quarterly and credited 75% to CONTRACTOR and 25% to CFL. Incoming and outgoing volumes of materials shall be reported to the AGENCY monthly. CONTRACTOR shall report the amount of income received by itself and CFL from the sale of materials from the CDP. CONTRACTOR may sell materials processed through the CDP to related entities at rates agreed to by the AGENCY.

(k) Landfill Surcharge Fee: Material diverted to the CDP is still included in those materials for which the franchise landfill surcharge fee ($3.75/ton as of the adoption of this amendment) is required to be paid to the AGENCY irrespective of the final disposition of the materials.

(l) Interest on IOCR: Interest shall accrue on IOCR from the date it is deposited (one quarter in arrears) at the rate that is the lower of the actual amount earned by CONTRACTOR on the IOCR if deposited into a separate account or Napa County Treasurer's "Weighted Average Yield to Maturity of Purchase" from the "Monthly Investment Report."

(m) The amount of IOCR to be segregated and maintained subject to the direction of AGENCY shall be reduced by Fourteen and Three Tenths Percent (14.3%) (the "Tax Adjustment") to account for the federal and state taxes due with respect to such IOCR (estimated to be 40%) less the present value of the tax benefit to be derived from future tax depreciation. The depreciation referenced in this Section 18.3(m) is tax depreciation which is separate and distinct from depreciation as an element of the rate. In addition, the amount of IOCR shall be reduced by the taxes due with respect to earned interest on

IOCR (the "Interest Tax Adjustment"). The Interest Tax Adjustment shall be 40%. Double tax free interest shall not be subject to the Interest Tax Adjustment.

(n) CONTRACTOR shall recover the Tax Adjustment applicable to the 2006 Over Collected Revenue from IOCR to be collected from and after July 1, 2007.

(o) Solid Waste Generated Outside Service Area: The calculation of the 5% limit of outside waste volume allowed under Section 8.2 of the CFL Agreement is based on the total volume of materials received at CFL prior to processing materials through the CDP (and not on the amount of residue that is disposed of as solid waste after processing).

18.4 Phase Two Capital Investment

Phase Two CDP. The Parties plan that CONTRACTOR will develop a second phase CDP within five years to relocate the initial phase CDP (which is a temporary facility located on property that will be required for landfill expansion) to a permanent facility at CFL and to expand the capabilities of the CDP and further reduce disposal at CFL. The second phase of the CDP shall not commence until the AGENCY and CONTRACTOR agree on the phase two plans and costs including all improvements necessary to mitigate the impacts of the development of the CDP on CFL. IOCR for the purpose of Phase Two CDP funding shall be placed within a segregated account by the CONTRACTOR that is acceptable to the AGENCY'S auditor and that is in compliance with Section 5.14 of this Agreement.

18.5 Funding for Phase Two.

(a) Context. AGENCY and CONTRACTOR agree to implement the CDP for the purpose of reducing the volume of material disposed of at CFL and agree that IOCR, if any, as may be approved by the Board shall be used as directed by the AGENCY provided that the AGENCY shall in no event require CONTRACTOR to invest IOCR where CONTRACTOR will not be entitled to recover its tax depreciation from its investment.

(b) No interest on CDP capital costs. CONTRACTOR agrees that, to the extent of its use of IOCR for the design, permitting, construction and equipping of the CDP, CONTRACTOR will not be entitled to recover interest on the amounts so loaned for the CDP. The parties anticipate that the CDP will be expanded in approximately five years and that the expansion will require a significant financial investment from CONTRACTOR. AGENCY will attempt to set rates, as conditions allow, under Section IV. 9. a. of Exhibit B to the Agreement through 2013 to collect sufficient IOCR to fund the planned estimated Phase II capital investment in the Project. To the extent that AGENCY and CONTRACTOR agree to a phase two CDP that requires capital in excess of the amount of IOCR, then such capital investment will be treated as any other allowed capital investment under the Rate Model.

18.6. Effect of Amendment: Nothing in this Section shall change or limit the rights and obligations of the parties under the Franchise Agreement except as specifically provided herein. All of the provisions of the Franchise Agreement, as amended, shall remain in

full force and effect except as specifically modified by this Section 18.

18.7. PROGRAM DESCRIPTION: Locate a new mixed construction and demolition (CDP) facility at Clover Flat Landfill that would be operated by Upper Valley Disposal Service (UVDS) and would allow the AGENCY to continue to exceed the minimum goals of AB 939. The new mixed C&D recycling program, when fully operational, is designed to add in the range of 15,500 tons of additional recycling tonnage per year.

The new C&D facility would be the first phase of a phased C&D recycling program at CFL. Phase 1 would operate on an approved 2.5 acre wet weather outdoor pad for a period of five years with a mobile processing line and outdoor grinding. During this time period UVDS will design a more sophisticated Resource Recovery Center with a stationary processing line in an enclosed Processing Building as part of Phase 2 (Phase 1 is limited to five years because it will be located on property that will be required for landfill expansion). UVDS will select mobile processing equipment as part of Phase 1 that can be utilized in Phase 2 and be permanent within the Processing Building.

The design of Phases 1 and 2 is intended to supplement and aggressively expand the existing source separation recycling program. UVDS plans to target the following waste types for diversion:

- Mixed construction and demolition (C&D) materials
- Self-haul waste rich with recyclables
- Dry commercial waste rich with recyclables (Phase 2 only)
- Other appropriate recyclable materials

The CDP program will be conducted by UVDS as a separate business with the proration of expenses being 75% UVDS and 25% CFL, which is based on the amount of tonnage received at the CFL gate using weight records. Proceeds from the sale of recovered materials from the CDP will be accounted for separately as part of Total Revenues to determine its cost to rate payers. UVDS will implement a marketing plan that is intended to achieve the highest use and sales value of recycled materials.

EXHIBIT B
TO SIXTH AMENDMENT
TO AGENCY AGREEMENT #95-09

UPPER VALLEY WASTE MANAGEMENT AGENCY

UPPER VALLEY DISPOSAL SERVICE RATE METHODOLOGY

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UPPER VALLEY DISPOSAL SERVICE RATE METHODOLOGY

I. INTRODUCTION

The Rate Methodology contained herein is intended to provide a consistent framework for establishing the Rates to the Franchisee, the Upper Valley Disposal Service (the "CONTRACTOR") by the Rate Setting Agency, the Upper Valley Waste Management AGENCY (the "AGENCY"). The AGENCY and the CONTRACTOR have agreed on a methodology which incorporates an adjustment based on a review of Major Allowable Expenses and Major Recoverable Expenses and adjusting all Other Allowable Non-Fuel Expenses and Other Recoverable Expenses by the Adjusted CPI Index. Allowable Fuel Expenses will be adjusted using the Fuel Index. Construction and Demolition Debris Program (CDP) expenses will be included in the Rate Methodology contained herein. CONTRACTOR shall provide the CDP Performance Report (defined below) to AGENCY. This methodology has been developed by the AGENCY in consultation with its MEMBERS, recognizing the importance of uniform Rate review for the collection services on the overall costs of waste management for the ratepayers within the AGENCY's MEMBER jurisdictions.

II. RATE SETTING PROCESS

1. ADJUSTMENT OF RATES

a. Annual Adjustment.

Subject to the terms herein, the CONTRACTOR is entitled to one Rate adjustment annually beginning on July 1, 2007. CONTRACTOR'S request for an adjustment shall be prepared in a format approved by the AGENCY Representative, and shall be submitted to the AGENCY by May 1st each year, beginning with May 1, 2007. In addition, a supplemental schedule of UVDS's portion of the CDP expenses and associated adjustments shall be submitted to the AGENCY by May 1st each year. Each adjustment is to be based on data from the previous twelve (12) month period as specified in this Article II, is to be approved by the AGENCY in June of each year, and will be effective on each subsequent July 1st. Each component shall be adjusted as specified in this Article II.

The AGENCY shall adjust the Rate up or down to reflect: 1) review of Major Allowable Expenses limited to: Wages and Related Benefits (excluding officer's salaries and benefits), Depreciation, and New Programs/Modifications 2) review of Major Recoverable Expenses limited to: Landfill Fees, Interest, New Programs/Modifications and Development Expenses, 3) all Other Recoverable Expenses, and Other Allowable Non-Fuel Expenses will be adjusted by the Adjusted CPI Index, 4) actual changes in any pass-through component of the Rate and 5) Allowable Fuel Expenses will be adjusted as specified below.

b. Special Identification of CDP Expenses and Revenue.

In each instance where there is CDP expense or CDP revenue, such CDP expense and CDP revenue (attributable to COMPANY's 75% share of the CDP) shall be separately identified as a

CDP expense or CDP revenue, as applicable, in all reports and rate setting requests and calculations submitted by COMPANY to AGENCY. By way of example, COMPANY shall, in seeking an Annual Adjustment and in its reporting to the AGENCY, identify "Wages and Related Benefits (excluding officer's salaries)" and "CDP – Wages and Related Benefits (excluding officer's salaries)" and shall similarly specify CDP related expenses and revenues for all purposes in proceeding under this Exhibit B. The purpose of the separate identification of CDP revenue and expenses is to assure that the AGENCY will have accurate data with which to calculate the net cost to rate payers of the development and operation of the CDP. The CDP related expenses and revenues shall be included in all rate setting calculations subject to the same adjustments as are applicable to like non-CDP related expenses and revenue, if any, and subject to the special provision for adjustment of CDP related expenses at Section V (1) (a) of Exhibit B.

c. Calculation of Adjustment to Other Allowable Non-Fuel Expenses and Other Recoverable Expenses

Other Allowable Non-Fuel Expenses (OANFE) shall be adjusted as follows:

Adjusted OANFE = (Previous Year OANFE) x [[(current year February CPI/12-month previous year February CPI) - 1] x 0.93 + 1]

Example: Assume the following change in CPI:

1. Current year February CPI = 123

2. Previous 12-month February CPI = 118

3. Previous year OANFE = $1,000,000

Adjusted OANFE is calculated as follows:

Adjusted OANFE = $1,000,000 x [[(123/118) – 1] x 0.93] + 1] = $1,039,407

Other Recoverable Expenses are calculated similarly.

d. Calculation of adjustment to Allowable Fuel Expenses
Allowable Fuel Expenses (AFE) shall be adjusted as follows:

Adjusted AFE = (Previous Year AFE) x [(current year Fuel Index/ prior year Fuel Index_)]

Example 1: Assume the following change in OPIS:

1. Current Year Fuel Index = 275

2. Prior Year Fuel Index = 250

3. Previous year AFE = $200,000

Adjusted AFE is calculated as follows:

Adjusted AFE = $200,000 x [(275/250)] = $220,000

Example 2: Assume the following change in OPIS:

1. Current Year Fuel Index = 240
2. Prior Year Fuel Index = 250
3. Previous year AFE = $200,000

Adjusted AFE is calculated as follows:

Adjusted AFE = $200,000 x [(240/250)] = $192,000

Example 3: Calculation of Average Fuel Index:

	Average Monthly OPIS Index
February	263
March	268
April	273
May	278
June	283
July	288
August	287
September	282
October	277
November	272
December	267
January	262
Subtotal	3,300
Divided By Number of Months	12
Average OPIS Index	275

For purposes of computing the Adjusted AFE for the 2013-2014 Operating Period, the previous year AFE is defined as follows:

Fuel Related Expenses for UVDS Hauling	$655,238
Fuel Related Expenses for CDP Operations	$ 54,963

e. Change in the CPI or OPIS Index

If the CPI or OPIS Index is discontinued or revised during the Term such other index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI or OPIS Index had not been discontinued or revised.

2. DATES FOR RATE APPLICATIONS AND RATE SETTING

Rate applications will be submitted May 1st of each year for review and adjustments to Rates will be applied to the following Rate Year beginning on July 1st.

An application submittal 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 Financial Year including a separate schedule for CDP related expenses.

b. Supplemental schedules for expenses that agree with the methodology with a schedule reconciling the methodology to the audited financial statements including a separate schedule for CDP related expenses.

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

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

e. A forecast of the next Financial Year's Major Allowable and Recoverable Expenses with supporting documentation.

f. 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.

g. Supporting information concerning the revenues and expenses of provision of diversion services and other special services provided by CONTRACTOR.

h. A schedule of Current and Proposed Rates for each MEMBER.

i. Any other information reasonably 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 Adjusted Rates. It will then adjust Rates by the Cost of Service Factor for each MEMBER. The AGENCY will adopt new Rates as appropriate.

If clarifications and responses for additional information are not completed in a timely manner, the effective dates for setting the Rates may change.

It is not the intent of the AGENCY to include all types of expenses as recoverable through Rates. Non-Recoverable Expenses are excluded from any review and consideration. Increases in expenses due to CONTRACTOR inefficiencies should not be borne by the ratepayers.

3. 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.

4. ANTICIPATED CAPITAL AND DEBT EXPENSES

The CONTRACTOR will prepare and submit a three year capital budget which forecasts debt or capital expenses greater than five thousand dollars ($5,000.00) related to development, expansion, and other capital improvements including leases. 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 annual depreciation expense will be allowed for use in the first Rate Year that the expense is anticipated in, with the full annual depreciation expense being allowed in the following Rate Years based on the date of purchase.

Employees of CONTRACTOR, as reviewed by the AGENCY, must substantiate these projected cost estimates. The term of the amortization of these expenses will be determined on a case by case basis, according to the depreciation schedules described herein, depending on the size and nature of each expense.

All reasonable means must be employed to anticipate these capital costs in order to mitigate Rate shock. Large anticipated expenses could be captured through Rates several years in advance of their actual incurrence. If future expenses are Pre-funded with current collection fees, all such funds shall be deposited as collected monthly into third party trust accounts, in a manner acceptable to the AGENCY Auditor.

III. DEFINITIONS

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

2003 Base Year: audited financial statements for 2003 that was used in the 2005 rate package approved by the AGENCY on December 12, 2005. For the initial year, the amounts will be determined by applying the Adjusted CPI Index to the 2003 Base Year amounts to arrive at the 2004, 2005 & 2006 amounts.

Adjusted CPI Index: the factor by which Other Recoverable Expenses and Other Allowable Non-Fuel Expenses are adjusted to address increasing costs of inflation. The Index is defined as 93 % of the increase or decrease in the Consumer Price Index (CPI, the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers) over the previous twelve (12) months from the February CPI, not to exceed 8% in any given Rate Year (and therefore Index not to exceed 7.44% per year, or 93% of 8%).

Adjusted Allowable Fuel Expense: Previous Year Allowable Fuel Expense times the current year Fuel Index divided by the prior year Fuel Index.

AGENCY Approved CDP Depreciable Assets: Assets that are not purchased with IOCR and for which depreciation shall be included in the rate as Major Allowable Expenses.

Allowable Expenses: all expenses found to be reasonable and necessary in providing quality service to the ratepayers 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).

CDP Non-Depreciable Assets. CDP Non-Depreciable assets are assets acquired by CONTRACTOR with IOCR.

CDP Performance Report. The CDP Performance Report shall categorize all of CONTRACTOR's share of expenses of the CDP in accordance with the categories set forth in this Exhibit B and shall report CONTRACTOR's share of revenues from sales of materials. The CDP Performance Report shall also include a report on the throughput of the CDP and such other items as the AGENCY may reasonably request.

Cost of Service Factors: the factors (one for each MEMBER) by which the Rate is adjusted to reflect the differing costs associated with hauling from the different MEMBER's communities and as detailed in Attachment 1.

CPI: the San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index for All Urban Consumers.

Development Expenses: all Development Expenses will be treated as a pass-through with no adjustment. The negotiated expense for development of the Solid Waste Facility at 1285 Whitehall Lane in St. Helena, part of which will be used to provide the SOLID WASTE HANDLING SERVICES described in the AGREEMENT. Twenty five thousand dollars ($25,000) per year through June 30, 2015 will be considered a Recoverable Expense and this amount will not be adjusted.

Financial Year: the financial period of time from January 1st through December 31st, defined as one (1) year.

Fuel Index: means the average of the twelve average monthly OPIS indexes beginning with

February of the Financial Year and ending with January of the subsequent Financial Year as set forth by the OPIS Standard Diesel Rack Prices (CARB OPIS average for San Francisco), established on the web site (http://opisnet.com)

- **Current Year Fuel Index:** the Fuel Index beginning in February of the Financial Year that precedes the year the Rate Year begins.
- **Prior Year Fuel Index:** the Fuel Index that begins one year prior to the Current Year Fuel Index.

Fuel Related Expenses: all Fuel Related Expenses are to be adjusted using the Fuel Index. The initial Fuel Index for the 2007 Rate Year was based upon a one-time 2003 Base Year adjustment. For purposes of computing the Fuel Related Expenses for Operating Period of July 1, 2013 to June 30, 2014 the average of the twelve average monthly OPIS indexes will become effective.

IOCR: IOCR has the meaning set forth at Section 18.3(b) of this Agreement

Initial Year CDP Budget Expenses: CONTRACTOR will provide a detailed proposed budget for the initial year of operations of the CDP. The AGENCY shall review and comment on the proposed initial CDP budget and the parties shall agree on an Initial Year CDP Budget. The Budget will be adjusted as provided at Section V. (a), below.

Major Allowable Expenses: are limited to Wages and Related Benefits (excluding officer's salaries and benefits), Depreciation, and New Programs/Modifications. Major Allowable Expenses include:

a. Wages and Related Benefits: salaries and benefits (including AGENCY approved "profit sharing" retirement plans not including Officers Salaries and Benefits) as paid to employees of CONTRACTOR and payroll taxes paid on such. Benefits include fees associated with group insurance and workman's compensation.

b. Depreciation on CONTRACTOR Owned Assets: expenses related to depreciation of all owned assets of CONTRACTOR including AGENCY Approved CDP Depreciable Assets but excluding CDP Non-Depreciable Assets 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

c. CDP-Special Provision Regarding AGENCY Approved CDP Depreciable Assets: The AGENCY may, for just cause (which could include, but not be limited to, financial, operational, or efficiency issues), cease funding of the program after giving at least 12 months notice to the CONTRACTOR. The CONTRACTOR shall be allowed to continue recovering AGENCY Approved CDP Depreciation only up to one year after CDP operations cease.

d. New Programs/Modifications: includes expenses for new programs and modifications

to existing programs as approved by the AGENCY.

Major Recoverable Expenses: are limited to Landfill Fees, Interest, and New Programs/Modifications. Expenses for Development will be treated as a pass-through with no adjustment. Major Recoverable Expenses include:

a. LANDFILL Fees: Landfill Fees are calculated as follows: audited amount adjusted for the approved change of rate at Clover Flat Landfill less adjusted Landfill Expenses (accounted for in Other Allowable Non-Fuel Expenses).

b. Interest Expenses on Debt. (1) Debt is defined as money paid on loans with periodic payments based on a loan agreement (the loan agreement shall specify the amounts and dates of repayment on the loan) made by the CONTRACTOR of the principal and/or interest. For purposes of inclusion in the rate methodology, any debt incurred through Intercompany loans must be for loans longer than 90 days. (2) The company may, however, participate in Intercompany loans of less than 90 days after requesting approval of the Agency Manager, providing the reason for the intercompany loan (e.g. unexpected economic event), the estimated amount of the loan and the length of the loan. The AGENCY manager must respond in writing to the request within ten (10) County business days. AGENCY manager's approval may not be unreasonably withheld.) (3) Any inter-company loans that exceed 90 days and include periodic payments of principal and/or interest will not require written agreement from the AGENCY manager, but will require written notification from the CONTRACTOR to the AGENCY manager if they are simply replacing (or re-financing) an existing loan that was previously approved by the AGENCY. Any loans for anticipated capital purchases must be proposed, as required in Section II, subsection 4, through the three year capital budget. (4) Loan schedules must be included as part of the annual rate package for any debt that meets the definitions set forth in this section and that are being requested for consideration in the rate review process.

c. Bank Covenants: It is recognized that CONTRACTOR must comply with the financial covenants established by its banks and lending institutions. It is further recognized such compliance is effected by CONTRACTOR's level of borrowing which fluctuates from time to time. Consequently, CONTRACTOR may include as a Major Recoverable Expense the amount needed to provide the additional necessary revenue to meet all of its bank covenants.

d. New Programs/Modifications: includes expenses for new programs and modifications to existing programs as approved by the AGENCY.

Non-Recoverable Expenses: all expenses which are neither Allowable Expenses nor Recoverable Expenses, including, but not limited to, intercompany leases for personal property, intercompany loans and advances less than 90 days, officers salaries and benefits in excess of levels set for 2003 and adjusted annually using the Adjusted CPI Index., dues and subscriptions, fines and penalties, donations, non-MEMBER services and MEMBER non-uniform special services.

Expenses associated with MEMBER services described in Section 2.2(a) of Exhibit A of the Franchise Agreement are Non-Recoverable expenses. For purposes of Section 2.2(a) expenses are defined as the direct cost of providing each member event or service as determined by a separate accounting.

Expenses and revenues associated with services provided for non-MEMBER Customers or non-uniform MEMBER services and for special services provided for MEMBERS Agency(ies) must be accounted for separately. If similar resources (i.e. personnel, vehicles, etc.) are used for MEMBER uniform services and MEMBER special services or non-MEMBER services, accurate estimates of the percentage use of all of those resources must be developed by CONTRACTOR and approved by the AGENCY. Interest expense from credit cards, Federal or State income taxes, contributions, entertainment and promotional expenses are explicitly excluded.

Operating Period: the period of time from July 1st through June 30th, defined as one (1) year.

Operating Ratio: the ratios of Allowable Expenses divided by Total Revenues (based on Allowable Expenses). Operating Ratio means 88.5%.

Other Allowable Non-Fuel Expenses: all Allowable Expenses except Major Allowable Expenses and Fuel Related Expenses. Other Allowable Non-Fuel Expenses will be adjusted using the Adjusted CPI Index. The initial Adjusted CPI Index for the 2007 Rate Year will be based upon a one-time 2003 Base Year adjustment.

Other Allowable Non-Fuel Expenses include:

a. Officers Salaries and Benefits: benefits shall be based on levels set for 2003 and adjusted annually using Adjusted CPI Index.

b. Vehicle Operating Expenses: all expenses related to the normal route operation of vehicles owned or leased by CONTRACTOR except for Fuel Related Expenses and which are used to provide service to the ratepayers represented by AGENCY.

c. Equipment Operating Expenses: all expenses related to the maintenance of equipment owned by CONTRACTOR and which is used to provide service, but not normally used on collection routes, to the ratepayers represented by AGENCY.

d. Garage Expenses: all costs related to the maintenance and repair of vehicles owned or leased by CONTRACTOR. Garage expenses provided to affiliates of CONTRACTOR must be reimbursed by those affiliates.

e. 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.

f. Leases

i. Third Party Leases - All third-party leases (including real and personal property) are Allowable Expenses.

ii. Intercompany Leases - Intercompany leases for real property are Allowable Expenses for any leases entered into prior to September 25, 1995 and will be adjusted according to the Adjusted CPI Index.

iii. Intercompany real property leases will be adjusted one-time for the 2007 Rate Year based on the difference between the 2003 Base Year and the CONTRACTOR's 2006 audited financial statements. After the one-time adjustment, all future adjustments will be based upon the Adjusted CPI Index.

(See Non-Recoverable Expenses for personal property leases).

g. LANDFILL Expenses: expenses for LANDFILL disposal up to one million one hundred twenty thousand dollars ($1,120,000, as adjusted by the Adjusted CPI Index) will be Allowable Expenses. All expenses exceeding this limit will be Recoverable but not Allowable for the application of the Operating Ratio.

h. Consultant Expenses: expenses for consultant services including legal, accounting and other professional services as adjusted by the Adjusted CPI Index based on the 2003 Base Year.

i. Insurance Expenses: All insurance expenses, including liability, vehicle, and umbrella liability insurance (excluding the expenses of all insurance and benefits related to stockholders).

j. 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.

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

Other Recoverable Expenses: all Recoverable Expenses except Major Recoverable Expenses Other Recoverable Expenses will be adjusted using the Adjusted CPI Index. The initial Adjusted CPI Index for the 2007 Rate Year will be based upon a one-time 2003 Base Year adjustment. Other Recoverable Expenses include:

a. Consultant Expenses: expenses for consultant services including legal, accounting and other professional services as adjusted and not included in Other Allowable Non-Fuel 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 wage taxes and property taxes.

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

d. Real Property Intercompany Leases: Lease agreements that are incurred after the effective date of this Amendment will be considered reasonable only if the lease payment is comparable to the cost a third-party lease.

e. Bad Debts

f. Surety Bonds

g. Development Expenses

Pass-through Expenses: any AGENCY approved expense to the AGENCY or its MEMBERS.

Pre-funded Expenses: any expense where a Rate has been set one-year in advance for an expense funded by the AGENCY.

Rate(s): Rates are defined as:

a. Proposed Rates are those Rates proposed by the CONTRACTOR for the new Rate Year

b. Adjusted Rates are those Rates adjusted by the AGENCY from Proposed Rates supplied by the CONTRACTOR

c. Approved Rates are those Rates set and approved by the AGENCY to be applied for the Rate Year.

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

Rate Year: a one year period beginning July 1 and ending the subsequent June 30 during which time a single Rate per type of service applies.

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

Revenue Increase (Decrease) Required: the difference between Total Revenues and Allowable Expenses gross up for the Operating Ratio plus Recoverable Expenses.

Total Revenues: all revenues recognized by CONTRACTOR less actual IOCR during one Rate Year, including, but not limited to, those revenues derived from Rates, interest income from intercompany loans and advances that have periodic payments of interest and principal and a loan period of greater than 90 days, insurance refunds or dividends, gains and (losses) on sales of fixed assets, service charges assessed on delinquent accounts, diverted materials sale, CDP

materials sale and other revenue, if any, and all other revenues related to CONTRACTOR's operating activities (intercompany revenues received from other affiliates for pooled costs are not includable in Total Revenue, but have been included in the 2003 base year amounts for Other Allowable Non-Fuel Expenses and are adjusted each year by the application of the Adjusted CPI Index to the prior year approved rate package amount for Other Allowable Non-Fuel Expenses). Revenues from materials sales attributed to the CDP operations shall be accounted for separately.

IV. RATE SETTING IMPLEMENTATION AND GUIDELINES

Annual Rate Calculation Steps (See Exhibit B, Attachment 2 for an Example of the Rate Calculation)

1. CONTRACTOR will submit audited financial statements as described in Article II Part 2a.

2. Place the audited Major Allowable Expenses, Major Recoverable Expenses and Total Revenues from the audited financial statements in the "CPI & Audited FY xx/xx" column..

3. Obtain the Other Allowable Non-Fuel Expenses, Other Recoverable Expenses and Fuel Expense from the prior year approved rate package and place in the "CPI & Audited FY xx/xx" column. For the initial year the amounts will be determined by applying the Adjusted CPI Index to the 2003 Base Year amounts to arrive at the 2004, 2005 & 2006 amounts.

4. Place the amount for Development Expenses in the "CPI & Audited FY xx/xx" column. (This step will be discontinued after June 30, 2015.)

5. The projections for Major Allowable Expenses and Major Recoverable Expenses will be placed in the "Projected or CPI Adjustment" column. Supporting documentation and schedules will be provided for amounts used. Landfill Fees will be Calculated as follows:

    a. Audited Landfill Expenses times the approved change for Clover Flat Landfill Fees
    b. Less the amount of Landfill Expenses under Allowable expenses.

6. The projected depreciation and interest expense for new assets from the previous year's rate model will be reviewed. The prior year's projected fixed asset additions will be reviewed and confirmed. The depreciation and interest expense for any projected new asset from the prior year will be reversed and eliminated in the current year's projected depreciation and projected debt if the new asset was not purchased in the prior year.

7. Adjusted CPI Index and OPIS Index will be used to calculate the change to Other Allowable Non-Fuel Expenses, Other Recoverable Expenses, and Fuel Expense which will be included in the "Projected or CPI Adjustment" column.

8. The totals of the "CPI & Audited FY xx/xx" column plus "Projected or CPI Adjustment" column will be placed in the "Projected FY xx/xx" column.

9. Calculation of Revenue Increase (Decrease) Required is as follows:

    a. Total Allowable Expenses divided by the Operating Ratio.
    b. Plus the Recoverable Expenses.
    c. Less the Total Audited Revenue net of IOCR.

10. Calculation of "Percentage Increase (Decrease) Required" is as follows:

    Revenue Increase (Decrease) Required divided by total audited revenue net of IOCR.

11. Rate equals the approved rate times one plus the "Percentage Increase (Decrease) Required".

12. Rates will be calculated for each MEMBER based on the Cost of Service Factors as shown in Attachment 1.

V. Special Rules Pertaining to Including CDP in Rate Setting

1. General. Subject to special adjustments, CONTRACTOR's 75% share of the cost of operating the CDP shall be included in the rate setting process. CONTRACTOR and AGENCY shall include the Initial Year CDP Budget Expenses in the rates.

a. Initial Period and Second Year CDP Expenses and Revenue. Each line item of the Initial Year CDP Budget shall be included in the appropriate category of expense and revenue as a separate line item in the Rate Model. For the initial year of operations of the CDP, AGENCY and CONTRACTOR shall rely on the Initial Budget to establish the line item amounts to be included in the Rate Model. After at least one full year of operations, the CONTRACTOR and the AGENCY shall review the expenses and revenues of the CDP and shall determine whether or not there should be any adjustments to the actual revenue and expenses of the CDP to reflect extraordinary circumstances during the initial year of operation. The first year actual expenses and revenue subject to adjustment by agreement of the parties as provided in the preceding sentence shall be the basis for the Annual Adjustment, if any, after the second year of operation of the CDP.

b. CDP Expenses and Revenue. CONTRACTOR's CDP related expenses and revenues shall be separately identified as provided at Section II (1) (b) of this Exhibit B and shall be included in the Rate Model subject to the same provisions that apply to CONTRACTOR other revenue and expenses hereunder excepting only the special provisions that apply to AGENCY Approved CDP Depreciation and the provisions limiting the right of the CONTRACTOR to recover depreciation and interest on assets acquired with IOCR. All of CONTRACTOR's share of the CDP expenses which would be included as expenses in establishing the rate under this Exhibit B, including but not limited to Fuel Related Expenses, Major Recoverable Expenses, Major Allowable Expenses, Allowable Expenses, Other Allowable Non-Fuel Expenses, Other Recoverable Expenses, Pass Through Expenses, Pre-funded Expenses, and Recoverable Expenses shall be included in calculating the rate to be allowed to CONTRACTOR hereunder in accordance with Exhibit B. Each such expense shall be separately identified as required under Section II (1) (b) of this Exhibit B.

c. CONTRACTOR Share of CDP. Notwithstanding any other provision of this Agreement, only seventy five per cent of the expenses and revenues of the CDP Program shall be considered for rate setting purposes. CFL shall have the other 25% share of the expenses and revenues for the CDP.

d. CDP Performance Report. CONTRACTOR shall provide CDP Performance Reports to

AGENCY no less frequently than annually. AGENCY shall use the CDP Performance Report as a basis for determining the continuing value and benefit of the CDP for the rate payers and for such other purposes as the AGENCY may deem suitable.

EXHIBIT B, ATTACHMENT 1
TO SIXTH AMENDMENT TO AGENCY AGREEMENT #95-09

The Cost of Service Factors are intended to adjust the Base Year Rate for differences in the cost of providing a consistent set of services to the ratepayers of the MEMBERS. While the Cost of Service Factors are based on observable criteria and on the evaluation of CONTRACTOR personnel of the cost and difficulty associated with collection in the different communities, they do not measure actual differences in the cost of providing service.

MEMBER	*Cost of Service Factor*
St. Helena	*1.000*
Calistoga	*1.239*
Yountville	*0.968*
Napa County	*1.398*

EXHIBIT B, ATTACHMENT 2
TO FOURTH AMENDMENT TO AGENCY AGREEMENT #95-09
SAMPLE CALCULATION

Submitted May 1, 2007
Upper Valley Disposal Service
Rate Model Calculation - Example

		wpref	Note 1 CPI & Audited FY 12/06	Projected or CPI Adjustment	Note 1 Projected FY 12/07
Operating Ratio			88.5%		88.5%
Major Allowable Expenses					
(a) Wages & related benefits	Note 2	B	3,045,792	127,159	3,172,951
(b) Depreciation on Contractor owned assets	Note 2	C	708,937	286,175	995,112
(c) New programs / modifications	Note 2	D			
Other Allowable Non-Fuel Expenses					
(a) Other Allowable Non-Fuel Exp	Note 3	E	1,130,003	33,448	1,163,451
(b) Landfill Expense	Note 4	F	1,169,317	34,611	1,203,928
Fuel	Note 3	G	443,135	15,414	458,549
Construction & Demolition Program (CDP)					
Major Allowable (75% of CDP costs)					
(a) Wages & related benefits		K	-	-	-
(b) Depreciation on Assets					
Not pre-funded by Rate Payers		K	-	*#DIV/0!*	*#DIV/0!*
(c) New programs / modifications		K		-	-
Other Allowable Non-Fuel Expenses		K	-	-	-
Fuel		K	-	-	-
Sub-total CDP			-	#DIV/0!	#DIV/0!
TOTAL ALLOWABLE EXPENSES			6,497,184	#DIV/0!	#DIV/0!
Major Recoverable Expenses					
(a) Landfill Expense	Note 2	F	654,731	78,866	733,597
(b) Interest on debt service	Note 2	H	745,406	(277,410)	467,996
(c) New programs / modifications	Note 2	D		30,000	30,000
Construction & Demolition Program (CDP)					
(a) Interest on debt service for Assets					
Not Pre-funded by Rate Payers		K	*input #*	*#DIV/0!*	*#DIV/0!*
Other Recoverable Expenses	Note 3	I	190,978	5,653	196,631
Development Expenses			25,000		25,000
TOTAL RECOVERABLE EXPENSES			1,616,115	#DIV/0!	#DIV/0!
TOTAL EXPENSES			8,113,299	#DIV/0!	#DIV/0!
ACTUAL REVENUE COLLECTED					
(a) All Sources Except IOCR and CDP	Note 2	J	10,320,324	XXX	10,320,324
(b) CDP (Other than CFL Reimb)		K	-		-
Total Actual Revenue Collected			10,320,324	XXX	10,320,324
Actual Net Revenue			2,207,025	XXX	#DIV/0!
Required Net Revenue					
(a) For projected costs & operating ratio					#DIV/0!
(b) IOCR as Set by Board for next rate cycle					-
Total Required Net Revenue					#DIV/0!
Revenue Increase (Decrease) Required					#DIV/0!
Percentage Increase (Decrease) Required					#DIV/0!
			Current		**Proposed**
Basic Residential Unit Cost - S.H.			**$ 20.14**		**#DIV/0!**

Index Calculation

CPI - SF-Oaklnad-SJ All Urban Consumers	3.18%
February Index - 93% of CPI	2.96%
OPIS - Fuel only (February)	3.48%
New per Amendment #4	

NOTES
Note 1: Non-allowable expenses are not included in either model.
Note 2: Amounts used in this example do not reflect actual revenues and expenditures of 2006; however, projections would be provided by the Company and reviewed by UVA staff for purposes of projected costs in the model for 2007 and forward
Note 3: Other Allowable and Recoverable will be based on the Audited FY 2002/2003 indexed by CPI or OPIS.
Note 4: Landfill Expenses are based on actual for the Audited amount; however the portion Allowable is based on an indexed amount.

U0011001/637309-6

EXHIBIT C
TO SIXTH AMENDMENT
TO AGENCY AGREEMENT #95-09

UPPER VALLEY WASTE MANAGEMENT AGENCY

UPPER VALLEY DISPOSAL SERVICE

RATES (as adopted by the Board each June)

U0011001/637309-6