November 2, 2017

Board of Directors
Ventura Regional Sanitation District
Ventura, California

APPROVAL OF AMENDMENT NO. 2 TO VRSD CONTRACT NO. 15-027, CITY OF OXNARD AGREEMENT NO. 7167-15-CM – AGREEMENT FOR CONSULTING SERVICES RELATED TO CLOSED OXNARD LANDFILLS

RECOMMENDATION

Approve, and authorize the Board Chair to sign, proposed Amendment No. 2 to VRSD Contract No. 15-027, City of Oxnard Agreement No. 7167-15-CM – Agreement for Consulting Services in the amount of $113,721.

FISCAL IMPACT

Anticipated annual revenue from this customer contract is estimated at approximately $113,721 and is included in the FY2018 budget.

BACKGROUND/ANALYSIS

On June 8, 2015, VRSD and the City of Oxnard entered into City Agreement No. 7167-15-CM and VRSD Contract No. 15-027 under which VRSD agreed to provide consulting services to the City that included landfill gas perimeter probe monitoring and reporting, landfill gas surface monitoring and reporting, storm water monitoring and reporting, gas collection system and flare operations and maintenance, and gas collection system monitoring services for the closed Santa Clara landfill. On December 1, 2016, VRSD entered into Amendment 1 to this contract to formally include groundwater monitoring service. The monitoring services to be performed under this contract are required by state law and regulation.

In June 2017, VRSD staff initiated communication with the City to extend the original Agreement for an additional year, establish a new not-to-exceed contract price, and modify the contract to include the following:

1) Scope of services reduced to reflect a change in storm water monitoring status;
2) Extension of the contract through June 30, 2018; and
3) Increase to the total not-to-exceed amount of the contract.

VRSD staff was successful in engaging with the Regional Water Quality Control Board and eliminating the need to continue to monitor the site for storm water runoff. As a result, this service is being eliminated from the contract. Staff anticipates that work under this contract will generate estimated revenue for VRSD of $113,721 for FY2018, which brings the total not-to-exceed amount of the contract to $318,228.91.

This letter and the associated contract amendment have been reviewed by Legal Counsel as to form.

If you should have any questions or need additional information, please contact me at (805) 658-4679 or via email at mattbaumgardner@vrsd.com.

MATT BAUMGARDNER, DIRECTOR OF OPERATIONS

APPROVED FOR FUNDS:

Carlos Corrales, Director of Finance

APPROVED FOR AGENDA:

Chris Theisen, General Manager

Attachment: Amendment No. 2 to VRSD Contract No. 15-027, City of Oxnard Agreement No. 7167-15-CM Agreement for Consulting Services

AMENDMENT NO. 2
TO
CITY OF OXNARD AGREEMENT NO. 7167-15-CM
AND
VENTURA REGIONAL SANITATION DISTRICT CONTRACT NO. 15-027

AGREEMENT FOR CONSULTING SERVICES

THIS SECOND AMENDMENT ("Second Amendment") to the Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this ___ day of _____, 2017, by and between the City of Oxnard, a municipal corporation ("City"), and Ventura Regional Sanitation District, a public agency formed pursuant to California Health & Safety Code Section 4700 *et seq.* ("Consultant"). Together, City and Consultant shall be referred to herein as "Parties."

RECITALS

A. On June 8, 2015, City and Consultant entered into the Agreement, which was titled both City of Oxnard Agreement No. 7167-15-CM and VRSD Contract No. 15-027.

B. In this Agreement, Consultant agreed to provide consulting services to the City for the closed Santa Clara Landfill which included landfill gas perimeter probe monitoring and reporting, landfill gas surface monitoring and reporting, storm water monitoring and reporting, gas collection system and flare operations and maintenance, and gas collection system monitoring; and

C. On April 11, 2017, City and Consultant agreed to amend the Agreement to update and modify certain of its provisions, and the full Agreement, as amended, is attached as **Exhibit D-2** hereto and incorporated herein by reference; and

D. The Parties acknowledge and agree that the Agreement should be renewed and extended for one additional year, and that additional compensation to Consultant should be added, and that this can be accomplished by amending the Agreement accordingly.

AMENDMENT TERMS AND CONDITIONS

NOW, THEREFORE, based upon valuable consideration below and the recitals above, the Parties agree as follows:

1. The following language shall replace the original provisions of Section 1in the Agreement, as previously modified Paragraph 1 of the First Amendment:

> "1. Scope of Services
>
> Consultant shall furnish City with professional consulting services as more particularly set forth in **Exhibit A-2** attached hereto and incorporated herein by this reference (the "**Services**")."

2. The following language shall replace the original provisions of Section 8 in the Agreement, as previously modified Paragraph 2 of the First Amendment:

"8. Time for Performance

The Services performed under this Agreement shall be completed by June 30, 2018. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays."

3. The following language shall replace the original provisions of Section 12 in the Agreement, as previously modified Paragraph 6 of the First Amendment:

"12. Term of Agreement

This Agreement shall begin on July 1, 2015, and expire on June 30, 2018."

4. The following language shall replace the original provisions of Section 14.a. in the Agreement, as previously modified Paragraph 7 of the First Amendment:

"14. Compensation

a. City agrees to pay Consultant in an amount not to exceed $318,228.91 for the Services at rates provided in **Exhibit B-2** attached hereto and incorporated herein by this reference."

5. As so amended, the Agreement remains in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this ~~First~~ Second Amendment on the day and year first written above.

VENTURA REGIONAL SANITATION DISTRICT ("Consultant")

By_____
WILLIAM WEIRICK
Chairman of the Board

ATTEST;

By_____
JULIET RODRIGUEZ
Clerk of the Board

APPROVED AS TO FORM:
ARNOLD, LAROCHELLE,
MATHEWS, VANCONAS & ZIRBEL, LLP

By_____
ROBERT N. KWONG
Legal Counsel for District

APPROVED AS TO ADMINISTRATION:

By_____
CHRIS THEISEN
General Manager

CITY OF OXNARD ("City")

By_____
TIM FLYNN
Mayor

ATTEST:

By_____
MICHELLE ASCENCION
City Clerk

APPROVED AS TO FORM:

By_____
STEPHEN FISCHER
City Attorney

APPROVED AS TO CONTENT:

By_____
THIEN NG
Interim Public Works Director

By_____
MIKE MORE
Risk Manager

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Exhibit A-2
Scope of Services

Landfill Gas Perimeter Probe Monitoring and Reporting

1. Conduct monthly perimeter landfill gas probe monitoring as required by California Code of Regulations (CCR) Title 27. Submit monthly reports to the County of Ventura Environmental Health Division.

2. Monitor the 3 on-site landfill gas detection systems located at the Clubhouse and Maintenance Tent. Calibrate as required by the manufacturer. Respond to gas alarms as needed.

Landfill Gas Surface Monitoring and Reporting

1. Coordinate with 3rd party vendor (RES Environmental) to perform surface emissions monitoring (SEM) of the surface of the landfill on an annual basis for gas emissions in accordance with the requirements of Title V Federal Operating Permit and by CCR 17. (Effective FY15/16 surface monitoring frequency has been reduced from quarterly to annual. If monitoring results exceed regulatory limits, monitoring frequency and cost will return to quarterly.

   Any leaks detected will be remediated in consultation with the City as warranted depending on the source of the leak. This may require adjustments to the gas collection system or cover maintenance.

   Follow-up inspection will be conducted on a 10 day and 30 day schedule as required in the Title V Federal Operating Permit and by CCR 17.

2. Grab landfill gas sample and test gas for component gasses quarterly.

3. Prepare Title V required semi-annual reports, semi-annual flare start-up, shutdown and malfunction reports, and annual certification reports. Retain Title V and CCR 17 records.

4. Prepare AB32 / CCR 17 Reports. Prepare Annual California and Federal Electronic Greenhouse Gas Reporting (EGERT).

5. Pay the Air Pollution Control District Permit Fee for Coastal Flare. 1/3 the fee cost will be charged to the City.

Groundwater Monitoring and Reporting

1. As part of the groundwater monitoring programs, groundwater levels will be measured in all designated wells prior to sampling activities using equipment that is decontaminated before use. The depth to water will be recorded to the nearest 0.01 foot in the field log.

2. Each well will be purged and sampled using dedicated pumps following the standard low-flow purging and sampling method. Non-dedicated monitoring and sampling equipment will be decontaminated prior to use at each well to ensure that samples collected represent the groundwater conditions at the site.

3. Groundwater samples will be collected in appropriate sample containers provided by the analytical laboratory. For dissolved metal analysis, samples will be filtered in the field. Samples will be preserved as required, placed on blue plastic ice in a cooler, and delivered to the laboratory courier. Chain-of-custody documentation will be generated and accompany each sample.

4. Groundwater monitoring and sampling results will be compiled and field and laboratory data will be imported into Excel tables and Sanitas statistical software. These data will be used to evaluate the groundwater conditions. Groundwater contour maps, summary tables, and time-series plots will be generated, and statistical analysis will be performed as required.

5. Groundwater monitoring activities will be conducted in compliance with the requirements in the various Monitoring and Reporting Program (MRPs) contained in the latest Waste Discharge Requirements (WDRs) issued by the California Regional Water Quality Control Board (RWQCB). Field activities will be conducted twice a year per the following schedule:

Site	Period	Sampling Month	Report Due to RWQCB
Santa Clara	Summer/Fall	October 2017	December 15, 2017
Santa Clara	Winter/Spring	April 2018	June 15, 2018

Storm Water Monitoring and Reporting

1. Effective July 1, 2017, the Santa Clara Landfill will no longer be subject to stormwater monitoring and reporting requirements under the Industrial General Permit. A Notice of Termination with State Water Resources Control Board was submitted and accepted in May of 2017.

Gas Collection System and Flare Operations & Maintenance

1. Operate City's landfill gas (LFG) collection system.

2. Conduct quarterly sump pump maintenance.

3. Conduct LFG flare maintenance.

4. Administer semi-annual comprehensive 3rd party LFG flare maintenance.

5. Coordinate annual gas flare source test.

Gas Collection System Monitoring

1. Conduct monthly gas collection well-field balancing.

Well Abandonment

Outside costs and permit fees associated with abandoning two water supply wells originally provided to the City of Oxnard for operation of the golf course under lease agreement with VRSD. The City has not used or maintained these wells and VRSD has incurred fees for the wells from United Water Conservation District. The wells have been vandalized and the District believes it is necessary to have them properly abandoned since they are not being used for golf course operations. This work was not started in FY2017, as originally planned. This work will be completed in FY2019/2020.

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EXHIBIT B-2

AMENDMENT NO. 2 TO

CITY OF OXNARD AGREEMENT NO. 7167-15-CM

AND

VENTURA REGIONAL SANITATION DISTRICT CONTRACT NO. 15-027

Summary

FY16 Proposed Customer Budget	$75,050.91
FY17 Proposed Customer Budget	$129,457.00
FY18 Proposed Customer Budget	$113,721.00
	$318,228.91

(See detail on the following pages.)

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VENTURA REGIONAL SANITATION DISTRICT
1001 PARTRIDGE DRIVE, SUITE 150
VENTURA, CA 93003-0704
805.658.4679

FY18 PROPOSED CUSTOMER BUDGET

Project Number		Account		Quantity	Cost/Price	Extension
411500 *City of Oxnard [River Ridge]- EPG*						
51010	Wages - Regular		Account Total— $34,058			
		51010	Engineering Technician LFG Perimeter Probe & Structure Monitoring	66	$109	$7,194
		51010	Engineering Technician LFG Surface Monitoring & Reporting	4	$109	$436
		51010	Senior SW Equipment Operator Gas Collection System and Flare Operation &	32	$106	$3,392
		51010	Engineer Gas Collection System and Flare Operation &	16	$118	$1,888
		51010	Engineering Technician Gas Collection System and Flare Operation &	6	$109	$654
		51010	Engineering Technician Gas Collection System Monitoring	96	$109	$10,464
		51010	Engineer LFG Perimeter Probe & Structure Monitoring	12	$118	$1,416
		51010	Engineer LFG Surface Monitoring & Reporting	73	$118	$8,614
52079	Environmental Consultants		Account Total— $34,173			
		52079	Landfill Surface Gas Emissions Monitoring	1	$7,700	$7,700
		52079	Semi Annual GW Monitoring Events & Reports	2	$9,900	$19,800
		52079	Semi Annual Flare Assessment	1	$2,273	$2,273
		52079	Gas Flare Source Test	1	$4,400	$4,400
52150	Permits, Licenses and Fees		Account Total— $920			
		52150	Permits, Licenses, and Fees	1	$920	$920
52155	Lab Services and Supplies		Account Total— $25,302			
		52155	Semi Annual GW Monitoring Analytical Lab Svcs	2	$12,375	$24,750
		52155	Quarterly LFG Sampling	4	$138	$552
52185	Operating Supplies		Account Total— $12,528			
		52185	Calibration Gas (Oxygen & Methane)	2	$207	$414
		52185	Calibration Gas (Zero Air & Methane)	2	$207	$414
		52185	Flare Maintenance & Repair Supplies	1	$11,000	$11,000
		52185	Maintain City's Air Compressor	4	$175	$700

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52197	Utilities		Account Total—	$2,880			
		52197 Electricity			1	$2,880	$2,880
52220	Equipment Rental/Lease		Account Total—	$150			
		52220 Man Lift for Gas Flare Source Test			1	$150	$150
60594	Fund Transfer Out-EQUIPMENT		Account Total—	$2,530			
		60594 GEM Gas Monitor			12	$76	$910
		60594 Mule - Portable Vehicle			4	$280	$1,120
		60594 Misc Supplies/Hardware			1	$500	$500
60598	Fund Transfer Out-FLEET		Account Total—	$1,180			
		60598 Mileage - LFG Perimeter Probe & Structure			480	$1	$480
		60598 Mileage - LFG Surface Monitoring & Reporting			200	$1	$200
		60598 Mileage - Gas Coll Sys Monitoring			500	$1	$500
			Project 411500 Total—	$113,721			
			Total for this report—	$113,721			

Customer Signature: _____ Date: _____
Approval to Start Project

VRSD Signature: _____ Date: _____
Approval to Start Project

VENTURA REGIONAL SANITATION DISTRICT
1001 PARTRIDGE DRIVE, SUITE 150
VENTURA, CA 93003-0704
805.658.4679

FY17 PROPOSED CUSTOMER BUDGET

Project Number

411500 *City of Oxnard [River Ridge]- EPG*

		Account		Quantity	Cost/Price	Extension
51010	Wages - Regular		Account Total--- $40,395			
		51010	Engineering Technician LFG Perimeter Probe & Structure Monitoring	78	$107	$8,346
		51010	Engineering Technician LFG Surface Monitoring & Reporting	77	$107	$8,239
		51010	Engineering Technician Stormwater Monitoring & Reporting	64	$107	$6,848
		51010	Senior Solid Waste Equipment Gas Collection System and Flare Operation &	32	$104	$3,328
		51010	Senior Engineering Technician Gas Collection System and Flare Operation &	16	$116	$1,856
		51010	Engineering Technician Gas Collection System and Flare Operation &	6	$107	$642
		51010	Senior Engineering Technician Gas Collection System Monitoring	96	$116	$11,136
52079	Environmental Consultants		Account Total--- $38,660			
		52079	(RES) Landfill Surface Emission Monitoring	1	$7,700	$7,700
		52079	(OEM) Semi-Annual Flare Assessment	1	$2,273	$2,273
		52079	Gas Flare Source Test	1	$4,400	$4,400
		52079	Annual Flare Destruction Efficiency Test	1	$2,686	$2,686
		52079	Semi-Annual GW Monitoring Events & Reports	2	$9,900	$19,800
		52079	Contractor Lab Costs for 4 Samples	4	$450	$1,800
52080	Other Professional Services		Account Total--- $4,000			
		52080	Methane Detectors Factory Service, Equip, &	1	$4,000	$4,000
52150	Permits, Licenses and Fees		Account Total--- $920			
		52150	APCD Permit Fee	1	$920	$920
52155	Lab Services and Supplies		Account Total--- $26,015			
		52155	Laboratory Fees	4	$178	$713
		52155	Quarterly Landfill Gas Analytical	4	$138	$552
		52155	GW Monitoring Analytical Lab Svcs for 2 Events	2	$12,375	$24,750

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52185	Operating Supplies	Account Total—	$11,828			
		52185 Calibration Gas (Oxygen + Methane)		2	$207	$414
		52185 Calibration Gas (Zero Air + Methane)		2	$207	$414
		52185 Flare Maintenance & Repair Supplies		1	$11,000	$11,000
52186	Other Operating Services	Account Total—	$700			
		52186 Maintain City's Air Compressor		4	$175	$700
52197	Utilities	Account Total—	$2,880			
		52197 Electricity Billing		12	$240	$2,880
52220	Equipment Rental/Lease	Account Total—	$150			
		52220 Man-Lift for Gas Flare Source Test		1	$150	$150
60594	Fund Transfer Out-EQUIPMENT	Account Total—	$2,530			
		60594 GEM Gas Monitor		12	$76	$910
		60594 Mule - Portable Vehicle		4	$280	$1,120
		60594 Misc Supplies/Hardware		1	$500	$500
60598	Fund Transfer Out-FLEET	Account Total—	$1,380			
		60598 Mileage - LFG Perimeter Probe & Structure		480	$1	$480
		60598 Mileage - LFG Surface Monitoring & Reporting		200	$1	$200
		60598 Mileage - Stormwater Monitoring & Reporting		200	$1	$200
		60598 Mileage - Gas Coll Sys Monitoring		500	$1	$500

Project 411500 Total— $129,457

Total for this report— $129,457

Customer Signature: _____ Date: _____
Approval to Start Project

VRSD Signature: _____ Date: _____
Approval to Start Project

Item #11

FY 16 budget

Landfill Gas Perimeter Probe and Structures Monitoring

		Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost
	Monitoring								
Labor $8,346.00	Landfill Gas Perimeter Probe Monitoring	Environmental Resource Analyst	4	12	48	$ 107.00			$5,136.00
	Calibrate Basement gas monitoring unit	Environmental Resource Analyst	1.0	12	12	$ 107.00			$1,284.00
	Calibrate tent gas monitoring units	Environmental Resource Analyst	0.5	12	6	$ 107.00			$642.00
	Reporting								
	Prepare Monthly Report for EHD	Environmental Resource Analyst	1	12	12	$ 107.00			$1,284.00
Materials $414.00	Calibration Gas (oxygen + methane)						2	$ 207.00	$414.00
Equipment $2,529.92	GEM - Gas Monitor						12	$ 75.83	$909.96
	Mule - Portable Vehicle						4	$ 279.99	$1,119.96
	Misc. Supplies/Hardware						1	$ 500.00	$500.00
Mileage $480.00	Mileage						480	$ 1.00	$480.00
Subtotal									$11,769.92

Landfill Gas Surface Monitoring and Reporting

		Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost
	Monitoring								
Labor $8,239.00	Follow-up monitoring for leaks detected (contingency for any surface emissions exceedances)	Environmental Resource Analyst	4	1	4	$ 107.00			$428.00
	Reporting								
	Semi-Annual/Annual Title 5 Reports	Environmental Resource Analyst	10	2	20	$ 107.00			$2,140.00
	Annual Start-up, Shutdown and Malfunction Report	Environmental Resource Analyst	3	1	3	$ 107.00			$321.00
	Emissions Inventory Report	Environmental Resource Analyst	3	1	3	$ 107.00			$321.00
	Annual Compliance Certification Report	Environmental Resource Analyst	7	1	7	$ 107.00			$749.00
	AB-32 / Title 17 Reporting	Environmental Resource Analyst	4	1	4	$ 107.00			$428.00
	California Electronic Greenhouse Gas Reporting	Environmental Resource Analyst	6	1	6	$ 107.00			$642.00
	Federal Electronic Greenhouse Gas Reporting	Environmental Resource Analyst	6	1	6	$ 107.00			$642.00
	Monthly Data Gathering for Reports	Environmental Resource Analyst	2	12	24	$ 107.00			$2,568.00
Materials $414.00	Calibration Gas (zero air + methane)						2	$ 207.00	$414.00
Outside Contracted Service $6,860.70	RES, Inc. - Landfill Surface Emission Monitoring (cost + 10%) *(Effective for FY 15/16 surface monitoring frequency has been reduced from quarterly to annual. If monitoring results exceed regulatory limits, monitoring frequency and cost will return to quarterly.)*	Contractor		1			Lump sum	$ 6,860.70	$ 6,860.70
Fees $879.75	APCD Permit Fee (1/3 fee)						1	$ 879.75	$879.75
Mileage $80.00							80	$ 1.00	$80.00
Subtotal									$16,478.45

Stormwater Monitoring and Reporting

		Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost
	Monitoring								
Labor $4,708.00	6 wet season inspections	Environmental Resource Analyst	2	6	12	$ 107.00			$1,284.00
	Stormwater sampling - 4 sampling events (2015 SW regulations increase sampling to 4 events from 2)	Environmental Resource Analyst	1	4	4	$ 107.00			$428.00
	4 dry season inspections	Environmental Resource Analyst	2	4	8	$ 107.00			$856.00
	Conduct Annual Site Inspection	Environmental Resource Analyst	4	1	4	$ 107.00			$428.00
	Plans and Reporting								
	Conduct Annual Certification and SSMP review	Environmental Resource Analyst	8	1	8	$ 107.00			$856.00
	Complete Annual Report	Environmental Resource Analyst	8	1	8	$ 107.00			$856.00
		Environmental Resource Analyst	21	1	21	$ 107.00			$2,247.00

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$1,800.00								360	$ 1.00	$360.00
Mileage $360.00										
Subtotal										$9,315.00
	Gas Collection System and Flare Operation & Maintenance	**Position**	**Time (Hours)**	**Frequency**	**Total Hours**	**Hourly Rate**	**Unit(s)**	**Unit Cost**		**Total Cost**
Labor $6,570.00	Landfill Gas Condensate Sump maint.	Senior Solid Waste Worker	8	4	32	$ 99.00				$ 3,168.00
	Supervise GCS operation & maint.	SW Technical Operations Supervisor	8	2	16	$ 110.00				$ 1,760.00
	Assist with gas flare engineering test & source test	Environmental Resource Analyst	3	2	6	$ 107.00				$ 642.00
Materials	Flare Maintenance and repair supplies (1/3 rd cost + 10%)	Materials		1			Lump sum			$ 11,000.00
Outside Contracted Service $7,300.54	Semi-annual flare assessment (1/3 rd cost + 10%)	Contractor		1			Lump sum			$ 2,273.54
	Quarterly Landfill Gas Analytical (1/3 rd cost + 10%)	Contractor		4			4	$ 138.00		$552.00
	Gas flare source test - 1/3rd cost + 10% (Testing requirements vary year to year)	Contractor		1			Lump sum	$ 1,033.00	$	1,033.00
	Annual Flare Destruction Efficiency Test (1/3 rd cost + 10%)	Contractor		1			Lump sum	$ 2,636.20	$	2,636.20
	Maintain City's air compressor quarterly (used to operate gas collection pneumatic liquid collection pumps)	Contractor		4			Qrtly	$ 175.00	$	700.00
Equipment rental $150.00	Man-lift for gas flare source test	Equipment		1			1	$ 150.00	$	150.00
Utility $2,880.00	Electricity billing	SCE utility		12				$ 240.00	$	2,880.00
Mileage $320.00							320	$ 1.00		$320.00
Subtotal										$27,220.54
	Gas Collection System Monitoring	**Position**	**Time (Hours)**	**Frequency**	**Total Hours**	**Hourly Rate**	**Unit(s)**	**Unit Cost**		**Total Cost**
Labor $9,792.00	Well-field balancing (monthly)	Engineering Technician	8	12	96	$ 102.00				$ 9,792.00
Mileage $480.00							480	$ 1.00		$480.00
Subtotal										$10,272.00
Grand Total										$76,050.91

EXHIBIT D-2

RECEIVED
2017 APR 13 AM 11:53
VENTURA REGIONAL
SANITATION DISTRICT

AMENDMENT NO. 1
TO
CITY OF OXNARD AGREEMENT NO. 7167-15-CM
AND
VENTURA REGIONAL SANITATION DISTRICT CONTRACT NO. 15-027

AGREEMENT FOR CONSULTING SERVICES

THIS FIRST AMENDMENT ("First Amendment") to the Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this ___ day of December, 2016, by and between the City of Oxnard, a municipal corporation ("City"), and Ventura Regional Sanitation District, a public agency formed pursuant to California Health & Safety Code Section 4700 *et seq.* ("Consultant"). Together, City and Consultant shall be referred to herein as "Parties."

RECITALS

A. On June 8, 2015, City and Consultant entered into the Agreement, which was titled both City of Oxnard Agreement No. 7167-15-CM and VRSD Contract No. 15-027, which is attached as **Exhibit D-1** hereto and incorporated herein by reference; and

B. In this Agreement, Consultant agreed to provide consulting services to the City for the closed Santa Clara Landfill which included landfill gas perimeter probe monitoring and reporting, landfill gas surface monitoring and reporting, storm water monitoring and reporting, gas collection system and flare operations and maintenance, and gas collection system monitoring, as more particularly set forth in Exhibit A of the Agreement (collectively "Services"); and

C. The Parties acknowledge and agree that the Agreement should be renewed and extended for one additional year, and that this can be accomplished by amending the Agreement accordingly.

AMENDMENT TERMS AND CONDITIONS

NOW, THEREFORE, based upon valuable consideration below and the recitals above, the Parties agree as follows:

1. The following language shall replace the original provisions of Section 1 in the Agreement:

   "1. Scope of Services
   Consultant shall furnish City with professional consulting services as more particularly set forth in **Exhibit A-1** attached hereto and incorporated herein by this reference (the "**Services**")."

2. The following language shall replace the original provisions of Section 8 in the Agreement:

   "8. Time for Performance
   The Services performed under this Agreement shall be completed by June 30, 2017. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays."

COUNCIL APPROVED
4/11/17 Item #12(D)
DATE

3. The following language shall replace the original provisions of Section 9 in the Agreement:

"9. Principal-in-Charge
Consultant hereby designates Matthew Baumgardner as its principal-in-charge and person responsible for necessary coordination with Manager."

4. The following language shall be added as a second paragraph to Section 10 (Permits, Licenses, Certificates) in the Agreement:

"Consultant's responsibility under this Agreement shall be subject to the terms and conditions of VRSD Contract No. 00-023-02 which is titled Amended and Restated Golf Course Lease and Landfill Postclosure Agreement By and Between Ventura Regional Sanitation District and City of Oxnard Dated May 21, 2002, is incorporated fully herein by this reference as **Exhibit C-1**. Parties agree that if any conflict arises between the terms and conditions of the Agreement, as amended, and the terms and conditions of **Exhibit C-1** shall prevail and take precedence."

5. The following language shall be added as a third sentence to Section 11 (City's Responsibility) in the Agreement:

"City's responsibility under this Agreement shall be subject to the terms and conditions of **Exhibit C-1**."

6. The following language shall replace the original provisions of Section 12 in the Agreement:

"12. Term of Agreement
This Agreement shall begin on July 1, 2015, and expire on June 30, 2017."

7. The following language shall replace the original provisions of Section 14.a. in the Agreement:

"14. Compensation
a. City agrees to pay Consultant in an amount not to exceed $129,457 for the Services at rates provided in **Exhibit B-1** attached hereto and incorporated herein by this reference."

8. The following language shall replace the original provisions of Section 40(b) in the Agreement:

"b. Any notices to the City may be delivered personally or by mail addressed to the City of Oxnard, Public Works Department, 305 W. Third Street, Oxnard, California 93030, Attention: Badaoui Mouderres."

9. As so amended, the Agreement remains in full force and effect.

(signatures on following page)

IN WITNESS WHEREOF, the Parties have executed this First Amendment on the day and year first written above.

VENTURA REGIONAL SANITATION DISTRICT ("Consultant")

By _____
BERT PERELLO
Chairman of the Board

ATTEST:

By _____
MICHELLE ASCENCION, CMC
Clerk of the Board

APPROVED AS TO FORM:
ARNOLD, LAROCHELLE, MATHEWS, VANCONAS & ZIRBEL, LLP

By _____
ROBERT N. KWONG
Legal Counsel for District

APPROVED AS TO ADMINISTRATION:

By _____
CHRIS THEISEN
General Manager

CITY OF OXNARD ("City")

By _____
GREG NYHOFF
City Manager

APPROVED AS TO FORM:

By _____
STEPHEN M. FISCHER
City Attorney

APPROVED AS TO CONTENT:

BM By _____
DANIEL RYDBERG
Public Works Director

APPROVED AS TO INSURANCE:

By _____
MICHAEL MORE
Risk Manager

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Exhibit A-1
Scope of Services

Landfill Gas Perimeter Probe Monitoring and Reporting

1. Conduct monthly perimeter landfill gas probe monitoring as required by California Code of Regulations (CCR) Title 27. Submit monthly reports to the County of Ventura Environmental Health Division.

2. Monitor the 3 on-site landfill gas detection systems located at the Clubhouse and Maintenance Tent. Calibrate as required by the manufacturer. Respond to gas alarms as needed.

Landfill Gas Surface Monitoring and Reporting

1. Coordinate with 3rd party vendor (RES Environmental) to perform surface emissions monitoring (SEM) of the surface of the landfill on an annual basis for gas emissions in accordance with the requirements of Title V Federal Operating Permit and by CCR 17. (Effective FY15/16 surface monitoring frequency has been reduced from quarterly to annual. If monitoring results exceed regulatory limits, monitoring frequency and cost will return to quarterly.

   Any leaks detected will be remediated in consultation with the City as warranted depending on the source of the leak. This may require adjustments to the gas collection system or cover maintenance.

   Follow-up inspection will be conducted on a 10 day and 30 day schedule as required in the Title V Federal Operating Permit and by CCR 17.

2. Grab landfill gas sample and test gas for component gasses quarterly.

3. Prepare Title V required semi-annual reports, semi-annual flare start-up, shutdown and malfunction reports, and annual certification reports.

4. Prepare AB32 / CCR 17 Reports.

5. Prepare Annual California and Federal Electronic Greenhouse Gas Reporting (EGERT).

6. Retain Title V and CCR 17 records.

7. Pay the Air Pollution Control District Permit Fee for Coastal Flare. 1/3 the fee cost will be charged to the City.

Groundwater Monitoring and Reporting

1. As part of the groundwater monitoring programs, groundwater levels will be measured in all designated wells prior to sampling activities using equipment that is decontaminated before use. The depth to water will be recorded to the nearest 0.01 foot in the field log.

2. Each well will be purged and sampled using dedicated pumps following the standard low-flow purging and sampling method. Non-dedicated monitoring and sampling equipment will be decontaminated prior to use at each well to ensure that samples collected represent the groundwater conditions at the site.

3. Groundwater samples will be collected in appropriate sample containers provided by the analytical laboratory. For dissolved metal analysis, samples will be filtered in the field. Samples will be preserved as required, placed on ice in a cooler, and delivered to the laboratory courier. Chain-of-custody documentation will be generated and accompany each sample.

4. Groundwater monitoring and sampling results will be compiled and field and laboratory data will be imported into Excel tables and Sanitas statistical software. These data will be used to evaluate the groundwater conditions. Groundwater contour maps, summary tables, and time-series plots will be generated, and statistical analysis will be performed as required.

5. Groundwater monitoring activities will be conducted in compliance with the requirements in the various Monitoring and Reporting Program (MRPs) contained in the latest Waste Discharge Requirements (WDRs) issued by the California Regional Water Quality Control Board (RWQCB). Field activities will be conducted twice a year per the following schedule:

Site	Period	Sampling Month	Report Due to RWQCB
Santa Clara	Summer/Fall	October 2016	December 15, 2016
Santa Clara	Winter/Spring	April 2017	June 15, 2017

Storm Water Monitoring and Reporting

Conduct storm water monitoring and reporting as outlined in the City's Storm Water Pollution Prevention Plan. Note – The State of California is modifying the General Industrial Permit effective July 1st 2015 that will require an update to the City's Stormwater Pollution Prevention Plan (SWPPP).

1. Collect and analyze 4 storm water samples per year.

2. Conduct up to 6 wet season monthly inspections as required during the rainy season.

3. Conduct 4 dry weather (authorized/unauthorized) inspections of the stormwater discharge locations.

4. Conduct an annual comprehensive site inspection and evaluation of SWPPP.

5. Complete the annual report and upload to the SMARTS system to the State Water Resources Control Board.

6. Recommend updates to the SWPPP based on the comprehensive site evaluation to the City.

Gas Collection System and Flare Operations & Maintenance

1. Operate City's landfill gas (LFG) collection system.

2. Conduct quarterly sump pump maintenance.

3. Conduct LFG flare maintenance.

4. Administer semi-annual comprehensive 3rd party LFG flare maintenance.

5. Coordinate annual gas flare source test.

6. FY 2014/2015 - Oversee implementation of new LFG flare blower assembly and controls update.

Gas Collection System Monitoring

1. Conduct monthly gas collection well-field balancing.

Well Abandonment

Outside costs and permit fees associated with abandoning two water supply wells originally provided to the City of Oxnard for operation of the golf course under lease agreement with VRSD. The City has not used or maintained these wells and VRSD has incurred fees for the wells from United Water Conservation District. The wells have been vandalized and the District believes it is necessary to have them properly abandoned since they are not being used for golf course operations.

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VENTURA REGIONAL SANITATION DISTRICT
1001 PARTRIDGE DRIVE, SUITE 150
VENTURA, CA 93003-0704
805.658.4679

FY17 PROPOSED CUSTOMER BUDGET

EXHIBIT B-1

Project Number		Account		Quantity	Cost/Price	Extension
411500 *City of Oxnard [River Ridge]- EPG*						
51010	Wages - Regular		Account Total--- $40,395			
		51010	Engineering Technician LFG Perimeter Probe & Structure Monitoring	78	$107	$8,346
		51010	Engineering Technician LFG Surface Monitoring & Reporting	77	$107	$8,239
		51010	Engineering Technician Stormwater Monitoring & Reporting	64	$107	$6,848
		51010	Senior Solid Waste Equipment Gas Collection System and Flare Operation &	32	$104	$3,328
		51010	Senior Engineering Technician Gas Collection System and Flare Operation &	16	$116	$1,856
		51010	Engineering Technician Gas Collection System and Flare Operation &	6	$107	$642
		51010	Senior Engineering Technician Gas Collection System Monitoring	96	$116	$11,136
52079	Environmental Consultants		Account Total--- $38,660			
		52079	(RES) Landfill Surface Emission Monitoring	1	$7,700	$7,700
		52079	(OEM) Semi-Annual Flare Assessment	1	$2,273	$2,273
		52079	Gas Flare Source Test	1	$4,400	$4,400
		52079	Annual Flare Destruction Efficiency Test	1	$2,686	$2,686
		52079	Semi-Annual GW Monitoring Events & Reports	2	$9,900	$19,800
		52079	Contractor Lab Costs for 4 Samples	4	$450	$1,800
52080	Other Professional Services		Account Total--- $4,000			
		52080	Methane Detectors Factory Service, Equip, &	1	$4,000	$4,000
52150	Permits, Licenses and Fees		Account Total--- $920			
		52150	APCD Permit Fee	1	$920	$920
52155	Lab Services and Supplies		Account Total--- $26,015			
		52155	Laboratory Fees	4	$178	$713
		52155	Quarterly Landfill Gas Analytical	4	$138	$552
		52155	GW Monitoring Analytical Lab Svcs for 2 Events	2	$12,375	$24,750

Item #11

52185	Operating Supplies	Account Total—	$11,828			
		52185 Calibration Gas (Oxygen + Methane)		2	$207	$414
		52185 Calibration Gas (Zero Air + Methane)		2	$207	$414
		52185 Flare Maintenance & Repair Supplies		1	$11,000	$11,000
52186	Other Operating Services	Account Total—	$700			
		52186 Maintain City's Air Compressor		4	$175	$700
52197	Utilities	Account Total—	$2,880			
		52197 Electricity Billing		12	$240	$2,880
52220	Equipment Rental/Lease	Account Total—	$150			
		52220 Man-Lift for Gas Flare Source Test		1	$150	$150
60594	Fund Transfer Out-EQUIPMENT	Account Total—	$2,530			
		60594 GEM Gas Monitor		12	$76	$910
		60594 Mule - Portable Vehicle		4	$280	$1,120
		60594 Misc Supplies/Hardware		1	$500	$500
60598	Fund Transfer Out-FLEET	Account Total—	$1,380			
		60598 Mileage - LFG Perimeter Probe & Structure		480	$1	$480
		60598 Mileage - LFG Surface Monitoring & Reporting		200	$1	$200
		60598 Mileage - Stormwater Monitoring & Reporting		200	$1	$200
		60598 Mileage - Gas Coll Sys Monitoring		500	$1	$500

Project 411500 Total— $129,457

Total for this report— $129,457

Customer Signature: _____ Date: _____
Approval to Start Project

VRSD Signature: _____ Date: _____
Approval to Start Project

Item #11

EXHIBIT C-1

DATE: 5/21/02 AGENDA # I

VRSD CONTRACT NO: 00-023-02

AMENDED AND RESTATED
GOLF COURSE LEASE AND
LANDFILL POSTCLOSURE
MAINTENANCE AGREEMENT
BY AND BETWEEN
VENTURA REGIONAL SANITATION DISTRICT
AND
CITY OF OXNARD

DATED: May 21, 2002

AMENDED AND RESTATED
GOLF COURSE LEASE AND LANDFILL POSTCLOSURE MAINTENANCE AGREEMENT
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AMENDED AND RESTATED
GOLF COURSE LEASE
AND LANDFILL
POSTCLOSURE MAINTENANCE AGREEMENT

THIS AMENDED AND RESTATED GOLF COURSE LEASE AND LANDFILL POSTCLOSURE MAINTENANCE AGREEMENT ("this Lease Agreement") is made and entered into this 21st day of May, 2002, by and between the VENTURA REGIONAL SANITATION DISTRICT, a California County Sanitation District (hereinafter referred to as "VRSD"), and the CITY OF OXNARD, a municipal corporation of the State of California (hereinafter referred to as "City"). The purpose of this Lease Agreement is to lease two parcels of real property, including a closed landfill parcel, to City so that City, at its sole expense, may design, permit, construct, and operate open space recreational uses on the property; to provide that City assume responsibility for maintaining the surface of the property and for expenses incurred by VRSD as a result of City's development and use of the property; to provide that VRSD retain responsibility for monitoring and maintaining specified subsurface maintenance facilities; and to provide consideration to VRSD and City in the form of additional covenants and agreements, with all of the above generally described provisions being more particularly described and established below. This Lease Agreement provides for a conveyance from a governmental agency to a governmental agency and is exempted by Government Code Section 66428(a)(2) from any requirement for a parcel map.

1. **DEFINITION OF TERMS**. As used in this Lease Agreement, the following terms have the meanings set forth below:

a. "Agreement for Waste Disposal" shall mean the Agreement for Waste Disposal at Toland Road Landfill between VRSD and City executed November 14, 2000, as it may be amended.

b. "Bailard Buffer Parcel" shall mean that certain real property owned by VRSD and located west of Victoria Avenue and east of the Bailard Landfill as more particularly described in Exhibit "B" and illustrated on Exhibit "A".

c. "Closure Plan" shall mean the Coastal Sanitary Landfill Final Closure Plan prepared by VRSD in September, 1991, and approved by the California Integrated Waste Management Board.

d. "Coastal Buffer Parcel" shall mean that certain real property owned by VRSD and located east of Victoria Avenue and west of the Coastal Landfill Parcel as more particularly described in Exhibit "C" and illustrated on Exhibit "A".

e. "Coastal Landfill Parcel" shall mean that certain real property owned by VRSD located west of the Santa Clara Landfill Parcel as more particularly described in Exhibit "D" and illustrated on Exhibit "A". "Coastal Landfill" shall mean the landfill located on the Coastal Landfill Parcel.

f. "Landfill Cover System" shall mean the landfill cover system constructed over the top of the closed Coastal Landfill as that system actually exists on the date of this Lease Agreement. The Landfill Cover System design is described and illustrated in the Closure Plan and represented in the as built closure plans prepared by VRSD for the Coastal Landfill. The actual dimensions of this system existing on the date of this Lease Agreement may vary from the design. VRSD makes no representation as to the dimensions or condition of the cover system as of the date of this Lease Agreement, because the cover system has changed due to differential settlement, erosion or other factors.

g. "Northwest Golf Course Community Specific Plan" or "Specific Plan" shall mean that Specific Plan approved by the City July, 1999.

h. "Northwest Golf Course Community Specific Plan EIR" or "Specific Plan EIR" shall mean that Final Environmental Report (State Clearinghouse No. 97031009) certified by City July, 1999.

i. "Postclosure Plan" shall mean the Coastal Sanitary Landfill Postclosure Maintenance Plan prepared by VRSD October, 1991, and approved by the California Integrated Waste Management Board.

j. "Premises" shall mean (1) the surface of the Coastal Landfill Parcel, and (2) the Coastal Buffer Parcel.

k. "Santa Clara Landfill Parcel" shall mean that certain real property owned by City located east of the Coastal Landfill Parcel as illustrated on Exhibit "A".

l. "Specified Recreational Uses" shall mean open space recreational uses available to the public, with or without charge, as approved in writing by City and VRSD. Subject to the other terms of this Lease Agreement, the following recreational uses are deemed approved as Specified Recreational Uses: golfing, walking, jogging, bicycling, picnicking and/or outdoor athletic fields.

m. "Subsurface" shall mean the land lying below the top of the clay liner portion of the Landfill Cover System constructed on the Coastal Landfill Parcel.

n. "Subsurface Maintenance Facilities" shall mean landfill improvements whether located on top of or below the surface of the Coastal Landfill that directly relate to maintenance or mitigation of subsurface landfill conditions. Such facilities shall include all landfill gas collection and monitoring wells, all water quality monitoring wells, all landfill gas collection system piping, valves, and related equipment, the entire landfill gas flare system, all flare station landscaping growing inside the fence surrounding the flare station, all condensate collection tanks and any other improvement physically connected to subsurface landfill maintenance improvements. "Subsurface Maintenance Facilities" shall not mean any roads or drainage improvements.

o. "Surface" shall mean the land lying on top of the Coastal Landfill Parcel including the soil above the top of the clay liner portion of the Landfill Cover System. "Surface" shall not be interpreted to include "Subsurface" or "Subsurface Maintenance Facilities."

p. "Water and Wastewater Services Agreement" shall mean the Agreement for Water and Wastewater Services between VRSD and City executed November 14, 2000 as it may be amended.

2. **PREMISES**. Pursuant to the terms, conditions and covenants hereof, VRSD hereby leases to City, and City leases from VRSD the Premises. All references to the "Premises" shall be understood to include both (1) the surface of the Coastal Landfill Parcel, and (2) the Coastal Buffer Parcel unless only one of these parcels is expressly specified in any provision of this Lease Agreement.

3. **TERM**.

This Lease Agreement shall be deemed to have become effective and the term shall be deemed to have commenced on November 14, 2000, provided, however, that where this Lease Agreement makes specific provision for the date of commencement and/or termination of certain rights and/or responsibilities, those specified dates shall control the timing of the referenced rights and/or responsibilities. This Lease Agreement shall continue in effect until December 31, 2099, unless terminated earlier in accordance with the provisions below.

4. **RENT**.

a. **Base Rent**. Commencing on the date first stated above and continuing thereafter during the term of this Lease Agreement, on or before December 1 of each year, City shall pay VRSD One Dollar ($1) per year as the Base Rent.

b. **Other Consideration**. In addition to the Base Rent, in consideration for the making of this Lease Agreement, City shall fully perform all obligations arising under this Lease Agreement, and City shall perform all of City's obligations arising under the Agreement for Waste Disposal and the Water and Wastewater Services Agreement. City expressly acknowledges that VRSD would not have made this Lease Agreement unless City had agreed to the Agreement for Waste Disposal and the Water and Wastewater Services Agreement.

5. **USE OF PROPERTY**. During the term of this Lease Agreement, City shall use and occupy the Premises solely for Specified Recreational Uses subject to the terms and conditions herein. Any other use is prohibited. In conjunction with Specified Recreational Uses, City may construct lined lakes on the Coastal Buffer Parcel to provide for drainage of City's property used for Specified Recreational Uses and for irrigation of City's property used for Specified Recreational Uses. City shall not construct or allow the construction or placement of any buildings or permanent enclosed

structures on the Coastal Landfill Parcel. City shall not construct or allow the construction or placement of any building or permanent enclosed structure on the Coastal Buffer Parcel except for restrooms, snack shops with open air seating, unenclosed shelters, and a maintenance facility serving Specified Recreational Uses solely, provided such improvements are designed and constructed to prevent the trapping or accumulation of landfill gas, and provided that such improvements are approved (including issuance of all required permits) by regulatory agencies which have jurisdiction to regulate construction of such improvements. City shall not disrupt or allow the disruption of the Landfill Cover System or any material lying within four feet of the waste buried in the Coastal Landfill Parcel without the express written approval of VRSD, CIWMB, RWQCB and other regulatory agencies which have jurisdiction to regulate the maintenance and improvements of the Landfill Cover System. Without limiting the foregoing, City agrees City shall not, under any circumstances, dig into, drill through or otherwise impair the compacted clay liner portion of the Landfill Cover System without all such required regulatory approval. City shall not permanently take any dirt or earthen material off either the Coastal Landfill Parcel or the Coastal Buffer Parcel; provided, however, that City may move dirt from the Coastal Buffer Parcel to the Coastal Landfill Parcel. Notwithstanding this Section 5 or any other provision of this Agreement, all rights granted by VRSD to City with respect to City's use and occupancy of the Premises are, and shall remain, fully subject to the rights of the Lessee under the Gas Lease (as such terms are defined in Section 10a of this Lease Agreement).

6. **CONDITION OF PREMISES.**

a. **Acceptance of Premises.** City hereby acknowledges that it has fully inspected the Premises, and all improvements thereon, and accepts the same in its present condition "as is." VRSD makes no guarantees, warranties or representations regarding the fitness of the Premises for development for Specified Recreational Uses or whether any of the activities contemplated hereunder can be undertaken without conflicting with or impairing any rights of the Lessee under the Gas Lease or causing VRSD to violate any of its covenants or obligations under the Gas Lease. City acknowledges that it will be relying solely on its own investigations, studies, and expert review concerning the condition of the Premises, its zoning and land use designation, its potential for development, and any and all environmental, hydrogeologic or geologic conditions.

b. **Landfill Impacts.** City further acknowledges that the Premises is located on or adjacent to a closed solid waste landfill and, as such, the Premises may be subject to certain conditions, including, but not limited to, significant differential settlement of the surface, venting of landfill gas through the surface, subsurface migration of landfill gas, chemicals, liquid substances and other compounds, contamination of groundwater beneath and adjacent to the landfill and all other environmental impacts associated with a closed landfill. Specifically, City acknowledges that the surface of the Coastal Landfill Parcel is settling at a non-uniform rate as the waste buried below the surface decomposes. Settlement of the surface can be expected to occur throughout the term of this Lease Agreement and this condition will require City to fill in cracks and voids and engage in constant maintenance of any and all paths, piping, utility conduits, fencing, landscaping, drainage features, golf course tees, fairways, greens, improvements for Specified Recreational Uses and other

improvements on the Coastal Landfill Parcel. City and VRSD agree that City shall carry out such responsibilities without impairing any rights of the Lessee under the Gas Lease, including Lessee's right to access at all times to the gas collection system (including all gas collection wells, interconnection pipes, valves, monitoring equipment, any necessary flare/blower stations, vacuum pumps and any additional gas extraction equipment installed and used for the purpose of extraction of landfill gas) for purposes of operation, maintenance, repair and replacement of such system. City acknowledges that landfill gas, including methane gas and other hazardous gases, generated by the decomposing waste buried beneath the surface of the Coastal Landfill Parcel migrates laterally subsurface and also vents vertically through cracks in the surface of the ground. The generation of landfill gas and the migration and venting of this gas can be expected to occur throughout the term of this Lease Agreement. City further acknowledges that the Coastal Buffer Parcel may experience all of the impacts associated with the landfill and that the Coastal Buffer Parcel experiences episodes of significant flooding, including, but not limited to, drainage from the existing Victoria Avenue drainage ditch and the Patterson Drain, including occasions when the outlet to the Santa Clara River does not drain due to high water. City assumes and accepts all risks, losses, damages, and costs of these above referenced landfill impacts as they may affect the construction and operation of Specified Recreational Uses on the Premises, except for losses arising from any VRSD negligent act or omission; provided that in no event shall VRSD ever be liable for any consequential damage incurred by City because the Premises is not usable for Specified Recreational Uses.

7. **PERMITTING OF PREMISES.**

a. **CIWMB**. City acknowledges that the Coastal Landfill Parcel is subject to regulation by the California Integrated Waste Management Board ("CIWMB") and its local enforcement agency ("LEA"), the Ventura County Environmental Health Department ("EHD"). The LEA and the CIWMB have approved the Closure Plan and the Postclosure Plan. City acknowledges that the Closure Plan and the Postclosure Plan must be revised before City can commence development of Specified Recreational Uses on the Coastal Landfill Parcel. City acknowledges that the CIWMB and the LEA must approve any revisions to the Closure Plan and Postclosure Plan and that CIWMB and LEA may order further revision to these plans during the term of this Lease Agreement. City further acknowledges that the State of California has enacted and will further enact laws and regulations which may apply to City's use of the Coastal Landfill Parcel.

b. **RWQCB**. City acknowledges that the Coastal Landfill Parcel is subject to regulation by the California Regional Water Quality Control Board - Los Angeles Region ("RWQCB") and the California State Water Resources Control Board ("SWRCB"). City acknowledges that the RWQCB has issued Waste Discharge Requirements ("WDR's") and Groundwater Monitoring Requirements ("Water Quality Requirements") for the Coastal Landfill, the Santa Clara Landfill and the Bailard Landfill. City acknowledges that the RWQCB shall review and revise the WDR's and/or Water Quality Requirements before City shall commence development of Specified Recreational Uses. City acknowledges that RWQCB and/or SWRCB may modify the WDR's and/or Water Quality Requirements at any time during the term of this Lease Agreement.

c. **APCD**. City acknowledges that the Coastal Landfill Parcel is subject to regulation by the Ventura County Air Pollution Control District ("APCD"). City acknowledges that APCD has adopted Rule 74.17 and Rule 74.17.1 and may adopt revisions to this rule or adopt new rules regulating air emissions from the Premises.

d. **EPA**. City acknowledges that the Coastal Landfill Parcel is subject to regulation by the Environmental Protection Agency and/or other regulatory agencies of the United States ("EPA"). City acknowledges that the United States has enacted the Resource Conservation and Recovery Act and other laws and regulations and will further enact new laws and regulations which may apply to City's use of the Coastal Landfill Parcel.

e. **Regulatory Compliance**. City acknowledges review of each of the above referenced Closure Plan, Postclosure Plan, WDR's, Water Quality Requirements and APCD Rule 74.17, and Rule 74.17.1. City acknowledges that the Coastal Landfill Parcel is subject to other regulatory requirements. City assumes responsibility for becoming fully informed of all the restrictions presented by such regulatory permits, rules, regulations and laws as they exist now or may exist in the future as they relate to City's use of the Premises. City agrees that to the extent its use of the Premises or adjacent City owned property causes a violation of any such permit, rule, regulation or law, City shall bear the full responsibility for correcting any such violation and City shall bear the full expense of any liability associated with any penalty, prosecution or remediation requirement associated with any such violation and that City shall hold harmless, defend (by counsel selected by City after concurrence which shall not be unreasonably withheld by VRSD) and indemnify VRSD from any such liability.

8. LANDFILL CLOSURE PLAN, LANDFILL POSTCLOSURE PLAN AND OTHER REGULATORY DOCUMENTS.

a. **City Reimbursement of VRSD**. VRSD and City acknowledge that the Closure Plan, Postclosure Plan and other regulatory documents must be revised and approved by the appropriate regulatory agencies in order to accommodate the development of Specified Recreational Uses on the Coastal Landfill Parcel and that such revisions may be required on subsequent occasions during the term of this Lease Agreement. VRSD and City agree to cooperate in all such revisions and the implementation of the Closure Plan, Postclosure Plan, and other regulatory documents, provided that VRSD shall not be obligated to agree to any revision or requirement relating to Specified Recreational Uses which causes VRSD to incur expenses for subsurface maintenance of the Coastal Landfill beyond the expenses VRSD was obligated to incur under the plans and documents in existence as of the date of this Lease Agreement or which would conflict with or impair any right of the Lessee under the Gas Lease or cause VRSD to violate any covenant or obligation under the Gas Lease. VRSD and City agree that City shall bear the entire cost to City and VRSD of revising the Closure Plan, Postclosure Plan, and all other regulatory documents. City shall reimburse VRSD for all commercially reasonable costs and expenses incurred by VRSD under subsections 8a, b, c, d, e, f, and g below, including all VRSD staff and consultant costs. With respect to City's obligation herein to pay or reimburse VRSD, City shall, within thirty (30) days after receipt of billing from

VRSD, pay VRSD for reasonable expenses incurred by VRSD in carrying out the activities described in this Section 8 including staff time and consultant time in consulting with the City, City consultants, VRSD consultants, regulatory agencies and other interested parties involved in the revision and/or implementation of the plans or other regulatory documents and/or any of the activities described in this Section 8. City's obligation to reimburse shall include, but not be limited to payment for all VRSD staff and VRSD consultant time spent on reviewing all drafts, proposed submittals, designs, and other documentation relating to the plans and documents and attendance of VRSD employees and VRSD consultants at any and all meetings relating to the development of Specified Recreational Uses on the Premises. As used in this Lease Agreement, the term "VRSD consultant" shall mean independent engineers, hydrologists, attorneys, architects and other experts retained by VRSD. City shall reimburse VRSD for its staff time at the then current established hourly rates and for its consultants' time at the established hourly rates as then specified in contracts between VRSD and its consultants which shall be made available to City. In addition, if the revised plans or other permits, conditions or documents changed as a result of Specified Recreational Uses result in an increase in the expense of providing subsurface postclosure maintenance City shall, throughout the terms of this Lease Agreement, reimburse VRSD for such additional postclosure maintenance expenses within thirty (30) days after receipt of billing specifying the nature and cost of the additional maintenance work, improvements, monitoring or other activity required by the revised Closure Plan, Postclosure Plan or other regulatory documents.

b. **City's Assumption of Responsibility**. Immediately upon execution of this Lease Agreement, City shall assume responsibility for complying with the surface maintenance components of the Postclosure Maintenance Plan and other regulatory documents, including, but not limited to, the WDR's. Upon the approval of the revised Closure Plan, Postclosure Plan, and other regulatory documents permitting Specified Recreational Uses on the Coastal Landfill Parcel City shall become responsible for and shall commence the physical work of complying with all components of those plans and any successor plans and other documents which regulate or relate to the development and maintenance of the surface of the Coastal Landfill Parcel and VRSD shall bear responsibility only for non Specified Recreational Uses related subsurface maintenance requirements of said plans, including responsibility for any subsurface maintenance facilities which exist on or above the surface of the Coastal Landfill Parcel. In addition to assuming responsibility for all continuing and all new surface maintenance requirements, City shall bear responsibility for any additional subsurface maintenance requirement caused by the development and/or operation of Specified Recreational Uses on the Premises. In the future, during the term of this Lease Agreement, City shall become responsible for compliance with all new provisions, conditions and requirements of further revised plans and other regulatory documents relating to Specified Recreational Uses on the Premises and for all subsequent revised or new provisions, conditions and requirements of said plans and documents or new regulatory enactments relating to the surface maintenance of the Premises which may hereinafter become effective during the term of this Lease Agreement. The parties acknowledge that the various regulatory agencies may continue to name VRSD as the permitee, owner and/or responsible party for the Closure Plan, Postclosure Plan, and other regulatory documents. Nonetheless, City shall take all reasonable action necessary to assure that City's activities do not cause VRSD to be found by the regulatory agencies to be out of compliance with the Closure Plan,

Postclosure Plan, or any other regulatory document. City and VRSD agree that each shall carry out its responsibilities under this Section 8 without impairing any rights of the Lessee under the Gas Lease, including Lessee's right to access at all times to the gas collection system (including all gas collection wells, interconnection pipes, valves, monitoring equipment, any necessary flare/blower stations, vacuum pumps and any additional gas extraction equipment installed and used for the purpose of extraction of landfill gas) for purposes of operation, maintenance, repair and replacement of such system.

c. **City's Right to Withdraw Initial Applications for Plan Revisions**. City, at its sole discretion, may, at any time, prior to approval of the initial applications to be made to revise the Closure Plans and Postclosure Plans in existence on the date of this Lease Agreement to allow the initial development of Specified Recreational Uses, determine that the applications for revision to the Closure Plan and Postclosure Plan and/or all other regulatory documents shall be withdrawn; and, this Lease Agreement will, upon such withdrawal, automatically terminate. It is further agreed that City, in its sole discretion, may at any time after approval of the above referenced applications, terminate this Lease Agreement pursuant to Section 24 below.

d. **Plan Revision Process**. Revisions of the Closure Plan and Postclosure Plan, current or as revised in the future, as well as the revision of any and all other regulatory documents pertaining to land use on the Premises, including permits, requirements, orders and other regulatory directives, shall be processed by City and VRSD on a cooperative basis consistent with the provisions herein. No application for any revision to the Closure Plan and/or Postclosure Plan shall be submitted to the CIWMB or LEA until both VRSD and City have approved the submission of such application for revision. Neither VRSD nor City shall be obligated to apply for, support or accept any Plan revision proposed as a consequence of planned Specified Recreational Uses which increases the expense of the party responsible for complying with the provision objected to; provided that neither party shall oppose such provisions if the other party agrees to assume all liability for the expense of such provisions, except that notwithstanding anything contained in this Agreement, VRSD shall not be required to apply for, support or accept any Plan revision, the implementation of which would conflict with or impair any right of the Lessee under the Gas Lease or cause VRSD to violate any covenant or obligation under the Gas Lease. City agrees that City shall pay and/or bear the full expense of preparing, processing and implementing the revised Closure Plan, Postclosure Plan, and other regulatory documents caused by or related to, directly or indirectly, the development of Specified Recreational Uses on the Premises.

e. **Financial Assurance Mechanism**. City acknowledges the legal requirements relating to the provision of financial assurance mechanisms for closed landfills. VRSD and City acknowledge that the existing financial assurance mechanism which has been established and funded by VRSD and approved by CIWMB may be revised as a result of revisions to the Closure Plan and Postclosure Plan necessitated by City's proposal to develop Specified Recreational Uses on the Coastal Landfill Parcel. VRSD shall continue to be responsible to the CIWMB for providing financial assurance in the amount stated in the Postclosure Plan's estimate of expense of fifteen (15) years of postclosure maintenance of the Coastal Landfill as specified in the cost estimate existing

on the date of this Lease Agreement (even though City, pursuant to this Lease Agreement, shall bear the actual expense, when incurred, of all surface maintenance and any expense of any additional subsurface maintenance required as a result of City's development of Specified Recreational Uses on the Coastal Landfill). On the other hand, City shall be responsible for providing financial assurance for all other new postclosure maintenance expenses as required by CIWMB as a consequence, direct and/or indirect, of Specified Recreational Uses including Specified Recreational Uses related surface maintenance requirements and all new subsurface requirements which are required as a result of Specified Recreational Uses proposed. City acknowledges that as a result of the application for revision to the Closure Plan and Postclosure Maintenance Plan which must be made in order to advance the development of Specified Recreational Uses on the Coastal Landfill Parcel, the CIWMB may implement additional financial assurance requirements. City shall be responsible for and hold VRSD harmless from any such additional Specified Recreational Uses related requirements. City also acknowledges that additional financial assurance requirements may be imposed in the future. City shall bear all costs, expenses and obligations of meeting such additional financial assurance requirements as relate to surface maintenance required because of the development and/or operation of Specified Recreational Uses on the Premises. VRSD shall expeditiously apply in accordance with CIWMB regulations to CIWMB for release of any financial assurance funding or security provided by City and release any funds held by VRSD which are due to City upon CIWMB approval of such release.

f. **Final Design**. After CIWMB and LEA approval of revisions to the Closure Plan and Postclosure Plan and all other necessary regulatory approvals, including, but not limited to the approval of the RWQCB, SWRCB and EPA, City shall develop final designs for Specified Recreational Uses improvements to be constructed upon the Premises. These final designs shall be submitted to VRSD for its review. VRSD may, within thirty (30) days after receipt of any submittal, comment upon any aspect of the designs which could potentially increase VRSD's cost of subsurface maintenance of the Coastal Landfill; provided, however, that, notwithstanding anything contained in this Agreement, VRSD shall not be required to accept any final design, the implementation of which would conflict with or impair any right of the Lessee under the Gas Lease or cause VRSD to violate any of its covenants or obligations under the Gas Lease.

Notwithstanding VRSD's review of and comment on the final design, City shall release, indemnify, defend and hold VRSD harmless from any liability arising from any design defect, error, omission, or damage arising from the final design of all improvements to be constructed on the Premises.

g. **Environmental Documentation**. City shall be the lead agency for all environmental documentation relating to any and all development on the Premises. City shall fully comply with the California Environmental Quality Act ("CEQA"). City shall be responsible for defending or providing a defense to any action alleging non-compliance with CEQA or any other law, regulation, rule or permit arising out of the revision of the Closure Plan, Postclosure Plan or other regulatory document relating to Specified Recreational Uses or the Northwest Golf Community Specific Plan, except to the extent of any liability caused by VRSD's acts, omissions or negligence. City shall hold

harmless, defend and indemnify VRSD in any such action, except to the extent of any liability caused by VRSD's acts, omissions or negligence. City shall reimburse VRSD for any expense, including, but not limited to any expense for staff time, consultant time (including attorney time or other related expenses) incurred by VRSD in response to City's request made in connection with VRSD's defense.

h. **Development Liability**. City shall hold harmless, defend (by counsel selected by City after concurrence, which shall not be unreasonably withheld, by VRSD) and indemnify VRSD from any action, claim or liability arising out of City's approval of development occurring on the Premises or on the property covered by City's approval of the Northwest Golf Community Specific Plan. City shall reimburse VRSD for any expenses, including, but not limited to, any expense for staff time or consultant time (including attorney time or other related expenses) incurred by VRSD as a result of such action. For example, City shall hold harmless, defend (by counsel selected by City after concurrence which shall not be unreasonably withheld by VRSD) and indemnify VRSD in any administrative appeal or judicial action brought in any administrative forum or any court relating to the City's approval and/or development approved by City in the Specific Plan area, including, but not limited to, compliance with environmental documentation requirements, low income housing provisions, compliance with general plan or other planning requirements or other actions involving any City approval or City permit relating to development in the Specific Plan area. With respect to development of Specified Recreational Uses on the Premises, City shall bear all permit, annexation, zoning, development agreement and other regulatory costs, fees, charges or requirements. For example, City shall indemnify and hold VRSD harmless from annexation fees and other charges due Calleguas Water District and/or Metropolitan Water District of Southern California upon annexation and development of the Premises.

i. **Construction**. VRSD shall be entitled to inspect the Premises throughout the construction of all improvements on the Premises. Notwithstanding VRSD's inspection of construction activities, City shall release, indemnify, defend and hold VRSD harmless from any and all liability arising from the construction of any and all improvements on the Premises by City or City's contractors. All City contractors working on the Premises shall be obligated to name VRSD as an additional insured as to all insurance requirements imposed by the City on its contractors.

9. **MAINTENANCE.**

a. **Immediate Assumption of Maintenance of Coastal Buffer Parcel and Surface Maintenance of Coastal Landfill Parcel**. Immediately upon execution of this Lease Agreement, City shall take possession of and be responsible for the maintenance of the Coastal Buffer Parcel and the surface maintenance of the Coastal Landfill Parcel as provided in this Lease Agreement. From and after the date of this Lease Agreement, City shall be entitled to a non-exclusive right of reasonable access to the Coastal Landfill Parcel at any time, subject to the present or future subsurface maintenance operations of VRSD on the Premises and to the rights of the Lessee under the Gas Lease, including Lessee's right to access at all times to the gas collection system (including all gas collection wells, interconnection pipes, valves, monitoring equipment, any necessary

flare/blower stations, vacuum pumps and any additional gas extraction equipment installed and used for the purpose of extraction of landfill gas) for purposes of operation, maintenance, repair and replacement of such system. The parties should coordinate their respective activities and meet quarterly to discuss upcoming activities on the Premises.

b. **Coastal Landfill Parcel Maintenance Responsibility**. Immediately upon execution of this Lease Agreement, City shall be responsible for complying with all surface maintenance requirements established under the then existing Postclosure Maintenance Plan and other regulatory documents including, but not limited to, the WDR. Upon approval of the revised Closure Plan and/or Postclosure Plan and other regulatory documents permitting Specified Recreational Uses, in accordance with this Lease Agreement, City shall be solely responsible for and obligated to maintain the surface of the Coastal Landfill Parcel in accordance with all requirements of said Plan and documents. VRSD shall retain the right of access to perform all subsurface maintenance of the Coastal Landfill for which VRSD shall remain responsible. City shall be responsible for complying with all surface maintenance activities on the Coastal Landfill including, but not limited to, the surface maintenance activities set forth in the Closure Plan, Postclosure Plan, and other regulatory documents and any revisions thereto. City shall bear all expense associated with Premises surface maintenance activity. City shall release, defend, and hold VRSD harmless from any and all expense relating to the surface maintenance of the Premises, except for expenses incurred by VRSD hereunder in maintaining subsurface maintenance facilities. City and VRSD agree that each shall carry out its responsibilities under this Section 9 without impairing any rights of the Lessee under the Gas Lease, including Lessee's right to access at all times to the gas collection system (including all gas collection wells, interconnection pipes, valves, monitoring equipment, any necessary flare/blower stations, vacuum pumps and any additional gas extraction equipment installed and used for the purpose of extraction of landfill gas) for purposes of operation, maintenance, repair and replacement of such system.

c. **Indemnification**. In consideration of entering into this Lease Agreement, City agrees that, City shall indemnify, defend (by counsel selected by City after concurrence, which shall not be unreasonably withheld, by VRSD), and hold VRSD, and each of VRSD's directors, employees, attorneys, and agents (collectively, "Indemnitees") harmless from any and all claims, liabilities, liens, losses, judgments, orders, actions (including actions arising from personal injury to or death of third persons or property damage), expenses, fines, penalties, governmental directives or inquiries, environmental response costs of any type (including without limitation reasonable attorneys' and environmental consultants' fees) (collectively "Liabilities"), arising from or related to City's design, construction, maintenance, repair, operation and/or use of the Premises, except to the extent such liabilities are caused by Indemnitees' acts, omissions, or negligence.

d. **Release**. City hereby fully releases Indemnitees from any and all claims which City may have now or in the future against Indemnitees for any damage or liability arising from the use of the Premises by City. As a material covenant and condition of this Lease Agreement, City agrees that in the event of any adverse event, situation or condition regarding the use of the Premises by City, City shall look solely to parties other than Indemnitees, and Indemnitees shall not be

responsible in any way therefor, and no cause of action shall lie, nor shall any judgment, however obtained, be executed against Indemnitees or any of them except to the extent such adverse event, situation or condition is caused by Indemnitees' acts, omissions or negligence.

With respect to the foregoing release, City fully waives any rights or benefits available to City under the provisions of Section 1542 of the California Civil Code, which provides as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

City acknowledges that its attorney at law has explained to City the meaning and effect of this statute. City understands fully the statutory language of Civil Code Section 1542, and with this understanding, City nevertheless elects to, and does, assume all risk as against Indemnitees regarding such damages or liabilities, whether arising before or after the making of this Lease Agreement and whether now known or unknown, and City specifically waives any rights City may have under California Civil Code Section 1542. City fully understands that if the facts with respect to which this release is executed are later found to be other than or different from the facts now believed by it to be true, City expressly accepts and assumes the risk as against Indemnitees of that possible difference in facts, and agrees that this release shall be and remain effective notwithstanding that difference in facts.

Therefore, the provisions of Civil Code Section 1542 (and any other or similar provisions of common or statutory law of any state of the United States) are hereby waived by City as to all matters released herein and City acknowledges that this waiver is an essential and material term of this Lease Agreement without which this Lease Agreement would not have been executed by VRSD. City acknowledges and recognizes that City may hereafter discover facts different from or in addition to those which City now knows or believes to be true with respect to the claims released herein. However, City intends by this Lease Agreement to fully, finally and forever settle and release the claims set forth herein, whether these claims heretofore have existed, now exist, may now exist, or will exist upon the discovery of additional facts. In furtherance of this intention, this Lease Agreement shall remain in full and complete effect in all respects, notwithstanding the discovery by VRSD or City of the existence of additional or different facts relating to the claims hereby released.

10. GAS AND CONDENSATE COLLECTION AND FLARE SYSTEM

a. **Collection System**. City acknowledges that VRSD owns the landfill gas generated under the Premises. City acknowledges the existence and contents of the April 22, 1983, Landfill Gas Lease and Operating Agreement for Conversion Systems among Cambrian Energy Systems,

Inc., Ventura Coastal Corporation and VRSD, and the April 18, 1991, First Amendment to Landfill Gas Lease and Operating Agreement for Conversion Systems between Oxnard Landfill Associates and VRSD (collectively referred to as the "Gas Lease"). City acknowledges that: (i) "Lessee" under said Gas Lease (originally Cambrian Energy Systems, Inc. and currently Ogden Power Pacific, Inc., a subsidiary of Ogden Energy, Inc.), has comprehensive rights of way over the Premises to extract landfill gas from the Coastal Landfill and collect this gas and transport it to its energy facility as described in said lease; (ii) these rights, include, but are not limited to, the right to construct, repair, replace, relocate, and maintain gas extraction wells, collection piping, collection traps, valves, monitoring equipment, blowers, pumps and other improvements related to the development of the gas rights in the Coastal Landfill; and (iii) the Lessee under said Gas Lease also has the right to place and maintain on the Coastal Landfill Parcel tanks, roads, pipelines, power lines and other improvements necessary to the Lessee's operations subject to limitations set forth in the Gas Lease. City acknowledges and agrees that its right to use and occupy the property under this Lease Agreement are subject to the rights of the Lessee and VRSD under said Gas Lease and that VRSD and/or the Lessee shall reserve ownership and possession of these gas collection improvements. VRSD agrees that it will be primary liaison with the Lessee regarding the coordination of Specified Recreational Uses with the Lessee's operations and the exercise of Lessee's rights under the Gas Lease. VRSD shall use commercially reasonable efforts to obtain the Lessee's reasonable commercial cooperation with Specified Recreational Uses; provided that City releases VRSD from any liability arising from the Lessee's failure to cooperate. City acknowledges, however, that notwithstanding anything contained in this Lease Agreement, VRSD makes no representation that the Lessee under the Gas Lease has agreed to, authorized or consented to, or will agree to, authorize or consent to, any particular action in respect of the activities contemplated hereunder. City further agrees that in the event the Gas Lease is terminated, VRSD shall be deemed to have succeeded to all of the rights, including rights of way over the surface of the Coastal Landfill Parcel created in the Lessee under said Gas Lease. In the event VRSD succeeds to Lessee's right, VRSD shall cooperate with City's operation of Specified Recreational Uses in a commercially reasonable manner.

City agrees to cooperate with the Lessee, and, subsequently, VRSD in Lessee's and VRSD's exercise of said Gas Lease rights of way. City also agrees to cooperate with Lessee and VRSD with regard to the gas and condensate collection system on the Premises, including any improvements, alteration, repair and/or maintenance of said system that may be undertaken by Lessee and/or VRSD. City shall coordinate its activities on the Premises with VRSD with respect to the activities which may affect rights under the Gas Lease. City agrees that to the extent the Closure Plan, Postclosure Plan or other regulatory documents require changes, because of the development of Specified Recreational Uses on the Premises, to the gas extraction and collection system built and owned by Lessee and/or VRSD pursuant to the Gas Lease, and VRSD and/or Lessee implement such changes, all work relating to such changes shall be at City's sole expense and City shall not initiate construction work on the Coastal Landfill Parcel until all work relating to such changes has been completed. Before commencing such gas system revision work, VRSD shall obtain City's approval of the specifications, budget and any construction contracts relating to such changes to the gas system. City shall pay the entire estimated cost of such work to VRSD before such work commences and upon the completion of the work VRSD shall provide City a complete

accounting of the expense of the work and either refund to City any unexpended portion of the City's initial payment of the estimated cost or collect from City any amount reasonably incurred by VRSD in excess of City's initial payment of the estimated cost. All work shall be completed in a commercially reasonable manner consistent with the requirements of all regulatory agencies. If City does not approve the proposed work and pay the estimated cost, VRSD will be under no obligation to implement the work. In the event that any changes to the gas extraction and collection systems are made hereunder, City shall bear the full expense of making such changes and shall hold harmless, defend and indemnify the Lessee and VRSD from any and all costs, liability, or regulatory enforcement activity related to any such change made to the gas extraction and/or collection system. For example, the amended Closure Plan or other regulatory requirement may require that gas extraction systems be fenced, that collection pipelines be buried and/or that other protective measures be taken with respect to any part of the landfill gas extraction, collection and distribution system. The total cost to VRSD of completing all of the work of designing, constructing, burying (including the importation of soil to bury the collection pipes) and maintaining changes to such systems necessitated by Specified Recreational Uses that may be carried out during the term of this Lease Agreement shall be borne by City and City shall promptly pay or reimburse VRSD for all VRSD expenses, including expenses associated with utilization of VRSD staff, VRSD consultants and/or the Lessee relating to such work. Any soil imported as part of this construction work shall meet City's specifications. City may require VRSD to use soil procured by City for this work in order to reduce construction costs.

b. **Flare Station**. City acknowledges the existence of a landfill gas flare station located on the northern portion of the Coastal Landfill Parcel as illustrated on Exhibit A. Notwithstanding any other provision of this Lease, City agrees that all of the area located within the fencing surrounding said flare station shall not be used by City or City's contractors and City shall design and operate any Specified Recreational Uses in the vicinity of the flare so as to discourage any recreational activity within 100 feet of the fence surrounding the flare. VRSD shall be responsible for maintaining all landscaping inside the fencing surrounding the flare station. City shall provide water to VRSD, out of the City's Entitlement, defined at section 14b below, at the cost of pumping the water from the Coastal Water Well (utility extraction cost and UWCD and GMA pump charges), for such landscaping. VRSD shall be responsible for the maintenance of the flare equipment or gas piping system associated with the flare station. VRSD shall, at its sole expense, continue to operate the flare and the associated facilities in compliance with all regulatory requirements including the requirements of CIWMB, LEA, and APCD.

c. **Condensate Collection**. City acknowledges the existence of condensate collection tanks on the Premises which store landfill condensate from the gas and condensate collection system for the Coastal Landfill. VRSD shall have access to repair, maintain and service said tanks.

d. **Gas Royalties**. This Lease Agreement does not modify, in any fashion, the Gas Lease and VRSD shall continue to be entitled to receive all royalties paid by the Lessee under said Gas Lease.

11. **LANDFILL GAS AND GROUNDWATER.**

a. **Groundwater.** City acknowledges that RWQCB has adopted WDR's and groundwater monitoring requirements for the closed Bailard Landfill, Coastal Landfill, and Santa Clara Landfill. City acknowledges that prior to the development of Specified Recreational Uses, revisions are likely to be made to the Bailard Landfill, Coastal Landfill and Santa Clara Landfill WDR's and groundwater monitoring requirements as a result of RWQCB's review of the proposed Specified Recreational Uses on the Coastal Landfill Parcel. To the extent RWQCB requires revisions to the monitoring requirements as a result of the proposed Specified Recreational Uses, and such changes increase the expense which VRSD incurs in its postclosure maintenance of the subsurface of the Bailard Landfill Parcel or the Santa Clara Landfill or the Coastal Landfill Parcel, City shall reimburse VRSD for the full amount of any such increase. For example, if RWQCB, determines, as a result of the proposed golf course development, that VRSD is required to drill additional monitoring wells or test additional constituents or increase the monitoring frequency or standards, City shall reimburse VRSD for the actual expense to VRSD of all VRSD staff time, consultant time, laboratory expense and other costs associated with compliance with such revisions as these expenses are incurred, throughout the term of this Lease Agreement, payable thirty (30) days after VRSD's delivery of invoices to City. VRSD shall also retain the right of access to and possession of all monitoring well sites approved by RWQCB on the Premises, including any located on the Coastal Buffer Parcel and/or the Coastal Landfill Parcel.

City also acknowledges that RWQCB may impose irrigation restrictions, cover system improvements or other conditions upon the development of Specified Recreational Uses in order to protect groundwater in the vicinity of the Premises. City agrees to comply with all restrictions and conditions on the development and operation of Specified Recreational Uses imposed by RWQCB as well as CIWMB, LEA, APCD or any other regulatory agency at City's sole expense and City further agrees to hold harmless, defend (by counsel selected by City, after concurrence, which shall not be unreasonably withheld, by VRSD) and indemnify VRSD from any and all expense, liability or regulatory enforcement actions, including fines or penalties for violations or remediation orders relating to any violation of any groundwater regulatory requirements by City or City's contractors or arising from the Specified Recreational Uses on the Premises.

City further acknowledges that as a result of the proposed Specified Recreational Uses on the Coastal Landfill Parcel, environmental impacts may occur in the future which may lead to the requirement for remediation of surface or subsurface conditions impacted or caused by the construction, operation and/or maintenance of Specified Recreational Uses on top of a closed landfill. City shall hold harmless, defend (by counsel selected by City, after concurrence, which shall not be unreasonably withheld by VRSD) and indemnify VRSD from any and all expense, liability, regulatory action or remediation costs associated with or caused by the development of Specified Recreational Uses on the Coastal Landfill Parcel.

b. **Subsurface Gas.** City acknowledges that the decomposing waste buried in the Coastal Landfill creates landfill gas, including methane gas. City acknowledges that some

constituents of the landfill gas may be hazardous and toxic. City further acknowledges that methane gas is combustible. City further acknowledges that the landfill gas can travel laterally subsurface. Throughout the term of this lease, VRSD shall remain responsible for and bear the full expense of monitoring subsurface migration of landfill gas from the Coastal Landfill Parcel. VRSD shall continue to maintain and monitor monitoring wells as required by CIWMB and the LEA. VRSD shall control the migration of landfill gas. As gas generation declines, VRSD shall be obligated to and have the right of access to the Premises in order to construct further gas wells and related collection piping and facilities in accordance with regulatory requirements. VRSD and City shall meet and cooperate in developing plans for such construction with the intent to avoid, to the extent consistent with regulatory and gas system operational requirements, unreasonable interference with Specified Recreational Uses.

City acknowledges that a subsurface gas migration barrier slurry wall has been constructed along the southern boundary of the Santa Clara Landfill and the eastern boundary of the Coastal Landfill. City shall not undertake or authorize any construction activity which damages the structural integrity or operational functionality of the slurry wall located on the Coastal Landfill Parcel.

City also agrees that City and City contractors, including the operator of any Specified Recreational Use on the Coastal Landfill Parcel, shall not undertake any activity, including excessive irrigation, as determined in writing by CIWMB, RWQCB, LEA or County of Ventura, which causes an increase in the expense to VRSD of its postclosure subsurface maintenance obligations, and City shall hold harmless, defend and indemnify VRSD from any and all expense, liability or regulatory enforcement actions, including fines or penalties for violations or remediation orders relating to any such activity by City or City's contractor.

c. **Surface Emissions**. City acknowledges that landfill gas can escape from the closed landfill through cracks in the surface of the cover lying over the buried waste. City acknowledges that by leasing the Premises, City has assumed responsibility for maintaining the surface of the closed landfill so that all cracks are filled and no leaks of gas are permitted through the surface in excess of the amount of gas allowed pursuant to APCD's Rules 74.17, and 74.17.1 and such other laws, regulations, rules or regulatory orders which exist now or may be adopted in the future. VRSD shall, at VRSD's expense, conduct Coastal Landfill surface emission monitoring and reporting to APCD under APCD Rules 74.17 and 74.17.1 and successor regulations. City acknowledges that these rules may require periodic sweeps on 100 foot or smaller grids laid over the Coastal Landfill Parcel. City shall hold harmless, defend and indemnify VRSD from any and all expense, liability or regulatory enforcement actions, including fines or penalties for violations or remediation orders relating to any violations of any such law, regulation, rule or regulatory order relating to City's maintenance of the surface of the Premises, except to the extent of liability caused by VRSD's negligence. City and VRSD agree that each shall carry out its responsibilities under this Section 11 without impairing any rights of Lessee under the Gas Lease, including Lessee's right to access at all times to the gas collection system (including all gas collection wells, interconnection pipes, valves, monitoring equipment, any necessary flare/blower stations, vacuum pumps and any additional gas

extraction equipment installed and used for the purpose of extraction of landfill gas) for purposes of operation, maintenance, repair and replacement of such system.

12. **EASEMENT FOR SETBACK AND IMPACT DISCLOSURE.**

a. **Adjacent Private Property**. Except as provided in subsection 12.a.1 below, City, in regulating the development of the Northwest Golf Community Specific Plan area, shall require the owners of the property lying to the south of the Coastal Landfill Parcel to execute and record an easement or other agreement providing for a 300 foot setback, measured from the property line of the Coastal Landfill Parcel, prohibiting any construction of any enclosed structure within the 300 foot setback. Drainage facilities are not considered to be enclosed structures. The City shall also require the developers of the property to disclose in writing to prospective buyers of the property that the prior operation, closure and postclosure maintenance of the solid waste landfill located on the Bailard Landfill Parcel and/or Coastal Landfill Parcel may adversely affect the use, enjoyment, and occupation of the property because of the creation, existence, expansion, migration, or discharge of environmental impacts including, but not limited to, odor, vectors, organisms, particles, gases, chemicals, toxics, leachate, or other substances, whether airborne, waterborne or otherwise transmitted.

1. Historical Building Parcel. Subject to the conditions stated in this subsection, City may allow construction of an enclosed structure on the Historical Building Parcel described in the Specific Plan; provided the City has made a written determination that the use of such structure shall not expose the users thereof to unacceptable risks of injury or property damage caused by landfill gas migrating from the Coastal Landfill Parcel. City, in regulating the development of the Historical Building Parcel, shall not allow the construction of buildings or other enclosed structures or improvements of any kind, except drainage or water detention facilities, within 150 feet of the Coastal Landfill Parcel. City shall not permit the construction of any residential building on the Historical Building Parcel. City shall not permit any structure on any portion of the Historical Building Parcel to be used for residential use. City shall implement and enforce building requirements for all improvements constructed on the Historical Building Parcel in order to protect any occupants or users of such structures from being exposed to any hazard associated with the migration of landfill gas from the Coastal Landfill Parcel. City shall not permit any construction on the Historical Building Parcel until the owners of that Parcel have executed and recorded (1) an Access Easement from Vineyard Avenue to the Coastal Landfill Parcel in a form acceptable to VRSD, (2) a Declaration and Establishment of Covenants, Conditions and Restrictions in a form acceptable to VRSD, and (3) any subordination documents necessary to remove any cloud on the priority of the rights conferred by the easement and the declaration. City shall quitclaim all of its interest in the property covered by this access easement except for a nonexclusive right of way for ingress and egress to the Patterson Drain.

b. **Adjacent City Property**. City, in managing the use of City owned property in the Northwest Golf Course Community Specific Plan area, shall not construct or permit construction of enclosed structures within 300 feet of the Coastal Landfill Parcel, except for Specified Recreational

Uses related restrooms, snack shops with open air seating, and/or unenclosed shelters, and a Specified Recreational Use maintenance facility, and drainage facilities, provided all such improvements are designed and constructed to prevent the trapping or accumulation of landfill gas. City further acknowledges that the prior operation, closure and postclosure maintenance of the solid waste landfill located on the Coastal Landfill Parcel may adversely affect the use, enjoyment, and occupation of the City's property because of the creation, existence, expansion, migration, or discharge of environmental impacts including, but not limited to, odor, vectors, organisms, particles, gases, chemicals, toxics, leachate, or other substances, whether airborne, waterborne, or otherwise transmitted (collectively called "Environmental Impacts to City's Property"). City expressly assumes and accepts all risk of such Environmental Impacts to City's Property. City, for itself and on behalf of its transferees, assigns and successors in interest, hereby agrees to waive, release and forever discharge VRSD from any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, cost or expense, including attorneys' fees and consultant fees, of any kind or nature whatsoever, whether for property damage, personal injury, death, or otherwise, past, present, or future arising from the Environmental Impacts to the City's Property, subject only to the limitation, to be narrowly interpreted to avoid diminution of the broad release intended here, that VRSD shall not conduct Landfill postclosure maintenance activities after the date of this Lease Agreement in a grossly negligent manner.

13. . **FLOOD CONTROL.**

a. **Patterson Drain.** City holds an easement to the Patterson Drain as illustrated on Exhibit A. City shall be solely responsible for the maintenance of this drain, including the maintenance of any landscaping lying within the drainage easement. City shall hold harmless, defend and indemnify VRSD from any and all expense, liability or regulatory enforcement action relating to City's operation and/or maintenance of the Patterson Drain.

b. **Victoria Avenue Drain and Flood Control Flap Gate.** City shall hold harmless, defend and indemnify VRSD from any and all expense, liability or regulatory enforcement action relating to or arising out of the City's use, operation or maintenance of any Specific Plan area drainage features existing now or constructed in the future, including the Victoria Avenue drain, the Ventura County Flood Control flap gate, except to the extent caused by VRSD's acts, omissions or negligence.

c. **VRSD Not Liable for Flood.** VRSD shall not be liable for any injury, damage, or loss suffered, sustained or claimed by City or the employees of City or any other persons injured on the Premises, arising from or related to flood, seepage, other waters upon the Premises, drainage or lack of drainage, irrigation or lack of irrigation, or any causes beyond the control of VRSD unless such liability arises from VRSD's acts, omissions or negligence.

14. **WATER**

a. **Water Rights**. VRSD and City agree that any and all water rights or water entitlements appurtenant to the Coastal Buffer, Coastal Landfill, Bailard Buffer and Bailard Landfill Parcels (collectively "VRSD Parcels") shall remain the property of VRSD, and shall be deemed to benefit and run with VRSD's ownership of the VRSD Parcels. VRSD and City agree that any and all water rights or water entitlements appurtenant to the real property addressed by the Specific Plan, excluding the VRSD Parcels, but including the entire GMA allocation attributable to the Swift Well (Swift Allocation; State Well No. 2N/22W-29M1), shall be the property of the City upon transfer to the City of all real property necessary to implement the Specific Plan. Water rights or water entitlements addressed by this section include riparian, overlying or prescriptive water rights, and any and all allocation or entitlement granted under or pursuant to ordinances of the Fox Canyon Groundwater Management Agency ("GMA") or any government agency with authority to regulate groundwater use on the VRSD Parcels and the real property associated with the Specific Plan. VRSD shall allow City, and City shall allow VRSD, the right to use a portion of the water produced in accordance with the water rights and water entitlements under the terms and conditions described in this section; provided, however, that all such rights granted to City by VRSD under this Lease Agreement shall be subject to the rights of Lessee under the Gas Lease, including Section 9 thereof.

b. **VRSD Landfills GMA Allocation**. With respect to the Coastal Landfill and Bailard Landfill Parcels, GMA has authorized and issued to VRSD, through VRSD state well numbers 2N/22W-29D4, 29D5, 30C5, 30C6, 30K1 and 30L2, a total of 260.4 acre feet of baseline allocation ("VRSD Landfills Baseline Allocation"), 39.514 feet of historical allocation ("VRSD Landfills Historical Allocation"), and any credits accruing on the VRSD Landfills Historical Allocation (the VRSD Landfills Baseline Allocation and the VRSD Landfills Historical Allocation are collectively referred to as the "VRSD Landfills Allocation"). Effective upon City's assumption of surface maintenance responsibilities for the Coastal Landfill Parcel under Section 9(b) above, and continuing so long as City continues to be responsible for and provides the required surface maintenance for the Coastal Landfill Parcel City and VRSD agree that, subject to GMA or other regulatory requirements, water produced in accordance with the VRSD Landfills Allocation shall only be used as follows:

(i) City shall have the exclusive right to use, for the sole purpose of constructing and irrigating Specified Recreational Uses developed on the Coastal Landfill Parcel pursuant to the Specific Plan, 93 acre feet per year of VRSD Landfills Baseline Allocation and 17 acre feet per year of VRSD Landfills Historical Allocation ("City's Entitlement").

(ii) VRSD shall have the exclusive right to use 167.4 acre feet per year of VRSD Landfills Baseline Allocation, the acre feet per year of VRSD Landfills Historical Allocation remaining, if any, after City's use of City's Entitlement, and any GMA credits accruing on the VRSD Landfills Historical Allocation, for any use on the Bailard Landfill Parcel, and to meet regulatory offset requirements relating to VRSD's operations at its Toland Road Landfill ("VRSD Entitlement").

(iii) On or before October 1 of each year, VRSD shall provide written notice to the City of the amount (in acre feet), to be determined in VRSD's sole discretion, subject to GMA or other regulatory requirements, of the VRSD Entitlement that VRSD, subject to the mutual agreement of City and VRSD as to the price of water as described below, will provide to the City for the City's exclusive use in the calendar year during which the written notice is provided ("VRSD Designation"). City shall respond with a written notice of how much of the VRSD Designation City agrees to use ("City Notice"). City shall have the exclusive right to use the entire amount stated in the City Notice only for the calendar year for which the VRSD Designation applies, subject to the payment by City to VRSD of VRSD Water Fees as defined below. As used herein, "VRSD Water Fees" shall mean an amount calculated by multiplying the number of acre feet of water used by City times the price of water set annually by the mutual agreement of VRSD and City as to the price of water for each year. If there is no mutual agreement, VRSD shall not be obligated to provide a VRSD Designation. City shall make payment in full to VRSD for the amount of water designated in the City Notice within thirty (30) days of the date City and VRSD agree upon a price for the use of the water.

c. **Other Water Rights Appurtenant to Premises**. For so long as City assumes surface maintenance responsibilities for the Coastal Landfill Parcel, VRSD grants to City the right to exercise any and all riparian rights associated with the Premises.

d. **Water Supply to Premises**. City may provide water to the Premises through any facilities needed and necessary, including VRSD state well number 29D5 (Coastal Water Well), subject to the conditions and limitations in this Lease Agreement. In light of the duration of this Lease Agreement, City shall be responsible for, and bear the full expense of the operation and maintenance of the Coastal Water Well as though City were the owner of the well. City, in its sole discretion, and at its sole expense, may repair or abandon the Coastal Water Well, If City abandons the Coastal Water Well, VRSD and City shall cooperate in selecting the most effective location and arrangement of the replacement to the Coastal Water Well and associated piping. If VRSD and City cannot agree on such location and arrangement, then, subject to GMA regulation, City shall make those decisions in a manner that VRSD incurs no greater cost than would be the case if the location and arrangement proposed by VRSD were selected. Provided however, should this Lease Agreement terminate, City shall, at its sole expense, provide a replacement well equivalent to the Coastal Water Well on the Coastal Landfill Parcel.

e. **Water Supply to Bailard Buffer Parcel**. VRSD has historically relied on the water well located on the land owned by Raymond E. Swift, successor trustee, known as the Swift Well (State Well No. 29M1), to supply water to the Bailard Buffer Parcel and the Coastal Buffer Parcel. The Swift Well will be abandoned during construction of the development provided in the Specific Plan. City agrees that before the Swift Well is abandoned VRSD shall drill a new well on the Bailard Buffer Parcel to serve the Bailard Buffer Parcel, with capacity to serve the Coastal Buffer Parcel if this Lease Agreement is ever terminated. City shall reimburse VRSD for seventy-five percent (75%) of the capital costs of drilling and equipping a new well on the Bailard Buffer Parcel, provided that in no event shall City be obligated to pay VRSD more than seventy-five thousand

dollars ($75,000) for such new well capital costs. City shall pay such costs within thirty (30) days of City's receipt of well cost invoices from VRSD. VRSD shall be solely responsible for compliance with any statutes, ordinances, rules or regulations applicable to the construction and operation of the new Bailard Buffer Parcel Well. VRSD shall be responsible for applying to GMA for permission to use an efficiency extraction to serve the Bailard Buffer Parcel. VRSD shall be solely responsible for the operation, maintenance, repair or replacement costs for the new Bailard Buffer Parcel well constructed pursuant to this paragraph.

Effective upon the GMA's approval of the assignment to the City of the Swift Allocation, and continuing through the term of this Lease Agreement, City shall make available for use by VRSD or its lessee, at the option of VRSD in its sole discretion and subject to approval by GMA if such approval is required, up to but no more than 110 acre feet per year of the Swift Allocation (VRSD Swift Entitlement) for use on the Bailard Buffer Parcel. Use by VRSD of the VRSD Swift Entitlement is contingent upon the GMA's approval of the assignment to the City of the Swift Allocation, and limited to that assigned amount recognized and approved by the GMA as corresponding to the historical irrigation of the Bailard Buffer Parcel using the Swift Allocation. Use by VRSD of the VRSD Swift Entitlement, if any is approved by the GMA, shall terminate, and all rights to the VRSD Swift Entitlement shall revert to the City, when the Bailard Buffer Parcel ceases to be used for commercial agricultural production at approximately the same level of production as exists at the time of execution of this Lease Agreement. Except as provided in this subparagraph 14(e), the City shall have no responsibility to provide water service, or any water rights or entitlement to VRSD for use on the Bailard Buffer Parcel.

f. **Reporting and Payment of GMA and UWCD Pump Charges.** City and VRSD shall coordinate, as frequently as necessary, their groundwater extraction reporting to the GMA and United Water Conservation District (UWCD) associated with the VRSD Landfills Allocation and, if applicable, VRSD Swift Allocation so that appropriate payment to the GMA and UWCD can be made timely for all groundwater extractions made hereunder by City, VRSD and VRSD's lessee. City shall be solely responsible for regional pump charges (i.e. UWCD and GMA pump charges, and any other pump charges that may be imposed by a court or water management agency other than City) associated with City's use of the City Entitlement and that amount of water designated in the City Notice. VRSD shall be solely responsible for regional pump charges associated with its or its lessee's use of the VRSD Entitlement. City and VRSD acknowledge and agree that the GMA imposes a penalty on water use above that made available through its allocations and that each entity is solely responsible for its individual penalties or surcharges associated with its or its lessee's respective overuse of groundwater.

g. **Water Availability.** City and VRSD acknowledge that neither City nor VRSD has made any representations, warranties or guarantees with respect to the availability, quantity or quality of any water supplies or sources which may be required by City for the operation of a golf course on the Premises. City acknowledges and agrees that City shall be solely responsible and liable for the acquisition of all water which may be required by City, as well as any and all water necessary for the conduct of its operations on the Premises, at City's sole costs and expense, including, but not limited to, all expenses related to all state or local water fees, charges,

assessments, annexation fees, connection fees, standby fees, levies, and other costs imposed to provide such water. In the event City purchases water from a water supplier or other party, City agrees to pay such water bills directly and to indemnify, defend and hold VRSD, and the Premises, harmless from any and all obligations for the payment of such bills.

h. **New Regulations.** If the GMA or any other regulatory agency adopts new requirements which reduce the GMA Allocation or otherwise restricts further the right to pump water for the VRSD Parcels, then the City Entitlement and the VRSD Entitlement shall be reduced proportionately based on the ratio between the two entitlements.

15. **ASSESSMENTS.** Except to the extent of any amount due as a result of VRSD's or the Lessee's use of utilities, City shall pay at its sole cost and expense, and prior to delinquency, all assessments, annexation fees, charges (excluding standard utility charges) and real property taxes levied, imposed or assessed upon the Premises and improvements thereon during the Lease term, including, but not limited to, the amount of all assessments, levies, taxes, imposts and other charges imposed or levied by United Water Conservation District ("UWCD"), Ventura County Groundwater Management Agency ("GMA"), Calleguas Municipal Water District, or any successor, replacement, assignee or substituted entity thereof, for any purpose, including, but not limited to, the provision of water, water facilities or related services and/or any other utility service to the Premises during the term of this Lease. City shall pay, at its sole cost and expense, and prior to any delinquency, all taxes and assessments imposed on any personal property or trade fixtures belonging to City and located on the Premises.

16. **UTILITIES.** City, at its sole cost and expense, shall pay for all utilities including, but not limited to, telephones, gas, electricity, water and sewage and rubbish removal used in or on the Premises, before the same become delinquent, and City shall hold VRSD harmless from any liability, cost or expense for such utility charges, except that VRSD shall bear the expense of utility services used by VRSD. the Lessee shall bear the Lessee's own utility service expenses.

17. **EXTERNAL ACCESS.** VRSD has access to the Premises from Victoria Avenue and Gonzales Road over rights of way over the Northwest Golf Course Community Specific Plan area as illustrated on Exhibit A by the easements recorded in the Official Records of Ventura, California ("Records") document number 94-125434 ("Buffer Access Easement") and records document number 86-043729 ("Coastal Access Easement"). City shall accommodate VRSD's access to the Premises by requiring that any development occurring over the Buffer Access Easement and/or the Coastal Access Easement, preserve or relocate adequate easements and roads for VRSD's right of way to the Premises.

18. **INTERNAL ACCESS.**

a. **Subsurface Maintenance Access.** During the term of this Lease Agreement, VRSD shall retain a non-exclusive right of way over the Premises and shall have the right, but not the obligation, to construct, repair, maintain and replace subsurface maintenance facilities and related landfill impact mitigation and remediation installations reasonably necessary to permit VRSD's

fulfillment of its landfill postclosure subsurface maintenance obligations. VRSD shall notify City of the location of and construction schedule for any new well or other subsurface facility prior to construction of such well or facility on either the Coastal Buffer Parcel or Coastal Landfill Parcel. City shall, at its expense, maintain roads which provide VRSD access to all subsurface maintenance facilities, including maintenance of the access roads which are located on the western, northern and eastern perimeter of the Coastal Landfill Parcel in the same condition as they exist as of the date of this Lease Agreement. City shall, at its expense, maintain or relocate other internal access roads on the Coastal Buffer Parcel and/or the Coastal Landfill Parcel, including the southern perimeter road existing on the Coastal Landfill Parcel as of the date of this Lease Agreement, to provide structurally reinforced all weather access, including cart paths, for VRSD staff and contractors to all subsurface maintenance facilities. All vegetation and golf course landscaping and other improvements shall be kept mowed, trimmed and/or maintained in a fashion that allows VRSD clear, unobstructed access to all such subsurface maintenance facilities and that provides adequate protection against fire hazard. City and VRSD agree that each shall carry out its responsibilities under this Section 18 without impairing any rights of the Lessee under the Gas Lease, including Lessee's right to access at all times to the gas collection system (including all gas collection wells, interconnection pipes, valves, monitoring equipment, any necessary flare/blower stations, vacuum pumps and any additional gas extraction equipment installed and used for the purpose of extraction of landfill gas) for purposes of operation, maintenance, repair and replacement of such system.

b. **Interference with Recreational Activities**. VRSD shall, to the extent reasonably and commercially practicable, avoid and minimize interference with Specified Recreational Uses. However, it is acknowledged that Specified Recreational Uses related activity may have to be temporarily diverted or stopped to allow VRSD to comply with postclosure regulatory requirements for monitoring and/or maintenance. VRSD shall not, under any circumstances, be responsible for consequential damages related to City's inability to provide recreational uses on the Premises, including any loss of golf course playing time. VRSD shall notify City of VRSD's maintenance schedule and reasonably coordinate its activities with the City's golf course operations. VRSD shall indemnify, defend and hold City harmless for any golf play caused damages or injuries sustained by VRSD employees who are on the Premises while golf is being played.

19. **TITLE**. City acknowledges review, approval and acceptance of the state of the title to the Premises as recorded in the Recorded Official Records of the County of Ventura. City shall not, at any time during the Lease term, encumber City's leasehold interest or VRSD's fee title by deed of trust, mortgage, lien or any other similar security instrument. City hereby agrees to indemnify and hold VRSD and the Premises free and harmless from all liability for any and all liens, mortgages, deeds of trust, claims and demands, including reasonable attorneys' fees, and all costs and expenses in connection therewith.

20. **REPAIRS AND RESTORATION**. City shall assume full responsibility for the maintenance and repair of the Premises except for any facilities owned or operated by the Lessee under the Gas Lease and, further, except for facilities maintained by VRSD in the discharge by VRSD of VRSD's subsurface maintenance of the closed Coastal Landfill, which facilities shall be interpreted to mean all gas migration monitoring and collection wells and piping, all equipment relating to the gas flare

station, all groundwater monitoring wells, all condensate collection tanks, all aerial survey plates (hereinafter "VRSD maintenance facilities"). Except for the VRSD maintenance facilities, City shall keep in good order, condition and repair the Premises and every part thereof, structural and non-structural, (whether or not such portion of the Premises requiring repair, or the means of repairing the same are reasonably or readily accessible to City, and whether or not the need for such repairs occurs as a result of City's use, any prior use, the elements or the age of such portion of the Premises), including, without limitation the generalization of the foregoing, all landscaping, driveways, roads, irrigation systems, parking lots, drainage improvements, fences, signs and all other improvements located on the Premises. Except as expressly stated herein to the contrary, it is intended by the parties hereto that VRSD has no obligation, in any manner whatsoever, to repair, maintain, replace, improve or otherwise perform any work whatsoever on the Premises. City expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford City the right to make repairs at VRSD's expense or to terminate this Lease Agreement because of VRSD's failure to keep the Premises in good order, condition and repair.

City, at City's cost and expense shall make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any valid law, ordinance, statute, order, or regulation now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity and arising from development or use of the Premises as a golf course. Further, City shall observe and comply with all valid laws, ordinances, statutes, orders, and regulations now or hereafter made or issued respecting the Premises or the improvements or facilities on the Premises by any federal, state, county, local or other governmental agency or entity. City and VRSD agree that City shall carry out its responsibilities under this Section 20 without impairing any rights of the Lessee under the Gas Lease, including Lessee's right to access at all times to the gas collection system (including all gas collection wells, interconnection pipes, valves, monitoring equipment, any necessary flare/blower stations, vacuum pumps and any additional gas extraction equipment installed and used for the purpose of extraction of landfill gas) for purposes of operation, maintenance, repair and replacement of such system.

21. **INDEMNITY AND INSURANCE**.

a. **Indemnity**. VRSD shall not be liable for any loss, damage or injury of any kind or character ("liability") to any person or property arising from City's use of the Premises, or any part thereof, or caused by any defect in any improvement constructed by or for City thereon or in any equipment or other facility therein constructed or furnished by or for City, or caused by or arising from any act or omission of City or of any of its agents, employees, licensees, or invitees, or by or from any accident on the Premises, or any fire or other casualty thereon, or occasioned by the failure of City to maintain the premises in safe condition; and City hereby waives on its behalf all claims and demands against VRSD for any such loss, damage or injury to City, and hereby agrees to indemnify, defend (by counsel selected by City after concurrence, which shall not be unreasonably withheld, by VRSD) and hold VRSD entirely free and harmless from all liability for any such loss, damage or injury to other persons, and from all costs and expenses arising therefrom except to the extent such liability is caused by VRSD's acts, omissions or negligence.

b. **Insurance**. City shall, at its sole cost and expense and at all times during the term of this Lease, maintain in force and effect risk management practices for the benefit of VRSD and City. City's risk management practices include a self-insured retention and excess insurance coverage for general liability. On the date of execution of this Lease Agreement the City is self-insured for comprehensive general liability to a limit of $1,000,000 and has excess insurance coverage of $24,000,000 to a limit of $25,000,000. VRSD finds such practices and City's self-insured retention and excess insurance coverage to be satisfactory. City retains sole discretion to change its risk management practices during the term of this Lease Agreement, provided that such practices provide VRSD with protection from loss which is substantially equivalent to the protection afforded by City's risk management practices in effect on the date of this Lease Agreement. Throughout the term of this Lease Agreement VRSD shall be named as an additional insured under City's excess insurance coverage.

22. **ASSIGNMENT AND SUBLETTING**. As a material component of the consideration for this Lease Agreement, City agrees that City shall not assign or sublease the Premises without VRSD's consent, which can be arbitrarily withheld for any reason whatsoever; and VRSD agrees that VRSD shall not assign its rights or duties under this Lease Agreement without City's consent, which can be arbitrarily withheld for any reason whatsoever. Any net rent paid to City by any assignee or subleasee not consented to by VRSD shall be paid by City to VRSD.

23. **DEFAULT**.

a. **Default by City**. Each of the following events shall be deemed to be an event of default hereunder:

(i) If City shall fail, neglect or refuse to pay any monies due hereunder or under the Agreement for Waste Disposal and/or Water and Wastewater Service Agreement, at the time and in the amount as therein provided, and if any such default should continue for more than thirty (30) days after notice thereof in writing given to City; or

(ii) If City shall fail to commence and thereafter to continuously conduct its operations on the Premises within the times and in the manner herein provided; or fail to use, maintain and operate the Premises as herein required or abandon the property, and if any such default should continue for more than thirty (30) days after notice thereof in writing given to City; or

(iii) If City shall fail, neglect or refuse to keep and perform any of the other covenants, conditions, stipulations or agreements herein agreed to be performed by City, and such default, if of a nature which can be cured, continues for more than fifteen (15) days after notice thereof in writing given to City by VRSD (no notice to be required or right to cure to apply to defects which cannot be cured); provided, however, in case of any default which involves the making of repairs or other matters reasonably requiring a longer

period of time to cure than thirty (30) days, City shall be deemed to have complied with such notice if City has commenced to comply with such notice within thirty (30) days and thereafter diligently completes such cure; but for any failure to timely so complete such cure, no further notice or right to cure need be given; or

(iv) If any voluntary petition in bankruptcy or similar debtor's pleading under any section or sections of any bankruptcy act shall be filed by City, or if any voluntary proceeding in any court or tribunal shall be instituted to declare City insolvent or unable to pay City's debts, or to effect upon City a plan of liquidation, composition or reorganization, or if any involuntary proceeding of the aforesaid nature be filed and City consents thereto or agrees therein by pleading or default, or if City makes any assignment of its property for the benefit of creditors, or the Premises are taken under a levy of execution or attachment in an action against City, or if a trustee or receiver is appointed over any substantial portion of City's assets or City's operations on the Premises, then neither this Lease nor any interest of City in or to the Premises shall become an asset in any such proceeding, and if any of the aforesaid occurrences is not dismissed or discharged within fifteen (15) days after VRSD's demand, or thirty (30) days after such occurrence, whichever date first occurs.

b. **Default by VRSD.** If VRSD shall fail, neglect or refuse to keep and perform any of the other covenants, conditions, stipulations or agreements herein agreed to be performed by VRSD, and such default, if of a nature which can be cured, continues for more than thirty (30) days after notice thereof in writing given to VRSD by City (no notice to be required or right to cure to apply to defects which cannot be cured); provided, however, in case of any default which involves the making of repairs or other matters reasonably requiring a longer period of time to cure than thirty (30) days, VRSD shall be deemed to have complied with such notice if VRSD has commenced to comply with such notice within thirty (30) days and thereafter diligently completes such cure; but for any failure to timely so complete such cure, no further notice or right to cure need be given.

c. **VRSD Remedies.** Upon an event of City's default hereunder, VRSD shall have the right at any time thereafter to terminate this Lease forthwith and reenter the Premises and take possession thereof and remove all persons therefrom, whereupon City shall have no further claim thereto but shall not be released from any obligations accruing hereunder prior to the date of termination or surviving any termination and VRSD shall have the further right to exercise any other right now or hereafter afforded by law.

d. **City Remedies.** Upon an event of VRSD's default hereunder, City shall have the right at any time thereafter to terminate this Lease forthwith, but City shall not be released from any obligations accruing hereunder prior to the date of termination or surviving any termination and City shall have the further right to exercise any other right now or hereafter afforded by law.

e. **Alternative Dispute Resolution Remedy.**

(1) The parties agree to cooperate to implement this Lease Agreement. In the event of any dispute hereunder, the parties shall meet within five days of a written notice from either party requesting informal dispute resolution. The complaining party shall send such notice prior to initiating arbitration or other remedies available hereunder.

(2) Agreement to Arbitrate Limited Issues: The parties hereto for themselves and for their successors and assigns agree to submit disputes concerning the interpretation or enforcement of rights and duties under sections 8, 9, 10, 11, 14, 16, 17 or 20 of this Lease Agreement to final and binding arbitration in Ventura County, California. Such arbitration shall comply with and be governed by the provisions of the California Arbitration Act contained in *Code of Civil Procedure §§* 1280, et seq., including any subsequent amendments thereto and shall not include the right of discovery. The following matters are excluded from arbitration hereunder:

(a) Any action not concerning the interpretation or enforcement of rights and duties under Sections 8, 9, 10, 11, 14, 16, 17 or 20 of this Lease Agreement; or

(b) Any claim seeking more than $25,000 in damages or recovery (increased 2% per year during the term of this Lease); or

(c) Any action seeking equitable relief other than declaratory relief as to the meaning of a provision of Sections 8, 9, 10, 11, 14, 16, 17 or 20, provided that any declaratory relief award shall not serve as a precedent controlling a claim seeking more than $25,000 in damages or recovery (increased 2% per year during the term of this Lease).

The prevailing party shall be entitled to recover reasonable attorney fees and costs incurred in such arbitration which fees and costs shall not be added to the computation of the monetary jurisdiction limits specified above. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedy shall not constitute a waiver of the right to arbitrate under this provision. With respect to all other issues excluded from arbitration hereunder, the parties may seek all available remedies in the court of competent jurisdiction in the County of Ventura, California.

3. Appointment of Arbitrators: If the parties are unable to agree on a single person to arbitrate such dispute within 15 days after a written demand for arbitration has been served by the demanding party upon the other party, then the selection of an arbitrator shall be made pursuant to the *California Code of Civil Procedure* §§1280, et seq., including any subsequent amendments thereto. The parties shall advance arbitrator's fees, as incurred, proportioned between them as the arbitrator shall determine, but the cost of arbitration shall ultimately be borne entirely by the losing parties or in such other manner as the arbitrator shall decide.

4. Power of Arbitrators: The provisions of this paragraph are an express limitation upon the jurisdiction of the arbitrator, the violation of which constitutes an act by the

arbitrator in excess of his/her power and a basis for vacating the award pursuant to *California Code of Civil Procedure* §1286.2(d). The arbitrator shall follow substantive California law applicable to the issues which are the subject of the arbitration. The arbitrator shall prepare and serve written findings of fact and conclusions which adequately set forth the basis of his decision. Should any party, after proper notice, fail or refuse to participate in the arbitration, or any part thereof, the arbitrator will have the full power to proceed, to take evidence from those parties appearing and participating, and to perform any other acts necessary to arbitrate the matter. The arbitrator shall have no power to make an award or impose a remedy that is not available to a court of general jurisdiction sitting in the County of Ventura or was not requested by a party. In no event shall the arbitrator have the authority to award punitive or exemplary damages or to issue any award relating to matters excluded from arbitration by subsection e.(2) above. The award of the arbitrator shall be enforceable according to the applicable provisions of the *California Code of Civil Procedure.* Judgment upon the award rendered by the arbitrator may be entered in any court having the requisite jurisdiction.

5. Expedience: If the arbitrator does not render and serve upon both parties a final award with written findings of fact and conclusion within 60 days of completion of the submission of evidence, the arbitration and the obligation to arbitrate the dispute may, at either party's election, be canceled, by written notice to the other party, and the parties shall be free to pursue other remedies legally available, and any pertinent claims requirement or statute of limitations shall be deemed to have been tolled for the period the arbitration procedure was ongoing.

24. **TERMINATION**

a. **Termination**. In addition to any event of termination arising from a party's exercise of its rights and/or remedies under the provisions of Section 23 (Default) above, this Lease Agreement shall terminate immediately, without further notice, in the event any of the following circumstances occur.

(i) City has not commenced construction of Specified Recreational Uses on the Premises by November 12, 2005; or

(ii) City abandons or vacates the Premises for ninety (90) days; or

(iii) City surrenders possession of the Premises, if City provides VRSD with sixty (60) days written notice of surrender.

b. **Return of Property**. Upon expiration or sooner termination of the Lease Agreement term, City shall quit the Premises together with the improvements, alterations, modifications, additions, fixtures, parts and surfaces thereof, clean and free of debris and in good operating order, condition and state of repair, reasonable wear and tear excepted. Reasonable wear and tear shall not include any damage or deterioration that would have been prevented by good and regular

maintenance, repair and safety practice or by City performing all of its obligations under this Lease Agreement.

c. **Maintenance of Premises After Termination.** Upon termination of this Lease Agreement, VRSD shall be solely responsible for all liability and expense of the maintenance of the Premises, provided that with respect to termination of the lease of the Coastal Landfill Parcel, VRSD shall comply with all Coastal Landfill Postclosure Maintenance obligations, except for any liability arising from City's negligence, and further provided that, except in the case of termination due to VRSD's default, City shall pay VRSD for all costs, expenses and liabilities incurred by VRSD from the date of termination through December 21, 2025, as a result of any new postclosure maintenance requirement imposed because of development or use of the Premises for Specified Recreational Uses prior to termination, including, but not limited to, additional monitoring of groundwater and/or gas, imposed upon VRSD as a result of the revised Postclosure Plans and/or other regulatory documents relating to the Specified Recreational Uses. In the event of termination arising out of City's decision to not proceed with development of Specified Recreational Uses, City and VRSD, shall cooperate to seek revision of any new postclosure maintenance requirements imposed because of the anticipated development and use of the Premises for Specified Recreational Uses.

25. **HAZARDOUS MATERIALS**. City shall not spray, spread, irrigate, inject, deposit, dispose or otherwise apply under, on or upon the Premises any fertilizer, chemicals, waste products, or other substances which are toxic, hazardous or otherwise inappropriate or illegal for application upon agricultural or horticultural real property, except as reasonably necessary for City to conduct golf course activities on the Premises in accordance with applicable laws, rules, regulations, permit conditions and any manufacturer or supplier guidelines. City shall not use, generate, manufacture, produce, store, treat, dispose or permit the escape on, under, about or from the Premises, or any part thereof, any asbestos or any flammable, explosive, radioactive, hazardous, toxic, contaminating, polluting matter, waste or substance or related injurious materials, whether injurious by themselves or in combination with other materials. If City breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Premises caused or permitted by City results in contamination of the Premises, or if contamination of the Premises by hazardous material otherwise occurs for which City is legally liable to VRSD for damage resulting therefrom, then City shall indemnify, defend and hold VRSD harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including without limitation diminution in value of the Premises, damages for the loss or restriction on use of rentable or useable space of any amenity of the Premises, damages arising from any adverse impact on developing or marketing the Premises and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise during or after the term of the Lease Agreement as a result of such contamination.

26. **SERVICE AGREEMENTS**.

a. **Agreement for Waste Disposal**. City performance of all City obligations under the Agreement for Waste Disposal is an express, material obligation of its performance under this Lease Agreement.

b. **Water and Wastewater Services Agreement**. City performance of all City obligations under the Water and Wastewater Services Agreement is an express, material obligation of its performance under this Lease Agreement.

c. **Additional Waste Disposal Service Agreement.**

(1) If, at any time during the term of the Agreement for Waste Disposal, City or City's designee for solid waste hauling or processing does not have in effect one or more contracts for solid waste disposal at a landfill for some or all of the tons of solid waste generated in City, other than the Agreement for Waste Disposal, VRSD may offer City a proposal for a contract for solid waste disposal at the Toland Landfill for all or part of such tons that are not subject to another contract.

(2) A contract will be deemed to be in effect if: (i) the contract was in effect on the effective date of this Lease Agreement and has not expired or been terminated, either because the original term of the contract is in effect or because the contract is renewed or extended before expiration or termination; or (ii) City entered into the contract after the effective date of this Lease Agreement after giving VRSD an opportunity to offer a proposal, and VRSD did not offer a proposal or VRSD's proposal was not the lowest total cost alternative; or (iii) City's designee for solid waste hauling or processing entered into a contract before or after the effective date of this Lease Agreement. A contract that is in effect may be amended as the parties thereto agree, including but not limited to amendments that affect the number of tons that are subject to the contract, the compensation paid, or the term of the contract.

(3) If a contract proposal made by VRSD to City provides City with the lowest total cost alternative for solid waste disposal at a landfill, City shall accept the proposal and enter into a contract with VRSD for disposal at the Toland Landfill of the number of tons proposed by VRSD at the price proposed by VRSD. The maximum term of such contract shall be five years with an option given to City to renew for an additional five years. VRSD and City shall negotiate in good faith as to any other provisions of the contract, but nothing in this Lease Agreement requires VRSD or City to agree to any other proposed provision of the contract.

(4) In determining whether VRSD has offered City the lowest total cost alternative for solid waste disposal at the landfill, VRSD and City shall compare the tipping fee offered by VRSD and the total cost to City of transportation and disposal at the Toland Landfill to the tipping fee offered by any other proposed contractor and the total cost to City of transportation and disposal at the proposed contractor's landfill.

(5) If a proposed contractor other than VRSD does not wish to make public the tipping fee or any other monetary incentives offered to City, VRSD and City shall devise a procedure, consistent with any State statutes applicable to VRSD and City, whereby a neutral third party chosen mutually by VRSD and City shall obtain the information from City and the proposed contractor in confidence and determine whether VRSD or the proposed contractor offers City the lowest total cost alternative for solid waste disposal at a landfill.

(6) Nothing in this Lease Agreement requires VRSD to make such a proposal or prohibits City from entering into a contract for solid waste disposal with a contractor other than VRSD if VRSD does not make such a proposal or if VRSD's proposal is not the lowest total cost alternative for solid waste disposal at a landfill.

(7) City's designee for solid waste hauling or processing may enter into contracts without regard to this Lease Agreement.

27. **CONDEMNATION**. If all or part of the Premises and/or any part of the Coastal Buffer Parcel or the Coastal Landfill Parcel shall be taken or condemned for a public or quasi-public use, all compensation awarded upon such condemnation or taking shall go to VRSD, and City shall have no claim thereto, and City hereby irrevocably assigns and transfers to VRSD any right to compensation or damages or bonus value of the Lease Agreement to which City may become entitled during the term hereof by reason of the condemnation of all or a part of the Premises; provided, however, that in any condemnation proceeding in which City is not the condemning agency, any portion of said compensation or damages attributable to golf course improvements on the Premises constructed by City shall be paid to City up to the total actual cost of construction incurred by City.

28. **MISCELLANEOUS**

a. **Notices**. All notices, requests or demands required or permitted to be given under this Agreement shall be in writing and shall be delivered to the party to whom notice is to be given either (a) by personal delivery (in which event such notice shall be deemed given on the date of delivery), or (b) by first class United States mail, postage prepaid, registered or certified, return receipt requested (in which event such notice shall be deemed given two (2) days after the date of deposit in the mail), and addressed as follows:

City:

City of Oxnard
300 West Third Street
Oxnard, California 93030
Attention: City Manager

VRSD:

Ventura Regional Sanitation District
1001 Partridge Drive, Suite 150
Ventura, California 93003
Attention: General Manager

b. **Incorporation of Exhibits**. All Exhibits referred to herein are deemed incorporated herein, as if fully set forth herein.

c. **Amendment**. Neither this Agreement, nor any term, covenant, condition or duty contained herein, may be altered, changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the alteration, change, waiver, discharge or termination is sought. Each party acknowledges and agrees that no agent of any party shall have any actual or apparent authority to rely upon or assert any purported, implied or oral amendment or modification hereof. Each party waives the future right to claim, contend or assert that this Agreement was modified, canceled, superseded or changed by an oral agreement, course of conduct, estoppel or any other occurrence.

d. **Entire Agreement**. This Agreement, together with all instruments, exhibits, schedules and other agreements being executed and delivered simultaneously with or pursuant to this Agreement, or which are incorporated herein by reference, shall constitute the entire agreement among the parties to this Agreement pertaining to the subject matter hereof and supersede all prior understandings and negotiations, whether oral or written. The parties represent that there are no collateral agreements or side agreements not otherwise provided for within the terms of this Agreement. Each party acknowledges that it has expressly bargained for a prohibition of any implied or oral amendments or modifications of any kind, nature or character. Each party acknowledges and agrees that (1) this Agreement is fully integrated and requires no parol evidence to reflect the intentions of the parties, (2) the literal words of this Agreement shall and do govern the transactions described herein, and (3) prior negotiations, drafts and other extraneous communications shall have no significance or evidentiary effect whatsoever.

e. **Captions and Headings**. The captions and headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation of any provision of or the scope or intent of this Agreement.

f. **No Course of Conduct**. At no time shall the prior or subsequent course of conduct by any of the parties hereto directly or indirectly limit, impair or otherwise adversely affect any of the rights or remedies of any party in connection with this Agreement, or detract from or otherwise affect the literal interpretation and effect of this Agreement, since the parties hereto agree that this Agreement shall only be amended by written instruments executed by the parties, as provided herein.

g. **Interpretation**. This Agreement shall be construed to liberally effectuate the rights and remedies of the parties as expressed herein, and neither such principle of interpretation nor the express language of this Agreement shall be impaired or adversely affected by any prior discussion, form or draft of this Agreement. The deletion of any provision from a prior draft of this Agreement shall not, and shall not be deemed to, constitute (and shall not be used as) evidence of any fact or interpretation, since the parties may disagree as to the meaning and effect of such a deletion, as well

as to their respective reasons for agreeing to such a deletion, and no prior draft of this Agreement shall be admissible as evidence of the meaning of this Agreement.

h. **Construction**. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

i. **Time Is of The Essence**. Time is of the essence in this Agreement, and all deadlines shall be strictly adhered to, unless otherwise provided herein. Any failure or refusal to timely perform any action or duty, no matter how minor or trivial the delay may be, but subject to any applicable grace period, shall be deemed a material breach of this Agreement.

j. **Governing Law**. This Agreement shall be deemed to have been entered into and performed in Ventura County, State of California. All questions of validity and interpretation or performance of any of its terms or any rights or obligations of the parties to this Agreement shall be governed by California law. Any action arising under this Agreement must be initiated, maintained and prosecuted solely in the County of Ventura, State of California.

k. **No Waiver**. The waiver by any party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition or promise. The waiver by any party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right, the time for the exercise of which is not specifically and expressly limited or specified in this Agreement, shall not be considered a waiver of, or an estoppel against, the later exercise of such remedy or right. The exercise of any remedy provided in this Agreement shall not be a waiver of any remedy provided by law, and the provisions in this Agreement for any remedy shall not exclude any other remedy unless it is expressly excluded. Any provision of this Agreement may be waived by the party for whose benefit it is made, but no waiver shall be effective unless it is in writing and signed by the waiving party or an authorized representative of the waiving party.

l. **Representation**. The parties hereby acknowledge that each has been represented by independent counsel in negotiation of this Agreement. VRSD has been represented by Mark A. Zirbel, a member of the firm of Arnold, Mathews, Wojkowski & Zirbel, and City has been represented by Gary L. Gillig, City Attorney. The counsel representing each party was of his or her own choosing and this Agreement has been read by the parties and has been explained to them by their respective counsel as to its meaning and legal consequences. The parties have reviewed this Agreement with their respective counsel and have received from their respective counsel satisfactory answers and explanations regarding all matters contained herein as to which they may have had any questions whatsoever. This Agreement or any provision hereof shall be fairly interpreted and shall not be construed strictly against either party on the basis that either party is the drafter of this Agreement or any specific provision hereof.

m. **Attorneys Fees**. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including but not limited to phone calls, photocopies, expert witnesses, travel, etc., and a reasonable attorneys fee to be fixed by the court. Such recovery shall include court costs, out-of-pocket expenses and attorneys fees on appeal, if any. The court shall determine who is the "prevailing party." If either party is reasonably required to incur such out-of-pocket expenses and attorney's fees as a result of any claim arising out of or concerning this Agreement or any right or obligation derived hereunder, then the prevailing party shall be entitled to recover such reasonable out-of-pocket expenses and attorneys fees whether or not action is filed.

n. **No Partnership**. Nothing contained in this Agreement shall be construed as or be deemed to create any association, partnership or other business organization as between the parties to this Agreement.

o. **Further Assurances**. The parties agree to execute all documents and instruments and to take all action as may be specifically provided for herein, and shall use their best efforts to accomplish the provisions hereof. As to each document to be prepared, signed, delivered, filed and/or recorded as described herein, any such document, instrument or deed may be hereafter modified or amended in an insubstantial and immaterial manner as reasonably approved by legal counsel to the parties hereto and executed by the parties or their successors and assigns on or before the date such documents are recorded. VRSD's General Manager and City's City Manager are hereby authorized to execute all such documents and instruments and other related documents, including escrow instructions, or take other action consistent with this Lease Agreement and the other agreements referred herein in order to carry out the intent of this Lease Agreement. Each party shall diligently and in good faith pursue the performance of this Agreement and the satisfaction of all contingencies subject to their approval.

p. **Severability**. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision will be fully severable and this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part thereof; and the remaining provisions hereof will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

q. **Successors**. Except as otherwise provided herein, this Agreement, and each and every provision hereof, shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

r. **No Third Party Benefitted**. Nothing in this Agreement, whether express or implied, shall be intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor shall anything in this Agreement relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement.

s. **Amended and Restated Lease**. This Lease Agreement replaces and completely supercedes the Golf Course Lease and Landfill Postclosure Maintenance Agreement made by VRSD and City November 14, 2000. This Lease Agreement also replaces and completely supercedes the Golf Course Stockpile Site Lease made by VRSD and City July 1, 2001, and said Stockpile Site Lease shall be deemed terminated effective June 30, 2002; provided, that the provisions of Section 24 of said Stockpile Site Lease shall remain in effect. City shall be entitled to maintain the soil stockpile located on the Coastal Buffer Parcel as of June 30, 2002 for use in preparing the Premises for Specified Recreational Uses.

"VRSD"

VENTURA REGIONAL SANITATION DISTRICT

By: _____
David Bury, Chairman
Board of Directors

ATTEST:

_____
Rhonda Catron, Clerk of the Board

APPROVED AS TO FORM:

_____
Mark A. Zirbel,
Arnold, Mathews, Wojkowski & Zirbel, LLP
General Counsel

"City"

CITY OF OXNARD

By: _____
Dr. Manuel M. Lopez, Mayor

APPROVED AS TO FORM:

_____
Gary L. Gillig, City Attorney

VRSD\General\Documents\ Oxnard Lease3

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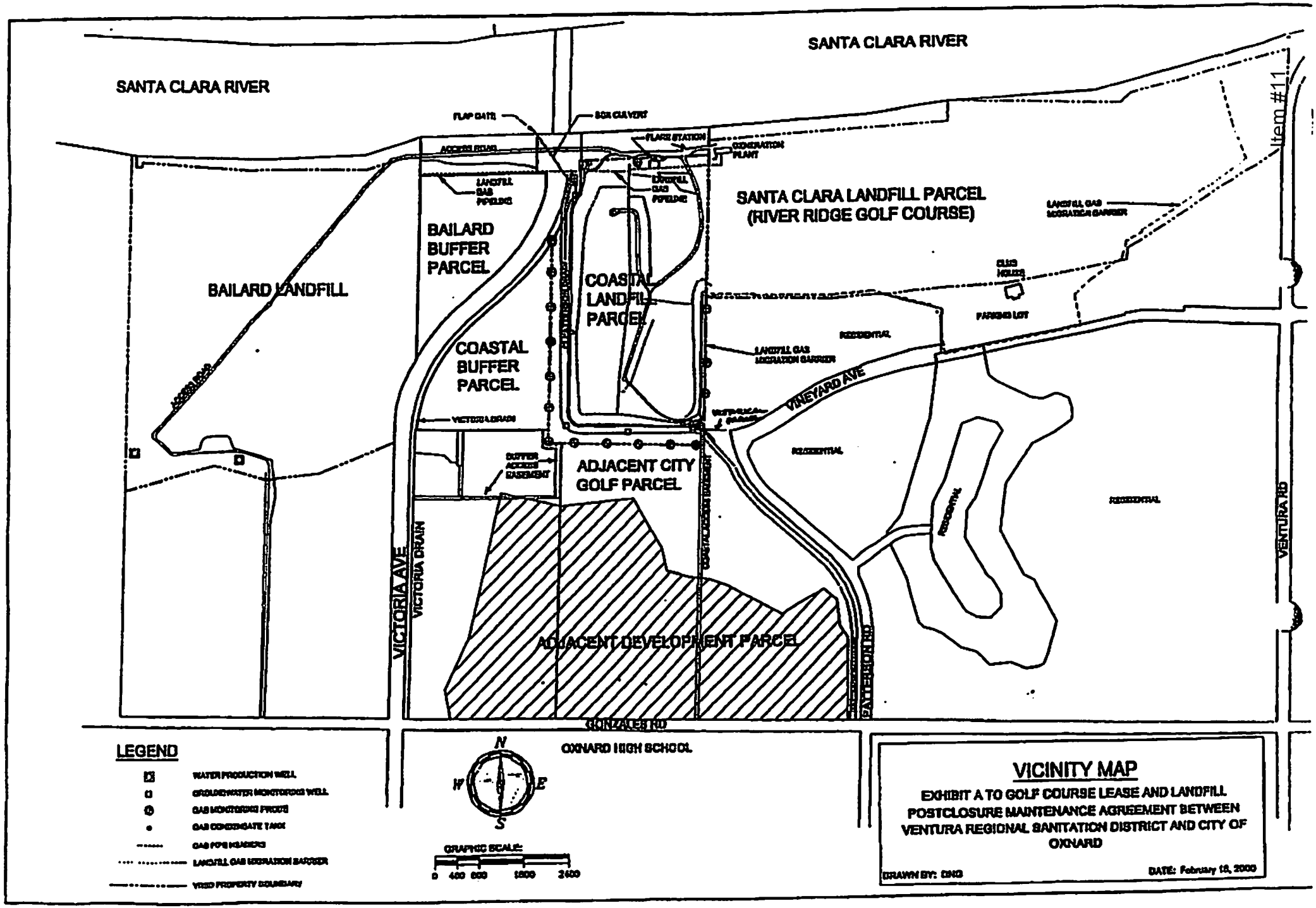
SANTA CLARA RIVER
SANTA CLARA RIVER
FLAP GATE
BOX CULVERT
FLARE STATION
GENERATION PLANT
ACCESS ROAD
LANDFILL GAS PIPELINE
COASTAL GAS PIPELINE
SANTA CLARA LANDFILL PARCEL
(RIVER RIDGE GOLF COURSE)
LANDFILL GAS MIGRATION BARRIER
BAILARD BUFFER PARCEL
BAILARD LANDFILL
COASTAL LANDFILL PARCEL
CLUB HOUSE
PARKING LOT
RESIDENTIAL
COASTAL BUFFER PARCEL
LANDFILL GAS MIGRATION BARRIER
VINEYARD AVE
VICTORIA DRAIN
BUFFER ACCESS EASEMENT
ADJACENT CITY GOLF PARCEL
RESIDENTIAL
RESIDENTIAL
RESIDENTIAL
VENTURA RD
VICTORIA AVE
VICTORIA DRAIN
ADJACENT DEVELOPMENT PARCEL
PATTERSON RD
GONZALES RD
OXNARD HIGH SCHOOL
Item #11
LEGEND
WATER PRODUCTION WELL
GROUNDWATER MONITORING WELL
GAS MONITORING PROBE
GAS CONDENSATE TANK
GAS PIPELINE
LANDFILL GAS MIGRATION BARRIER
VISED PROPERTY BOUNDARY
N
W
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GRAPHIC SCALE:
0 400 800 1600 2400
VICINITY MAP
EXHIBIT A TO GOLF COURSE LEASE AND LANDFILL POSTCLOSURE MAINTENANCE AGREEMENT BETWEEN VENTURA REGIONAL SANITATION DISTRICT AND CITY OF OXNARD
DRAWN BY: DNG
DATE: February 18, 2000

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GOLF COURSE LEASE AND
LANDFILL POSTCLOSURE MAINTENANCE AGREEMENT

EXHIBIT B
(BAILARD BUFFER PARCEL)

Being Portions of Parcel B, Subdivision No. 4, Rancho El Rio De Santa Clara O' La Colonia as per map recorded in Book 3, Page 44 of Miscellaneous Records (maps), in the Office of the County Recorder, County of Ventura, State of California.

Commencing at the Westerly terminus of the third course of Parcel A as per that certain Deed recorded in Book 4445, Page 904 of Official Records, in the Office of the County Recorder of said county; thence along the boundary of said Deed recorded in Book 4445, Page 904, South 1° 27' 16" West 350.15 feet to the True Point of Beginning; thence continuing along the boundary of Parcel A per said Deed in Book 4445, Page 904 the following 5 courses,

1st: North 89° 45' 45" East 85.54 feet to a point; thence,

2nd: South 1° 27' 16" West 138.48 feet to a point; thence,

3rd: Southerly and Southwesterly along a curve concave Northwesterly, having a radius of 1415.58 feet at a central angle of 37° 14' 52", the radial of which at said point bears North 76° 36' 31" West, an arc distance of 920.26 feet to a point; thence,

4th: South 50° 47' 01" West 399.53 feet to a point; thence,

5th: Southwesterly along a tangent curve concave Southeasterly, having a radius of 1575.00 feet and a central angle of 21° 40' 00", an arc distance of 599.72 feet to a point in the Westerly line of said Parcel B; thence Northerly along the Westerly line of said Parcel B,

6th: North 1° 15' 41" East 1610.81 feet to the Southwesterly corner of that certain Deed recorded in Book 4437, Page 688 of Official Records in the Office of the County Recorder of said county; thence Easterly along the Southerly line of last said Deed,

7th: North 89° 45' 45" East 1053.58 feet to the True Point of Beginning.

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GOLF COURSE LEASE AND
LANDFILL POSTCLOSURE MAINTENANCE AGREEMENT

EXHIBIT C
(COASTAL BUFFER PARCEL)

Being Portions of Parcel B, Subdivision No. 4, Rancho El Rio De Santa Clara O' La Colonia as per map recorded in Book 3, Page 44 of Miscellaneous Records (maps), in the Office of the County Recorder, County of Ventura, State of California.

Commencing at the Northwest corner of Parcel B, as shown on that certain map filed in Book 30, Pages 22 and 23 of Parcel Maps, in the Office of the County Recorder of said county; thence Easterly along the Northerly line of Parcel B of said Parcel Map, south 89° 02' 49" East to the Northeast corner of Parcel B of said Parcel Map, said Northeast corner also being the True Point of Beginning; thence Easterly along a prolongation of the North line of Parcel B of said Parcel Map.

1st: South 89° 02' 49" East 817.92 feet to an intersection with the Westerly line of that certain Deed recorded July 15, 1988 as Document no. 88-099785 of Official Records; thence Northerly along said Westerly line,

3rd: North 01° 15' 31" East 1672.65 feet to an intersection with the Southeasterly line of Parcel A as per that certain Deed recorded in Book 4445, Page 904 of Official Records, in the Office of the County Recorder of said county, said intersection also being a point on a curve concave Northwesterly having a radius of 1721.73 feet, a radial line to said curve bears South 58° 29' 32" East; thence Southwesterly along the Southeasterly line of said Deed the following 4 courses,

4th: Southwesterly along said curve through a central angle of 20° 29' 41" an arc distance of 615.86 feet; thence,

5th: South 50° 47' 01" West 408.00 feet to the beginning of a tangent curve concave Southeasterly having a radius of 1380.00 feet; thence,

6th: Southwesterly and Southerly along said curve through a central angle of 41° 11' 11" an arc distance of 992.00 feet; thence,

7th: South 09° 35' 50" West 99.77 feet to an intersection with the Northerly line of Parcel B of said Parcel Map; thence Easterly along said Northerly line,

8th: South 89° 02' 49" East 374.37 feet to the True Point of Beginning.

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GOLF COURSE LEASE AND
LANDFILL POSTCLOSURE MAINTENANCE AGREEMENT

EXHIBIT D
(COASTAL LANDFILL PARCEL)

Parcel 1 (Landfill)

Fee simple title in and to a portion of Parcel A of Subdivision No. 4 of the Rancho El Rio de Santa Clara o'La Colonia, in the County of Ventura, State of California, as shown on the map recorded in the Office of the Ventura County Recorder in Book 3, Page 44, of Miscellaneous Records, described as follows:

Beginning at the Southwest corner of the property deeded to the City of Oxnard and described in Book 3290, Page 40 of Official Records of said County, said point being the Westerly terminus of the sixth course of Annexation No. 68-10 to said City as filed with the Secretary of State on July 8, 1968; thence Northerly 115 feet along the seventh course of said annexation to the True Point of Beginning; thence,

1st: South 87° 47' 14" West 1194.27 feet; thence,

2nd: South 1° 27' 42" West 177.54 feet; thence,

3rd: South 51° 41' 00" West 119.00 feet; thence,

4th: Southerly along a curve concaved Westerly having a central angle of 3° 48' 56", radial bearing of South 71° 32' 56" East and radial distance of 1721.73 feet. This same curve has an arc distance of 114.66 feet to a point in the Westerly line of said parcel "A", (3 M.R. 44) thence,

5th: South 1° 15' 50" West 1926' along the Westerly line of Parcel "A"; thence along a line parallel to the Southerly line of said Parcel "A",

6th: East 1321.98 feet more or less to a point in the East line of Parcel "A", (3 M.R. 44) said point also lying in the Southerly prolongation of the Westerly line of Parcel "B" of Annexation to the City of Oxnard 77-4 as filed with the Secretary of State on November 7, 1978; thence along said Southerly prolongation and the Westerly line of said annexation,

7th: North 1° 15' 50" East 2325.22 feet to the True Point of Beginning and containing approximately 69.3 acres.

Parcel 2 (Patterson Drain West of Landfill)

That portion of Parcel B of Subdivision No. 4 of the Rancho El Rio De Santa Clara O'La Colonia, in the County of Ventura, State of California, as shown on the Map recorded in the Office of the Ventura County Recorder in Book 3, Page 44 of Miscellaneous Records.

Being a strip of land 120 feet in width, the Easterly line thereof being the Westerly line, and Southerly prolongation thereof, of Parcel 1 (Landfill Parcel) as described in the Deed to Ventura County Regional Sanitation District, recorded April 14, 1986 as Instrument No. 86-043729 of Official Records.

Said strip of land to terminate Northwesterly in the Southeasterly line of Victoria Avenue, as described in Parcel A in the Deed to County of Ventura, recorded August 13, 1975, as Document No. 54364, in Book 4445, Page 904 of Official Records, and to terminate in an line parallel with and distant Southerly 120.00 feet from the Westerly prolongation of the Southerly line of said Parcel 1 (Landfill Parcel).

Parcel 3 (Patterson Drain South of Landfill)

That portion of Parcel A of Subdivision No. 4 of the Rancho El Rio De Santa Clara o'La Colonia, in the County of Ventura, State of California, as shown on the map recorded in the office of the Ventura County Recorder in Book 3, Page 44 of Miscellaneous Records.

Being a strip of land 120 feet in width, the Northerly line thereof being the Southerly line of Parcel 1 (Landfill Parcel) as described in the Deed to Ventura Regional Sanitation District, recorded April 14, 1986 as Instrument No. 86-043729 of Official Records.

Said strip of land to terminate Easterly and Westerly in the Easterly and Westerly lines of said Parcel A.

EXCEPT all oil, gas, other hydrocarbon substances and minerals in and under said Parcels 1, 2 and 3.

EXHIBIT D-1

Agreement No. 7167-15-CM
VRSD Contract No. 15-027

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES ("**Agreement**") is made and entered into in the County of Ventura, State of California, this 8th day of June, 2015, by and between the City of Oxnard, a municipal corporation ("**City**"), and Ventura Regional Sanitation District ("**Consultant**"). City and Consultant are sometimes individually referred to as "**Party**" and collectively as "**Parties.**"

WHEREAS, City desires to hire Consultant to perform certain consulting services specified herein; and

WHEREAS, Consultant represents that Consultant and/or Consultant's personnel have the qualifications and experience to properly perform such services.

NOW, THEREFORE, City and Consultant hereby agree as follows:

1. Scope of Services

Consultant shall furnish City with professional consulting services as more particularly set forth in **Exhibit A** attached hereto and incorporated by this reference in full herein (the "**Services**").

2. Method of Performing Services

Subject to the terms and conditions of this Agreement, Consultant may determine the method, details, and means of performing the Services.

3. Standard of Performance

Consultant agrees to undertake and complete the Services to conclusion, using that standard of care, skill, and diligence normally provided by a professional person in performance of similar consulting services.

4. Nonexclusive Services

This Agreement shall not be interpreted to prevent or preclude Consultant from rendering any services for Consultant's own account or to any other person or entity as Consultant in its sole discretion shall determine. Consultant agrees that performing such services will not materially interfere with the Services to be performed for the City.

COUNCIL AGENDA ITEM #
11/19/15 I-1(A)
DATE

5. Coordination of Services

The Services shall be coordinated with the City Manager or designated Department Head ("Manager"), subject to the direction of the City Manager or Department Manager.

6. Place of Work

Consultant shall perform the Services provided for in this Agreement at any place or location and at such times as the Consultant shall determine.

7. Correction of Errors

Consultant agrees to correct, at its expense, all errors which may be disclosed during review of the Services. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be paid by Consultant.

8. Time for Performance

The Services performed under this Agreement shall be completed by June 30, 2016. City agrees to amend the performance termination date whenever Consultant is delayed by action or inaction of City and Consultant promptly notifies Manager of such delays.

9. Principal in Charge

Consultant hereby designates Frank Kiesler as its principal-in-charge and person responsible for necessary coordination with Manager.

10. Permits, Licenses, Certificates

Consultant, at Consultant's sole expense, shall obtain and maintain during the term of this Agreement, all permits, licenses, and certificates required in connection with the performance of the Services, including a City business tax certificate.

11. City's Responsibility

City shall cooperate with Consultant as may be reasonably necessary for Consultant to perform the Services. Manager agrees to provide direction to Consultant as requested regarding particular project requirements.

12. Term of Agreement

This Agreement shall begin on July 1, 2015, and expire on June 30, 2016.

13. Termination

a. This Agreement may be terminated by City without cause if Manager notifies Consultant, in writing, of Manager's desire to terminate the Agreement. Such termination shall be effective ten (10) calendar days from the date of delivery or mailing of such notice. City agrees to pay Consultant in full for all amounts due Consultant as of the effective date of termination, including any expenditures incurred on City's behalf, whether for the employment of third parties or otherwise.

b. This Agreement may be terminated by Consultant without cause if Consultant notifies Manager, in writing, of Consultant's desire to terminate the Agreement. Such termination shall be effective ten (10) calendar days from the date of delivery or mailing of such notice and only if all assignments accepted by Consultant have been completed prior to the date of termination.

14. Compensation

a. City agrees to pay Consultant in an amount not to exceed $75,050.91 for the Services at rates provided in **Exhibit B** attached hereto and incorporated by this reference in full herein.

b. The acceptance by Consultant of the final payment made under this Agreement shall constitute a release of City from all claims and liabilities for compensation to Consultant for anything completed, finished or relating to the Services.

c. Consultant agrees that payment by City shall not constitute nor be deemed a release of the responsibility and liability of Consultant or its employees, subcontractors, agents and subconsultants for the accuracy and competency of the information provided and/or the Services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Consultant, its employees, subcontractors, agents and subconsultants.

d. Consultant shall provide Manager with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service.

e. If any sales tax is due for the Services performed by Consultant or materials or products provided to City by Consultant, Consultant shall pay the sales tax. City shall not reimburse Consultant for sales taxes paid by Consultant.

15. Method of Payment

a. City agrees to pay Consultant monthly upon satisfactory completion of the Services and upon submission by Consultant of an invoice delineating the Services performed, in a form satisfactory to Manager. The invoice shall identify the Services by project as specified by Manager.

b. Consultant agrees to maintain current monthly records, books, documents, papers, accounts and other evidence pertaining to the Services performed and costs incurred.

Such items shall be adequate to reflect the time involved and cost of performing the Services. Consultant shall provide Manager with copies of payroll distribution, receipted bills and other documents requested for justification of the invoice.

16. Responsibility for Expenses

Except as otherwise expressly provided in this Agreement, City shall not be responsible for expenses incurred by Consultant in performing the Services. All expenses incident to the performance of the Services shall be borne by the Consultant, including, but not limited to rent, vehicle, and travel, entertainment and promotion, general liability and health insurance, workers' compensation insurance, and all compensation and benefits of employees or agents engaged by Consultant. Consultant shall, at its own cost and expense, supply all personal property necessary or appropriate to perform the Services provided for under this Agreement, including, but not limited to any personal property used by employees and agents of Consultant in the performance of such Services.

17. Non-Appropriation of Funds

Payments to be made to Consultant by City for the Services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of the Services beyond the current fiscal year, this Agreement shall cover payment for the Services only up to the conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

18. Records

a. Consultant agrees that all final computations, exhibits, files, plans, correspondence, reports, drawings, designs, data and photographs expressly required to be prepared by Consultant as part of the scope of services (**"documents and materials"**) shall be the property of City and shall, upon completion of the Services or termination of this Agreement, be delivered to Manager.

b. At City's request, City shall be entitled to immediate possession of, and Consultant shall furnish to Manager within ten (10) calendar days, all of the documents and materials. Consultant may retain copies of these documents and materials.

c. Any substantive modification of the documents and materials by City staff or any use of the completed documents and materials for other City projects, or any use of uncompleted documents and materials, without the written consent of Consultant, shall be at City's sole risk and without liability or legal exposure to Consultant. City agrees to hold Consultant harmless from all damages, claims, expenses and losses arising out of any reuse of the documents and materials for purposes other than those described in this Agreement, unless Consultant consents in writing to such reuse.

19. Maintenance and Inspection of Records

Consultant agrees that City or its auditors shall have access to and the right to audit and reproduce any of Consultant's relevant records to ensure that City is receiving the Services to which City is entitled under this Agreement or for other purposes relating to the Agreement. Consultant shall maintain and preserve all such records for a period of at least three (3) years after the expiration of this Agreement, or until an audit has been completed and accepted by City. Consultant agrees to maintain all such records in City or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead.

20. Confidentiality of Information

Any documents and materials given to or prepared or assembled by Consultant under this Agreement shall be confidential and shall not be made available to any third person or organization by Consultant without prior written approval of the Manager.

21. Indemnity

a. To the fullest extent permitted by law, Consultant shall (1) immediately defend; (2) indemnify; and (3) hold harmless City, its City Council, each member thereof, and its directors, officers, and employees (the "**Indemnified Party**") from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with Consultant's performance of this Agreement or Consultant's failure to comply with any of its obligations contained in this Agreement. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that any of the liabilities covered by this Section are the result of the sole active negligence or sole willful misconduct of the Indemnified Party. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of the Indemnified Party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the Indemnified Party.

b. The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Indemnified Party immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of negligence or willful misconduct by the Indemnified Party shall not relieve Consultant from its separate and distinct obligation to defend the Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnified Party. If it is finally adjudicated that

liability was caused by the sole active negligence or sole willful misconduct of the Indemnified Party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

c. The review, acceptance or approval of Consultant's work or work product by the Indemnified Party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This Section shall survive completion of the Services or termination of this Agreement. The provisions of this Section shall not be restricted by and do not affect the provisions of this Agreement relating to insurance.

22. Insurance

a. Consultant shall obtain and maintain during the performance of the Services the insurance coverages as specified in **Exhibit INS-C**, attached hereto and incorporated herein by this reference, issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Consultant obtain and maintain such insurance coverages.

b. Consultant shall, prior to performance of the Services, file with the Risk Manager evidence of insurance coverage as specified in **Exhibit INS-C**. Evidence of insurance coverage shall be forwarded to the Risk Manager, addressed as specified in **Exhibit INS-C**.

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

23. Independent Contractor

a. City and Consultant agree that in the performance of the Services, Consultant shall be, and is, an independent contractor, and that Consultant and its employees are not employees of City. Consultant has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting Consultant.

b. Consultant shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Consultant's employees, agents, subcontractors and subconsultants, including compliance with social security requirements, federal and State income tax withholding and all other regulations governing employer-employee relations.

c. Consultant acknowledges that Consultant and Consultant's employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, or health, life, dental, long-term disability and workers' compensation insurance benefits.

24. Consultant Not Agent

Except as Manager may specify in writing, Consultant, and its agents, employees, subcontractors and subconsultants shall have no authority, expressed or implied, to act on behalf of City in any capacity, as agents or otherwise, or to bind City to any obligation.

25. Conflict of Interest

If, in performing the Services set forth in this Agreement, Consultant makes, or participates in, a **"governmental decision"** as described in Title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for City that would otherwise be performed by a City employee holding a position specified in City's conflict of interest code, Consultant shall be subject to City's conflict of interest code, the requirements of which include the filing of one or more statements of economic interests disclosing the relevant financial interests of Consultant's personnel providing the Services set forth in this Agreement.

26. Assignability of Agreement

Consultant agrees that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's personnel's unique competence, experience and specialized personal knowledge. Assignments of any or all rights, duties, or obligations of Consultant under this Agreement will be permitted only with the express written consent of Manager, which consent may be withheld for any reason.

27. Successors and Assigns

Consultant and City agree that this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of Consultant and City.

28. Fair Employment Practices

a. Consultant agrees that all persons employed by Consultant shall be treated equally by Consultant without regard to or because of race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of California, and City.

b. Consultant agrees that, during the performance of this Agreement, Consultant and any other parties with whom Consultant may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

c. Consultant agrees to state in all of its solicitations or advertisements for applicants for employment that all qualified applicants shall receive consideration for

employment without regard to their race, color, religion, ancestry, national origin, disability, sex, marital status, age, or any other status protected by law.

d. Consultant shall provide City staff with access to and, upon request by Manager, provide copies to Manager of all of Consultant's records pertaining or relating to Consultant's employment practices, to the extent such records are not confidential or privileged under State or federal law.

29. Force Majeure

Consultant and City agree that neither City nor Consultant shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire, communication line failures, earthquakes, or other disasters.

30. Time of Essence

Consultant and City agree that time is of the essence in regard to performance of any of the terms and conditions of this Agreement.

31. Covenants and Conditions

Consultant and City agree that each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

32. Governing Law

City and Consultant agree that the construction and interpretation of this Agreement and the rights and duties of City and Consultant hereunder shall be governed by the laws of the State of California.

33. Compliance with Laws

Consultant agrees to comply with all City, State, and federal laws, rules, and regulations, now or hereafter in force, pertaining to the Services performed by Consultant pursuant to this Agreement.

34. Severability

City and Consultant agree that the invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

35. Waiver

City and Consultant agree that no waiver of a breach of any provision of this Agreement by either Consultant or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or Consultant to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

36. Counterparts

City and Consultant agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

37. Arbitration

Consultant and City agree that in the event of any dispute with regard to the provisions of this Agreement, the Services rendered or the amount of Consultant's compensation, the dispute may be submitted to non-binding arbitration upon the mutual agreement of the parties, under such procedures as the parties may agree upon, or, if the parties cannot agree, then under the Rules of the American Arbitration Association.

38. Expenses of Enforcement

Consultant and City agree that the prevailing party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions of this Agreement.

39. Authority to Execute

a. City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.

b. Consultant acknowledges that the person executing this Agreement has been duly authorized by Consultant to do so on behalf of Consultant.

40. Notices

a. Any notices to Consultant may be delivered personally or by mail addressed to, Ventura Regional Sanitation District, 1001 Partridge Drive, Suite 150, Ventura, California 93003 Attention: Frank Kiesler.

b. Any notices to City may be delivered personally or by mail addressed to City of Oxnard, General Services Department, Oxnard, California 93030, Attention: Michael Henderson.

41. Amendment

City and Consultant agree that the terms and conditions of the Agreement may be reviewed or modified at any time. Any modifications to this Agreement, however, shall be effective only when agreed upon to in writing by both the City representative authorized to do so under the City's purchasing policies and Consultant.

42. Entire Agreement

City and Consultant agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written.

CITY OF OXNARD

Greg Nyhoff, City Manager

APPROVED AS TO FORM:

For

Stephen M. Fischer, Interim City Attorney

APPROVED AS TO CONTENT:

Michael Henderson, General Services Director

APPROVED AS TO INSURANCE:

Risk Manager

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

APPROVED AS TO FORM:

ARNOLD, LaROCHELLE, MATHEWS, VANCONAS & ZIRBEL LLP

MARK ZIRBEL
Legal Counsel for DISTRICT

ATTEST:

JOSIE GUZMAN
Clerk of the Board

VENTURA REGIONAL SANITATION DISTRICT

RICK NEAL, Chairman

INTERNAL USE ONLY

Principal Analyst _____

Finance Manager _____

Director of Finance 7/8

Fiscal Technician _____

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Exhibit A
Scope of Services

Landfill Gas Perimeter Probe Monitoring and Reporting

1. Conduct monthly perimeter landfill gas probe monitoring as required by California Code of Regulations (CCR) Title 27. Submit monthly reports to the County of Ventura Environmental Health Division.

2. Monitor the 3 on-site landfill gas detection systems located at the Clubhouse and Maintenance Tent. Calibrate as required by the manufacturer. Respond to gas alarms as needed.

Landfill Gas Surface Monitoring and Reporting

1. Coordinate with 3rd party vendor (RES Environmental) to perform surface emissions monitoring (SEM) of the surface of the landfill on an annual basis for gas emissions in accordance with the requirements of Title V Federal Operating Permit and by CCR 17. (Effective FY15/16 surface monitoring frequency has been reduced from quarterly to annual. If monitoring results exceed regulatory limits, monitoring frequency and cost will return to quarterly.

   Any leaks detected will be remediated in consultation with the City as warranted depending on the source of the leak. This may require adjustments to the gas collection system or cover maintenance.

   Follow-up inspection will be conducted on a 10 day and 30 day schedule as required in the Title V Federal Operating Permit and by CCR 17.

2. Grab landfill gas sample and test gas for component gasses quarterly.

3. Prepare Title V required semi-annual reports, semi-annual flare start-up, shutdown and malfunction reports, and annual certification reports.

4. Prepare AB32 / CCR 17 Reports.

5. Prepare Annual California and Federal Electronic Greenhouse Gas Reporting (EGERT).

6. Retain Title V and CCR 17 records.

7. Pay the Air Pollution Control District Permit Fee for Coastal Flare. 1/3 the fee cost will be charged to the City.

Storm Water Monitoring and Reporting

Conduct storm water monitoring and reporting as outlined in the City's Storm Water Pollution Prevention Plan. Note – The State of California is modifying the General Industrial Permit effective July 1st 2015 that will require an update to the City's Stormwater Pollution Prevention Plan (SWPPP).

1. Collect and analyze 4 storm water samples per year.
2. Conduct up to 6 wet season monthly inspections as required during the rainy season.
3. Conduct 4 dry weather (authorized/unauthorized) inspections of the stormwater discharge locations.
4. Conduct an annual comprehensive site inspection and evaluation of SWPPP.
5. Complete the annual report and upload to the SMARTS system to the State Water Resources Control Board.
6. Recommend updates to the SWPPP based on the comprehensive site evaluation to the City.

Gas Collection System and Flare Operations & Maintenance

1. Operate City's landfill gas (LFG) collection system.
2. Conduct quarterly sump pump maintenance.
3. Conduct LFG flare maintenance.
4. Administer semi-annual comprehensive 3rd party LFG flare maintenance.
5. Coordinate annual gas flare source test.
6. FY 2014/2015 - Oversee implementation of new LFG flare blower assembly and controls update.

Gas Collection System Monitoring

1. Conduct monthly gas collection well-field balancing.

FY 16 budget

	Landfill Gas Perimeter Probe and Structures Monitoring	Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost
	Monitoring								
Labor	Landfill Gas Perimeter Probe Monitoring	Environmental Resource Analyst	4	12	48	$ 107.00			$5,136.00
$8,348.00	Calibrate Basement gas monitoring unit	Environmental Resource Analyst	1.0	12	12	$ 107.00			$1,284.00
	Calibrate tent gas monitoring units	Environmental Resource Analyst	0.5	12	6	$ 107.00			$642.00
	Reporting								
	Prepare Monthly Report for EHD	Environmental Resource Analyst	1	12	12	$ 107.00			$1,284.00
Materials	Calibration Gas (oxygen + methane)						2	$ 207.00	$414.00
$414.00									
Equipment	GEM - Gas Monitor						12	$ 75.83	$909.96
$2,620.92	Mule - Portable Vehicle						4	$ 279.99	$1,119.96
	Misc. Supplies/Hardware						1	$ 500.00	$500.00
Mileage	Mileage						460	$ 1.00	$460.00
$460.00									
Subtotal									$11,769.92

	Landfill Gas Surface Monitoring and Reporting	Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost
	Monitoring								
Labor	Follow-up monitoring for leaks detected (contingency for any surface emissions exceedances)	Environmental Resource Analyst	4	1	4	$ 107.00			$428.00
$9,239.00	**Reporting**								
	Semi-Annual/Annual Title 5 Reports	Environmental Resource Analyst	10	2	20	$ 107.00			$2,140.00
	Annual Start-up, Shutdown and Malfunction Report	Environmental Resource Analyst	3	1	3	$ 107.00			$321.00
	Emissions Inventory Report	Environmental Resource Analyst	3	1	3	$ 107.00			$321.00
	Annual Compliance Certification Report	Environmental Resource Analyst	7	1	7	$ 107.00			$749.00
	AB-32 / Title 17 Reporting	Environmental Resource Analyst	4	1	4	$ 107.00			$428.00
	California Electronic Greenhouse Gas Reporting	Environmental Resource Analyst	6	1	6	$ 107.00			$642.00
	Federal Electronic Greenhouse Gas Reporting	Environmental Resource Analyst	6	1	6	$ 107.00			$642.00
	Monthly Data Gathering for Reports	Environmental Resource Analyst	2	12	24	$ 107.00			$2,568.00
Materials	Calibration Gas (zero air + methane)						2	$ 207.00	$414.00
$414.00									
Outside Contracted Service	RSI, Inc. - Landfill Surface Emissions Monitoring (cost + 10%) *(Effective for FY 15/16 surface monitoring frequency has been reduced from quarterly to annual. If monitoring results exceed regulatory limits, monitoring frequency and cost will return to quarterly.)*	Contractor		1			Lump sum	$ 6,860.70	$ 6,860.70
$6,860.70									
Fees	APCD Permit Fee (1/3 fee)						1	$ 879.75	$879.75
$879.75									
Mileage							80	$ 1.00	$80.00
$80.00									
Subtotal									$16,478.45

	Stormwater Monitoring and Reporting	Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost
	Monitoring								
Labor	6 wet season inspections	Environmental Resource Analyst	2	6	12	$ 107.00			$1,284.00
$4,703.00	Stormwater sampling - 4 sampling events (2015 SW regulations increase sampling to 4 events from 2)	Environmental Resource Analyst	1	4	4	$ 107.00			$428.00
	4 dry season inspections	Environmental Resource Analyst	2	4	8	$ 107.00			$856.00
	Conduct Annual Site Inspection	Environmental Resource Analyst	4	1	4	$ 107.00			$428.00
	Plans and Reporting								
	Conduct Annual Certification and SSMP review	Environmental Resource Analyst	8	1	8	$ 107.00			$856.00
	Complete Annual Report	Environmental Resource Analyst	8	1	8	$ 107.00			$856.00
	Storm Water Pollution Prevention Plan update	Environmental Resource Analyst	21	1	21	$ 107.00			$2,247.00
Outside Contracted Services	Laboratory Fees						4	$ 450.00	$1,800.00

Exhibit "B"

Item #11

Item #11

$1,600.00								$60	$ 1.00	$560.00
Mileage $560.00										$9,915.00
Subtotal										
	Gas Collection System and Flare Operation & Maintenance	Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost	
Labor $6,570.00	Landfill Gas Condensate Sump maint.	Senior Solid Waste Worker	8	4	32	$ 99.00			$ 3,168.00	
	Supervise GCS operation & maint.	SW Technical Operations Supervisor	8	2	16	$ 110.00			$ 1,760.00	
	Assist with gas flare engineering test & source test	Environmental Resource Analyst	3	2	6	$ 107.00			$ 642.00	
Materials	Flare Maintenance and repair supplies (1/3 rd cost + 10%)	Materials		1			Lump sum		$ 11,000.00	
Outside Contracted Service $7,300.54	Semi-annual flare assessment (1/3 rd cost + 10%)	Contractor		1			Lump sum		$ 2,273.94	
	Quarterly Landfill Gas Analytical (1/3 rd cost + 10%)	Contractor		4			4	$ 138.00	$552.00	
	Gas flare source test - 1/3rd cost + 10% (Testing requirements vary year to year)	Contractor		1			Lump sum	$ 1,039.00	$ 1,039.00	
	Annual Flare Destruction Efficiency Test (1/3 rd cost + 10%)	Contractor		1			Lump sum	$ 2,668.20	$ 2,686.20	
	Maintain City's air compressor quarterly (used to operate gas collection pneumatic liquid collection pumps)	Contractor		4			Qrtly	$ 175.00	$ 700.00	
Equipment rental $150.00	Man-lift for gas flare source test	Equipment		1			1	$ 150.00	$ 150.00	
Utility $2,880.00	Electricity billing	SCE utility		12				$ 240.00	$ 2,880.00	
Mileage $320.00							320	$ 1.00	$320.00	
Subtotal										$27,220.54
	Gas Collection System Monitoring	Position	Time (Hours)	Frequency	Total Hours	Hourly Rate	Unit(s)	Unit Cost	Total Cost	
Labor $9,792.00	Well-field balancing (monthly)	Engineering Technician	8	12	96	$ 102.00			$ 9,792.00	
Mileage $480.00							480	$ 1.00	$480.00	
Subtotal										$10,272.00
Grand Total										$75,050.81