

**City of Carson City
Agenda Report**

Date Submitted: July 22, 2011

Agenda Date Requested: August 4, 2011
Time Requested: 30 Minutes

To: Mayor and Supervisors

From: Public Works Department

Subject Title: For Possible Action: To approve and authorize the Mayor to sign a contract with Recology Environmental Solutions, Inc. for operation of the landfill and a phased program for waste recovery. (Andy Burnham)

Staff Summary: On July 1, 2010, the Board of Supervisors directed staff to proceed with negotiations with Recology Environmental Solutions, Inc. (Recology) for operation of the City's landfill and for an significantly improved waste diversion/recycling program. This contract with Recology will provide for the operation of the Carson City Landfill, with emphasis on a waste diversion/recovery program to reduce the amount of waste disposed by 30% within two years. This will ensure that Carson City has solid waste disposal capabilities far into the future and provides the ability to increase diversion/recycling in the future.

Type of Action Requested: (check one)
 Resolution
 Formal Action/Motion Other (No action required))

Does This Action Require A Business Impact Statement: Yes (XX) No

Recommended Board Action: I move to approve and authorize the Mayor to sign a contract with Recology Environmental Solutions, Inc. for operation of the landfill and a program for waste recovery.

Explanation for Recommended Board Action: Carson City staff reviewed existing solid waste management practices and initiated a Request for Proposal process at the urging of the Governor and the Mayor. They had been contacted by several firms indicating an interest in demonstrating waste recovery and waste to energy technologies.

Staff conducted an extensive process for selection of a company to develop a waste recovery facility. The process resulted in staff recommending that Recology, Inc. located in San Francisco and operating in several states including in Nevada, be selected for the Carson City Landfill. Recology has extensive experience with waste recovery and landfill operations in communities of our size and larger. They bring significant expertise to various waste management issues, making them a great partner with the City for dealing with future waste management issues.

Existing Solid Waste Management Practices

The existing Carson City Sanitary Landfill, formerly the Ormsby Landfill, is located off Highway 50 at 3600 Flint Drive which is in the northeast section of Carson City, Nevada. The landfill, owned by Carson City, has been in operation since 1970 and is currently operated by the City. The landfill was operated by a contractor until July of 2000. At that time, Carson City Public Works was awarded the contract for operation of the landfill and has operated the landfill since that time, resulting in longer life span to the landfill and an income stream to the general fund.

Waste is hauled to the landfill by commercial waste haulers and private individuals. The majority of the waste, 85%, currently originates from Carson City with the remaining coming from the surrounding region including California. The landfill is located on approximately 210 acres of land which was granted to the City by the United States Bureau of Land Management (BLM). Current landfill operations utilize 83 of the 210 acres for waste placement.

The City, under the Federal Lands Bill, is acquiring the land surrounding the landfill from the BLM. The City has developed a master plan for the landfill which provides for expansion of the landfill and maintaining buffer areas particularly in relation to the V&T Railway.

The Carson City Sanitary Landfill has an estimated remaining capacity of approximately 19,400,000 cubic yards with the ability to expand beyond that if necessary on adjacent lands.

The life expectancy of the Carson City Sanitary Landfill based on current disposal practices, the calculated air space, the projected annual tonnages received, is approximately 51 years. With this contract and by increasing the diversion rate the life of the landfill will be extended to 100 years or longer.

The Carson City Landfill is currently operated as an unlined facility without leachate or landfill gas collection, the least expensive type of landfill operation process in the U.S. The facility accepts about 150,000 tons per year or about 400 tons of solid waste and recyclable material per day. The City's total waste stream diversion rate of recyclable/reusable materials is approximately 19%. The State's goal, not a requirement currently, is 25%. Included in the 400 ton per day estimate is approximately 40 tons per day of waste from out-of-county.

In Carson City, the curbside collection of trash, garbage and recyclables is accomplished by an exclusive franchise agreement with Capital Sanitation, a subsidiary of Waste Management Incorporated (WMI). The franchise agreement with Carson City began July 1, 1999 and extends until July 1, 2014. Upon expiration of the 15 year period, WMI has the right to extend the term of the franchise for an additional 5 year period by written notice to the City at least one year prior to the termination of the primary term.

Originally, the cost of the curbside recycling program was \$1.00 per month. However, that cost has since been imbedded in the monthly garbage service fees. The base residential rate is currently \$39.27 per quarter. The rate automatically escalates annually based on CPI.

To date, Carson City has not chosen to mandate garbage or recycling services. Therefore, historically the community has had an approximate 62% participation rate (14,880 households) in curbside service. Of those participants, approximately 60% (8,928 households) take advantage of the curbside recycling program. The remaining households haul their garbage to the landfill. Recycling bins are provided at the landfill for those who do not recycle at the curb and for out-of-county patrons. Additional recycling is accomplished at the landfill with a program of separating wood waste, tires, scrap metal, waste oil, anti-freeze and vehicle batteries. This program accounts for an annual diversion of approximately 7%, with the curbside recycling program and commercial efforts rounding out the overall 19% diversion rate discussed previously.

Diversion rates in California are required and currently set at 50% of the waste stream. California is considering increasing the rate to 75%. Nevada is expected to adopt mandatory diversion rates in the next several years. EPA is also reviewing the possibility of mandatory waste diversion for landfills and increases in recycling. The future of landfills as we know them today is certain to change in the future and will result in reduction in what is just buried and

disposed of. This effort is driven by the need for new energy sources and to reduce mankind's carbon footprint on the world's resources.

This contract with Recology provides for the operation of the Carson City Landfill, with emphasis on developing a waste diversion/recovery program to reduce the amount of waste disposed by 30%. The major recovery programs will include organics composting and disposal pad segregation of construction/demolition debris and other recyclables. Recycling and marketing of these materials should bring Carson City's total waste diversion rate to approximately 40% or higher which will put the community on the road to meeting possible future regulations and extend the life of the landfill to over 100 years. In order for Recology to maximize the potential for recycling it is important that they operate the landfill on a daily basis. This provides them the opportunity to direct the flow of materials to minimize the cost of processing. Future efforts for increasing the diversion rate is possible and could attain an overall rate of 70% or higher. Efforts were made to include the possibility of Douglas County joining with the City in these efforts but the County has indicated that for the time being they will stay with their current disposal practice at the Lockwood landfill. When the state mandates higher diversion rates the possibility of including Douglas County and adding a Materials Recovery Facility (MRF) is a distinct possibility.

The term of this Agreement will be for an initial ten (10) years and may be renewed every five (5) years as long as both parties agree in writing. Recology is responsible to comply with all operating requirements and permit conditions as required by Carson City and the Nevada Division of Environmental Protection. City staff will monitor for compliance and environmental concerns (groundwater, methane, vectors, etc.). Recology is responsible to provide all needed equipment to operate the landfill and diversion programs and maintain all of the equipment. Current City equipment will remain at the landfill for use by Recology.

Recology will be compensated through a monthly base payment of \$125,000 (based on capital expenditures and fixed costs) plus payment of \$8.00 per ton for the total number of tons of waste delivered to the Landfill for the month, less the number of tons of waste generated by City operations and community clean up events delivered to the Landfill. Annually, the base payments will be adjusted by the Western State's CPI Index. The City and Recology will share the net revenue generated from the sale of recycled materials.

Applicable Statue, Code, Policy, Rule or Regulation: N/A

Supporting Material: Contract

Fiscal Impact: Approximately \$3 million annually.

Explanation of Impact: Cost is funded from approximately \$4 million generated from landfill fees. Current fees will be increased \$3/ton which for 60% of residents is contained within the annual WMI CPI increase so their will be no impact to them. Self haulers will see the increase.

Funding Source: Landfill Fees

Alternatives: Do not approve and direct staff otherwise.

Prepared by: Andrew Burnham

Reviewed By: [Signature]
(Department Head)

Date: 7/26/11

Concurrences: [Signature]
(City Manager)

Date: 7/26/11

[Signature]
(District Attorney)

Date: 7/26/11

[Signature]
(Finance Director)

Date: 7/26/11

Board Action Taken:

Motion _____ 1: _____
2: _____

Aye/Nay

(Vote Recorded By)

Carson City Landfill and Waste Recovery

Operational Agreement No. 1

Between

**Carson City
and
Recology Environmental Solutions, INC.**

Date: _____

**Agreement
For Operation of the
Carson City Landfill and to Provide for Waste Recovery**

THIS AGREEMENT, made and entered into this ____ day of _____, by and between the CITY OF CARSON CITY, a consolidated municipality, a political subdivision of the State of Nevada, hereinafter called "City," and RECOLOGY ENVIRONMENTAL SOLUTIONS, INC., a California Corporation, having its principal place of business at 235 North First Street, Dixon, CA 95620, hereinafter called "Contractor."

W I T N E S S E T H:

WHEREAS:

- a. The City possesses certain property in the City of Carson City, State of Nevada, including land located in Sections 1 and 12 of T. 15 N., R. 20 E. and Section 6 of T. 15 N., R 21 E., consisting of approximately 212 acres, (together with buildings and heavy equipment as listed in Schedule 1, collectively known as the Carson City Landfill), hereinafter called "Facility"; and
- b. NRS 244.187 and NRS 244.188 authorize City to operate or grant an exclusive franchise for operation of a landfill; and
- c. Said Facility is used and maintained by the City for the use of the general public as a depository for garbage, refuse, rubbish, debris, green waste and other organic material or other non-hazardous abandoned waste matter and City additionally utilizes the Facility for collection of household hazardous wastes and for waste recovery operations for recycling of materials; and
- d. The City is the owner of the Facility and the City may from time to time construct and improve the Facility or may acquire additional land, buildings and equipment; and
- e. The City is empowered to adopt reasonable rules and regulations for use and operation of the Facility and may prescribe, revise, and collect charges for the services and facilities furnished by the City; and
- f. The City may revise said rules and regulations and such charges from time to time during the term of this Agreement; and
- g. The intent of the specifications contained within this Agreement is to ensure the Facility is operated in a manner that provides the general public with a workable and convenient facility for refuse disposal, waste diversion, waste recycling, and waste processing, to ensure the Facility is not offensive to the senses or injurious to the public health or

welfare, and to ensure that all Facility operations are consistent with the specifications contained in the facilities permits; and

- h. It is the obligation of the Contractor to take reasonable steps to accomplish the foregoing goals, notwithstanding the absence of an expressed specification to this effect; and
- i. The City proposes to enter into this Agreement with the Contractor herein for the operation and management of the Facility and provide for waste recovery to the extent practical; and
- j. The Contractor represents he is qualified and willing to operate the Facility and provide waste recovery pursuant to this Agreement.

NOW, THEREFORE, IT IS MUTUALLY AGREED:

1. ABBREVIATIONS AND DEFINITIONS

The words and terms as used in this Agreement shall have the meanings as set forth in this Section 1. In the event any definitions in the Agreement are inconsistent with definitions in permits governing the Facility, the definitions in the laws and regulations shall prevail.

Acceptable Waste - means Solid Waste which can be disposed of at the Facility under the terms and conditions of any permits, licenses, or approvals obtained with respect to the operation of the Facility, other than waste material which Contractor finds, in its sole discretion, to pose an unreasonable risk or danger to the operation or safety of the Facility, person, or the environment.

Alternative Daily Cover - means alternative materials approved by appropriate regulatory agencies to be used as a substitute for soil as daily cover for waste.

Board - means the Carson City Board of Supervisors

CCMC - means the Carson City Municipal Code.

C & D - means construction and demolition debris.

Cell - means a portion of a municipal solid waste landfill unit which consists of compacted wastes completely enclosed in cover material.

City - means the City of Carson City.

City Waste - means Solid Waste and Recyclable Materials generated by the City and municipal water reclamation sludge generated by the City or by other local governments that the City has agreed to accept at the Facility as of the Effective Date of this Agreement.

CRT - means any electronic device with a screen in excess of 4 inches that contains a Cathode Ray Tube.

Customer - means any waste hauler approved by the Department to deliver, recycle and/or dispose of waste.

Department - means the Carson City Public Works Department, the Director of the Carson City Public Works Department or a designee authorized by the Director.

Diversions Area - means the area designated for operation of the City diversion and processing programs.

Dumping Pad - means the area designated for the customers to unload solid waste intended for disposal.

Effective Date - means the latest date upon which both Parties have executed this Agreement and the Board has approved the Agreement.

End Dump - means a 25 foot or longer pull-type end dump truck or similar vehicle that has a high center of gravity.

Excavation Plan - means an engineered drawing that defines the horizontal and vertical limits of the areas available to be excavated.

Facility Plan - means an engineered drawing of the Facility and contains information such as the Facility boundaries, location of refuse, Limit of Operations, location of diversion area, location of lined areas, location of buffer area, location of access roads, location of existing structures and other pertinent features.

Fill - means compacted solid waste and cover material.

Final Fill Plan - means an engineered drawing that defines the horizontal and vertical limits of the finish surfaces of refuse and cover material.

Finish Grade - means the limits of cover as shown on the Final Fill Plan.

Franchise Hauler - means a commercial refuse hauler franchised by the City of Carson City, a commercial refuse hauler contracted by a municipality, or a city or county permitted by the State to go from place to place to collect solid waste in Carson City.

Gate Attendant - means a Contractor employee that is assigned to staff a gatehouse at a City waste facility and to collect gate fees.

Global Position System (hereinafter referenced to as GPS) - means a land surveying method that determines horizontal and vertical controls by the use of satellites and computers.

Hazardous Material - means any material or combination of materials which, because of its quantity, concentration or physical, chemical or infectious characteristics may either (i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or

incapacitating reversible illness, or (ii) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of or otherwise managed. Hazardous Material also includes hazardous wastes as defined under NRS 459.430 or federal law or regulations promulgated pursuant to any such law, as such law or regulations may from time to time be amended.

Hazardous Waste - means those wastes which meet the criteria for hazardous waste in NRS 459.430, and any regulations promulgated pursuant to such law, as such law or regulations may from time to time be amended.

Household Hazardous Waste - means leftover household products that contain corrosive, toxic, ignitable, or reactive ingredients.

Inerts - means non-decomposable material such as concrete, bricks, asphalt, tile, rocks, gravel and dirt that can be readily separated from other solid waste and can be used for construction within the Facility for purposes such as roads, all-weather pads and drainage conveyances.

Intermediate Cover - means a minimum of 12 inches of clean earth or other acceptable cover material compacted and graded smooth placed on the top of each lift and on areas where no additional refuse will be deposited within 90 days.

Intermediate Grade - means the limits of intermediate cover as shown on the Lift Development Plan.

Lift - means a compacted layer of solid waste, typically consisting of several cells, which is approximately 10 to 15 feet thick, placed within a defined area of a municipal solid waste landfill unit and separated from other lifts on the top and bottom by a layer of cover material.

Lift Development Plan - means an engineered drawing that defines the horizontal and vertical limits of refuse and cover for refuse lifts.

Limit of Operations - means that portion of the Facility which is used for the unloading and disposal of solid waste, soil excavation and other related landfill activities covered by the terms of this Agreement. The Limit of Operations are shown on the Facility plan.

Liquid Waste - means any waste material which is determined to contain free liquids as a result of a paint filter liquids test, Method 9095, described in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, Environmental Protection Agency, Publication No. SW-846, as adopted by reference in NAC 444.636.

Local Enforcement Agency - means the City Public Works Department Environmental Control Authority or person authorized by the Department.

Material Recovery - means any process of obtaining from Solid Waste (as herein defined), by pre-segregation or otherwise, material that has useful physical or chemical properties after

servicing a specific purpose and can, therefore, be reused or recycled for the same or another purpose.

Material Recovery Level means the percentage amount of material recovery achieved by the Contractor. The Material Recovery Level shall be computed by dividing the total number of tons of Recovered Material by the total number of tons of Waste handled for diversion by Contractor prior to recovery.

Medical Waste - means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens, including without limitation certain wastes generated by medical and dental practitioners(not including medical waste which has been autoclaved), hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs, and any waste which includes animal wastes or parts from slaughterhouses or rendering plants.

NDEP - means the Nevada Division of Environmental Protection.

NRS - means Nevada Revised Statutes.

Operating Area - means that portion of the Facility which is currently in use for the unloading and disposal of solid waste.

Organic Material - means those discarded materials that will decompose and/or putrefy and that County ordinance permits, directs and/or requires generators to separate from Solid Waste for collection in specifically designated containers for organic materials collection. Organic materials include yard trimmings less than six inches (6") in diameter and five feet (5') in length, and food scraps, such as, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with food scrap, pieces of unpainted or untreated wood, and pieces of unpainted and untreated wall board.

Person - means any individual, partnership, firm, private corporation, trust, estate, commission, board, public or private institution, utility, or cooperative; includes City, the State of Nevada and the United States, to the extent authorized by the state and federal law.

Recovered Material - means material recovered from incoming Acceptable Waste provided that such removed is diverted for reuse, recycling, or use as a fuel or is used at the facility for beneficial purposes such as the construction of structural berms. Material shall not be counted as Recovered Material until it has been transported off Facility or used beneficially on Facility for purposes other than disposal.

Recovery Guarantee - means the Material Recovery Level that Contractor guarantees to achieve as defined in this Agreement at Section 4.10.

Recyclable Material - means any Solid Waste that can be processed and returned to the economic mainstream in the form of raw materials or products, as determined by the State Environmental Commission.

Recycle - means the transformation of material into new products in such a manner that the original material or product loses its identity.

Reuse - means the return of material to the economic stream for use in the same kind of application as before without change in the material's identity.

Runoff - means the portion of precipitation or applied water that drains from an area as surface flow.

Salvaging - means the authorized removal of recyclable materials from the dumping pad by the Contractor or his designee.

Scavenging - means the uncontrolled or unauthorized removal of materials from the Facility.

Self-Hauler - means a customer other than a franchise hauler or city contract hauler.

Solid Waste - means all putrescible and nonputrescible refuse in solid or semisolid form, including, but not limited to, garbage, rubbish, junk vehicles, ashes or incinerator residue, street refuse, dead animals, demolition waste, construction waste, solid or semisolid commercial and industrial waste. The term does not include Hazardous Waste managed pursuant to NRS 459.400 to 459.600, inclusive.

Source Separated Recyclable Material - means Recyclable Material that has been separated from the Solid Waste stream by the generator.

Spreading - means moving the refuse on the working face into compactable layers.

Subcontractor - means a person who or business that contracts to provide some service or material necessary for the performance of contractor's contract with the City.

Temporary Access Road - means a graded road within the Limit of Operations used by customers, Department and Contractor to access the operating areas, diversion areas, monitoring locations and other areas.

Temporary Haul Road - means a graded road within the Limit of Operations used by the Contractor's equipment to accomplish dirt moving and other activities.

Ton - means 2,000 pounds.

Unacceptable Wastes - means hazardous, oversized and banned materials as defined and specified in this Agreement and incorporated references.

Vectors - means a living insect or another arthropod, or animal (not human) capable of carrying disease from one person or animal to another, capable of transmitting a waste from one organism to another or translocating a waste away from a disposal Facility.

White Goods - means enameled household appliances such as refrigerators, stoves, washer/dryers, water heaters, dishwashers, trash compactors, air conditioners, any Freon bearing equipment, and similar items.

Wood - means wood scraps, lumber, branches, pallets or similar woody materials that are suitable for grinding.

Work Authorization Process - means the process described in Section 4.1.9 for the City and Contractor to agree on special project outside the scope of work described in this Agreement.

Working Face - means that portion of the cell where solid waste is spread and compacted.

Yard Debris - means tree trimmings; grass cuttings; leaves; branches; dead plants, trees and bushes; and similar materials generated from plants, trees and bushes, whether generated on Residential Property or Commercial Property.

2. GENERAL PROVISIONS

2.1 Grant of Exclusive Operation

City grants to Contractor the sole and exclusive right and authority, during the term of this Agreement and in accordance with the terms hereof, to operate the Facility and dispose of all Solid Waste and Recyclables deposited at the Facility.

2.2 Term of Agreement

Contractor's performance of this Agreement shall commence on the Effective Date. The Contractor agrees that he shall not have the right to be compensated pursuant to this Agreement until such time as the Contractor actually begins operation at the Facility. The City shall provide Contractor access to the Facility for mobilization 30 days prior to commencement of operations. The term of this Agreement shall be for an initial ten (10) years commencing on the Effective Date. This Agreement may be renewed thereafter for successive five (5) year terms as long as both Parties to the Agreement concur in writing. In the event either Party wishes to renew this Agreement, it shall provide written notice to the other Party no later than six (6) months prior to the expiration of the then-current term.

2.3 Board of Supervisors Designates Representative

With respect to any provisions of this Agreement or the specifications whereby Contractor is required to act in conformity with the determination or directions of the City, the Department of Public Works through its Director is the City's authorized representative. The Board of Supervisors may at any time and from time to time designate some other officer or employee of the City of Carson City to make such determination, rules or directions, in which case the City Manager shall notify the Contractor in writing.

2.4 Related Plans Incorporated by Reference

The following plans are incorporated into this Agreement by reference:

- Landfill Operations Plan prepared by Contractor pursuant to Section 2.8
- Lift Development Plans (to be developed by City within 6 months of execution of the contract).
- Final Fill Plan
- §Excavation Plan (to be developed by City within 6 months of execution of the contract).

The Contractor or its subcontractor shall perform all construction activities and operations in conformance with these plans. The contractor may review and provide supporting feedback to the City in the development of these plans.

2.5 Permits and Approvals

Except to the extent Contractor is required by applicable laws to hold permits, the City shall be the owner and applicant for the permits necessary to own and operate a landfill and composting facility in the State of Nevada, including the Solid Waste Facility Permit, the Air Quality Permit, Seagull Depredation Permit, and Scale Certification, and permits for future waste processing facilities such as a sorting facility. Contractor shall provide necessary support to the City to obtain these permits.

2.6 Applicable Codes and Facility-Related Documents

Contractor agrees to operate and maintain the Facility as a refuse disposal, waste diversion, and composting facility and to supervise the general public in the use of the Facility, all in accordance with the requirements of the following: this Agreement; NRS Chapter 444, the Carson City Municipal Code Chapter 12.12 and as may be amended from time to time by the Board of Supervisors for the operation of the Facility; the Solid Waste Facility Permit for the Facility, the Air Quality Permit for the Facility, and any other

state, federal, and local laws and regulations that may apply, all to the reasonable satisfaction of the Department. The Contractor shall be responsible for the compliance with this Section regardless of provisions in this Agreement which may overlap or be in addition to the above stated requirements. If there is a conflict between permits or the CCMC and applicable state or federal statutes and regulations, the statutes and regulations shall govern.

2.7 City Municipal Code

It is mutually understood and agreed that the Board of Supervisors may amend the Carson City Municipal Code Chapter 12.12 Solid Waste Management for the operation of the Facility, or repeal the same, during the term of this Agreement and upon so doing, such amended, revised, new or additional rules or regulations, from and including the effective date thereof, shall be deemed to be a part of this Agreement without the need to physically attach a copy of same hereto, provided however that if any such revisions materially impact Contractor's economic expectations under this Agreement, or materially impair Contractor's ability to perform this Agreement under its original terms, Contractor shall have a right to terminate this Agreement pursuant to Section 5.6 as its sole and exclusive remedy. The Contractor may provide comments to the City in the proposed amendments to the Carson City Municipal Code Chapter 12.12 Solid Waste Management.

2.8 Plans to be Submitted by Contractor

2.8.1 Landfill Operations Plan

The Contractor shall prepare and submit an Operations Plan to the Department for approval. The Operations Plan shall be submitted to the Department within no later than 6 months following the Effective Date and shall be reviewed for accuracy and updated if necessary at the sole discretion of City annually thereafter on or before July 1. The current City Operations Plan shall be followed until the Department approves the Contractor's Operations Plan. The Operations Plan may be amended more frequently, at the discretion of the Contractor, by submitting a written revision to the Department for approval. The Department shall issue a notice of approval or disapproval within two weeks. If the Department disapproves the Operations Plan, the Contractor shall resubmit within two weeks after receiving the Department's explanation of disapproval. Subsequent to approval by the Department the Operations Plan shall be submitted to NDEP for review and approval. Separate Operations Plans shall be

prepared for any future facilities such as a C & D sorting facility or composting facility.

The Landfill Operations Plan shall address the following:

- a. Movement and sequencing between Phases and Modules.
- b. Construction sequence for the Lift Development Plan.
- c. Excavation sequence from the designated borrow source.
- d. Drainage control and management plan.
- e. Location of operations layer material stockpile and process area.
- f. Wet weather operations plan including:
 - (1) Location of wet weather pads and roads.
 - (2) Location of wet weather pad and roads aggregate material stockpile, including source and quantity.
 - (3) Proposed method of construction.
- g. Location of employee parking areas
- h. Location of equipment storage and maintenance area
- i. Location of salvage storage area
- j. Location of office
- k. Location of hazardous materials and waste storage area and method of secondary containment
- l. Proposed method of spill cleanup, remediation and disposal
- m. Location of temporary access and haul roads
- n. Personnel and their duties
- o. Location of smoking area
- p. Location of Contractor's inert stockpile
- q. Proposed plan to control on-Facility litter and prevent litter from migrating off Facility including clean-up methods for both areas.
- r. Vector control plan including sea gulls.
- s. Any other items which are necessary to describe how the Contractor will operate the Facility in a healthful, efficient and economical way.

2.8.2 Emergency Response Plan

The Contractor may be required to respond to emergencies at any time of day or night. The Emergency Response Plan shall outline steps to be taken in an

emergency and shall be made available to all on-Facility employees. The Emergency Response Plan shall include an emergency contact list. This list shall include home telephone and cell phone numbers of the Designated Facility Superintendent and any other Contractor personnel designated to be contacted if an emergency occurs. The Emergency Response Plan shall be submitted to the Department for approval prior to the start of work. Department will coordinate with the City Emergency Manager prior to approval of the Emergency Response Plan. The Contractor shall respond within 14 days to any comments or questions made by the Department in regards to the Emergency Response Plan. The Contractor shall participate in one emergency response drill annually coordinated by the Department.

2.8.3 Health and Safety Plan

The Contractor shall submit a Health and Safety Plan to the Department within no later than 3 months following the Effective Date. The Health and Safety Plan shall be prepared in conformance with applicable local, state and federal regulations. The Contractor shall respond within 21 days to any comments or questions made by the Department in regards to the Health and Safety Plan.

The Emergency Response Plan and Health and Safety Plan shall be included in the Contractor's Operations Plan.

2.8.4 Hazardous Materials/Waste Inventory

The Contractor shall submit a Hazardous Materials/Waste (HMW) Inventory prior to the start of work. The HMW Inventory shall list each Hazardous Material or Waste that the Contractor plans to store or use on the Facility and the maximum storage quantity. The HMW Inventory shall include, but not be limited to, fuels, oils, solvents and compressed gases. The Contractor shall receive approval from the Department prior to storing or using on Facility any Hazardous Material or Waste not identified in the HMW Inventory. The Contractor shall provide copies of the Material Safety Data Sheet for any Hazardous Material upon request by the Department.

2.9 Progress Meetings

The Contractor's Facility Superintendent shall be available to meet with the Department, either at the Facility or at the City's offices, two times per month to discuss Contractor's progress in constructing the landfill, proposed employee or operational updates,

regulatory changes, inspections, plan reviews and any other operational issues. The meeting location is at the discretion of the Department.

2.10 Hours of Operation

Contractor shall prominently post hours of operation at the Facility. Hours of operations shall be set forth in the Operations Plan and shall be based upon a six-day week. Any change in the standard operating hours shall be subject to the mutual agreement of the Parties.

2.11 Right of Entry

The City reserves the right to enter the Facility at any time for any and all purposes. Regulatory agencies such as Nevada Division of Environmental Protection also have the right to enter the Facility at any time and for any purpose.

2.12 Protected Areas

The Contractor must receive permission from the Department prior to encroaching on any previously undisturbed land or protected areas noted on the Facility Plan. The Contractor's employees shall stay on established interior roads to prevent further disturbance of the local wildlife.

2.13 Surveying

The Contractor shall provide all surveying by a Nevada Licensed Professional Land Surveyor as necessary for the operation within the Limit of Operations except as described in Section 4.3. The Contractor shall give the Department notice a minimum of four 4 weeks in advance of the need for City surveying work at the Facility. If the Contractor damages or displaces any reference points identified and established by the City, replacement of these reference points shall be at the expense of the Contractor. Contractor shall replace or provide new or additional stakes during the remainder of the project at the Contractor's expense. Contractor shall be responsible for any lines, grades, or measurements which do not comply with specified or proper tolerances or which are otherwise defective, and any resultant defects in the work. The Contractor shall conduct resurveys or check surveys to correct errors indicated by review of the field notebooks or otherwise detected. The Contractor's surveys may be checked by the Department at any time.

2.14 Contractor's On-Site Personnel

The Contractor shall employ and have on duty during all hours that the Facility is required to be open, a sufficient number of competent and qualified employees to perform efficient operations on the Facility. Contractor's employees shall staff the gatehouse, collect fees at the entrance gate, maintain adequate cash audit controls, direct traffic, control public and commercial dumping, control and clean up litter, screen loads, compact and cover waste, and perform other duties as may be required to operate the Facility, including operation of Contractor's equipment to ensure that all of Contractor's operations at the Facility are in accordance with this Agreement.

2.14.1. Communication

Any of Contractor's employees performing duties that require communication with City personnel or the public shall be able to speak and write English fluently.

2.14.2 Employees with Multiple Duties

It is understood and agreed that to operate the Facility in a cost-effective manner, the Contractor may choose to have employees perform multiple duties throughout the work day; however, the Contractor shall ensure that when multiple duties are assigned to an employee, the employee can properly perform the duties in accordance with this Agreement.

2.14.3 Supervision of Contractor Personnel

It is expressly understood and agreed that the City has entered into this Agreement in reliance upon the Contractor's personal and continuous supervision of, and responsibility for such enterprise and at no time shall the City be required to rely upon supervision or performance by any other party.

2.14.4 Designated Facility Superintendent and Facility Superintendent

The Contractor shall designate a Facility Superintendent. The Facility Superintendent shall be the Contractor or Contractor's representative that is responsible for successfully complying with this Agreement and will have overall responsibility of operations. The Facility Superintendent or his qualified designee shall be on the Facility at all times the Facility is opened to the public. Any time that the Contractor has employees on the Facility and the Facility Superintendent is not on site, an employee that is on the site shall be designated to direct operations and communicate with the public and the City.

2.14.5 Performance of Contractor's Personnel

In the event that any Contractor employee neglects to properly serve the public or City representative in a courteous and efficient manner, fails to conduct the proper waste diversion operations at the Facility, or permits or causes any violation of this Agreement, the Contractor agrees to provide appropriate discipline to such employee, including, in Contractor's discretion, termination of such employee.

2.15 Training for Contractor's Personnel

All employees of the Contractor shall receive hazardous waste awareness and PCB recognition training and Cathode Ray Tube (CRT) handling training prior to on-Facility employment.

2.15.1 Designated Facility Superintendent

The Contractor's designated Facility Superintendent shall have a current Solid Waste Association of North America Manager of Landfill Operations, or Technical Associate of Landfill Operations certification or equivalent within 12 months of on-Facility employment.

2.15.2 Contractor's Employees

All employees shall receive OSHA 10 training and any Superintendent and any Supervisor shall receive OSHA 30 training. Any time the Contractor has employees on the Facility, at least one employee shall be trained in first aid, CPR, and possess a current 24-hour OSHA certificate in a hazardous waste operations and emergency response training course as approved by the Department. This training must remain current with annual updates for the 24-hour OSHA course, and bi-annual update for the first aid and CPR courses. These requirements may be satisfied by combining the training of the Facility Superintendent and/or Supervisor or other on-Facility employees.

2.15.3 Training Meetings

The Contractor shall conduct, at a minimum, monthly meetings for the purpose of maintaining the training of all on-Facility employees. Meeting topics are left to the Contractor's discretion but must be related to operations, safety, or hazardous waste recognition training.

2.16 Contractor Minimum Safety Requirements

2.16.1 Clothing Requirements

All employees shall wear as their outermost item of clothing, a high visibility, safety shirt, jacket, coat, or vest. All employees, other than gate attendants, shall wear hard-soled boots.

2.16.2 Smoking

Smoking shall only be permitted in specifically designated areas approved by the Department.

2.16.3 Lighting

During periods of darkness (typically, but not necessarily limited to, early morning and late afternoon hours of November, December, January, and February), the Contractor shall perform operations in a manner that ensures personnel safety, as required by OSHA standards and maintains compliance with State minimum standards, which may require the use of ancillary equipment to adequately illuminate solid waste operations. This may require furnishing up to 4,000 watts of lighting in the vicinity of the dumping pad and working face.

2.17 Training and Safety Records

2.17.1 Designated Facility Superintendent

Documentation showing certification as a Manager or Technical Associate of Landfill Operations from the Solid Waste Association of North America, or equivalent, shall be submitted to the Department within 12 months of placing an employee in the position of Facility Superintendent.

2.17.2 Contractor's Employees

Documentation showing training regarding OSHA 10 and/or OSHA 30, hazardous waste, PCB recognition and CRT handling for all on-Facility employees shall be submitted to the Department within one month of that employee beginning on-Facility employment.

Certificates or other documentation for designated personnel training shall be submitted to the Department prior to on-Facility employment. Certificates or other documentation of training updates shall be submitted to the Department within one month of completion.

Documentation of monthly training shall be submitted to the Department by the end of the month following the training. This documentation shall include a brief description of the meeting topic and signatures of all employees attending.

2.18 Contractor to Comply with State Labor Laws

2.18.1 Contractor shall keep and maintain accurate records in accordance with the requirements of NRS 608.115 and shall comply with all applicable requirements of NRS Chapter 608. Contractor shall pay employees prevailing wage only to the extent required by State Law.

2.18.2 Payroll

The Contractor shall provide to the Department, within ten working days after requested, a copy of the Contractor's payroll for any month in which the Contractor performed work for the City under this Agreement.

2.19 Contractor Provided Buildings and Facilities

Contractor shall operate and maintain existing buildings and improvements and equipment located at the site, as listed in Schedule 1, in the performance of this Agreement. Contractor agrees to be responsible for the repair and maintenance of such improvements and equipment at Contractor's cost. City shall be responsible for insuring such improvements and equipment pursuant to Section 2.25.5.

The Contractor may install if necessary and maintain upon the Facility additional buildings for maintenance, office, or processing subject to approval of the Department. No type of shelter, trailer, or bus shall be permitted unless authorized in writing by the Department. No person shall be allowed to spend the night at the Facility other than designated personnel at a designated Facility security building or mobile home. This Agreement does not authorize the construction, installation or use of any building or mobile home contrary to the provisions of the zoning ordinance, building code, housing code, fire code or other applicable ordinances of the City of Carson City, or statutes or regulations of the State of Nevada. Contractor shall have the responsibility of obtaining any permits and approvals necessary for any building permitted by this Agreement prior to installing or maintaining same at the Facility.

2.20 Electrical Utilities

Contractor may, at Contractor's own expense, provide electrical connections and lines, in addition to those provided in the existing design of the Facility. Installation and maintenance of such additional electrical connections and lines shall be the sole

responsibility of the Contractor. All charges for power to the Facility shall be the sole responsibility of the Contractor.

2.21 Telephone

Contractor shall maintain a telephone at the Facility at all times. All charges for telephone service shall be the sole responsibility of the Contractor. In the event a phone line is unavailable, the Contractor shall provide a cellular phone at the Facility or other two-way communications device as approved by the Department.

2.22 Sanitary Facilities

The Contractor shall provide sanitary facilities for the employees on the Facility. A well-maintained chemical toilet and hand wash would meet the minimum requirement. No sewer services are provided to the Facility by the City. Contractor shall maintain the septic system serving the Gatehouse and Employee Trailer.

2.23 Water

City shall provide water from its municipal water system to the Facility free of charge for domestic use and for dust control or other process uses.

2.24 Workers' Compensation Insurance

The Contractor shall procure, prior to commencing performance of any work under this Agreement, Workers' Compensation Insurance in compliance with the Nevada laws. The Contractor certifies, pursuant to NRS 616B.627 that he is aware of the provisions of NRS Chapters 616A to 616D inclusive, and that he shall comply with such provisions before commencing performance of any work under this Agreement. The Contractor shall furnish to the Department satisfactory proof of Workers' Compensation coverage and if such coverage is provided by a policy of insurance, Contractor shall furnish a Certificate of Insurance providing that the Department shall receive not less than 60 days notice of cancellation.

2.25 General Liability Insurance

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it preclude the City from taking such other actions as are available to it under any other provision of this contract or otherwise in law. The Contractor shall secure and keep in force during the entire term of this Agreement covering all of the Contractor's activities with respect to the Facility, the following:

2.25.1 General Liability

A commercial general liability insurance policy with personal injury, property damage and contractual coverage of not less than \$2,000,000 per occurrence with a \$4,000,000 aggregate, including the following coverage:

2.25.1.1 Comprehensive Coverage Form, Premises-Operation, Operations Hazard, Contractual Insurance, Broad Form Property Damage, Independent Contractors and Personal Injury.

2.25.1.2 Coverage for damage and injury caused by blasting, collapse, structural injuries or damage to underground utilities. The coverage shall include explosion and collapse hazard, and underground hazard. The policy shall not contain the so called "X" "C" "U" exclusions. The Certificate of Insurance shall specifically indicate that the "X" "C" "U" exclusions have been eliminated from the policy.

2.25.1.3 Combined single limit Automobile Liability Insurance coverage for injury and property damage in the amount of \$1,000,000 per occurrence on all vehicles used by the Contractor, his employees or agents or similar insurance form including coverage for owned, hired and non-owned vehicles, excluding City-owned vehicles. The Contractor shall maintain this coverage in full force and effect during the term of this Agreement.

2.25.2 Special Endorsements

Such policies shall contain special endorsements providing substantially as follows:

2.25.2.1 A clause providing as follows: The City of Carson City, City's agents, employees, officers and its governing body and each member thereof are hereby declared to be an additional named insured under the terms of the policy with reference to the activity described in the policy or policies of insurance, whether such additional insured be actively or passively negligent, or liable by operation of law.

2.25.2.2 A contractual liability coverage underwriting the obligations of the Contractor to hold harmless, indemnify and defend in each of the respects provided herein.

2.25.2.3 “Cross liability” or Severability of interest” coverage for all named insureds.

2.25.2.4 That such insurance is primary, and that any other insurance maintained by the additional named insured is excess and not contributing insurance with respect to the subject insurance policy.

2.25.2.5 That the insurer waives all rights of subrogation against the additional named insured shall not be prejudiced in any way by any failure of the principal insured to comply with any notice requirements of such policy.

2.25.2.6 That the coverage afforded by such policy to the additional named insured shall not be prejudiced in any way by any failure of the principal insured to comply with any notice requirements of such policy.

2.25.2.7 That such policy may not be canceled, coverage reduced or terms altered in any manner detrimental to the coverage, except after delivery to the Department of written notice not less than 30 days prior to the effective date of such cancellation, deduction or alteration. No such cancellation provisions in any such insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish insurance during the term of this Agreement. The lapse for any reason of insurance as required herein shall constitute grounds for the immediate removal of the Contractor from the Facility and termination of this Agreement without notice. Contractor shall not be compensated for any period that insurance coverage is not effective as required herein.

2.25.3 Certificates

A signed copy of an insurance certificate with all necessary endorsements signed and attached thereto indicating that the policies of insurance required by this paragraph are in effect with proof of payment of premium thereon shall be submitted to the Department following the execution of this Agreement.

2.25.4 Best's Rating

All insurance shall be issued by a company or companies admitted to do business in the State of Nevada and listed in the current Best's Key Rating Guide publication with a minimum of an A-, VII rating; or in special circumstances, issuers pre-approved by the Risk Management Division of the Office of City Counsel.

2.25.5 City's Insurance

City shall maintain insurance, meeting the liability limits and rating requirements stated in this Section, subject to its contracted self-insurance retentions, on City-owned improvements and equipment at the Facility, and shall name Contractor as an additional named insured.

2.26 Faithful Performance and Payment Bond

The Contractor shall deliver to the Department concurrent with execution of this Agreement, and shall maintain at all times during the term hereof, a Faithful Performance Bond and a Payment Bond each in the amount of \$500,000. The Faithful Performance Bond and Payment Bond shall be on City-approved forms. All bonds required herein shall be carried only with companies admitted and licensed to do business in the State of Nevada, which shall be either approved in writing by the City Risk Manager or rated in Best's Key Rating Guide as A-, VII or better, or which carry an equivalent rating.

2.27 Payment of Taxes

The Contractor shall promptly pay any personal property taxes or other taxes which may attach to any salvaged or diverted material, building, mobile home or other property which he may have upon the premises.

2.28 Coordination with Other Contractors

The Contractor agrees that in his performance of this Agreement, he shall take all reasonable steps to coordinate the operations of the Facility with the activities of any other contractors engaged by City to perform work at the Facility. Any issues related to coordination shall be discussed with Contractor at the progress meetings under Section 2.9 of this Agreement.

2.29 Subcontractors

The Contractor agrees that any subcontractor employed by Contractor shall be required to comply with the terms and conditions of this Agreement and the Contractor shall be responsible for ensuring said compliance. Subcontractors employed by Contractor to perform any work required under this Agreement are subject to approval by City.

2.30 Operation of Other Businesses

Except for the operations specifically permitted under this Agreement, the Contractor shall not engage in any private business, including the display or sale of any salvaged materials within the Facility unless approved by the City to do so.

2.31 Rights to Minerals and Hydrocarbons

Rights to minerals and hydrocarbons located in and under the City-owned land at the Facility shall remain with the City, except to the extent reserved by the United States. However, the Contractor's salvage privilege includes any minerals or hydrocarbon substances generated from materials disposed of at the Facility, including but not limited to landfill gas, and Contractor shall have a right to dispose of such minerals or hydrocarbon substances as Recovered Property.

2.32 Supervision of the Public

The Contractor agrees that in his performance of this Agreement, he shall use reasonable means to cause the public to conform to all applicable laws and regulations of Carson City, the State of Nevada, and all rules, regulations and directives of the Department, as may be in effect from time to time.

2.33 Contractor Not a Peace Officer

It is mutually understood that neither the Contractor nor any of Contractor's employees are peace officers and shall not be required to furnish nor shall they carry out any of the duties peculiar to peace officers in the performance of their duties hereunder.

2.34 Removal of City Equipment and Material

Contractor shall not remove from the Facility any City-owned equipment or City-owned materials used, stored, or stockpiled at the Facility, unless authorized by the City.

3. CONTRACTOR'S FACILITY OPERATIONS

3.1 Opening the Facility

The Contractor shall unlock and open and shall close and lock the gate at the times identified in the Operations Plan. The Contractor shall provide a lock to be linked in series with the City lock on the entrance gate of the facility. Extended operating hours may be established for franchise haulers only. During these extended hours, self-haulers will not be allowed access to the Facility. The Contractor shall not allow anyone access to the Facility except as identified in the Operations Plan.

3.2 Temporary Access and Haul Roads

The Contractor shall construct temporary access and haul roads to the operating area and diversion area. Such roads shall be all-weather, free of protruding objects, bumps, ruts and depressions, and otherwise provide continuous access for the public, Department or the Contractor as intended by this Agreement. The roads shall be

constructed and maintained to promote drainage such that no ponding occurs. The Contractor shall abide by the 15 mile per hour speed limit for all public access roads between the entrance gate and the unloading areas. Haul roads shall not cross access roads unless approved by the Department. The Contractor shall not allow equipment on access roads, except for the purposes of road grading or maintenance, unless authorized by the Department.

3.3 Control of Traffic

The Contractor shall route customers via signs, cones, employees or other methods to the operating area and diversion area for the purpose of depositing solid waste or recycling materials. Customers shall be kept on approved access roads only. Franchise hauler vehicles, end dumps and other similarly sized vehicles shall be kept separate from the smaller vehicles as necessary to ensure customer safety. The Contractor shall assist all disabled vehicles and, if necessary, remove them from hindering traffic or operations.

3.4 Coordination with City

3.4.1 Cell Phones

Contractor shall provide a cell phone to the Facility Superintendent in order to allow for coordination with Department operations personnel and for emergency contact with the City.

3.4.2 Special Occurrence Log

The Contractor shall promptly report to the Department occurrences such as fires, earth slides, explosions, property damage, vehicle or equipment accidents, and personnel or public injuries.

3.5 Load Screening – Contractor’s Responsibilities

The Contractor shall observe unloading activities at the dumping pad for the purpose of identifying recyclable and unacceptable wastes. The Contractor shall attempt to make the observation after the customer uncovers their load and prior to unloading whenever possible. When recyclable and unacceptable wastes are found, the Contractor shall take the appropriate action in accordance with the provisions of this Agreement.

3.5.1 Unacceptable Wastes

The Contractor’s visual observation shall be extensive enough to identify unacceptable waste types, including wastes that are illegal to dispose of at the

Facility or wastes requiring special handling. The customer will be allowed to unload any Acceptable Wastes.

If unacceptable waste is identified after unloading at the dumping pad and the customer cannot be identified, the Contractor shall be responsible for the proper handling in accordance with this Agreement, subject to Section 3.5.2 below.

3.5.2 Hazardous Wastes

If the unacceptable waste identified is Hazardous Waste and the customer cannot be identified, the Facility Superintendant shall immediately contact City and NDEP and Contractor shall do one of the following:

3.5.2.1 If the Hazardous Waste is limited to recyclable lead acid batteries, paint, non-commercial creosote treated wood, CRT's, fuels, or motor oil, the Contractor's properly trained personnel shall remove it from the dumping pad and place in an area designated by the City.

3.5.2.2 For any other Hazardous Waste, the Contractor shall cordon off the area where the Hazardous Waste is located to prevent public exposure to the Waste and cease operations in the cordoned-off area. Upon cordoning off the area, the Contractor's employee shall immediately contact the City and report all information regarding the circumstance. City shall be responsible for arranging for the proper disposal of the Hazardous Waste at City's cost.

3.6 Coordination with City Diversion Programs

The Contractor will operate diversion programs in the designated diversion area on the Facility. These diversion programs may include, but are not limited to, tires, White Goods, scrap metal, green waste, food waste, wood, inert material, and CRT's. The Parties acknowledge that diversion programs may be subject to special permits and regulations, and that Contractor shall obtain appropriate permits prior to operating such programs. To the extent applicable permits or regulations impose requirements inconsistent with the terms in this section, the terms of the permits or regulations shall prevail.

3.6.1 White Goods

The Contractor shall not allow disposal of any White Goods to occur at the Facility. The Contractor shall instruct any customer with a White Good in their load to take the White Good to the diversion area after unloading any acceptable

wastes at the dumping pad. If a White Good is identified at the dumping pad and the customer cannot be identified, the Contractor shall be responsible for relocation of the White Good to the diversion area in the appropriate manner. The Contractor may not move White Goods with a dozer or other heavy equipment. Moving of White Goods must be done so as not to cause any Freon leakage from the units. Contractor is responsible for removal of Freon in accordance with applicable regulations prior to recycling.

3.6.2 Tires

Whole tires are accepted for recycling at this Facility. Tires as part of a commingled load may be buried provided that the number of tires does not exceed the guidelines established by the City. These guidelines allow the following tolerances for commingled waste tires:

Cars, pick-up trucks, trailers	0 tires
One axle rear packer truck	1 tire
Two axle rear packer truck	1 tire
40 cubic yard roll-off	2 tires

The Contractor shall not allow commingled loads with greater than these numbers of tires to unload their waste without separating out the tires for diversion. The Contractor shall promptly notify a gate attendant of the number of tires in the load and shall direct the user to return to the gatehouse to have the customer gate fee ticket corrected.

If a tire is identified at the dumping pad and the customer cannot be identified, the Contractor shall be responsible for relocation of the tire to the diversion area

3.6.3 CRT's

The Contractor shall cooperate to prevent disposal of any CRT to occur at the Facility. The Contractor shall instruct any customer with a CRT in their load to take the CRT to the diversion area after unloading any acceptable wastes at the dumping pad.

If a CRT is identified at the dumping pad and the customer cannot be identified, the Contractor shall be responsible for relocation of the CRT to the diversion area. The Contractor shall employ preventive measures to minimize CRT breakage when moving the CRT to the diversion area.

3.6.4 Inert Materials

The Contractor shall establish a stockpile area for inert material to be used for surfacing access roads, dumping pads and other beneficial uses at the Facility. Inert material includes, but is not limited to, concrete, asphalt concrete, tile and brick. Concrete shall not have any reinforcing bar or wire. The Contractor may either direct the customer to unload directly into the stockpile or move the inert material from the dumping pad. The Contractor may direct any load containing visible contamination which cannot be easily separated to the disposal area. The Contractor shall promptly notify a gate attendant of the decision to redirect any load and direct the customer per the gate attendant's instructions. Once inert material has been stockpiled, the Contractor shall not dispose the material without the express approval of the Department. Diverted materials for the purposes of sale may be excluded by the City from this obligation.

The Contractor is encouraged to collect as much inert material as possible from customers' loads to be deposited in the inert stockpile. Customers with commingled loads containing inert material shall be informed by the Contractor of the inert program. Customers not wanting to separate their commingled loads shall be allowed to dispose their entire load at the dumping pad.

The Contractor shall provide a container for incidental waste material in the vicinity of the inert stockpile. The container shall have a minimum capacity of 60 gallons and the Contractor shall empty each container at the working face when it is full or at least once per week. The Contractor shall keep the inert stockpile free of litter, trash, and any other inappropriate waste types.

3.6.5 Scrap Metal, Wood and other Recyclable Materials

All loads of predominately clean scrap metal, wood or other recyclable materials identified by the Contractor will be directed to the Contractor's diversion area by a gate attendant. If the Contractor identifies one of these loads at the dumping pad prior to unloading, the Contractor shall promptly notify a gate attendant and direct the customer per the gate attendant's instructions.

3.7 Salvage

Materials salvaged by the Contractor shall be stored in containers located in a single, distinct area of minimum size within the Facility. The area shall be kept clean, orderly and free from litter and debris. The Contractor shall store any equipment containing fuel (such as lawnmowers) in a manner that does not allow fuel or lubricant spillage. Any

spillage shall be reported to the Department immediately and remediated as instructed by the Department. Material salvaged by the Contractor shall be removed from the Facility in accordance with regulatory requirements, or as directed by the Department. When salvage is removed from the Facility, the Contractor shall obtain an outbound ticket from the gate attendant.

Any non-hazardous material left at the Facility which has been covered with soil or any other approved cover shall become and remain the sole and exclusive property of the City.

Salvage operations by the Contractor shall be permitted only under the following conditions:

- a. Salvage operations shall not interfere with the landfill operations, City recycling programs, the general public's dumping of their refuse or be detrimental to the efficient operation of the landfill.
- b. The Contractor shall not salvage any drugs, cosmetics, foods, beverages, hazardous wastes, poisons, medical wastes, syringes, needles, pesticides or other similar materials capable of impairing public health
- c. The Contractor shall not sell, trade, give, or in any way cause a member of the public to remove salvage from the Facility. The Contractor shall not display for sale any materials salvaged on the Facility, except those items designated for the resale center.
- d. Salvaged material, when removed from the Facility, shall not be taken for disposal to any other disposal facility.

3.8 Wastes that Require Special Handling During Disposal

The Contractor may, from time to time, be directed by the Department to dispose of wastes which require special handling. These wastes may require the Contractor to provide a separate dumping area, separate disposal, immediate cover, and/or other requirements as necessary to properly protect the environment and public health. If appropriate, the City shall furnish the Contractor with Material Safety Data Sheets or other analytical reports prior to the receipt of the special waste. In no case shall Contractor be required to dispose of special wastes in contravention of applicable regulations or permits, or requiring special training or licensing outside the scope of the training required by this Agreement.

3.8.1 Dead Animals

Large dead animals, or a large number of dead animals, shall be directed to the designated area as approved by the department for burial. The dead animals shall be covered immediately with a minimum of two feet of waste or dirt cover material.

3.8.2 *Asbestos*

The Facility is permitted to accept friable and non friable asbestos.

The Contractor shall accept and dispose of commercial friable and non friable asbestos delivered to the Facility. All loads of asbestos must be accompanied with a Non-Hazardous Waste Manifest issued by the Department's Environmental Control Authority Division. The commercial customer must contact the Contractor for an appointment to dispose of asbestos. If the Contractor identifies asbestos in a commercial customer's load and no manifest was provided at the gate house, the Contractor shall stop the customer from off-loading and notify the Environmental Control Authority immediately. The Contractor shall insure that the manifest is completed properly and that copies are routed to the appropriate parties. Residents delivering their own asbestos must have it double bagged, but a manifest is not required. After the above noted conditions are met by the customer, the contractor shall direct the customers to a designated asbestos disposal area where it is to be immediately covered with two feet of soil. Once the asbestos has been adequately covered, the Contractor shall continue the compaction efforts.

3.9 Landfill Fires

In the event surface fires occur at the Facility during regular hours of operation, Contractor's employees will provide necessary assistance to the fire department to suppress the fire at no additional cost to City. In the event Contractor's employees are required to provide fire suppression assistance at the Facility outside of regular hours of operation, Contractor will be compensated by City pursuant to the provisions of Section 4.1.8.

City agrees to assume all responsibility for suppression of subsurface fires and any assistance required or requested of Contractor shall be subject to compensation pursuant to the provisions of Section 4.1.8.

3.10 Monitoring Wells

City shall operate, monitor, and maintain at City's expense any wells located at the Facility for the monitoring of groundwater and landfill gas migration.

3.11 City Waste

City shall have the right to dispose of City Waste at the Facility at no cost to City.

3.12 City Accounts and special contracts

City shall have the sole responsibility for the billing and collection of city accounts. Contractor acknowledges City's contract with John Serpa, attached as Exhibit A, and agrees to allow Serpa to dispose of landfill waste at the Facility pursuant to the terms of that contract and subject to NDEP requirements.

3.13 Cover Material

Contractor may excavate cover and soil material from the Facility for use at the Facility at no cost, other than its cost of excavation and placement.

3.14 Contractor Provided Equipment

The Contractor shall supply, at Contractor's own expense, all other needed equipment necessary to handle, push, spread, compact and cover refuse, maintain the interior roads, provide dust control, and otherwise perform the requirements of this Agreement. The Contractor shall ensure that equipment is available on Facility for arduous, heavy-duty service to operate a Class I and III landfill. The equipment utilized must be specifically designed for the use intended. Modified or built-up equipment not originally designed for the use intended will not be acceptable. The Contractor shall properly protect the equipment and place it in the charge of competent operators.

The Contractor shall determine the number and type of equipment needed to achieve compliance with this Agreement subject to approval by the Department. All equipment shall be in conformance with the Contractor's Equipment List approved by the Department and shall remain on Facility and fully functional for the duration of this Agreement except as agreed by the Parties to accommodate operational changes and efficiencies. Acceptance of the Contractor's Equipment List by the City only reflects that the City acknowledges that the Contractor is meeting the minimum requirements and that the City accepts the individual equipment items. Acceptance of the Contractor's Equipment List does not warrant that the amount and type of equipment will be adequate to perform all the requirements contained in this Agreement.

The Contractor shall obtain Department approval for any exchange or deletion to the equipment list. The Contractor may add equipment to the list at any time. All equipment shall be equipped with accessories such as rollover protection, back-up

warning systems and other devices as may be required to comply with applicable state and federal safety requirements.

3.14.1 Backup Equipment

Sufficient backup equipment shall be available at all times to prevent a delay in refuse processing caused by equipment breakdowns, or a delay caused by an inability to handle peak loads. Such backup equipment may be located at other Contractor operated facilities and shall be subject to the approval of the City.

3.14.2 Equipment Maintenance and Repair

The Contractor is expected to provide and maintain at Contractors cost all equipment which will operate with a minimum of downtime including City supplied equipment.

In the event that a piece of equipment breaks down more than two times in any seven-day period, three times in any 30-day period or four times in any 90-day period, the City may require that the piece of equipment be permanently replaced. No equipment or property which is not used in, or necessary for landfill operations, may be stored at the Facility.

Equipment repairs shall be started and completed in a timely manner. The Contractor shall be responsible for any uninsured costs of repairs due to fire, theft, accident, or vandalism. The Contractor shall promptly repair all fluid leaks on the equipment. The Contractor shall maintain the equipment storage and maintenance area in a neat and orderly manner.

3.14.3 Re-refined Oil

Contractor shall use re-refined oil in all equipment listed on the Equipment List. Contractor shall submit to the Department, copies of the receipt of purchase, including name and phone number of vendor, for each purchase made. Contractor shall be exempt from the use of re-refined oil if the Contractor can demonstrate to the satisfaction of the Department that re-refined oil which meets the original equipment manufacturer's warranty specifications is not available.

4. CITY OBLIGATIONS, COMPENSATION, AND WASTE RECOVERY

4.1 Compensation

In consideration of Contractor's performance under this Agreement, City shall pay to the Contractor as follows:

4.1.1 Monthly Base Payment

The monthly base payment shall be the sum of the basic amount plus the per ton payment minus the City's share of the net revenue generated from the sale by Contractor of Recovered Property including, but not limited to, recyclable materials and minerals and hydrocarbons generated from materials disposed of or diverted at the Facility. The basic amount shall include compensation for capital expenditures and shall be \$125,000.00 (one hundred twenty-five thousand dollars) per month. The per ton payment shall be calculated by multiplying \$8.00 (eight dollars) times the total of the number of tons of waste delivered to the Facility for the month, less the number of tons of City Waste delivered to the Facility pursuant to Section 3.11 for the month. .1.2 *City's Credit from Recovered Property Sales*

The City shall receive a credit based upon the net revenue generated from the sale of Recovered Property as follows: Net revenue generated from the sale of Recovered Property shall be calculated by taking the total gross cash receipts generated from the sale of Recovered Property during the previous month and subtracting the actual direct costs incurred by the Contractor in the sale of that Recovered Property. The actual direct costs incurred by the Contractor shall not include profit, overhead or any actual direct costs for which the Contractor is otherwise compensated by City through the base payment. Such net revenue shall be calculated on a monthly basis. The monthly net revenue shall be divided by the total number of tons of waste delivered to the Facility for the same month. The resulting revenue per ton shall be allocated between the Parties as follows: The first \$2.50 per ton shall be allocated to Contractor. Of the balance, the next \$1.50 shall be allocated as a credit to the City, and any amounts over \$4.00 (Contractor's initial share + City's initial share) shall be allocated equally between the Parties. See schedule 2 for examples.

4.1.3 Calculation of Invoices

The Department shall determine the number of tons delivered to the Facility using established gate fee procedures to count disposed and diverted tonnages.

The payment for the first month of the Agreement shall be prorated based on the actual number of days the Contractor operated the Facility. For subsequent months, monthly base payments shall be for a calendar month. The final payment at the termination of this Agreement shall be prorated based on the number of days the Contractor actually operated the Facility.

Contractor shall determine the City's credit allocation of the net revenue from sales of Recovered Property on a monthly basis. The City's allocation, calculated as set forth in Section 4.1.2, shall be applied as a credit against the monthly base payment to Contractor for the subsequent month. See schedule 2.

4.1.4 Books, records, and audit rights.

Each Party shall have a right to periodic audits of the books and records of the other Party to verify the accuracy of tonnages and revenues from Recovered Property, including a right of inspection of applicable operating practices. In the event that an error occurred, the Department shall adjust the Contractor's current monthly base payment to correct any over or under payments from previous months.

4.1.5 Annual Inflation Multiplier

Subject to the terms herein, an Annual Inflation Multiplier (AIM) shall be applied to the Contractor's monthly base payment including the basic amount and the per ton payment. The AIM shall be adjusted annually based on inflation and will be effective on each July 1 of the following year. The first adjustment will be effective July 1, 2012. The AIM shall not be applied to any work performed under the Work Authorization Process or for any performance-based compensation.

The inflation adjustment factor will be calculated by the City to reflect 100% of the increase or decrease in the Consumer Price Index (CPI) over the previous twelve (12) months. The CPI index used shall be the Western State's CPI Index, provided that the CPI shall not be less than zero. The AIM shall be calculated as follows:

$$\text{AIM} = \{(\text{CPI (New)} - \text{CPI (Base)}) / \text{CPI (Base)}\} + 1$$

CPI (Base) - (The average of the monthly indexes for the 12 months prior to the start of the Agreement, _____ through _____, and will not change throughout the term of this Agreement)

CPI (New) - (The average of the monthly indexes for the 12 months immediately preceding _____)

The following is an example for the AIM to be applied at the start of the third year of the Agreement (_____ through _____):

Assume:

CPI (Base) = 150

CPI (New) = 160 (The average of the monthly indexes for the 12 months immediately preceding _____)

Then the AIM would be calculated as follows:

$$\text{AIM} = \{(160-150)/150\} + 1 = 1.067$$

If the CPI is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised. The City shall approve any replacement index to the CPI at its sole discretion.

4.1.6 Payment Within 30 Days

Monthly base payments to the Contractor shall be made monthly and within 30 days after the end of the month for which work has been completed.

4.1.7 Reopener for Base Payment

The Parties agree to reopen negotiation of the base payment amount set forth in Section 4.1.1 in the event of material changes affecting the economic expectations of the Parties, including, but not limited to, material changes in the tonnage delivered to the Facility.

4.1.8 Hourly Amount for Additional Work

Should overtime be required by the City or to accommodate extended hours for franchise haulers the contractor will be compensated at the rate of (TBD).

The City agrees to pay the Contractor the amounts of \$85.00 per hour for furnishing two workers and one pickup truck (or equivalent) performing occasional clean up services in the vicinity of the Facility which are not otherwise the responsibility of the Contractor. Such clean up services shall be performed by the Contractor only at the direction of the City.

4.1.9 Work Authorization Process for Additional Work

The Department may, from time to time, determine that minor work is required at the Facility that is outside of the scope of work described in the Agreement but that the Contractor is capable of performing. The Department may authorize the Contractor to perform such work under the conditions and Work Authorization Process described in this Section.

However, authorization of extra work under this Section will not relieve or excuse the Contractor from full and complete compliance with the other provisions in this Agreement. The Department and Contractor shall confer to determine whether an item of work is outside the scope of work of this Agreement.

4.1.9.1 Conditions for consideration for extra work:

4.1.9.1.1 Each individual project of minor work shall cost less than \$25,000 to perform.

4.1.9.1.2 The Contractor shall have prior experience in performing the type of work considered.

4.1.9.1.3 The Contractor shall have the equipment necessary to perform the work on Facility as a matter of routine for the operational needs under this Agreement.

4.1.9.1.4 The Department shall make a finding that the cost proposed by the Contractor is less than could reasonably be expected through competitive bid.

4.1.9.2 Project Description, Proposal, and Authorization Form:

4.1.9.2.1 The Department will provide the Contractor with a project description for the desired work. The Contractor shall prepare a draft proposal, including a detailed schedule and itemized cost estimate, at no cost to the City, for the requested service.

4.1.9.2.2 The Department shall review the proposal. The Department may make comments back to the Contractor regarding the proposal prior to approval in which case the Contractor shall make any necessary adjustments to the proposal and

resubmit to the Department. If the Department approved the proposal, including a finding that the proposed cost is competitive, the Department will prepare a Work Authorization Form.

4.1.9.2.3 The Contractor and Department Director must sign the Work Authorization Form prior to any work being performed. The Department will not retroactively approve services.

4.1.9.2.4 The executed Work Authorization Form shall become part of this Agreement.

4.1.9.3 The Department may terminate the Work authorized under the Work Authorization Form by providing a minimum of three working days notice to Contractor. Termination by the City shall not relieve City of its obligation to pay Contractor for work performed under the Work Authorization Form.

4.1.9.3.1 Work Authorization Payments:

4.1.9.3.2 The Contractor shall submit an invoice to the Department upon completion of the work. If the Work Authorization was established as a time and material reimbursement, the invoice shall be itemized accordingly

4.1.9.3.3 The Department shall review the invoice. The Department shall notify the Contractor if it does not approve of the invoice and explain why. Payment shall be included in the monthly compensation as described in Section 4.1 within 60 days of approval by the Department.

4.1.9.3.4 The total of all payments incurred under this Work Authorization Process shall not exceed \$100,000 per year for the term of this Agreement.

4.2 Gate Attendant and Fee Collection

During the term of this Agreement, the Contractor shall provide an on-Facility gate attendant(s) who shall be responsible for keeping accurate records of all material

entering and leaving the Facility, and who shall be responsible for the administration of the City fee collection program at the Facility. The Gate attendant shall be on the Facility during all hours the Facility is open to the public. City shall collect from the gate attendant the daily cash receipts and deposit them into City bank accounts. A detailed monthly report of material entering and leaving the Facility shall be prepared and submitted by Contractor to City. The form and content of the report must be approved by Department. Any credit accounts for disposal by the public must be approved by City and will be billed by City directly and not by the Contractor. Contractor will assist Department annually in evaluating total tonnages of waste received, diverted, recycled, etc and total revenues received and projected for ensuing years in order to assist City with budget preparation and landfill fee evaluation.

4.3 Surveying

The City shall provide survey reference points for the Contractor. The reference points shall include monuments, survey control lines, elevation bench marks in the vicinity of the Facility as determined by the Department. The City may check coordinates and grades of fill areas completed by the Contractor. The City shall inform the Contractor of the results of the grade checking performed by the City. The City shall on or about July 1 each year conduct an aerial survey of the Facility for determination of the overall changes to the landfill Facility and calculate volume used during the previous year.

4.4 Signage

The City agrees to provide entrance signs displaying the rules applicable to the Facility, rates, schedules of charges and a name sign identifying the Facility, and all other signs within the Facility. The Contractor may request additional signs. If the City declines to provide additional signs requested by the Contractor, the Contractor may request the City's permission to provide and display said signs at Contractor's own expense.

4.5 Plans and Drawings

The City shall provide the Contractor with the plans referenced in Section 2.3. These plans may change during the term of this Agreement and if they change, the City shall furnish the Contractor with current revised plans.

The lift development plans incorporated into this Agreement may not provide the sufficient capacity for the term of this Agreement. If required, additional lift development plans will be provided at a later date.

4.6 Hazardous Waste Load Checking Program

The Contractor shall coordinate with City relative to the City Household Hazardous Waste Program. Contractor shall utilize the City on-Site hazardous waste storage facility for any hazardous waste and shall provide personnel to place the identified hazardous waste in the facility. Contractor shall pay for the proper disposal of the hazardous waste and shall be reimbursed by the City through periodic billing.

4.7 Diversion Programs

The Contractor shall operate the current diversion programs within the Facility at its discretion in consultation with City. These diversion programs include, but are not limited to, C&D, organics, tires, white goods, scrap metal, inert material, composting, and CRT's. The Contractor shall provide containers for residual or incidental waste material brought to the diversion areas and containers shall be made available to customers for the disposal of contamination or small amounts of inappropriate waste contained in divertible loads. The Contractor shall be responsible for emptying containers at the working face.

It is anticipated that Contractor will develop future C & D sorting facilities and new agreements or amendments to this agreement will be developed if and when these facilities are planned. City will assist Contractor in securing grants or State private activity bond funding as may be available to Contractor.

4.8 Delays Beyond Contractor Control

The Contractor shall be allowed a reasonable extension of time for the performance of any obligation on account of delays caused by extreme weather conditions or causes beyond the control and without the fault or neglect of the Contractor or Contractor's employees, including, but not restricted to, acts of God, acts of the public enemy, strikes or acts of another Contractor or of the City, or their respective officers, employees and agents; in such case the period of violation shall be deemed to begin, and the provisions for liquidated damages shall only apply, after expiration of such reasonable time.

4.9 Air Space Usage

The Contractor agrees that the efficient use of the available capacity (air space) of the landfill is of extreme importance to the City and agrees to perform all operations in such a way as to maximize the amount of waste disposed within the available air space. Any method of measurement of the waste to air space density will include the volume of soil or Alternative Daily Cover used and including the weight of the soil or Alternative Daily Cover used.

4.10 Waste Recovery Guarantee

4.10.1 Subject to the provisions set forth in Section 4.10.2 Contractor hereby provides City with its Contractor's Recovery Guarantee that it will achieve the following specified Material Recovery Levels based on waste characteristics identified by Blue Ridge services in their assessment conducted on August, 10, 2010 together with composted material. The material recovery level should not include the yearly average tonnage of non-landfill related recovery and recycling activities measured during the period from July 1, 2008 through June 30, 2011. For the period commencing September 1, 2011 and continuing up to and including August 31, 2012, Contractor provides the City its Contractor's Recovery Guarantee in the amount of no less than 20 percent (20%) recovery. Effective on and after September 1, 2012, Contractor provides City with its Contractor's Recovery Guarantee in the amount of no less than thirty percent (30%) recovery. Effective after September 1, 2012, if Contractor fails in any calendar quarter to achieve its Contractor's Recovery Guarantee for that period, City shall reduce the payment that would otherwise have been made to Contractor by the amount equivalent to the difference between the number of tons Contractor actually recovered during such calendar quarter period and the number of tons that Contractor would have recovered had it achieved Contractor's Recovery Guarantee during that period, multiplied by City's average cost for disposal of each ton of waste during the calendar quarter previous to that in which Contractor failed to meet its Contractor's Recovery Guarantee.

4.10.2 In the event the net value of any Recyclable Material commodity falls below zero, Contractor may dispose of such material at the landfill at no cost, provided that Contractor gives notice to the City together with the basis of Contractor's economic calculation of the value of such material. The Parties agree that the tonnage of such material will not be included in the calculation of the Contractor's Recovery Guarantee (in either the numerator or denominator) and the Parties shall confer to determine a mutually acceptable method of calculating the tonnage of such material for the purpose of deducting it from the tonnage of waste handled. Alternatively, the Parties may agree to reopen negotiations of the Contractor's Recovery Guarantee to account for material changes in economic assumptions,

4.11 Fines Assessed Against the City

In the event any fines or assessments are made against the City solely as a result of the failure of Contractor to perform its obligations in accordance with the terms of this Agreement, the City shall retain from amounts otherwise due the Contractor an amount equal to any fines plus a penalty of 50% of the amount of the fine assessed against the City, in addition to any damages assessed through mediation and in accordance with this Agreement. Any dispute as to the Contractor's responsibility for the acts or omissions leading to such fines or assessments shall be resolved pursuant to the dispute resolution procedure set forth in Section 6.10.

5. TERMINATION PROCEDURE

5.1 Final Payment and Completion of Work

Upon termination of this Agreement at the expiration of the Term, or by the City for cause as set forth herein the City shall hold the final full month's and the fractional last month's payments until all work is completed in accordance with this Agreement, including removal of Contractor's equipment and tools from the Facility, and work completion has been approved by the City and all changes in compensation under Section 5.4 have been calculated by the Department. Contractor shall have 30 days after the date of termination to complete the work in accordance with this Agreement and if he fails to do so, the City shall retain the final full month's and the fractional last month's payment and shall hold the Contractor and the surety which issues Contractor's Faithful Performance Bond liable to the City as mentioned in Section 2.26 of this Agreement. City agrees Contractor shall have no obligation to remove Contractor-installed buildings and fixtures, and City shall compensate Contractor for the residual value of such buildings and equipment calculated as of the date of termination. Such compensation will be paid by City as part of City's final payment to Contractor.

5.2 Preservation, Restoration, Demobilization and Cleanup

Upon termination of this Agreement, the Contractor shall remove all his salvage materials and all containers for such materials, or shall dispose of the same on the Facility in accordance with the applicable rules and regulations within 7 days after the effective date of such termination and if the Contractor fails to do so, he shall be deemed to have abandoned the same and the City shall have the option of selling the same or any part thereof, retaining the proceeds for its expenses in the matter, and/or of disposing of all or any part thereof on the Facility or as the City shall otherwise see fit, and in any case the City shall be entitled to recover from the Contractor all City's reasonable expenses incurred in disposing of said material.

5.3 Grounds for Termination

The following situations with respect to the Contractor may constitute grounds for termination by City, subject to remedies provided below, of this Agreement and removal of the Contractor from the Facility:

- a. Permitting any condition on the premises constituting a public health hazard as determined by the Department or any agency responsible for public health or welfare.
- b. Failure to furnish or have in effect any insurance or surety bond, and maintain certificate of such on file with the Department, as required by this Agreement including, but not limited to, liability and worker's compensation insurance.
- c. Making any assignment for the benefit of creditors.
- d. A levy, attachment or garnishment is used against the equipment or fuel normally used in the performance of this Agreement or on any funds payable to the Contractor under this Agreement.
- e. Failure to fulfill the requirements of Section 2.18.
- f. When it appears to the satisfaction of the City that the Contractor has abandoned the operation.

5.4 Events of Default that Justify Termination if not Remedied

When the Contractor fails to comply with the terms of this Agreement, as determined by the Department, the City shall give the Contractor written notice of the default setting forth with specificity the factual basis for the determination. If the default is not corrected within 30 days from the date such notice is personally served on the Contractor or 30+3 days from the date such notice is mailed to the Contractor, the City may, but does not waive such default if it chooses not to, terminate this Agreement and remove the Contractor from the Facility without further notice.

Termination pursuant to Section 5.3 or the immediately preceding paragraph shall not terminate nor extinguish any remedy the City may have against the Contractor or Contractor's surety on Contractor's Faithful Performance Bond.

5.5 City's Remedies

In the event the Contractor fails or neglects to faithfully perform any duties required by any provision of this Agreement, or this Agreement is terminated as set forth in this Agreement as a result of the failure of the Contractor to faithfully perform the terms of

this Agreement, in addition to any other remedy and without prejudice to any other remedy it may have, the City shall have all of the following remedies and the selection of one remedy does not prejudice the right to another remedy:

5.5.1 *Removal of Contractor*

Remove the Contractor, Contractor's employees, agents, successor, assigns, and Contractor's or their equipment or property from the Facility or cause such equipment and property to be stored at the expense of the Contractor either on or off the Facility and to dispose of the Contractor's salvaged material as provided elsewhere in this Agreement.

5.5.2 *City May Purchase Insurance*

In the event of a failure to provide insurance as required herein or pay any premium thereon when due, City may pay or advance such sum or procure such policy of insurance and pay for the same, all for the account and at the expense of the Contractor.

5.5.3 *City May Deduct from Contractor's Compensation*

Deduct any sum due City from any compensation or amount the Contractor may be or may become entitled to together with interest at the rate of prime plus 1 percent per annum from the time such sum is paid or advanced by the City or is otherwise incurred to the date of payment thereof. It is expressly agreed, that these charges are over and above the damages mentioned in Section 5.1 of this Agreement.

5.5.4 *Call Bond*

The Contractor's surety on Contractor's Faithful Performance Bond shall be liable to the City for any sums paid or advanced by the City or owing to City by the Contractor under this Agreement and for any damage which the City may have sustained as a result of such default by the Contractor plus any interest thereon. The City agrees to notify the Contractor's surety within 30 days of the date any such determination or action is made or taken by the City.

5.5.5 *Sell Contractor's Equipment*

Sell, after 15 days written notice to the Contractor, any property owned by the Contractor left on the premises or in the possession of the City and apply the net proceeds toward any such amount due the City. City may, in its discretion, employ an auctioneer or other agent for the sale of the equipment and deduct the

costs of sale from any proceeds due City or, in the event there is nothing owed to City, to the Contractor. In the event the City, in its reasonable discretion, determines the costs of sale would exceed the value of the equipment, City may sell equipment as scrap and deduct the reasonable costs of sale from the proceeds.

5.5.6 *City May Operate Facility*

Provide equipment, materials, labor and services as the City may deem necessary for the proper performance of the duties to be performed by the Contractor by whatever method the Department may deem expedient, including, but not limited to, the use of independent Contractors, City employees, or other public agencies and/or by using materials, equipment, fuel or other property of the Contractor that may be on the Facility and may be reasonably necessary, for the account and at the expense of the Contractor. Contractor shall be minimally liable for the difference between the sums that would have been paid to him pursuant to this Agreement and the actual cost to City to operate the Facility in the manner required by this Agreement during the period from the date the Contractor is removed from the Facility or leaves in violation of this Agreement, to the date another Contractor takes over after City has rebid the operation, as required by law and, therefore, entered into an operating agreement with another Contractor.

5.6 Contractor's Right to Terminate

5.6.1 Contractor shall have a right to terminate this Agreement upon the occurrence of any of the following:

a) In the event City fails to pay when due any amounts owing to Contractor, and City has not cured such delinquent payment within thirty (30) days of receipt of notice of such delinquency from Contractor;

b) City fails to maintain in good standing any permit in City's name necessary to the operation of the Landfill or other permitted operations under this Agreement, and such failure is not due to any acts or omissions Contractor;

c) City fails to meet any of its obligations set forth in this Agreement, and City does not cure such failure within sixty (60) days of receipt of notice from Contractor.

d) City's subsequent material change to the relevant Carson City Municipal Code as set forth in Section 2.6 of this Agreement.

6. ADDITIONAL PROVISIONS

6.1 Governing Law

This Agreement shall be governed by, and interpreted in accordance with the laws of the State of Nevada.

6.2 Severability

If any provision, provisions or portions of this Agreement are found to be invalid by a court of competent jurisdiction, such finding shall not invalidate the other provisions of this Agreement.

6.3 Independent Entities

Nothing in this Agreement shall be construed between the parties as constituting a joint venture, partnership, agency, employment, or relationship other than one of independent entities. None of the parties to this Agreement has, or shall have any authority, obligation or responsibility, express or implied, with respect to the other party to this Agreement.

6.4 Waivers

No waiver, indulgence or extension of time by the Department, allowed with respect to any duty to be performed or payment to be made by the Contractor, under the terms of this Agreement, shall be deemed to be a waiver, indulgence or extension of time with respect to any duty or payment at any other time.

6.5 Assignments

The Contractor shall not assign this Agreement nor any right or obligation of the Contractor hereunder to any other non-affiliated company, person, firm, corporation or governmental entity, whether by operation of law or otherwise, except with the express written consent of the Board of Supervisors of the City. Any transfer of assets by the Contractor to any corporation in connection with the incorporation of Contractor's business, or any gift or conveyance by the Contractor to any member of Contractor's family or any other person, shall also be deemed to be an assignment within the scope of this paragraph.

If the Contractor is now or may hereafter become (with the express written consent of the Board of Supervisors of the City) a corporation, any transfer or assignment (whether

by operation of law or otherwise) or any gift of stock of said corporation in excess of 10 percent of all outstanding stock of said corporation, whether on a cumulative basis or otherwise, and whether as between existing stockholders or otherwise, shall also be deemed to be an assignment within the scope of this paragraph, and the Contractor shall in any case give notice to the Board of Supervisors of any intended transfer, assignment or gift of any such stock.

Subject to the provisions of this Agreement limiting the right of power to assign this Agreement or any part hereof, it is mutually agreed that the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective heirs, personal representatives, successors and assigns.

6.6 Interpretation of Gender

The words he, his, it, and its as used herein shall include the feminine and neutral gender as the case may be.

6.7 Agreement Revisions

This Agreement may be amended or terminated or extended at any time by the mutual written Agreement of the Contractor and the City. The surety of the Contractor consents, and its Faithful Performance Bond and Payment Bond shall contain a provision consenting, to any such amendment, termination, or extension of this Agreement and to the extension of additional time to the Contractor within which to perform any duty or obligation, or to make any payment required of him under this Agreement; said surety further consents to any amendment, revision, or repeal of the rules and regulations and the schedule of general prevailing wages mentioned elsewhere in this Agreement at any time without notice to the surety.

6.8 Notices

Any notice required or permitted under this Agreement shall be given either by personal service or by United States mail, postage prepaid, to the Contractor and City at the addresses as shown below:

CONTRACTOR

Mark Lomele
Chief Financial Officer
Recology
50 California Street
24th Floor
San Francisco, CA 94111

CITY

Carson City Public Works
3505 Butti Way
Carson City, NV 89701

6.9 Indemnification

To the extent permitted by law, including but not limited to, the provisions of NRS Chapter 41, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs arising out of any alleged negligent or willful acts or omissions of the indemnifying party, its officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of the indemnity which would otherwise exist as to any party or person described in this paragraph.

Except as otherwise provided below, the indemnifying party shall not be obligated to provide a legal defense to the indemnified party, nor reimburse the indemnified party for the same, for any period occurring before the indemnified party provides written notice of the pending claim(s) or cause(s) of action to the indemnifying party, along with:

- 1) a written request for a legal defense for such pending claim(s) or cause(s) of action; and
- 2) a detailed explanation of the basis upon which the indemnified party believed that the claim or cause of action asserted against the indemnified party implicated the culpable conduct of the indemnifying party, its officers, employees, and/or agents.

After the indemnifying party has begun to provide a legal defense for the indemnified party, the indemnifying party shall not be obligated to fund or reimburse any fees or costs provided by any additional counsel for the indemnified party, including counsel through which the indemnified party might voluntarily choose to participate in its defense of the same matter.

After the indemnifying party has begun to provide legal defense for the indemnified party, the indemnifying party shall not be obligated to reimburse the reasonable attorney's fees and costs incurred by the indemnified party during the initial thirty (30) day period of the claim or cause of action, if any, incurred by separate counsel.

6.10 Dispute Resolution

6.10.1 Dispute or Claim.

Any cause of action, claim or dispute which either Party may have against the other arising out of or relating to this Agreement, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Agreement ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

6.10.2 Good Faith Resolution.

The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.

6.10.3 Informal Negotiation.

The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations between the designated representatives of each Party.

6.10.4 Mediation Equitable Remedies.

In the event the Parties are unable to resolve any Dispute through the informal negotiations within thirty (30) days of a Party's receipt of written notice of such Dispute, then either Party may submit the Dispute for resolution by mediation, or non-binding arbitration, or any other method chosen by the Parties, subject to the express prior written agreement of the Parties. Such written agreement shall include all guidelines to be followed by the Parties in such dispute resolution prior to the commencement of such process. Neither Party shall be required to pursue arbitration over any other method of dispute resolution.

6.10.5 Litigation Rights.

In the event the Parties are unable to satisfactorily resolve the Dispute within thirty (30) days of the receipt of notice of the Dispute, subject to any extensions

of time mutually agreed upon in writing, either Party may initiate litigation in a court of law located in Carson City, Nevada, which shall be the exclusive venue to litigate Disputes..

6.10.6 Recovery Costs.

In the event any action is brought at law or in equity in court to enforce any provision of this Agreement, or for damages by reason of any alleged breach of this Agreement, then the prevailing Party will be entitled to recover from the other Party all costs of the suit, including, court costs and the prevailing Party's reasonable attorney's fees and related costs and expenses.

6.11 Independent Contractor

An independent contractor is a natural person, firm or corporation who agrees to perform services for a fixed price according to his/her or its own methods and without subjection to the supervision or control of the other contracting party, except as to the results of the work, and not as to the means by which the services are accomplished.

It is mutually agreed that Contractor is associated with City only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract. Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract.

Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for City whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.

Contractor shall indemnify and hold City harmless from, and defend City against, any and all losses, damages, claims, costs, penalties, liabilities, expenses arising out of or incurred in any way because of, but not limited to, Contractor's obligations or legal duties regarding any taxes, fees, assessments, benefits, entitlements, notice of benefits, employee's eligibility to work, to any third party, subcontractor, employee, state, local or federal governmental entity.

Neither Contractor nor its employees, agents, or representatives shall be considered

employees, agents, or representatives of City.

6.12 City Ownership of Proprietary Information

Any files, reports, histories, studies, test, manuals, instruction, photographs, negatives, blue prints, plans, maps, data, system designs, computer programs, computer codes, and computer records (which are intended to be consideration under this Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be exclusive property of the City of Carson City, Nevada, and such materials shall be delivered into City's possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of Contractor's obligations under this Contract without the prior written consent of City. Notwithstanding the foregoing, City shall have no proprietary interest in any materials license for use by City that are subject to patent, trademark or copyright protection.

City shall be permitted to retain copies, including reproducible copies, of Contractor's drawings, specifications, and other documents for information and reference in connection with this Contract.

Contractor's drawings, specification and other documents shall not be used by City or others without expressed permission of Contractor.

6.13 Public Records

Pursuant to NRS 239.010, information or documents received from Contractor may be opened to public inspection and copying. City will have duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may clearly label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 332.061, provided that Contractor thereby agrees to indemnify and defend City for honoring such a designation. The failure to so label any document that is released by City shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

6.14 Confidentiality

Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

6.15 Federal Funding

In the event federal funds are used for payment of all or part of this Contract:

Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp.19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

6.16

Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted there under contained in 28 C.F.R. 26.101.36.999, inclusive, and any relevant program-specific regulations.

Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulation, and shall not discriminate against any employee or offer or for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap conditions (including AIDS and AIDS-related conditions). Contractor agrees it will take no actions in contravention of NRS 281A or 332.810.

6.17 Former Employees of City

In the event Contractor hires any City employees for its initial workforce at the Facility, City shall be solely responsible for the termination of employment of the City's employees in accordance with the requirements of any applicable collective bargaining agreement. City acknowledges that such employees will be hired to positions

unrepresented by a collective bargaining unit. City shall indemnify and hold harmless Contractor from and against any and all claims of such employees arising from the termination of such employees by the City, the termination of their retirement or health benefits by the City, and any worker's compensation claims or other claims arising prior to or arising out of their termination by the City. Contractor shall have sole discretion over the hiring of such employees, including without limitation, their qualifications for the work to be performed, their benefits, if any, their work hours, and their work status. This provision shall not be construed to create any third-party benefits in such employees.

6.18 Signatures Binding

Each person executing this Agreement on behalf of the Contractor represents and warrants that he or she is authorized by the Contractor to execute and deliver this Agreement on behalf of the Contractor and this Agreement is binding on the Contractor in accordance with its terms and provisions.

SIGNATURES

IN WITNESS WHEREOF, the parties to this Agreement have executed the same on the day and year first mentioned herein.

CARSON CITY

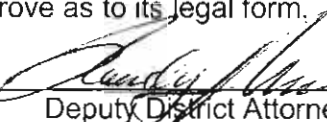
Robert L. Crowell, Mayor

By: _____
Robert L. Crowell, Mayor

DATED _____.

CITY'S LEGAL COUNSEL

Neil A. Rombardo, District Attorney
I have reviewed this Contract and
approve as to its legal form.

By: 
Deputy District Attorney

DATED 7/26/11.

RECOLOGY

By: _____

DATED _____

SCHEDULE 1

City-Owned Equipment at Facility

6014	1995	GMC	Dump Truck
6411	1984	FMC	Truck
6417	1992	IHC	Dump Truck
6430	1997	IHC	10 yd Dump
6617	2007	VO	40 Ton Haul Truck
7902	1999	JOH	Excavator, 230LC
7903	2001	CAT	Landfill Dozer, D8R11
7905	2006	CAT	Compactor, 826G
7906	2007	KOM	D275 Dozer
8107	1992	CAS	Backhoe TURBO 4X4
8201	2004	CAT	966G waste handler
8505	1999	SU	Air compressor
9017	1996	LIN	Welder

Buildings at Facility

Buildings at Facility

All building sizes are approximate,

Gatehouse 12' x 32'

HHW Facility 2 each 10' x 40' Connex Shipping Containers connected with a wood and shingle roof

Employee Break Area Trailer 12' x 32'

Old Garage 20' x 21'

Wood Shed 10' x 13'

Wood Shed 10' x 12'

Storage Connex 8' x 40'

Storage Connex 8' x 20'

Storage Connex 8' x 20'

SCHEDULE 2

Examples of Calculation of City Credit From Sales of Recovered Materials

Example 1

Assume monthly net revenues from sale of recovered materials = \$60,000
Assume material disposed of at Facility during same month = 10,000 tons

Revenue per ton: $\$60,000 \div 10,000 = \6 per ton

Contractor's initial share = \$25,000 ($\$2.50 \times 10,000$)

City's initial share = \$15,000 ($\$1.50 \times 10,000$)

Balance of \$20,000 is shared equally:

Contractor's share = \$10,000

City's share = \$10,000

The City's total share of \$25,000 is a credit against the monthly invoice from Contractor during the subsequent month

Example 2

Assume monthly net revenues from sale of recovered materials = \$30,000
Assume material disposed of at Facility during same month = 10,000 tons

Revenue per ton: $\$30,000 \div 10,000 = \3 per ton

Contractor's initial share = \$25,000 ($\$2.50 \times 10,000$)

City's share = \$5,000 ($\$3.00 - \$2.50 = \0.50, $\$0.50 \times 10,000 = \$5,000$)

The City's total share of \$5,000 is a credit against the monthly invoice from Contractor during the subsequent month

Example 3

Assume monthly net revenues from sale of recovered materials = \$15,000
Assume material disposed of at Facility during same month = 10,000 tons

Revenue per ton: $\$15,000 \div 10,000 = \1.5 per ton

Contractor's share = \$15,000

City's share = \$0.00