

**AMENDED AND RESTATED
AGREEMENT FOR SOLID WASTE DISPOSAL SERVICES
BETWEEN
THE CITY OF OXNARD AND
WASTE MANAGEMENT OF CALIFORNIA, INC.**

THIS AGREEMENT is made this ___ day of November, 2013 by and between the City of Oxnard, a California municipal corporation ("City") and Waste Management of California, Inc., a California corporation ("Owner"). This Agreement amends and restates in its entirety the "Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California, dated September 25, 2001 ("Prior Agreement"), the "First Amendment to Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California," dated September 25, 2006 ("First Amendment"), the "Second Amendment to Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California," dated September 20, 2011 ("Second Amendment"), and the "Third Amendment to Agreement For Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California," dated February 7, 2012 ("Third Amendment").

RECITALS

WHEREAS, Owner is the owner and operator of the Simi Valley Landfill and Recycling Center (the "Facility") and City desires to dispose of Residual Solid Waste and Municipal Solid Waste at the Facility on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, City may desire to deliver ADC Material and Biosolids to the Facility; and

WHEREAS, Owner agrees to grant such right to dispose of Residual Solid Waste, Municipal Solid Waste, ADC Material or Biosolids at the Facility on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the parties agree as follows.

1. DEFINITION OF TERMS

1.1. Agreement. "Agreement" means this "Amended and Restated Agreement between City and Owner for Solid Waste Disposal Services Between the City of Oxnard and Waste Management of California, Inc." dated as of the Effective Date (as defined herein), including all exhibits and attachments, and any amendments hereto.

1.2. ADC Fee. "ADC Fee" means the amount to be charged by Owner for acceptance of ADC Material at the Facility, which shall include all federal, state and local fees imposed on the Facility as of the Effective Date, but shall exclude the County Integrated Waste Management Planning Disposal Fee.

1.3. Alternative Daily Cover Material. "Alternative Daily Cover Material" or "ADC Material" means processed Yard Waste or Construction Debris that is suitable for use as alternative daily cover at the Facility in accordance with the requirements of 27 CCR §20690. In order to qualify as ADC Material, processed Yard Waste must be delivered to the Facility within forty-eight (48) hours of its receipt by the City.

1.4. Biosolids. "Biosolids" means residual solids and semi solids from the treatment of water or wastewater, from which free liquid has been evaporated or otherwise removed, or organic and inorganic non-hazardous grit and screenings captured by mechanical or hydraulic methods, from City's publicly-owned wastewater and water treatment plants,

and which is acceptable for disposal at the Facility.

- 1.5. City. "City" means the City of Oxnard, a California municipal corporation.
- 1.6. Bulky Waste. "Bulky Waste" means large appliances, furniture, pipes, poles, large concrete sections, tree stumps and other similar waste materials with weights or volumes that would require additional handling at the landfill.
- 1.7. CalRecycle. "CalRecycle" means the California Department of Resources, Recycling and Recovery, or any successor state agency.
- 1.8. CPI. "CPI" means the Consumer Price Index, All Urban Consumers for the Los Angeles, Riverside, Orange County Metropolitan Area, 1982-1984 = 100, published by the U.S. Department of Labor, Bureau of Labor Statistics.
- 1.9. Change in Law. "Change in Law" means the occurrence of any change in law applicable to the performance of this Agreement as follows:
 - 1.9.1.1. The adoption, promulgation, modification, or change in law, regulation, or judicial or administrative interpretation occurring after the Effective Date which adoption, promulgation, codification, or change affects the performance of this Agreement, other than laws with respect to taxes based on or measured solely by net income, or any unincorporated business, payroll, or employment taxes; or
 - 1.9.1.2. Any action, resolution, order or judgment of any federal, state or local court, administrative agency or governmental body issued after the Effective Date if:
 - 1.9.1.2.1. such action, resolution, order or judgment is not also the result of the willful misconduct or negligent action or inaction of the party relying thereon

or of any third party for whom the party relying thereon is directly responsible; and

1.9.1.2.2. the party relying thereon, unless excused in writing from so doing by the other party, shall make or have made, or shall cause or have caused to be made reasonable efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such party); or

1.9.1.3. Any action, resolution, order or judgment made by a governmental authority or agency having authority over the Facility that imposes new or different material conditions in connection with the issuance, renewal, or modification of any permit or related agreement required for the development or operation of the Facility.

1.10. Construction Debris. “Construction Debris” means waste building materials resulting from construction, remodeling, repair or demolition operations.

1.11. Del Norte Facility. “Del Norte Facility” means the solid waste handling facility owned by City that separates some portion of incoming commingled Municipal Solid Waste into marketable recyclables, or separates mixed recyclables.

1.12. Designated Waste. “Designated Waste” shall have the meaning set forth in Section 13173 of the California Water Code. California Water Code section 13173 provides:

“Designated waste” means either of the following:(a) Hazardous waste that has been granted a variance from hazardous waste management requirements pursuant to Section 25143 of the Health and Safety Code or (b) Nonhazardous waste that consists of, or contains, pollutants that, under ambient environmental conditions at a waste

management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state as contained in the appropriate state water quality control plan.

1.13. Disposal. "Disposal" means the final disposition of Residual Solid Waste hereunder at the Facility or other duly permitted disposal facility

1.14. Disposal Fee. "Disposal Fee" means the amount to be charged by Owner for disposal of Residual Solid Waste, Municipal Solid Waste or Biosolids at the Facility, which shall include all federal, state and local fees imposed on the Facility as of the Effective Date, but shall exclude the County Integrated Waste Management Planning Disposal Fee.

1.15. Effective Date. "Effective Date" is November __, 2013.

1.16. Environmental Laws. "Environmental Laws" means all federal and state statutes, county and City ordinances concerning public health, safety and the environment including, by way of example and not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Emergency Planning and Community Right to Know Act, 42 U. S. C. Section 1101 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the California Hazardous Waste Control Act, California Health & Safety Code Section 25100 et seq.; the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 et seq.; the Safe. Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section 25249.5 et seq.; and the California Clean Air Act, Health and Safety Code Sections 39000 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.17. Facility. “Facility” means the Simi Valley Landfill and Recycling Center in Ventura County, California.

1.18. Garbage. “Garbage” means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any product thereof, resulting from the preparation, storage, handling or consumption of such substances.

1.19. Generator(s). “Generator(s)” means any person(s) whose act or process initially produces Municipal Solid Waste, Designated Waste, Hazardous Waste, Medical Waste or any other waste product which becomes part of the waste stream.

1.20. Hazardous Waste. “Hazardous Waste” means:

1.20.1.1. All substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act (42 U.S.C. Section 3251 et seq.), as amended, including the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) and all further amendments thereto or regulations promulgated thereunder; and

1.20.1.2. All substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Health and Safety Code Sections 25110.02, 25115, and 25117, and future amendments to recodifications of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Section 2521; and,

1.20.1.3. Radioactive wastes.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of “Hazardous Waste”, for purposes of

processing and disposal to land, the broader, more encompassing definitions shall be employed for purposes of this Agreement.

1.21. Medical Waste. “Medical Waste” means those materials defined in Health and Safety Code Section 117690 and does not include waste identified as not being medical wastes in Section 117700.

1.22. Municipal Solid Waste. “Municipal Solid Waste” means all putrescible and non-putrescible solid and semi-solid waste material, including but not limited to Garbage, Construction Debris and Rubbish, that is authorized for disposal at the Facility pursuant to the Environmental Laws, the permits or other approvals issued to the Facility, or any contracts between the Owner and any governmental entity having authority over the Facility relating to the operation of the Facility. Municipal Solid Waste does not include Bulky Waste, waste tires, Hazardous Waste, Designated Waste, liquid waste, asbestos, Medical Waste, sewage, sewage sludge, abandoned automobiles, or Yard Waste.

1.23. Non-Conforming Waste. “Non-Conforming Waste” means Bulky Waste, waste tires, Hazardous Waste, Designated Waste, liquid waste, asbestos, Medical Waste, sewage, sewage sludge, abandoned automobiles or Yard Waste; any waste materials not authorized for disposal at the Facility pursuant to (i) the Environmental Laws, (ii) the permits or other approvals issued to the Facility, or (iii) any contracts between the Owner and any governmental entity having authority over the Facility relating to the operation of the Facility; and any waste materials not constituting Municipal Solid Waste as defined herein.

1.24. Owner. “Owner” means Waste Management of California, Inc., which owns and operates the Facility.

- 1.25. Person. "Person" includes an individual, firm, association, organization, partnership, corporation, joint venture, the United States, the State of California, municipality, political subdivision, governmental agency, or any other entity whatsoever.
- 1.26. Recycling Facility. "Recycling Facility" means a facility owned or operated by the City located within the City that is a "Recycling Center" as set forth in Title 14, California Code of Regulations, Section 17402.5(d).
- 1.27. Residual Solid Waste. "Residual Solid Waste" means Municipal Solid Waste remaining for disposal after processing at the Del Norte Facility or at another Recycling Facility.
- 1.28. Rubbish. "Rubbish" means all waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes from residential burning, floor sweepings, and glass.
- 1.29. Sustainability Fee. "Sustainability Fee" means the fee imposed on the Facility under Article 3 of that certain agreement entitled "Addendum Agreement for a Sustainability Fee at the Simi Valley Landfill and Recycling Center" between Owner and the County of Ventura, dated July 19, 2011, assessed on materials received at the Facility originating from any point outside the geographic boundaries of Ventura County but within the State of California.
- 1.30. Term. "Term" means the Term of this Agreement, including both the Initial Term and any Successive Term.
- 1.31. Ton. "Ton" means a short ton of 2,000 pounds avoirdupois.

- 1.32. Yard Waste. “Yard Waste” means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees, and similar organic materials, scrap lumber, wood crating, pellets, wood chips, and similar materials.

2. TERM OF AGREEMENT

- 2.1. Term. The initial Term of this Agreement shall begin as of the Effective Date and shall continue until the close of business on November 14, 2020 (the “Initial Term”). Thereafter, this Agreement may be extended beyond the Initial Term for one or more additional terms (the “Successive Term”), for a time period to be determined by the parties, upon mutual written agreement of the parties made not less than sixty (60) days prior to the end of the Initial Term or any Successive Term.
- 2.2. Effect of Prior Agreement and Amendments. Commencing on the Effective Date, the parties shall have no further rights or obligations under the Prior Agreement or the First Amendment, Second Amendment, or Third Amendment, except that any indemnity obligations based on claims arising during the effective period of the Prior Agreement and First Amendment, Second Amendment or Third Amendment shall survive their expiration.
- 2.3. Termination for Convenience. Notwithstanding any provision to the contrary, both the City and Owner may terminate this Agreement for convenience, without cause or penalty, upon sixty (60) days written notice to the other. Owner is obligated to carry out all obligations under this Agreement up to and including the date of termination for convenience and the City is obligated to pay Owner for amounts due and owing under this Agreement up to and including the date of termination for convenience. Nothing herein is intended to and nothing herein shall be construed to restrict the parties' rights in the event of a default. In the event of a default, the parties' rights shall be determined by applicable law, applied to the terms and provisions of this Agreement.

- 2.4. Regular Meetings. During the Term, Owner and City shall upon request by either, meet to discuss issues of service at the Facility, as well as any other issues that may arise under this Agreement.

3. RIGHTS AND OBLIGATIONS OF CITY

3.1. Residual Solid Waste; Municipal Solid Waste.

3.1.1. City has the right, but not the obligation, to deliver or cause to be delivered to the Facility Residual Solid Waste from the Del Norte Facility or another Recycling Facility, up to and including the entire amount of Residual Solid Waste Generated at such facilities. City may also deliver other Municipal Solid Waste generated within the City and collected by the City and transported directly to the Facility for Disposal.

3.1.2. As of the date of this Agreement, City estimates the amount of Residual Solid Waste and Municipal Solid Waste to be delivered to the Facility is approximately 350 tons per calendar day and 10,600 tons per calendar month. This is a non-binding estimate used solely for the purpose of assisting Owner's operation of the Facility. City will use commercially reasonable efforts to deliver Residual Solid Waste and Municipal Solid Waste on a reasonably uniform basis, and further agrees to provide Owner with reasonable notice if it anticipates an increase or decrease of fifty percent (50%) or more by weight in the amount of Residual Solid Waste or Municipal Solid Waste to be delivered on a daily basis.

3.1.3. Deliveries by City will be made by means of (i) transfer trailers originating at the Del Norte Facility, or (ii), solely with respect to Municipal Solid Waste generated within the corporate limits of City, roll-off containers, including double box roll-off containers originating at a location certified as a Recycling Center by CalRecycle, unless the parties agree in writing to other types of transport vehicles or other points of origin.

3.2. Limitation of City's Use of Disposal Facilities. Owner's commitment to accept Residual Solid Waste and Municipal Solid Waste without any delivery commitment, and at the rates set forth in Section 5.1, is expressly predicated and conditioned upon the City's commitment to not utilize any other site for the disposal of these materials other than the Facility or the Toland Road Landfill, owned and operate by the Ventura Regional Sanitation District. This commitment from City is considered as an essential part of the consideration for Owner entering into this Agreement under the terms and conditions set forth herein. During the Initial Term or any Successive Term, City shall not, except as provided in this Section 3.2, directly or indirectly, dispose or cause the disposal of any Residual Solid Waste or Municipal Solid Waste at a disposal site other than the Facility or the Toland Road Landfill. In the event that either of these sites is closed or otherwise become unavailable to City, City shall direct Residual Solid Waste and Municipal Solid waste to the remaining disposal site, to the extent that capacity is available at the remaining disposal site. City may utilize another disposal site in the event that the Facility and Toland Road Landfill, collectively, are unavailable to receive Residual Solid Waste or Municipal Solid Waste generated by the City.

3.3. Alterntive Daily Cover Material. City may deliver and Owner may accept deliveries of ADC Material. Prior to initiating deliveries, City shall notify Owner in writing or by telephone of its desire to deliver ADC Material, and the estimated daily and monthly amounts to be delivered on a daily and monthly basis. Thereafter, the parties agree to undertake good faith negotiation as to the amount of ADC Material that can be delivered and accepted, and the ADC Fee.

3.4. Biosolids.

3.4.1. City's Right to Deliver Biosolids. The City has the right, but not the obligation, to deliver Biosolids to the Facility. Owner's acceptance of Biosolids is subject to City completing and abiding by the terms of a waste profile for the material, demonstrating that the material may be accepted for disposal at the Facility in accordance with

applicable law.

3.4.2. The City shall provide Owner with an estimate of Biosolids to be delivered to the Facility on a daily and monthly basis, and, in addition, shall provide Owner with at least three (3) business days notice if it anticipates a substantial increase (i.e., fifty percent (50%) or more) in the amount of Biosolids to be delivered by City on a daily or monthly basis.

4. OBLIGATIONS OF OWNER

4.1. Residual Solid Waste, Municipal Solid Waste and Biosolids. Owner is obligated to receive the Residual Solid Waste, Municipal Solid Waste and Biosolids delivered to the Facility by City for disposal on each operating day the Facility is open, subject to and in accordance with the terms of this Agreement. Owner shall immediately advise City by telephone or facsimile of any situation, event or circumstance that results in a partial or complete inability to perform Owner's obligation to accept Residual Solid Waste, Municipal Solid Waste or Biosolids delivered to the Facility in accordance with the terms of this Agreement. Owner shall use its best efforts to resume normal operations at the Facility as soon as possible.

4.2. Alternative Daily Cover Material. Owner shall use reasonable efforts to ensure that all ADC Material delivered by the City is utilized as alternative daily cover, and that the City receives diversion credit, consistent with its operational needs for such material.

4.3. Monthly Report. Owner shall provide City with a monthly report regarding the amount of Residual Solid Waste, Municipal Solid Waste, ADC Material and Biosolids delivered to the Facility by City for each month.

4.4. Measurement. Owner shall maintain a scale system at the Facility. Owner shall make available to City the following information with respect to each delivery of Residual Solid Waste, Municipal Solid Waste, ADC Material and Biosolids: (1) calendar date; (2) time of day; (3) vehicle identification; and (4) total number of tons of Residual Solid Waste, Municipal Solid Waste, ADC Material and Biosolids delivered to the Facility and accepted by Owner. All scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability specified in the California Code of Regulations. The tonnage used to calculate the Disposal Fee and ADC Fee shall be based on the weight of each loaded truck measured at the weight scales described below minus the certified tare weight for each truck. City shall establish the tare weight of each truck, subject to verification by Owner using the Facility scale system. City shall allow Owner to provide a number or device to be inserted in or on each truck that will identify the truck to the scale attendant, or an automated scanner, or to provide such other device or means necessary to identify trucks using an unattended, automated system.

4.5. Disposition of Non-Conforming Waste. City and Owner shall implement procedures to identify, prevent the delivery of, or reject Non-Conforming Waste delivered to the Facility. If Owner discovers Non-Conforming Waste delivered to the Facility, Owner shall immediately notify City. Notwithstanding the provisions of Section 9.5, such notice may be given either verbally or by facsimile to the office of City's Solid Waste Superintendent. Except as emergency conditions require, or except as required by the Facility's permits or the Environmental Laws, City shall have the first opportunity to immediately remove such refused or rejected materials. If said Non-Conforming Waste is not removed from the Facility within one business day from the date of Owner's initial notice to City (or, in the event removal within one business day is not possible despite diligent efforts by City, an additional reasonable period of time for City to diligently pursue such removal), Owner may arrange for transportation and disposal of the Non-Conforming Waste, with the reasonable costs thereof to be borne by City. In addition, Owner shall recover from City all other

reasonable costs, fines and penalties incurred as the result of the delivery of Non-Conforming Waste to the Facility.

4.6. Title and Ownership. Title, ownership and responsibility for Residual Solid Waste and ADC Material shall pass from City to Owner at the time of unloading and acceptance of the material at the Facility; provided that title, ownership and responsibility for Non-Conforming Waste shall remain with City at all times.

4.7. Days and Hours of Operation. Subject to its permit and Ventura County contractual limits on daily tonnage, Owner shall operate the Facility for the receipt and disposal of Residual Solid Waste in accordance with the following schedule:

4.7.1. Monday through Saturday, from 7:00 a.m. to 4:00 p.m., and Sundays as mutually agreed upon. Closed on the following holidays: New Year's Day, Thanksgiving Day, Christmas, Memorial Day, Fourth of July, Labor Day. Notwithstanding the above, the Facility will be opened for one-half day on Memorial Day, Fourth of July and Labor Day at no additional cost to City upon seven days' advance written notice from City, provided, however, that City delivers not less than 400 tons of Residual Solid Waste to the Facility. In the event City does not deliver 400 tons of Residual Solid Waste, City shall reimburse Owner the additional cost of such extended operating hours, as determined by Owner in its reasonable judgment.

4.7.2. Subject to conditions in its permits restricting operating hours, and other legal constraints, Owner shall reasonably cooperate with City to receive deliveries at other times, and in particular when necessary because of natural disasters or other special circumstances. The additional cost of such extended operating hours shall be borne by City. Such additional cost shall be mutually agreed upon by both parties in advance.

5. COMPENSATION TO OWNER

5.1. Disposal Fee.

5.1.1. Residual Solid Waste and Municipal Solid Waste. For Residual Solid Waste and Municipal Solid Waste delivered to the Facility and accepted by Owner, City shall pay a Disposal Fee of \$27.07 per ton.

On or before the 10th of each month, City will provide Owner with a report identifying the amount of Residual Solid Waste delivered to the Facility, and the combined amount of Residual Solid Waste directly or indirectly transported for disposal from the Del Norte Facility during the prior calendar month.

The Disposal Fee includes all fees and charges in effect as of the Effective Date, except for the Countywide Integrated Waste Management Plan disposal fee ("CIWMP Fee"). City shall in addition to the amounts set forth above, as adjusted, pay Owner the applicable CIWMP Fee, to the extent such fee is or becomes imposed on or payable by the Facility.

5.1.2. Biosolids. For Biosolids delivered to the Facility and accepted by Owner, City shall pay the Disposal Fee set forth in Section 5.1.1, as adjusted, plus a surcharge of \$20.32 per ton for special handling, as adjusted. The Disposal Fee includes all fees and charges in effect as of the Effective Date, except for the CIWMP Fee. City shall in addition to the amounts set forth above, as adjusted, pay Owner the applicable CIWMP Fee, to the extent such fee is applicable or becomes imposed on or payable by the Facility.

5.1.3. Residual Solid Waste, Municipal Solid Waste and Biosolids Originating Outside Ventura County but Within the State of California. For Residual Solid Waste,

Municipal Solid Waste and Biosolids delivered to the Facility and accepted by Owner originating from outside Ventura County but within the State of California, City shall pay the Disposal Fee set forth in Sections 5.1.1 or 5.1.2 (as adjusted), as the case may be, any CIWMP Fee, and in addition the Sustainability Fee. Currently, the Sustainability Fee is four dollars (\$4.00) per ton. The Sustainability Fee will be charged based on the disposal reporting information submitted by City to Owner and Ventura County, which is due no later than 75 days following the end of the previous quarter, as required by 14 CCR sections 18809.1-11. Owner will invoice City for any Sustainability Fee amounts within 15 days from receipt of report, with payment in accordance with Section 5.7.

5.2. ADC Fee.

5.2.1. For ADC Material delivered to the Facility and accepted by Owner, City shall pay an ADC Fee in the amount agreed to by the parties in accordance with Section 3.3.

5.2.2. The ADC Fee includes all fees and charges in effect as of the Effective Date, except for the CIWMP Fee. City shall in addition to the amounts set forth above, as adjusted, pay Owner the applicable CIWMP Fee, to the extent such fee is or becomes imposed on or payable by the Facility.

5.2.3. For ADC Material delivered to the Facility and accepted by Owner originating from outside Ventura County but within the State of California, City shall pay the ADC Fee, any CIWMP Fee, and in addition the Sustainability Fee, to the extent applicable. Currently, the Sustainability Fee is eight percent (8%) of the ADC Fee. The Sustainability Fee will be charged based on the disposal reporting information submitted by City to Owner and Ventura County, which is due no later than 75 days following the end of the previous quarter, as required by 14 CCR sections 18809.1-11. Owner will

invoice City for any Sustainability Fee amounts within 15 days from receipt of report, with payment in accordance with Section 5.7.

5.3. Fee for Other Wastes. Notwithstanding any other provision of this Agreement, City and Owner may make separate agreements as to service and fees relating to waste materials other than Residual Solid Waste, Municipal Solid Waste, Biosolids or ADC Material, including, but not limited to, Construction Debris, Bulky Waste, Designated Waste, or Yard Waste.

5.4. New or Increased Taxes, Fees and Charges. The Disposal Fee or ADC Fee shall be adjusted from time to time to allow Owner to recover City's pro rata share of any new or increased fees (to the extent they become imposed on or payable by the Facility), assessments or taxes (not including income taxes and ad valorem property or possessory interest taxes, which are the responsibility of Owner), imposed directly on landfill solid waste disposal or use of alternative daily cover by any State, Local or Federal governments after the Effective Date (collectively, the "Additional Fees"), upon thirty day's advance written notice from Owner and a statement of basis for the adjustment. Notwithstanding the above, if any new or increased fees results in a Disposal Fee increase greater than 10%, City shall have the right within thirty (30) days of receipt of Owner's written notice to request that Owner negotiate in good faith regarding changes in services, or other terms and conditions, to mitigate the impact of the proposed increase. If negotiations are not successfully concluded within sixty (60) days following Owner's receipt of the City's written request, City shall have the right to give a one hundred and eighty (180) day notice of termination and terminate this Agreement. In the event City elects to terminate this Agreement there shall be no Disposal Fee increase for the then-remaining term of the Agreement.

5.5. Change in Law. The Disposal Fee or ADC Fee shall be adjusted from time to time to allow Owner to recover City's pro rata share of any increased costs of operation of the Facility arising from a Change in Law, upon thirty (30) day's advance written notice from

Owner and a statement of basis for the adjustment. Notwithstanding the above, if a change in law results in a Disposal Fee increase greater than 10%, City shall have the right within thirty (30) days of receipt of Owner's written notice to request that Owner negotiate in good faith regarding changes in services, or other terms and conditions, to mitigate the impact of the proposed increase. If negotiations are not successfully concluded within sixty (60) days following Owner's receipt of the City's written request, City shall have the right to give a one hundred and eighty (180) day notice of termination and terminate this Agreement. In the event City elects to terminate this Agreement there shall be no Disposal Fee or ADC Fee increase for the then-remaining term of the Agreement.

5.6. Annual Adjustment. The annual price adjustment for the Disposal Fee shall be based on the CPI and shall first be effective July 1, 2014 and on July 1 of each subsequent year during the term of this Agreement. The Disposal Fee shall be increased on July 1 by the percentage increase in the annual average CPI for the preceding January to December. These calculations are mathematically and hypothetically illustrated for the first CPI adjustment (July 2014) as follows in Exhibit A.

5.7. Billing and Payment Procedure. On or before the 20th day of each month, Owner shall submit to City an invoice for Disposal Fees and ADC Fees, and for any applicable additional charges as allowed by the terms of this Agreement for the prior calendar month, except for the Sustainability Fee. The Sustainability Fee will be invoiced separately in accordance with Sections 5.1.3 and 5.2.3. Payment shall be due thirty (30) days from City's receipt of the invoice. Owner may charge City interest on past due accounts up to twelve percent (12%) per annum (one percent (1%) per month). If City disputes any amount billed by Owner, City shall provide written objection within twenty (20) days of receipt of the invoice containing the disputed amount. City shall pay any amount not in dispute. The parties shall promptly attempt to resolve any dispute, but in the event the dispute is not resolved, either party may pursue legal action.

Invoices related to Residual Solid Waste, Municipal Solid Waste, ADC Material and other materials will be submitted to:

City of Oxnard
Solid Waste Superintendent
111 S. Del Norte Blvd.
Oxnard, CA 93030

Invoices related to Biosolids will be submitted to:

City of Oxnard
Wastewater Superintendent
6001 Perkins Road
Oxnard, CA 93033

6. INDEMNITY AND INSURANCE

- 6.1. Indemnification of City. Owner shall indemnify defend and hold harmless City and its member agencies, officers, directors, employees, agents, representatives and the members of City's and City's member agencies and legislative bodies, from and against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses, including without limitation claims based in tort or for death or personal injury, or damage to property or for contribution or indemnity claimed by third parties against City or incurred by City, known or unknown, contingent or otherwise, directly or indirectly, arising from occasioned by, or related to Owner's performance of, or its failure to perform its obligations under this Agreement or under any federal, state or local law, statute, order or regulation, or related in any way to Owner's management of City's Residual Solid Waste at the Facility, including, without limitation, the design, construction, operation (including without limit, the delivery of waste to, or the acceptance and disposal of Municipal Solid Waste at the Facility)

of the Facility, or related to the closure or post-closure maintenance of the Facility. "Liability, demands, claims, costs, losses, damages, recoveries, settlements and expenses", as set forth in this Section, include, without limitation, property damage, bodily injury or death, or any damage to natural resources or the environment (including damages from the release of hazardous substances) or cost of environmental clean-up including those that arise under any federal, state or local law, or regulation, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USCA Section 9601 et. seq.); the Resource Conservation and Recovery Act (42 USCA Section 6901 et. seq.); the Clean Water Act (33 USCA Section 1251 et seq.); the Clean Air Act (42 USCA Section 7401 et. seq.); the Hazardous Substances Account Act (California Health and Safety Code Section 25300 et. seq.); and the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq). Owner shall defend City at Owner's sole cost and expense, including, but not limited to, reasonable attorneys fees, direct litigation costs and expert witness and consultant fees, in any legal or administrative action or proceeding based upon any such liability, demand, claim, cost, loss, damage, recovery, settlement or expense. Owner shall select legal counsel in any matters in which City is indemnified hereunder, subject to the reasonable approval of City. Such legal counsel may also be counsel for Owner. The obligations of Owner set forth in this Section are effective as to contamination, occurring as a "sudden and accidental" event or occurring over a more extended period of time.

Notwithstanding the above, the foregoing indemnity shall not apply to the extent any liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses directly or indirectly, arise from, are occasioned by, or relate to the negligent or intentional acts or omissions of City, or its officers, employees, subcontractors or agents, occurring in the course of City's performance of its obligations under this Agreement, acts or omissions in violation of the Environmental Laws, or the delivery of Non-Conforming Waste to the Facility.

6.2. Indemnification of Owner. City shall indemnify defend and hold harmless Owner and its officers, directors, employees, agents, and representatives from and against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses, including without limitation claims based in tort or for death or personal injury, or damage to property or for contribution or indemnity claimed by third parties against Owner or incurred by Owner, known or unknown, contingent or otherwise, directly or indirectly, arising from occasioned by, or related to the negligent or intentional acts or omissions of City, or its officers, employees, subcontractors or agents, occurring in the course of its performance of its obligations under this Agreement, including acts or omissions in violation of the Environmental Laws, or the delivery of Non-Conforming Waste to the Facility.

6.3. Insurance.

6.3.1. City is self insured under provisions of California Law for amounts up to \$1,000,000 for automobile and general liability purposes, and up to \$300,000 for workers' compensation purposes. With respect to insurance above these amounts, City is a member of BICEP, an organization of California cities that pool risk. City will, upon written request, provide Owner such documentation as appropriate to evidence and describe City's insurance arrangements. The City shall promptly inform Owner in the event it terminates its membership in BICEP. The City shall make arrangements for equivalent insurance coverage effective upon the termination of its membership in BICEP, and shall promptly notify Owner of such alternative arrangements in writing.

6.3.2. Owner's Minimum Coverage. Owner agrees to maintain Insurance coverage for any liability, loss, expense or claim which may arise out of or result from Owner's performance under this Agreement, whether such performance be by Owner or by any contractor of Owner or anyone directly or indirectly employed by Owner or such contractor, or by anyone for whose act Owner may be liable, with the following limits,

which limits shall be adjusted every three years by the increase in the CPI, using the same formula described for price adjustments in Section 5.6:

6.3.2.1. General liability insurance, including comprehensive form, premises operation and broad form property damage coverage, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit coverage;

6.3.2.2. Automobile liability insurance, including comprehensive form, including loading and unloading, owned, hired and non-owned coverage, with a limit of not less than Five Million Dollars (\$5,000,000) combined single limit coverage;

6.3.2.3. Contractual personal injury liability and contractual property damage insurance covering liability assumed under this Agreement, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit coverage;

6.3.2.4. Workers' compensation insurance as required by law; and

6.3.2.5. Employer's Liability Insurance with a limit of not less than One Million Dollars (\$1,000,000).

6.3.3. Certificates. City is self insured, with excess coverage and pool participation as provided under California Law. City agrees to provide Owner with information concerning City's self insured provisions upon written request by Owner. Certificates of Owner's insurance acceptable to City shall be filed with City prior to commencement of any operation or performance under this Agreement. The certificates shall state that City, its City Council, officers, employees, agents and volunteers are additional insureds for coverage in 6.3.2.1-3 above, that the insurance afforded shall be primary insurance, and that coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice (ten (10) days in the event of cancellation for non-

payment) has been given to City.

6.3.4. Each subcontractor performing services pursuant to this Agreement shall be covered by the above policies, respectively, or by a separate policy or policies having the same limits, terms and conditions.

6.3.5. Owner shall provide the above coverages with an insurance carrier having an A.M. Best's rating of A VII or higher.

6.3.6. Maintenance of proper insurance coverages by Owner is a material element of this Agreement. Owner's failure to maintain or renew insurance coverages or to provide evidence of renewal may be considered as a material breach of this Agreement.

7. DEFAULT BY CITY

7.1. Right to Suspend or Terminate Upon Default. City shall be in default under this Agreement, and Owner shall have the right to suspend or terminate this Agreement, in the event City fails to perform its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving notice from Owner specifying the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as it promptly commences action required to cure the breach within ten (10) calendar days after receipt of such notice and continues such performance diligently until the cure is completed. Notice of default shall be in writing and delivered to the representative of City designated in Section 9.5.

7.2. Owner's Remedies Cumulative. Owner's rights to suspend or terminate this Agreement under Section 7.1 are not mutually exclusive, and Owner's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in the alternative and in addition to any and all other legal and equitable rights and remedies that Owner may have.

8. DEFAULT BY OWNER.

8.1. Right to Suspend or Terminate Upon Default. Owner shall be in default under this Agreement and City shall have the right to suspend or terminate this Agreement in the event Owner fails to accept and dispose of Residual Solid Waste or ADC Material as required by Section 4 or otherwise fail to perform its obligations under this Agreement and fails to cure such breach within thirty (30) days after receiving notice from City specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Owner shall not be in default so long as Owner commences action required to cure the breach within ten (10) calendar days after receipt of such notice and continues such performance diligently until the cure is completed. Notice of default shall be in writing and delivered to the representative of Owner designated in Section 9.5.

8.2. City's Remedies Cumulative. City's rights to suspend or terminate this Agreement under Section 8.1 are not mutually exclusive, and City's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in the alternative and in addition to any and all other legal and equitable rights and remedies that City may have.

9. OTHER AGREEMENTS OF THE PARTIES

9.1. Relationship of Parties. The parties intend that Owner shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venturer with City. No employee or agent of Owner shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Owner shall have the exclusive control over the manner and means of conducting the Residual Solid Waste disposal services performed under this Agreement and all persons performing such services. Owner shall be solely responsible of acts and omissions of its officers, employees, subcontractors, and agents. Neither Owner, nor its officers employees, subcontractors or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City's employees by virtue of their employment with City.

9.2. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

9.3. Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any right on any Persons other than the parties to it and their representatives, successors and permitted assigns.

9.4. Waiver. The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

9.5. Notice. Except as provided otherwise herein, any notice required under this Agreement shall be made either by personal delivery or by registered or certified mail, return

receipt requested, and shall be deemed given upon personal delivery or within three (3) days of mailing. Notices shall be given to the parties at the following addresses:

To Owner:

District Manager
Simi Valley Recycling and Disposal Facility
2801 N. Madera Road
Simi Valley, CA 93065-6208

With a Copy to:

Waste Management—Southern California Market Area
9081 Tujunga Avenue
Sun Valley, CA 91352
Attn: Legal Counsel

To City:

City of Oxnard
Solid Waste Superintendent
111 South Del Norte Blvd.
Oxnard, CA 93030

With a Copy To:

City of Oxnard
City Attorney
300 West Third Street
Oxnard, CA 93030

Either party may change the location of individuals for receipt of notices hereunder by providing written notice to the other party as aforesaid.

9.6. Approvals. Except as provided otherwise herein, whenever this Agreement calls for the consent, review, approval, action or permission of a party, such party shall act reasonably under the circumstances, and such consent, review, approval, action or permission shall not be arbitrarily or unreasonably taken, given, withheld, exercised or delayed.

9.7. Force Majeure.

9.7.1. Neither Owner nor City shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other similar catastrophic events), war, insurrection, riot, acts of any government (including judicial action), condemnation or other taking by a governmental entity, Change in Law, labor unrest (including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Owner's employees or directed at Owner or third parties) or other similar causes which are not the fault of, and beyond the reasonable control of, the party claiming excuse from performance.

9.7.2. Any interruption or discontinuance of Owner's ability to accept and dispose of Residual Solid Waste caused by one or more of the events described in this section shall not constitute an event of default by Owner under this Agreement.

9.7.3. If either City's or Owner's performance is affected by any such event, it shall give written notice to the other party as soon as it is reasonably practical and further, shall diligently attempt to resolve such condition.

9.8. Authority of City. City hereby represents it has the power and authority to execute this Agreement and to be bound by the terms and conditions contained herein. City further represents that it has the authority to direct the disposal of Residual Solid Waste to the Facility on behalf of City during the entire Term hereof.

9.9. Other Remedies. In addition to the other remedies expressly provided for elsewhere herein, the parties may exercise any and all rights and remedies provided by law or equity for any breach of this Agreement.

10. MISCELLANEOUS PROVISIONS

10.1. Entire Agreement. This Agreement represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

10.2. Section Headings. The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement and not to alter or affect its provisions.

10.3. Interpretation. This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

10.4. Amendment. This Agreement may not be modified or amended in any respect except by a writing signed by the parties

10.5. Severability. If any non-material provision of this Agreement is for any reason deemed to be invalid, and unenforceable, the invalidity or unenforceability of such provision

shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

- 10.6. Attorneys' Fees. Subject to the provisions of Section 9.3, the prevailing party in any arbitration or litigation brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.
- 10.7. References to Laws. All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or rectified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.
- 10.8. Definitions. Capitalized terms used in this Agreement without definitions have the meanings specified in the Definitions section, unless the context clearly requires otherwise.
- 10.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.
- 10.10. Successors/Assignment. This Agreement shall bind the successors, assigns and legal representatives of the parties. This Agreement may not be assigned by either party without the advance written consent of the other, which consent shall not be withheld unreasonably nor required for an assignment to an affiliate of Owner. In determining whether to grant or withhold consent a party may consider the financial strength of the proposed assignee as compared to the financial strength of the party seeking assignment, the experience and reputation of the assignee in the industry, and such other factors as are commercially reasonable.

IN WITNESS WHEREOF, City and Owner have executed this Agreement as of the date and year first above written.

CITY OF OXNARD

By: Tim Flynn
Tim Flynn, Mayor

**WASTE MANAGEMENT OF
CALIFORNIA, INC.**

By: Michael E. Smith
Michael E. Smith, Director of Operations

ATTEST:

By: Daniel Martinez
Daniel Martinez, City Clerk

APPROVED AS TO INSURANCE:

By: James Cameron
James Cameron, Chief Financial Officer

APPROVED AS TO FORM:

By: Stephen M. Fischer
Stephen M. Fischer, Interim City Attorney

APPROVED AS TO AMOUNT:

By: Karen R. Burnham
Karen R. Burnham, Interim City Manager

APPROVED AS TO CONTENT:

By: Rob Roshanian
Rob Roshanian, Interim Public Works Director

EXHIBIT A

EXAMPLE RATE ADJUSTMENT METHODOLOGY

$$\text{CPI Adjustment} = A \times (B - C) / C$$

A = Disposal Fee, Effective Date (Disposal Fee) = \$27.07 (for example, calculation would be made for each rate in the rate matrix)

B = 2013 Annual Average CPI (Consumer Price Index All Urban Consumers Los Angeles-Riverside-Orange County 1982-1984=100) = 242.564(a)
hypothetical value for example only)

C = 2012 Annual Average CPI (Consumer Price Index All Urban Consumers Los Angeles-Riverside-Orange County 1982-1984=100) = 236.648

July 2014 Disposal Fee CPI Adjustment =

$$\begin{aligned} &= \$27.07 ((242.564 - 236.648) / 236.648) \\ &= \$27.07 \times 0.025 \\ &= \$0.68 \end{aligned}$$

July 2014 Disposal Fee = Disposal Fee + CPI Adjustment

$$\begin{aligned} &= \$27.07 + \$0.68 \\ &= \$27.75 \end{aligned}$$