



County of Los Angeles CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

January 8, 2008

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**DEPARTMENT OF PUBLIC WORKS: NU-WAY LIVE OAK RECLAMATION,
NU-WAY ARROW RECLAMATION, INC., USA WASTE OF CALIFORNIA,
AND AZUSA LAND RECLAMATION AGREEMENTS
SOLID WASTE MANAGEMENT FEE
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD ACTING AS THE BOARD OF THE
COUNTY OF LOS ANGELES AND THE GOVERNING BODY OF THE LOS
ANGELES COUNTY FLOOD CONTROL DISTRICT:**

1. Approve the agreement between Nu-Way Live Oak Reclamation, Inc., Nu-Way Arrow Reclamation, USA Waste of California, Inc., the County of Los Angeles, and the Los Angeles County Flood Control District, providing for the payment by Nu-Way Live Oak Reclamation and Nu-Way Arrow Reclamation of \$1,847,992 in cash, plus in-kind services as provided below, in lieu of unpaid solid waste management fees and associated penalties.
2. Approve the solid waste disposal agreement between USA Waste of California, Inc., and the Los Angeles County Flood Control District, providing for 4.5 million tons of sediment disposal capacity for the District's use at preferential rates, starting with an initial rate of \$0.50 per ton, subject to annual inflation adjustments.
3. Approve the environmental collection center lease agreement between Azusa Land Reclamation, Inc., and the County of Los Angeles, providing a site approximately one acre in size, free of rent, for development by the County of an environmental collection center for an initial ten-year term and an optional ten-year extension.

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

4. Authorize the Los Angeles County Flood Control District to reimburse the Solid Waste Management Fund at the rate of \$2 for every ton of sediment disposed in accordance with the solid waste disposal agreement, payable on a monthly basis, up to a total maximum of \$1.7 million.
5. Authorize the Chair to execute the agreements.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Nu-Way Live Oak Reclamation, Inc. (Live Oak) and Nu-Way Arrow Reclamation (Arrow) each operate an inert waste landfill facility. Pursuant to Chapter 20.88 of the Los Angeles County Code, all persons or operators who receive, collect, convey, and haul solid waste in the County of Los Angeles are subject to a solid waste management fee of \$0.86 per ton or \$0.52 per cubic yard. The County found that prior to and until September 2007, the County found that Live Oak underreported the amount of solid waste received at its facility, resulting in gross underpayment to the County of more than \$4 million in required solid waste management fees. Additionally, Arrow did not submit any solid waste management fee payments for the period December 2004 through April 2006 totaling more than \$390,000 in unpaid fees.

The purpose of this action is to approve an agreement between the County of Los Angeles (County), the Los Angeles County Flood Control District (District), and Live Oak, Arrow, and USA Waste of California, Inc., (USA Waste) (collectively "Nu-Way") for payment of delinquent solid waste management fees, as well as a solid waste disposal agreement between the District and USA Waste of California, Inc., and an environmental collection center lease agreement between the County and Azusa Land Reclamation, Inc., to provide services in lieu of solid waste management fees and penalties. The recommended agreements provide a mechanism for the County to recover unpaid solid waste management fees and penalties.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs that we provide Organizational Effectiveness (Goal 3) and Fiscal Responsibility (Goal 4). The recovered fees and penalties provide funds to continue to develop and implement waste reduction programs Countywide. Additionally, this action secures needed sediment disposal capacity for the District to assure continued flood protection for the citizens of the County.

FISCAL IMPACT/FINANCING

The recommended action provides a mechanism for the County to recover unpaid solid waste management fees and associated penalties owed by Live Oak and Arrow. This would be done through a cash payment to the Solid Waste Management Fund of \$1,847,992, plus in-kind services as described in the solid waste disposal agreement and the environmental collection center lease agreement.

Pursuant to the solid waste disposal agreement, USA Waste would provide 4.5 million tons of sediment disposal capacity for use by the District over a 20-year period at preferential rates, starting at \$0.50 per ton (\$0.75 per cubic yard) of sediment disposed subject to annual inflation adjustments, and the District would pay the applicable solid waste management fee (\$0.52 per cubic yard) on behalf of USA Waste. In addition, the District would deposit into the Solid Waste Management Fund on a monthly basis, \$2 for every ton of sediment disposed, up to a total maximum of \$1.7 million. This arrangement will provide the District needed sediment disposal capacity for enhanced flood protection and result in millions of dollars in avoided future costs. Sufficient funds are allocated in the Fiscal Year 2007-08 Flood Fund budget to cover the above costs.

Under the environmental collection center lease agreement, Azusa Land Reclamation, Inc., would lease to the County rent-free, a site approximately one acre in size for development of a household hazardous waste (environmental) collection center. The lease agreement would have an initial ten-year term and an optional ten-year extension at the discretion of the lessor.

There will be no impact to the County General Fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Live Oak operates an inert waste landfill located at 13620 Live Oak Avenue in the City of Irwindale, California, and Arrow operates an inert waste landfill located at 1270 East Arrow Highway, Irwindale, California. Both sites receive inert waste materials such as soil, rock, and inert debris, which are deposited to facilitate the reclamation process at the sites. Pursuant to the Solid Waste Management Fee Ordinance (County Code Chapter 20.88), both sites are subject to a solid waste management fee of \$0.86 per ton or \$0.52 per cubic yard.

Live Oak underreported the amount of solid waste received at its facility, resulting in gross underpayment of more than \$4 million in required solid waste management fees and Arrow did not submit any solid waste management fee payments for the period December 2004 through April 2006 totaling more than \$390,000 in unpaid fees.

On November 24, 2004, and December 19, 2006, the Department of Public Works issued Enforcement Orders to Live Oak and Arrow, as provided for in the Solid Waste Management Fee Ordinance (County Code Chapter 20.88). The Enforcement Orders demanded immediate payment of the fees that were past due plus applicable penalties. Live Oak and Arrow appealed their respective Enforcement Orders to the hearing officer as provided in Chapter 20.88. While the appeals were pending, the parties engaged in meetings in an attempt to negotiate a settlement. These negotiations were ultimately successful and resulted in the attached agreements.

Nu-Way's agreement to pay fees and penalties through a combination of a cash payment, sediment disposal capacity, and a rent-free land lease will enable the County and District to collect the full value of the unpaid fees and much of the accumulated penalties and provide the District with much needed sediment disposal capacity. Therefore, we believe the recommended agreements are in the best interest of the County and District. County Counsel concurs with this recommendation.

If approved by your Board, the attached agreements would be executed by the Chair on behalf of the County and the District.

The attached agreements have been reviewed and approved as to form by County Counsel.

ENVIRONMENTAL DOCUMENTATION

Approval of the recommended actions is not subject to the California Environmental Quality Act because it can be seen with certainty that there is no possibility that the approval may have a significant effect on the environment in accordance with California Environmental Quality Act Guidelines Section 15061(b)(3).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

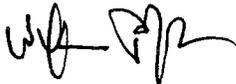
There will be no impact on current services.

The Honorable Board of Supervisors
January 8, 2008
Page 5

CONCLUSION

Please return four approved copies of this letter along with two signed copies of the agreements to the Department of Public Works, Environmental Programs Division.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer

WTF:DLW
FR:td

Attachments (3)

c: County Counsel
Department of Public Works (Fiscal, Flood Maintenance, Water Resources)

SETTLEMENT AGREEMENT

This settlement agreement ("Agreement") is entered into as of January 08, 2008, by and among the following Parties: Nu-Way Live Oak Reclamation, Inc. ("Live Oak"), Nu-Way Arrow Reclamation ("Arrow"), and USA Waste of California, Inc. ("USA Waste") (Live Oak, Arrow, and USA Waste are referred to together as "Nu-Way"), the County of Los Angeles ("County"), and the Los Angeles County Flood Control District ("District") (all parties are referred to together as "Parties").

This Agreement is made with reference to the following circumstances:

A. Live Oak operates an inert debris engineered fill operation located at 13620 Live Oak Avenue, in the City of Irwindale, California ("Live Oak Property"), and Arrow operates an inert debris engineered fill operation located at 1270 E. Arrow Highway, Irwindale, California ("Arrow Property") (together, "Properties"), both of which receive inert waste materials, such as soil, rock and inert debris, that are deposited to facilitate the reclamation process at these sites.

B. The County contends that such inert waste materials fall within the definition of "solid waste" specified in the Los Angeles County Code ("LACC") Section 20.88.020. The County imposes a fee pursuant to LACC Chapter 20.88 ("Solid Waste Management Fee") on persons or operators, who receive, collect, convey and haul solid waste in the County.

C. The County has issued three enforcement orders ("Enforcement Orders) concerning the Properties as follows.

(1) On or about November 24, 2004, the County issued an Enforcement Order to Live Oak, a copy of which is attached as Exhibit 1 hereto,

alleging, *inter alia*, that Live Oak was in violation of LACC Chapter 20.88 for underreporting and underpayment of the Solid Waste Management Fees required to be paid for the Live Oak Property for the period January 1997 through the effective date of the Enforcement Order, and that Live Oak owed the County corresponding solid waste management fees and penalties in an amount not less than \$19,844,817.30.

(2) On or about December 19, 2006, the County issued a second Enforcement Order to Live Oak, a copy of which is also attached as Exhibit 2 hereto, alleging, *inter alia*, that Live Oak was and is in violation of LACC Chapter 20.88 for underreporting and underpayment of the Solid Waste Management Fees required to be paid for the Live Oak Property for the period subsequent to the date of the first Enforcement Order through April 30, 2006, and that Live Oak owed the County corresponding solid waste management fees and penalties in an amount not less than \$744,568.06.

(3) On or about December 19, 2006, the County also issued an Enforcement Order to Arrow, a copy of which is attached as Exhibit 3 hereto, alleging, *inter alia*, that Arrow was and is in violation of LACC Chapter 20.88 for nonpayment of the Solid Waste Management Fees required to be paid for the Arrow Property for the period December 13, 2004 through April 30, 2006, and that Arrow owed the County corresponding solid waste management fees and penalties in an amount not less than \$894,824.47.

D. Nu-Way has denied, and continues to deny, liability to the County with respect to the matters raised in the Enforcement Orders and described in Recital C above and further contends that it is entitled to a refund of overpaid Solid Waste

Management Fees.

E. Nu-Way timely served the County with appeals from all three Enforcement Orders. On January 30 and March 14, 2007, three separate hearing on these appeals ("Hearings") were held before Mr. John Kelly, who was appointed by the County as the Hearing Officer for the Nu-Way appeals.

F. Following the hearings, but before the Hearing Officer rendered a ruling, Nu-Way and the County agreed upon a settlement of all issues raised by, and concerning, the Enforcement Orders, subject to execution of definitive written legal agreements.

G. The Parties now desire to settle and resolve all issues, claims, and disputes between them arising out of or relating to Nu-Way's obligation to report and pay the Solid Waste Management Fees required to be paid for the Live Oak and Arrow Properties for all periods from the beginning of time through March 31, 2007, pursuant to LACC Chapter 20.88, including but not limited to the claims described in the Enforcement Order and in Recitals C and D above, without any admission of wrongdoing or liability on the part of any of the Parties.

Accordingly, the Parties agree as follows:

1. Satisfaction of Solid Waste Management Fees and Penalties Owed for the Properties.

1.1. Payment of Solid Waste Management Fees. Within twenty-one (21) calendar days following the Effective Date of this Agreement (¶ 1.4), Nu-Way shall remit payment to the County's Department of Public Works, Environmental Programs Division, the amount of \$1,847,992. Failure to make this

payment shall immediately terminate this Agreement.

1.2. Solid Waste Disposal Agreement. USA Waste shall provide the District with in-kind services pursuant to the terms and conditions set forth in the separate "Solid Waste Disposal Agreement" between USA Waste and the District attached hereto as Exhibit 4. The Disposal Agreement shall not be effective until and unless this Agreement has been executed by all Parties.

1.3. Lease Agreement. Azusa Land Reclamation, Inc., an affiliate of USA Waste, shall lease certain property to the County, pursuant to the terms and conditions set forth in the Environmental Collection Center Lease Agreement attached hereto as Exhibit 5. The Environmental Collection Center Lease Agreement shall not be effective until and unless this Agreement has been executed by all Parties.

1.4. Effective Date. This Agreement shall not be effective unless and until it is executed by all Parties and both the Solid Waste Disposal Agreement and the Environmental Collection Center Lease Agreement are fully executed by the respective parties to those agreements.

2. Disposition of Enforcement Orders and Release of Claims.

2.1 Nu-Way and the County agree that the Enforcement Orders shall remain in effect, with preservation of Arrow and Live Oak's right of appeal, pending performance by Nu-Way under paragraph 1.1 of this Agreement. Thereafter, within five (5) days of receipt of the payment called for by paragraph 1.1, above: (1) The County shall inform the Hearing Officer that the Enforcement Orders are dismissed and discharged; and (2) Live Oak and Arrow shall withdraw their administrative appeals and inform the Hearing Officer of said withdrawals. Neither these dismissals and

withdrawals, nor the releases provided for in this Agreement, shall affect the Solid Waste Disposal Agreement and the Environmental Collection Center Lease Agreement (Exhibits 4 and 5), which shall remain fully enforceable.

2.2 Upon Nu-Way's payment as provided in paragraph 1.1 above and Live Oak and Arrow's withdrawal of their administrative appeals as provided in paragraph 2.1 above, the County agrees to release Nu-Way, including its past and present parents, subsidiaries, affiliates, accountants, officers, directors, agents, employees and lawyers, from any claims, causes of action, cross-claims, controversies, damages, liability and demands of any kind, known or unknown, including claims for fraud and false claims act violations, with respect to any alleged inaccurate reporting and alleged underpayment of Solid Waste Management Fees for the Properties, for all periods through March 31, 2007. The County hereby acknowledges that it is familiar with, and expressly waives, the provisions of California Civil Code Section 1542 which provide:

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

3. Nu-Way agrees to release the County, including its past and present departments, officers, directors, agents, employees, and lawyers, from any claims, causes of action, cross-claims, controversies, damages, liability and demands of any kind, known or unknown, including claims for fraud, with respect to any alleged over-reporting and/or overpayment of Solid Waste Management Fees, or any other claims

raised in Nu-Way's administrative appeals, as described in Recitals D and E above, including any alleged right to refund relating thereto, for the Properties for all periods through March 31, 2007. Nu-Way hereby acknowledges that it is familiar with, and expressly waives, the provisions of California Civil Code Section 1542 which provide:

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

4. Escrow.

On or about July 10, 2006, the County and Nu-Way entered into an agreement entitled "Escrow Agreement – Nu-Way Live Oak Landfill," which called for the creation of an escrow account. The Parties acknowledge that the Escrow Agreement has terminated pursuant to its terms and all funds held now, or at any time, in the escrow account created by that Escrow Agreement are the property of Nu-Way and the County expressly disclaims any right, title or interest in any of said funds. This disclaimer does not affect Nu-Way's obligation to fully perform under Paragraph 1.1 of this Agreement.

5. Representations And Warranties.

5.1 The Parties each represent and warrant to the other that they own the claims resolved herein, that none of said claims have been assigned to any other person or entity, and that no other person or entity has any interest with respect to said claims.

5.2 The Parties each represent and warrant to the other that they

have the authority to enter into this Agreement, that any person executing this Agreement in a representative capacity is duly authorized to do so, and that each person executing this Agreement in a representative capacity represents, warrants and covenants that he/she is duly authorized to do so pursuant to appropriate by-law, ordinance, resolution or other authority.

5.3 The Parties each represent and warrant to the other that they have read and understand this Agreement and that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party hereto.

5.4. The Parties hereby acknowledge that they have been represented in the negotiations and preparation of this Agreement by counsel of their own choice, and that they have read this Agreement and had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of the legal effect of each and every provision herein.

6. Attorney's Fees.

If any Party brings an action or proceeding to enforce the terms hereof or declare rights hereunder, the Prevailing Party (as hereafter defined) in any proceeding, action, or appeal thereon, shall be entitled to reasonable attorney's fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by judgment, or the abandonment by the other Party of its claim or defense. The attorney's fee award shall not be computed in

accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

7. Miscellaneous

7.1 This Agreement constitutes the entire agreement between and among the Parties pertaining to its subject matter and supersedes any and all prior or contemporaneous agreements or understandings, oral or written, between the Parties, if any, relative to its subject matter, with the exception of the fully executed Solid Waste Disposal and Environmental Collection Center Lease Agreements attached to this Agreement as Exhibits 4 and 5. Any prior agreements, provisions, negotiations or representations not expressly set forth in this Agreement are of no force or effect whatsoever.

7.2 All modifications, alterations or amendments to this Agreement shall be in writing and signed by the Parties and must specifically refer to the Agreement.

7.3 No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any one waiver constitute a continuing waiver. No waiver shall be effective or binding unless executed in writing by the party(ies) making such waiver.

7.4 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same instrument.

7.5 This Agreement shall inure to the benefit of, and shall be binding upon, each of the Parties and any and all of their respective affiliates,

successors in interest, predecessors in interest, assignees, lawyers, accountants, partners, officers, directors, agents, shareholders, and employees.

7.6 This Agreement shall be construed in accordance with, and shall be governed by, the laws of the State of California without giving effect to the choice of law principles thereof. Any action to enforce any of the terms of this Agreement shall be brought in the Central District of the Los Angeles County Superior Court.

7.7 If any provision of this Agreement is held to be illegal or unenforceable by any court or tribunal in a final decision from which no appeal can be taken, such provision shall be deemed modified to eliminate the invalid element, and as so modified, such provision shall be deemed a part of this Agreement as though originally included herein. The enforceability of the remaining provisions of the Agreement shall not be affected by any such modification.

7.8 Counsel for all Parties have participated in the preparation of this Agreement. This Agreement was subject to revision and modification by all Parties, and has been accepted and approved as to the final form by counsel for all Parties. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement.

7.9 Live Oak, Arrow, and USA Waste each represent and warrant that they are ready, willing and able to comply with the terms of this Agreement and provide the above-described settlement consideration.

7.10 The warranties and representations made in this Agreement

LOS ANGELES COUNTY FLOOD
CONTROL DISTRICT

By: _____
Chair, Board of Supervisors

ATTEST:
SACHI HAMAI
Executive Officer-Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:

By:  _____
Attorneys for Nu-Way Live Oak Reclamation, Inc, Nu-Way Arrow Reclamation,
USA Waste of California, Inc.

RAYMOND G. FORTNER, JR.
County Counsel

By:  _____
Deputy
Attorneys for County of Los Angeles and
Los Angeles County Flood Control District

EXHIBIT 1



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

November 24, 2004

IN REPLY PLEASE
REFER TO FILE: **EP-4**

Mr. Scott Jenkins
District Manager
Nu-Way Live Oak Reclamation, Inc.
766 S. Ayon Ave.
Azusa, CA 91702

Dear Mr. Jenkins:

**ENFORCEMENT ORDER
PAST DUE FEES AND ADMINISTRATIVE PENALTIES
SOLID WASTE MANAGEMENT FEE
NU-WAY LIVE OAK RECLAMATION, INC.**

This Enforcement Order is issued to Nu-Way Live Oak Reclamation, Inc. (Nu-Way), as the operator of the Nu-Way Live Oak Reclamation Facility located at 13620 Live Oak Lane, Irwindale, California, for unpaid solid waste management fees and penalties. The issuance and service of this Enforcement Order is effective immediately upon the termination of the Tolling Agreement between Nu-Way and the County of Los Angeles, as described in the attached Notice of Termination of Tolling Agreement dated October 28, 2004.

The disposal facility located at 13620 Live Oak Avenue, Irwindale, is subject to solid waste management fees, due and payable on the first day of each month, pursuant to Los Angeles County Code (LACC), Chapter 20.88. Each monthly fee becomes delinquent and subject to an administrative penalty if not paid within 30 days after it is due. Additionally, each monthly fee payment must be accompanied by a statement specifying and certifying the total tons or cubic yards, as applicable, of solid waste received at the facility during the preceding month. Documentation substantiating the statement must be maintained and is subject to review by the County for a period of up to three years. Each failure to comply with these certification, documentation, and record retention requirements is a separate violation of LACC Chapter 20.88 and is subject to enforcement provisions and administrative penalties as provided in LACC Section 20.88.070.B.2. Furthermore, each day that Nu-Way should fail to comply with this Enforcement Order constitutes a separate violation for which Nu-Way will be subject to additional administrative penalties under LACC Section 20.88.070.B.2.

NOV 24 04 00:41PM PUBLIC WORKS DIVISION 7213 DIT 1104 1-405 P.003/013 P-260

Mr. Scott Jenkins
November 24, 2004
Page 2

Pursuant to LACC Section 20.88.070, Nu-Way is hereby ordered to immediately remit payment and supporting documentation to the County of Los Angeles Department of Public Works (Public Works) for all solid waste management fees and penalties owed for the time period from January 1997 through and including the effective date of issuance of this Order, in an amount not less than \$19,844,817.30, and continuing thereafter for all additional solid waste management fees and penalties which Nu-Way fails to pay. In addition, Nu-Way is ordered to submit timely, monthly payments of all future solid waste management fees due, with the required supporting certification, documentation, and records pursuant to LACC Chapter 20.88.

Our records indicate that Nu-Way has underpaid the solid waste management fees required for the period January 1997 to the present. As Nu-Way is aware, an audit was conducted by Public Works of the records that substantiate Nu-Way's payment of solid waste management fees for the period January 1997 through December 2002. This audit evidenced an underpayment of the required fees for that period in the amount of \$4,118,255.67 and corresponding penalties for the underpayments in the amount of \$13,130,680.35 through March 31, 2003.

As set forth in the enclosed audit report dated June 12, 2003, which includes an audit calculation table, which report and table are incorporated herein by reference, Nu-Way failed to present adequate records to support its solid waste management fee payments, and Nu-Way also failed to provide requested supplementary information to address the inadequacy of Nu-Way's documentary record. Although Nu-Way was provided a copy of the attached audit calculation table in or about April 2003, neither Nu-Way nor Waste Management has paid any of the underpaid fees or penalties noted in the audit.

As no payments have been received for the underpayments noted in the audit report, penalties have continued to accumulate. In addition, our records indicate that Nu-Way has continued to underpay the required solid waste management fee for the period from January 2003 to the present. The total, in an amount not less than \$19,844,817.30 as referenced above, represents the underpaid solid waste management fees and penalties noted in the audit report as well as the unaudited underpaid fees and penalties owed subsequent to the audit period through the effective date of issuance of this Enforcement Order.

Pursuant to LACC Section 20.88.070.A.3, this order shall be final unless an appeal from the order is filed as provided in Section 20.88.070.C, no later than 30 days after the date of service of the enforcement order. The notice of appeal shall include any statements and evidence that the appellant wishes to be considered in connection with the appeal. A copy of LACC Section 20.88.070 is enclosed for your convenience.

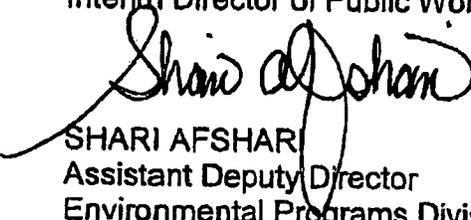
Mr. Scott Jenkins
November 24, 2004
Page 3

The County does not hereby waive any other legal remedy against Nu-way. In addition, the County reserves all rights and remedies relating to any other outstanding amounts that may pertain to Nu-Way's facility.

If you have any questions, please contact me at (626) 458-3500, Monday through Thursday, 7 a.m. to 5:30 p.m.

Very truly yours,

DONALD L. WOLFE
Interim Director of Public Works


SHARI AFSHARI
Assistant Deputy Director
Environmental Programs Division

RCB/JF:mal
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Enc.

cc: County Counsel (Judith Fries, Fred Pfaeffle)
Department of Health Services (Cindy Chen)
Waste Management, Inc. (Ray Andersen)
McNamara, Spira & Smith (Kirsten Spira)

EXHIBIT 2



DONALD L. WOLFE, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: EP-4

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

December 19, 2006

Mr. Brent Anderson
District Manager
Nu-Way Live Oak Reclamation, Inc.
766 South Ayon Avenue
Azusa, CA 91702-5123

Dear Mr. Anderson:

**ENFORCEMENT ORDER
PAST DUE FEES AND ADMINISTRATIVE PENALTIES
SOLID WASTE MANAGEMENT FEE
NU-WAY LIVE OAK RECLAMATION, INC.**

This Enforcement Order is issued to Nu-Way Live Oak Reclamation, Inc., as the operator of the Nu-Way Live Oak Reclamation Facility, located at 13620 Live Oak Avenue in the City of Irwindale, for delinquent solid waste management fees and administrative penalties.

In accordance with the Los Angeles County Code (LACC), Chapter 20.88, the Nu-Way Live Oak Reclamation Facility is subject to solid waste management fees, due and payable on the first day of each month for the solid waste received during the preceding month. Each monthly fee becomes delinquent and subject to an administrative penalty if not paid within 30 days after it is due. Penalties continue to accrue until the delinquent fee is paid.

Additionally, each monthly fee payment must be accompanied by a statement specifying and certifying the total tons or cubic yards, as applicable, of solid waste received at the facility during the preceding month. Documentation substantiating the statement must be maintained and is subject to review by the County for a period of up to three years. Each failure to comply with these certification, documentation, and record retention requirements is a separate violation of LACC Chapter 20.88 and is subject to enforcement provisions and administrative penalties as provided in LACC Section 20.88.070.B.2. Furthermore, each day that a disposal site operator fails to comply with an enforcement order constitutes a separate violation for which the operator is subject to additional administrative penalties under LACC Section 20.88.070.B.2.

Mr. Brent Anderson
December 19, 2006
Page 2

As you are aware, an audit was conducted by the County of Los Angeles Department of Public Works of the records that substantiate the payment of solid waste management fees by Nu-Way Live Oak Reclamation, Inc., for the period from October 1, 2004 through April 30, 2006. The audit evidenced underpayment of the required solid waste management fees during that period.

Pursuant to LACC, Section 20.88.070, Nu-Way Live Oak Reclamation, Inc., is hereby ordered to immediately remit payment with the required certification to Public Works for solid waste management fees owed for the audited period, in the amount of \$320,382.92. In addition, administrative penalties calculated in accordance with LACC, Section 20.88.070.B, have accrued in connection with the delinquent fees in the amount of \$424,185.14 as of December 13, 2006. Additional administrative penalties will continue to accrue until all delinquent fees have been paid.

LACC, Section 20.88.070, provides that this Enforcement Order will be final unless a written notice of appeal is filed no later than 30 days after the date of service of this order. The notice of appeal must include any statements and evidence that the appellant wishes to be considered in connection with the appeal.

The County does not hereby waive any other legal remedy against Nu-Way Live Oak Reclamation, Inc. In addition, the County reserves all rights and remedies relating to any other outstanding amounts that may pertain to the Nu-Way Live Oak Reclamation Facility.

If you have any questions, please contact Mr. Lee Miller of this office at (626) 458-3524, Monday through Thursday, 7 a.m. to 5:30 p.m.

Very truly yours,

DONALD L. WOLFE
Director of Public Works



FRED M. RUBIN
Assistant Deputy Director
Environmental Programs Division

PC:cw
P:\Sec\Letters\EO-Nu Way Live Oak rev 1.doc

cc: County Counsel (Judith Fries)
McNamara, Spira & Smith (Kirsten Spira)
Parker, Milliken, Clark, O'Hara, & Samuelian (Gary Meyer)
Waste Management, Inc. (John Newell)

EXHIBIT 3



COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

DONALD L. WOLFE, Director

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
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ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE REFER TO FILE: **EP-4**

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

December 19, 2006

Mr. Brent Anderson
District Manager
Nu-Way Arrow Reclamation, Inc.
766 South Ayon Avenue
Azusa, CA 91702-5123

Dear Mr. Anderson:

ENFORCEMENT ORDER PAST DUE FEES AND ADMINISTRATIVE PENALTIES SOLID WASTE MANAGEMENT FEE NU-WAY ARROW RECLAMATION, INC.

This Enforcement Order is issued to Nu-Way Arrow Reclamation, Inc., as the operator of the Nu-Way Arrow Reclamation Facility, located at 1270 Arrow Highway in the City of Irwindale, for delinquent solid waste management fees and administrative penalties.

In accordance with the Los Angeles County Code (LACC), Chapter 20.88, the Nu-Way Arrow Reclamation Facility is subject to solid waste management fees, due and payable on the first day of each month for the solid waste received during the preceding month. Each monthly fee becomes delinquent and subject to an administrative penalty if not paid within 30 days after it is due. Penalties continue to accrue until the delinquent fee is paid.

Additionally, each monthly fee payment must be accompanied by a statement specifying and certifying the total tons or cubic yards, as applicable, of solid waste received at the facility during the preceding month. Documentation substantiating the statement must be maintained and is subject to review by the County for a period of up to three years. Each failure to comply with these certification, documentation, and record retention requirements is a separate violation of LACC Chapter 20.88 and is subject to enforcement provisions and administrative penalties as provided in LACC Section 20.88.070.B.2. Furthermore, each day that a disposal site operator fails to comply with an enforcement order constitutes a separate violation for which the operator is subject to additional administrative penalties under LACC Section 20.88.070.B.2.

MAILED
DEC 20 2006

Ree

Mr. Brent Anderson
December 19, 2006
Page 2

As you are aware, the Department of Public Works conducted an audit of the Nu-Way Arrow Reclamation disposal records for the period of December 13, 2004 through April 30, 2006. The audit evidenced receipt of inert solid waste at the facility. However, no payment of the required solid waste management fees has been received.

Pursuant to LACC, Section 20.88.070, Nu-Way Arrow Reclamation, Inc., is hereby ordered to immediately remit payment with the required certification to Public Works for solid waste management fees owed for the audited period, in the amount of \$393,660.28. In addition, administrative penalties calculated in accordance with LACC, Section 20.88.070.B, have accrued in connection with the delinquent fees in the amount of \$501,164.19 as of December 13, 2006. Additional administrative penalties will continue to accrue until all delinquent fees have been paid.

LACC, Section 20.88.070, provides that this Enforcement Order will be final unless a written notice of appeal is filed no later than 30 days after the date of service of this order. The notice of appeal must include any statements and evidence that the appellant wishes to be considered in connection with the appeal.

The County does not hereby waive any other legal remedy against Nu-Way Arrow Reclamation, Inc. In addition, the County reserves all rights and remedies relating to any other outstanding amounts that may pertain to the Nu-Way Arrow Reclamation Facility.

If you have any questions, please contact Mr. Lee Miller of this office at (626) 458-3524, Monday through Thursday, 7 a.m. to 5:30 p.m.

Very truly yours,

DONALD L. WOLFE
Director of Public Works



FRED M. RUBIN
Assistant Deputy Director
Environmental Programs Division

PC:cw

P:\Sec\Letters\EO-Nu Way Arrow rev 2.doc

cc: County Counsel (Judith Fries)
McNamara, Spira & Smith (Kirsten Spira)
Parker, Milliken, Clark, O'Hara, & Samuelian (Gary Meyer)
Waste Management, Inc. (John Newell)

EXHIBIT 4

SOLID WASTE DISPOSAL AGREEMENT

This SOLID WASTE DISPOSAL AGREEMENT ("Agreement") is made and entered into on January 08, 2008 by and between USA Waste of California, Inc., a Delaware corporation ("USA Waste") and the Los Angeles County Flood Control District ("District"). USA Waste and the District may be referred to herein collectively as the "Parties" and individually as a "Party."

A. USA Waste represents that it owns and operates an environmentally sound and permitted disposal site located in the City of Azusa, State of California on property located at 1211 West Gladstone Street.

B. The District seeks to conserve existing sediment disposal capacity at sites owned by the District or the County of Los Angeles by providing for the disposal of Acceptable Waste (as defined herein) at privately-owned disposal facilities.

C. The District and USA Waste desire to enter into this Agreement to provide for the disposal of Acceptable Waste (as defined herein) transported by the District to USA Waste's disposal site.

D. The District and USA Waste, among others, have or will enter into a Settlement Agreement (the "Settlement Agreement") which provides in part that the Parties shall enter into this Agreement. The Settlement Agreement further provides, in part, for the execution of a separate Environmental Collection Center Lease Agreement (the "Lease Agreement").

Now therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, including the Settlement Agreement, the Parties, intending to be legally bound, agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the following meanings:

1.1 "Acceptable Waste" means sediment located at any property owned by the County of Los Angeles ("County") or the District that is not "Excluded Waste" as defined in Section 1.6 below.

1.2 "Base Rate" means the initial per ton disposal fee to be paid by the District to USA Waste as compensation for disposal of Acceptable Waste as set forth in and adjusted in accordance with Section 3 below.

1.3 "Disposal Site" means that certain disposal site owned and operated by USA Waste located in the City of Azusa, California at 1211 West Gladstone Street or such other disposal facility as may be designated by USA Waste with the prior written consent of the District, which consent shall not be unreasonably withheld, delayed or conditioned.

1.4 "Effective Date" means the date by which this Agreement, the Settlement Agreement, and the Lease Agreement are all fully executed by the respective parties to those agreements.

1.5 "Equipment" means any and all containers, tractors, trailers, motor vehicles, cranes, top pickers and other equipment utilized by the District or USA Waste for the collection, transportation, handling, processing and disposal of Acceptable Waste pursuant to this Agreement.

1.6 "Excluded Waste" means waste that: (a) is prohibited from receipt at the Disposal Site by state, federal or local law, regulation, rule, code, ordinance, order, license, permit or permit condition, including

land use restrictions or conditions applicable to the Disposal Site; (b) is or contains Hazardous Waste as defined in Section 1.7 below; or (c) would present a significant risk to human health or the environment, or cause a nuisance; and (d) does not constitute Acceptable Waste as defined in Section 1.1 above.

1.7 "Hazardous Waste" means waste that is required to be accompanied by a written manifest or shipping document describing the waste as "hazardous waste," pursuant to any state or federal law and waste containing any substance or material defined, regulated or listed as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic waste," or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to federal, state or local laws.

1.8 "Uncontrollable Circumstances" means Acts of God including landslides, lightning, storms, floods, freezing, and earthquakes; forest fires; civil disturbances; strikes; lockouts or other industrial disturbances; acts of the public enemy; wars; blockades; public riots; power failure; governmental restraint; damage to or destruction of the Disposal Site as a result of events such as those described in this paragraph; except that "Uncontrollable Circumstances" does not include events that are reasonably within the control of the Party, or a Party's contractor or subcontractor, whose ability to perform under this Agreement is impaired or prevented by the Uncontrollable Circumstances event.

2. DELIVERY OF ACCEPTABLE WASTE. Beginning on the Effective Date, and throughout the term of this Agreement, the District and/or its agents or subcontractors may collect, load, transfer, transport and deliver to, and USA Waste shall accept for disposal at the Disposal Site up to 4,500,000 tons (the "Maximum Tonnage") of Acceptable Waste.

3. COMPENSATION FOR DISPOSAL.

3.1 Base Rates. USA Waste shall charge the District, and the District shall pay to USA Waste for disposal services, an initial disposal rate of Fifty Cents (\$0.50) per ton (the "Base Rate") for all Acceptable Waste delivered to the Disposal Site by the District or its agents or subcontractors. The Base Rate includes all federal, state and local taxes, fees and assessments levied on or applicable to the disposal of the Acceptable Waste as of the Effective Date, EXCEPT the Base Rate shall not include any solid waste management fee levied pursuant to LACC Chapter 20.88 ("Solid Waste Management Fee"). The District agrees that it shall be solely responsible for payment of any applicable Solid Waste Management Fee to the County. In charging the Base Rate, USA Waste shall determine the tonnage of Acceptable Waste by weighing the District's vehicles or its agent's or subcontractor's vehicles at the Disposal Site.

3.2 CPI Adjustment. Beginning on July 1, 2008, and thereafter on the next succeeding July 1 for the next four (4) years during the term of this Agreement, the then-current Base Rate, as adjusted under this Section 3, shall be automatically adjusted by the average percent change, if any, in the Consumer Price Index (CPI) for all urban consumers in the Los Angeles, Anaheim, and Riverside areas, as published by the United States Department of Labor, Bureau of Labor Statistics, during the period commencing April 1 of the previous calendar year to March 31 of the current calendar year, as confirmed by the Auditor-Controller. The rate adjustment under this Section 3.2 shall go into effect during the billing cycle for the month after which the District receives notice of the CPI adjustment from USA Waste.

3.3 Other Rate Adjustments. USA Waste may increase the Base Rate for any additional tax, tariff, fee, assessment or other charge levied or assessed on the storage, handling, transportation or disposal of Acceptable Waste after the Effective Date, except that USA Waste shall be responsible for any tax, tariff, fee, assessment or other charge levied or assessed on the storage, handling and transportation of material removed from the Disposal Site for any purpose or reason that is not pursuant to Section 3.1 above.

3.4 Payment. On a monthly basis during the term of this Agreement, USA Waste shall invoice the District for the actual tons of Acceptable Waste disposed of by the District during the preceding month. The District shall pay the full amount of each invoice to USA Waste within sixty (60) days of the date of each invoice.

4. **EXCLUDED WASTE: INSPECTION, REJECTION**. Prior to delivery to the Disposal Site, USA Waste shall inspect all waste received, collected, handled, processed and/or transported by the District (and/or its agents or subcontractors) and shall remove any and all Excluded Waste. USA Waste shall have the right to inspect, analyze or test any waste delivered by the District. USA Waste shall have the right to reject, refuse or revoke acceptance of any waste if, based on and in compliance with USA Waste's written inspection protocols, a copy of which shall be provided to the District as of the date of this Agreement, the waste or tender of delivery fails to conform to, or the District fails to comply with, the terms of this Agreement with respect to the delivery of waste meeting the definition of Acceptable Waste hereunder. USA Waste shall within two business days of the rejection provide the District with written documentation, including all testing results, of USA Waste's basis for its rejection of the District's waste. USA Waste shall not reject the District's waste for any other reason. Upon the District's receipt of written documentation as provided in this paragraph, the District shall have three business days (excluding Friday) to challenge USA Waste's rejection of its waste. Upon notice by USA Waste that its rejection is not rescinded, the District shall, at its sole cost, remove or arrange to have the rejected waste removed from USA Waste's control or property. If the rejected waste is not removed within seven (7) business days from the District's receipt of notice, USA Waste shall have the right and authority to handle and dispose of the rejected waste. The District shall pay and/or reimburse USA Waste for any and all reasonable costs, damages and/or fines incurred as a result of or relating to the District's tender or delivery of Excluded Waste or other failure to comply or conform to this Agreement, including, without limitation, costs of inspection, testing, analysis, handling and disposal of Excluded Waste, except to the extent said costs, damages and/or fines are the result of or relate to USA Waste's own negligence. USA Waste shall invoice the District for all such costs, damages and/or fines and the District shall pay the full amount of each invoice to USA Waste within sixty (60) days of the date of each invoice. Title to, ownership of and liability for Excluded Waste shall at all times remain with the District.

5. **COMPLIANCE WITH LAWS**. The District and USA Waste shall fully comply with all federal, state and local statutes, regulations, permits, approvals and restrictions, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination or order of any governmental body having jurisdiction, that is/are applicable to the collection, handling, transport, processing, storage or disposal of the Acceptable Waste, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, building codes, non-discrimination and the payment of minimum wages.

6. **TERM OF AGREEMENT**. The term of this Agreement shall commence on the Effective Date and end on the day that the Maximum Tonnage has been accepted for disposal at the Disposal site, but in any event not more than a period of twenty (20) years after the Effective Date. The period of twenty years shall not include any time during which the obligations under this Agreement are suspended under Section 9 below.

7. **LIMITED LICENSE TO ENTER**. The District and its agents and subcontractors shall have a limited license to enter the Disposal Site for the sole purpose of off-loading Acceptable Waste at an area designated, and in the manner directed, by USA Waste. The District shall ensure that its subcontractors, comply with all rules and regulations of the Disposal Site (as articulated in writing), including those relating to the use and operation of the Disposal Site and conduct of persons on the premises of the Disposal Site, as the same may be amended by USA Waste from time to time. USA Waste may reject

Acceptable Waste or deny the District or its subcontractors entry to the Disposal Site with respect to a given load in the event of the District's or its subcontractors' failure to follow such rules and regulations. USA Waste shall by the Effective Date delineate to the District in writing all rules and regulations of the Disposal Site, including those relating to the use and operation of the Disposal Site and conduct of persons on the premises of the Disposal Site. USA Waste's amendments to Disposal Site rules and regulations shall not go into effect until (10) days after the District's receipt of USA Waste's written notification of the amendments.

8. TIME OF DELIVERY. The District shall be entitled to deliver Acceptable Waste to the Disposal Site during normal operating hours. The District will reasonably cooperate with USA Waste regarding delivery schedules and volumes of Acceptable Waste to avoid unreasonable interference with the normal operations of the Disposal Site.

9. UNCONTROLLABLE CIRCUMSTANCES. Provided that the requirements of this Section are met, neither Party shall be considered in default in the performance of its obligations under this Agreement (not including the obligation to make payments) to the extent that such performance is prevented or impaired by the occurrence of Uncontrollable Circumstances. If, as a result of an event of Uncontrollable Circumstances, either Party is wholly or partially unable to meet its obligations under this Agreement, then it shall give the other Party prompt written notice of such event, describing it in reasonable detail. The obligations under this Agreement of the affected Party shall be suspended, other than for payment of monies due, but only with respect to the particular component of obligations affected by the event and only for the period during which the event of Uncontrollable Circumstances exists; provided, however, that USA Waste shall have a reasonable time during which to assess the impacts caused by an event of Uncontrollable Circumstances and reasonable discretion to determine whether it will make repairs and resume all or part of the operations or whether it will terminate all operations at the Disposal Site. Should operations at the Disposal Site be interrupted, impaired or terminated due to Uncontrollable Circumstances, USA Waste shall designate an alternative Disposal Site acceptable to the District.

10. TERMINATION; DEFAULT. Either Party shall have the right to terminate this Agreement upon giving the other Party written notice if the other Party defaults in the performance of any material obligation of the defaulting Party under this Agreement and fails to cure such default within thirty (30) days after receiving written notice thereof from the non-defaulting Party, provided that in the event the defaulting Party shows cause why it should be entitled to reasonable additional time to cure the default (other than a payment default), the non-defaulting Party shall allow such additional time. It is the understanding and expectation of the Parties that they will make all reasonable accommodations to avoid termination of this Agreement, which has been entered into as consideration for the Settlement Agreement.

11. THE DISTRICT'S REMEDIES FOR BREACH.

11.1 In the event that performance under this Agreement becomes impossible or impractical by reason of USA Waste's material breach of this Agreement:

11.1.1 The District, through its agents or subcontractors, may collect, load, transfer, transport and deliver Acceptable Waste to an alternative disposal facility selected by the District in its reasonable discretion. In the event that the District elects to dispose of said waste at an alternative facility pursuant to this Section 11, USA Waste shall be responsible for and shall reimburse the District for the actual out-of-pocket costs of disposal, less the rate otherwise payable by the District pursuant to Sections 3.1, 3.2, and 3.3 above, within thirty (30) days of the District incurring said costs; or

11.1.2 If requested by USA Waste, the District may collect, load, transfer, transport and deliver Acceptable Waste to an alternative facility operated by USA Waste or its affiliates for disposal; provided, however, that: (1) the Parties agree upon such an alternative facility acceptable to the District; and (2) all out-of-pocket costs of disposal beyond the rate otherwise payable by the District pursuant to Sections 3.1, 3.2, and 3.3 above shall be paid by USA Waste.

11.2 The District shall notify USA Waste of its election prior to any alternative disposal pursuant to this Section 11 and will negotiate in good faith with USA Waste to avoid alternative disposal pursuant to this Section 11, if possible. USA Waste's responsibility for disposal and alternative disposal under this Section 11 shall not, in any event, exceed the Maximum Tonnage under Section 2 above.

11.3 The provisions of this Section 11 shall survive a termination of this Agreement pursuant to Section 10 above by reason of a default by USA Waste.

11.4 The rights and remedies conferred upon the District in this Section 11 are cumulative and in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the District of any one or more of the rights or remedies provided for in this Section 11 or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the District of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The provisions of this Section 11 shall not, however, relieve the District of its obligation to mitigate its damages hereunder, except that in the event that the District selects a District or County owned disposal facility as an alternative disposal facility under Section 11.1.1 above, then the District's costs of disposal under Section 11.1.1 shall be calculated based upon the fair market value of the disposal capacity used at the alternative disposal facility.

12. WARRANTIES OF THE DISTRICT. The District warrants and represents that:

12.1 The waste delivered to the Disposal Site by the District or its agents or subcontractors shall conform to the definition of Acceptable Waste set forth in Section 1.1 above and the District shall not knowingly deliver waste containing any Excluded Waste;

12.2 The District shall establish and maintain a program of operating and monitoring procedures and activities to prevent the transportation or delivery to the Disposal Site of Excluded Waste;

12.3 The District possesses the Equipment, plant and employee or subcontractor resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

12.4 The District shall, and shall direct any of its subcontractors to, collect, handle and transport all Acceptable Waste in a safe and workmanlike manner in full compliance with all applicable federal, state and local laws, ordinances, decisions, orders, rules or regulations; and

12.5 The District has advised its drivers of USA Waste's prohibition on delivery of Excluded Waste, of the definitions and listing of Hazardous Waste under applicable federal and state law and regulations and of the definition of Acceptable Waste in Section 1.1 above.

13. WARRANTIES OF USA WASTE. USA Waste warrants and represents that:

13.1 USA Waste possesses the Equipment, plant and employee resources required to meet its obligations required under this Agreement, and the Equipment shall, at all times relevant to the performance of services hereunder, be maintained in a good and safe condition and fit for use;

13.2 The Disposal Site has been issued, and USA Waste shall maintain throughout the term of this Agreement, all permits, licenses, certificates or approvals required by valid and applicable laws, ordinances and regulations necessary to allow the Disposal Site to accept and dispose of Acceptable Waste; and

13.3 USA Waste shall handle and dispose of the Acceptable Waste in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules and regulations.

14. INSURANCE. USA Waste warrants that it shall, and the District warrants that it shall ensure that its subcontractors, secure and maintain in full force and effect throughout the term of this Agreement insurance coverage for commercial general liability (bodily injury and property damage), automobile liability and workers' compensation insurance with limits that are required by appropriate regulatory agencies or the following limits, whichever are greater: commercial general liability, \$1,000,000 combined single limit per occurrence and aggregate; automobile liability, \$1,000,000 combined single limit per occurrence; aggregate; workers' compensation and statutory limit, \$1,000,000 combined single limit per occurrence and aggregate; and pollution legal liability, \$0.00 per occurrence, \$0.00 aggregate.

15. INDEMNITY.

15.1 Indemnity. Each Party ("Indemnitor") shall defend, indemnify and hold harmless the other Party and its districts, elected and appointed officials, employees, officers, agents and subcontractors (collectively, "Indemnitees"), from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, judgments and costs and expenses incidental thereto, including expert witness fees and reasonable attorneys' fees (collectively, "Damages"), which any or all of the Indemnitees may hereafter suffer, incur, be responsible for or pay out as a result of personal injuries, property damage, or contamination of or adverse effects on the environment, to the extent directly or indirectly caused by, or arising from or in connection with the breach of any representations and warranties of the Indemnitor set forth above, or any negligent actions or omissions of Indemnitor, its employees, officers, owners, directors, agents or subcontractors, in the performance of this Agreement. Such indemnity shall be limited to exclude Damages to the extent they arise as a result of any negligent actions or omissions of any of the Indemnitees. Notwithstanding the foregoing or anything else in this Agreement to the contrary, the District shall be liable and shall defend, indemnify and hold harmless USA Waste for Damages arising from, related to or caused by the presence, handling or disposal of Excluded Waste that is generated, received, handled, processed at, or transported or originating from, the District's transfer station or otherwise from the District, except to the extent that any such damages are caused by USA Waste's own negligence.

15.2 Notice, Defense. In the event of any suit against any Indemnitee under this Section 15, the Indemnitor shall appear and defend such suit provided that the Indemnitor is notified in a timely manner of the suit. The Indemnitee shall have the right to approve counsel chosen by the Indemnitor to litigate such suit which approval shall not be unreasonably withheld. In the event a dispute exists over whether a Party is entitled to indemnification, each Party shall defend itself until the dispute is resolved. Upon

resolution of the indemnification dispute, the prevailing Party shall be entitled to indemnification for its defense costs incurred prior to resolution.

16. **BINDING EFFECT, ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors and assigns provided that the rights, obligations and duties of each Party as specified in this Agreement may not be transferred, assigned or otherwise vested in any other company, entity, or person without the prior written approval of the other Party which approval shall not be unreasonably withheld. Notwithstanding the foregoing, USA may assign or transfer its rights and obligations hereunder to an affiliate of USA or a subsidiary of USA's parent company without seeking or obtaining the approval of the District.

17. **NOTICES.** All notices, invoices, or other communications to be given under this Agreement shall be in writing and shall be personally delivered or mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight carrier or confirmed facsimile to the Parties' addresses specified below, or to such other address as either Party shall specify by at least ten (10) days written notice so given. Any notice sent by mail in the manner set forth above shall be deemed given and received three (3) business days (excluding Friday) after the date deposited in the United States mail. Any notice or communication given by personal delivery or sent by overnight carrier or confirmed facsimile in the manner set forth above shall be deemed given upon receipt.

TO USA WASTE:

USA Waste of California, Inc.
7025 N. Scottsdale Road, Suite 200
Scottsdale, Arizona 85253
Attention: General Counsel
Fax No.:

INVOICES TO DISTRICT:

County of Los Angeles
Department of Public Works
Fiscal Division
900 South Fremont Avenue
Alhambra, CA 91803
Fax No.:

With copies to:

County of Los Angeles
Department of Public Works
Water Resources Division
900 South Fremont Avenue, 2nd Floor
Alhambra, CA 91803
Fax No.:

and:

County of Los Angeles
Department of Public Works

Environmental Programs Division
900 South Fremont Avenue, Annex 3rd Floor
Alhambra, CA 91803
Fax No.:

COMMUNICATIONS OTHER THAN INVOICES TO DISTRICT:

County of Los Angeles
Department of Public Works
Water Resources Division
900 South Fremont Avenue, 2nd Floor
Alhambra, CA 91803
Fax No.:

With copies to:

County of Los Angeles
Department of Public Works
Environmental Programs Division
900 South Fremont Avenue, Annex 3rd Floor
Alhambra, CA 91803
Fax No.:

18. **INDEPENDENT CONTRACTOR.** Each Party hereto is and shall perform this Agreement as an independent contractor, and as such, shall have and maintain complete control over all of its employees, agents, and operations. Neither Party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other Party.

19. **NON-WAIVER.** The failure of either Party to enforce its rights under any provision of this Agreement shall not be construed to be a waiver of such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach.

20. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by a writing signed by both Parties hereto.

21. **SEVERABILITY.** If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be deemed to be severed from this Agreement and shall not affect the remainder hereof, which shall remain in full force and effect; however, the Parties shall amend this Agreement to give effect, to the maximum extent allowed by law, to the intent and meaning of the severed provision.

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22. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California regardless of any conflict of law provisions. Any action to enforce any of the terms of this Agreement shall be brought in the Central District of the Los Angeles County Superior Court.

EXECUTED as of the date set forth above.

USA Waste of California, Inc.

By: 
Its: President

Date: Nov. 6, 2007

Los Angeles County Flood Control District

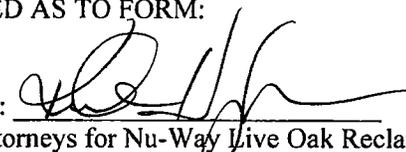
By: _____
Chair, Board of Supervisors

Date: _____

Attest:

Sachi Hamai
Executive Officer-Clerk of Board

APPROVED AS TO FORM:

By: 
Attorneys for Nu-Way Live Oak Reclamation, Inc, Nu-Way Arrow Reclamation,
USA Waste of California, Inc.

RAYMOND G. FORTNER, JR.
County Counsel

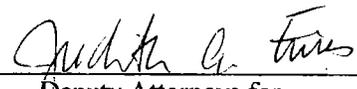
By: 
Deputy Attorneys for
Los Angeles County Flood Control District

EXHIBIT 5

ENVIRONMENTAL COLLECTION CENTER LEASE
AGREEMENT

This ENVIRONMENTAL COLLECTION CENTER LEASE AGREEMENT (this "Agreement") is entered into on January 08, 2008 by and between Azusa Land Reclamation, Inc., a California corporation (the "Landlord"), and the County of Los Angeles (the "Tenant").

RECITALS

WHEREAS, Landlord is the owner of a certain tract or parcel of land (the "Property") which is more fully described in "Exhibit A" which is attached hereto and incorporated herein for any and all purposes;

WHEREAS, Tenant and an affiliate of Landlord have or will enter into a Settlement Agreement (the "Settlement Agreement") and a separate Solid Waste Disposal Agreement (the "Disposal Agreement") to be effective concurrently herewith. The Settlement Agreement provides in part that the Parties shall enter into an Agreement to lease a portion of Landlord's Property (the "Premises") together with any buildings, facilities and improvements erected thereon by Tenant (the "Improvements"). The Premises are more fully described in "Exhibit B" which is attached hereto and incorporated herein for any and all purposes;

WHEREAS, The Tenant has conducted household hazardous waste collection events at various locations throughout Los Angeles County (collectively, "Collection Events");

WHEREAS, The Collection Events are intended to offer all County residents an environmentally safe means of disposing of or recycling their household hazardous waste in accordance with applicable laws and regulations;

WHEREAS, The Tenant has proposed establishing an Environmental Collection Center ("Facility") to enhance the level of service to County residents by providing frequent Collection Events;

WHEREAS, The Landlord owns and operates the Premises and has agreed to make approximately one acre of suitable land available to the Tenant as a site for the construction and operation of the Facility;

WHEREAS, After completion of the construction of the Facility, the Tenant will assume responsibility for the operation and maintenance of the Facility;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, including the Settlement Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I: LEASE OF PREMISES; TERM; OPTIONAL EXTENSIONS

- 1.1 Lease of Premises. In consideration and subject to the terms and conditions of this Agreement, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord. The Premises and the Improvements are subject, however, to, and the parties shall be bound by all existing easements, agreements, and encumbrances of record relating to the Premises or the Improvements, and Landlord shall not be liable to Tenant for any damages resulting from any action taken by a holder of an interest pursuant to the rights of that holder.
- 1.2 Ingress and Egress. Tenant and County residents using the Facility shall have reasonable access, including egress and ingress, to the Premises and the Improvements during the Term of this Agreement in a manner which shall not unreasonably interfere with the Landlord's use of the Property. Landlord reserves the right of ingress and egress over and across the Premises for its agents, employees, licensees and invitees for all reasonable purposes of Landlord, provided, however, Landlord's ingress and egress shall not cause any unreasonable interference with Tenant's operation of the Facility and/or access to the Facility by Tenant and County residents.
- 1.3 Term; Commencement Date. This Agreement shall not be effective until and unless this Agreement, the Settlement Agreement, and the Disposal Agreement are all fully executed by the respective parties to those agreements. The Premises are leased for a term (the "Term") beginning on the date that this Agreement is effective (the "Commencement Date") and ending ten (10) years thereafter (the "Termination Date"), subject to Tenant's one (1) option to extend the Term for ten (10) years, as set forth in Section 1.4.
- 1.4 Option to Extend Term. If this Agreement has not been terminated and if Tenant is not in material default under this Agreement *both* at the time of exercise of the option and at the time the extension period would be effective the Term may be extended as follows: Tenant shall have the option to extend the Term for one (1) additional period of ten (10) years (but not a fraction thereof); *provided*, however, that Tenant shall first obtain the written approval of Landlord, which approval may be granted or withheld in Landlord's sole and absolute discretion. Tenant shall give written notice to Landlord not more than twenty-four (24) months or less than six (6) months before the expiration of the initial Term. Tenant's failure to timely request the extension of the term pursuant to this Section 1.4 shall conclusively be deemed a waiver thereof. The extension period shall, if the option is so exercised and approved, be included within the meaning of the word "Term" for all purposes of this Agreement. Except as otherwise provided in this Agreement, the extended Term shall be on the same terms, covenants, and conditions as provided in this Agreement for the initial Term.

Tenant shall have no implied right of renewal of this Agreement and shall have only the option to extend subject to the provisions of this Section 1.4.

ARTICLE II: CONSIDERATION; NO RENTS

- 2.1 No Rents. No rents shall be payable or owed by Tenant under this Agreement. This Agreement is entered into pursuant to the Settlement Agreement, which both parties acknowledge is adequate consideration for this Agreement.

ARTICLE III: USE; MAINTENANCE OBLIGATION OF TENANT; UTILITIES; ALTERATIONS; LEGAL REQUIREMENTS; AND SIGNS

- 3.1 Use of Premises. Tenant's use of the Premises and the Improvements shall be for the following purposes and subject to the following restrictions:

- (a) Tenant shall be responsible for the preliminary engineering, award of construction contract, contract administration, project management, construction engineering and inspection, and all other work required for the design and construction of the Facility.
- (b) Tenant shall continuously use and occupy the Premises during the Term as a Facility for the collection of Household Hazardous Waste. "Household Hazardous Waste" shall have the meaning assigned thereto in 40 Code of Federal Regulations § 261.4 (b) (1) or any successor provision thereto, and 14 California Code of Regulations § 18502 (a) (12), or any successor provision thereto.
- (c) Tenant shall operate the Facility and occupy the Premises and Improvements in full conformity with all laws, regulations, ordinances, restrictions and prohibitions of any governmental authority (collectively, the "Legal Requirements"). Tenant shall not commit or suffer any nuisances or any conditions or behavior which interferes with the full use and enjoyment of Landlord's property not occupied by Tenant. Tenant shall obtain and maintain all permits, licenses and shall pay all license fees, impact fees, impost of any nature attributable to the transaction of the business of Tenant or the occupancy of the Premises by Tenant.
- (d) During its operation, the Facility will not be used by Landlord for its own purposes or for any purposes other than for its operation, conducted in a manner consistent with this Agreement, including, without limitation, this Section 3.1; provided, however, that temporary storage in the Facility of Waste collected at the gate of the Property only from residential customers who are members of the Public (not from commercial sources or from Landlord or its agents, contractors, employees, affiliates or representatives, or the Landfill) at times other than on days regularly scheduled for the drop-off of Waste will be authorized, if: (i) those materials are not commingled with hazardous waste collected by Landlord at curbside under its franchise agreements and/or other operations; and (ii) the resident seeking to dispose of Waste at the gate of the Property is not charged for that disposal.

3.2 Maintenance Obligation of Tenant. This Agreement, the Premises and the Improvements, and Tenant's use thereof are subject to the following provisions for maintenance, repairs, and utilities:

- (a) Throughout the Term, Tenant shall maintain, repair, and replace the Premises and the Improvements as necessary to keep them in good order, condition and repair. Tenant's obligations shall extend to both structural and non-structural items and to all maintenance, repair, and replacement work, including unforeseen and extraordinary items. Repairs shall include such items as repairs of floors, walls, foundation, ceilings, roofs, mechanical and electrical systems, and other parts of the Premises or the Improvements whether or not they are damaged or worn through normal occupancy. Tenant shall keep the Premises free of rubbish, trash, snow, and ice. Landlord shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises or to the Improvements.
- (b) Throughout the Term, Tenant shall pay for all electricity, water, gas, sewer, garbage collection, and other services and utilities consumed in connection with Tenant's occupancy of the Premises. Tenant shall pay the provider of the services directly. Landlord shall not be required to furnish to Tenant any facilities or services of any kind whatsoever during the Term, such as, but not limited to, water, steam heat, gas, hot water, electricity, light, or power. In the event that any utility or service provided to the Premises or the Improvements is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of the charges. Tenant shall pay such amounts within thirty (30) days of invoice.

3.3 Alterations. Tenant shall make no improvements, alterations, remodeling, replacements or additions including, but not limited to, any building or facility that shall serve as a Facility for Household Hazardous Waste, within or about the Premises, absent the written consent of Landlord. Landlord, in its reasonable discretion, reserves the right to review and approve plans and specifications for any Improvement on the Premises. In the event that Landlord consents to the construction of any Improvements, such Improvements shall be constructed in a diligent and workmanlike manner, shall become part of the Premises, and shall become the property of the Landlord at the expiration of this Agreement without payment or compensation to Tenant. If so directed by Landlord, Tenant shall remove any such Improvements at the expiration of this Agreement, and restore the Premises to the same condition as existed before the Improvements were made or installed, all at the expense of Tenant. If Tenant fails to effect such removal and restoration as directed by Landlord, Tenant shall be liable to Landlord for all expenses incurred by Landlord in discharging the obligations of Tenant on behalf of Tenant.

3.4 Determination of Baseline Conditions. With respect to Tenant's obligation to restore the Premises to the same condition as existed before the

Tenant Improvements were made or installed, and in furtherance of its rights to inspect the Premises as referenced in Section 6.3 herein, Tenant shall have the right to conduct a baseline study of the Premises in order to determine the condition of the Premises upon Tenant's assumption of possession of the Premises ("Baseline Study"). Tenant shall not assume possession of the Premises until after it has conducted the Baseline Study. To the extent that Tenant may require entry to the Premises prior to assuming possession of the Premises to, *inter alia*, survey the Premises, conduct the Baseline Study, or as part of any bidding process to construct Improvements on the Premises, Tenant shall request entry to the Premises from Landlord and Landlord may, at its discretion, accompany Tenant onto the Premises on each such occasion to observe Tenant's activities. In connection with said Baseline Study Tenant shall be given the opportunity, at its sole expense, to conduct a pre-possession assessment of the Premises, which shall include, if Tenant deems appropriate, the taking of soil and/or groundwater samples at, under and/or about the Premises. Landlord shall reasonably cooperate with Tenant regarding said assessment and, further, Landlord shall provide to Tenant, at Tenant's request, copies of any and all documents, studies and/or reports that Landlord has pertaining to the condition of the Premises, including, *inter alia*, environmental reports, test results, soil reports and/or documents, compaction reports and/or documents, CEQA documents, and/or environmental impact reports. Landlord shall disclose to Tenant any and all information of which it has knowledge, including any and all information Landlord has reasonable access to, regarding the condition of the Premises. The information gathered and obtained by Tenant in connection with its Baseline Study shall provide the basis for determining the condition of the Premises upon Tenant's assumption of possession of the Premises and prior to Tenant's operation of the Facility. Conditions found to exist prior to Tenant's operation of the Facility, which conditions do or may require expenditures to remedy, remove and/or modify (whether such expenditures shall or may occur before or after the expiration of the Agreement) shall not be the responsibility of Tenant.

- 3.5 Costs and Expenses of Tenant. Tenant shall be solely responsible for all costs and expenses associated with the construction, maintenance, repair, and operation of any Improvement.
- 3.6 Signs. Tenant shall be permitted to install at the Premises reasonably appropriate signs that conform to all applicable laws and ordinances.
- 3.7 Compliance with Legal Requirements. Throughout the Term, Tenant shall promptly comply with all Legal Requirements that may apply to the Premises or to the use or manner of uses of the Premises or the Improvements or the owners or users of the Premises or the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Premises or the Improvements, necessitate structural changes or improvements, necessitate obtaining permits from any governmental or public authority, or interfere with the use and

enjoyment of the Premises or the Improvements Tenant shall pay all costs of compliance with Legal Requirements.

ARTICLE IV: TAXES

- 4.1 Real Property Taxes. To the extent applicable, Tenant shall pay, prior to delinquency, all general real estate taxes, assessments and governmental charges whether federal, state, county, or municipal and whether they are imposed by taxing or management districts or authorities presently existing or hereafter created including any interest or penalties for late or delinquent payments (collectively, the "Real Property Taxes") that accrue against the Premises or the Improvements.
- 4.2 Personal Property Taxes. To the extent applicable, Tenant shall pay when due all taxes levied or assessed against any personal property, fixtures or alterations placed in or upon the Premises and the Improvements. If any such taxes are levied or assessed against Landlord or Landlord's property and (a) Landlord pays them or (b) the assessed value of Landlord's property is increased thereby and Landlord pays the increased taxes, then Tenant shall pay to Landlord such taxes immediately upon Landlord's request therefor.
- 4.3 Incremental Tax Obligation. Notwithstanding the provisions of Sections 4.1 and 4.2 above, Tenant shall be responsible only for the incremental tax increase, if any, which may be occasioned by this Agreement, including but not limited to the Tenant's leasehold interest granted herein, construction of the Improvements, and Tenant's use of the Premises and the Facility.

ARTICLE V: LIENS; INSURANCE;

- 5.1 Liens. Tenant's use of the Premises and the Improvements is subject to the following restrictions with respect to liens:
- (a) Tenant shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on the reversion or other estate of Landlord or on any interest of Landlord in the Premises or the Improvements.
 - (b) Tenant shall not allow or permit any liens to attach to the interest of Landlord in all or any part of the Premises or Improvements by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Tenant or anyone occupying or holding an interest in all or any part of the Improvements through or under Tenant. If any such lien is at any time filed against the Premises, Tenant shall cause the lien to be discharged of record within thirty (30) days after the date of its filing, either by payment, deposit, or bond. If Tenant receives any notice of any lien, or of any right to claim a lien, or any such

notice is placed on or delivered to the Premises in any way whatsoever, Tenant shall immediately furnish Landlord a copy of the notice.

- (c) Nothing in this Agreement shall be deemed to be, or be construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to claim or file any lien against Landlord's interest in the Premises or in the Improvements. Landlord shall have the right to post and keep posted at all reasonable times on the Premises and on the Improvements any notices that Landlord may deem appropriate to post for the protection of Landlord and of the Premises and of the Improvements from any such lien.

5.2 Tenant's Insurance. Landlord acknowledges that Tenant is self-insured. Tenant shall maintain such self-insurance, in the same amounts as Landlord's insurance as described in Section 5.3, through the Term of this Agreement.

5.3 Landlord's Insurance. Prior to the Commencement Date Landlord shall add Tenant as an additional insured to all insurance policies which are maintained by Landlord with respect to the Premises, and shall thereafter maintain such policies for the duration of this Agreement. Landlord shall provide to Tenant within ten (10) days following the Commencement Date evidence that Landlord has named Tenant as an additional insured on such policies. Nothing herein shall require Landlord to obtain additional or different policies or coverage.

5.4 Waiver of Subrogation. Notwithstanding any other provision of this Agreement to the contrary, Landlord and Tenant each hereby waive all rights of recovery against the other on account of loss or damage occasioned to such waiving party for its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policies which may be in force at the time of such loss or damage (or self-insurance in the case of Tenant), even if such damage may have been caused by the negligence of the other party, its agents or employees. Tenant and Landlord shall, upon obtaining policies of insurance required hereunder, give notice to the insurance carrier that the foregoing mutual waiver of subrogation is contained in this Agreement and Tenant and Landlord shall cause each insurance policy obtained by such part to provide that the insurance company waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any damage covered by such policy.

ARTICLE VI: REPRESENTATIONS AND WARRANTIES

- 6.1 Representations and Warranties of Tenant. Tenant represents and warrants to Landlord that: (a) Tenant has full right, power, and authority to execute this Agreement, to lease the Premises as provided in this Agreement, and to carry out all of Tenant's obligations under this Agreement; and (b) Tenant is financially capable of performing and satisfying, or has obtained sufficient financial assurance to satisfy, in full, Tenant's obligations under this Agreement.
- 6.2 Representations and Warranties of Landlord. Landlord represents and warrants to Tenant that: (a) Landlord (i) has full right, power, and authority to execute this Agreement, to lease the Premises as provided in this Agreement, and to carry out all of Landlord's obligations under this Agreement and (ii) has taken all necessary action required to make this Agreement the valid and enforceable obligation it purports to be; and (b) Landlord is financially capable of performing and satisfying, or has obtained sufficient financial assurance to satisfy, in full, Landlord's obligations under this Agreement.
- 6.3 No Other Representations. Except as provided in this Agreement, no representations, statements, or warranties, express or implied, have been made by or on behalf of either party in respect to the Premises and the Improvements. Tenant warrants it has had full and adequate opportunity to make all inspections and tests of the Premises (including tests of environmental, subsurface, and soil conditions) Tenant believes are appropriate, and accepts the Premises and the Improvements as fully suitable for all of Tenant's intended purposes, **AS IS**, and in their present condition. Except as otherwise provided in this Agreement, Tenant accepts and assumes all risks associated with the Premises, including risks of environmental conditions and hazards.

ARTICLE VII: TENANT'S ADDITIONAL COVENANTS

- 7.1 Notice to Landlord. Within three (3) business days of receipt, Tenant shall provide Landlord with a copy of any notice: (a) from any governmental body that is served upon Tenant claiming an actual or threatened violation of Legal Requirements; (b) requiring any work, repairs, construction, alterations, or installation on or in connection with the Premises in order to comply with Legal Requirements; or (c) of any pending or threatened lawsuit, claim, administrative proceeding, or enforcement action resulting from an actual or threatened violation of Legal Requirements.
- 7.2 Corrective Action. If Tenant knows of or has reason to believe that a release of hazardous waste that is not categorized as Household Hazardous Waste (the "Prohibited Substance") has occurred or come to be located on or beneath the Premises as a result of Tenant's operation of the Facility, Tenant shall immediately: (a) give written notice of this knowledge or belief to Landlord; (b)

report to appropriate governmental agencies any release of a reportable quantity of Prohibited Substances on or beneath the Premises as required by Legal Requirements; and (c) remove and properly dispose of the Prohibited Substances, and diligently undertake all removal or remediation procedures as may be required by Legal Requirements. If it is determined that Prohibited Substances are being improperly stored, used, or disposed of on the Premises, Tenant shall immediately take all corrective action as requested by Landlord. If Tenant fails to take the corrective action within forty-eight (48) hours, Landlord shall have the right to perform the work, and Tenant shall promptly reimburse Landlord for costs associated with the work.

7.3 Acts of Third Parties. As between Landlord and Tenant, Tenant shall be responsible for protecting against intentional or negligent acts or omissions of third parties relating to Tenant's operation of the Facility that might result in the discharge, release, disposal, or other placement of Prohibited Substances on or beneath the Premises. As between Landlord and Tenant, Landlord shall be responsible for protecting against intentional or negligent acts or omissions of third parties relating to Landlord's ownership and/or operation of the Property that might result in the discharge, release, disposal, or other placement of Prohibited Substances on or beneath the Premises. Neither Tenant nor Landlord is, however, deemed to hereby waive any and all rights that it may seek as against any third parties.

7.4 Sampling of Premises. At the end of the Term or at some shorter interval at Landlord's request, Tenant shall obtain the services of a state-approved laboratory to sample any visibly contaminated area of the Premises, or area where a release of Prohibited Substances has been reported, to ensure that the Premises are returned to Landlord reasonably free of contamination. If Tenant fails to undertake these sampling activities, Landlord may perform the sampling, and Tenant shall reimburse Landlord for the costs of the sampling. Such obligation shall not apply, however, to any condition existing prior to the Commencement Date or to any contamination resulting from Landlord's conduct or for which Landlord is otherwise responsible.

7.5 Assignment and Subletting Restricted. Tenant shall not sell, assign, sublet or in any other manner transfer this Agreement or any interest in this Agreement without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. No consent in one instance shall prevent the provision from applying to a subsequent instance.

7.6 Surrender. The following provisions apply to surrender of the Premises and the Improvements on the expiration or earlier termination of this Agreement:

- (a) Except as otherwise provided in this Agreement, Tenant shall, on the last day of the Term or earlier termination of this Agreement, surrender and deliver up the Premises and all Improvements to the possession and use of

Landlord without fraud or delay, free and clear of all lettings and occupancies other than subleases to which Landlord shall have specifically consented in writing, and free and clear of all liens and encumbrances other than those, if any, now existing or created or suffered by Landlord, without any payment or allowance whatever by Landlord on account of any Improvements.

- (b) Tenant shall surrender the Improvements vacant and broom-clean (i.e., the property shall be empty of all personal property, except as may be included in the Agreement, free of all trash, garbage, junk, litter, broken or discarded items, and vacuumed or swept). When furnished by or at the expense of Tenant, personal property, furniture, fixtures, and equipment shall be removed by Tenant at its sole cost and expense when or before this Agreement terminates; provided, however, the removal must not injure the Premises or the Improvements or necessitate changes in or repairs to them. At Landlord's request, Tenant shall at Tenant's expense restore the Premises and Improvements to substantially their condition as on the Commencement Date, and/or to industrial property standards, including remediating any contaminated soil arising from releases of Prohibited Substances on the Premises occurring during the Term and which releases are not the result of conduct for which Landlord is responsible. Tenant shall pay all Remediation Costs and other costs of repairing any damage arising from the restoration of the Premises and/or the Improvements to their condition before the removal. "Remediation Cost" shall mean the costs of taking all remedial or other corrective actions and measures associated with remediation of contaminated real property, including all direct and indirect legal, administrative and capital costs, clean-up expenses, engineering costs, and annual operation, maintenance, and monitoring costs.
- (c) Any personal property, fixtures, equipment or furniture of Tenant that remains on the Premises after the termination of this Agreement and the removal of Tenant from the Premises may, at the option of Landlord, be deemed to have been abandoned by Tenant and may either be retained by Landlord as Landlord's property or be disposed of, without accountability, in any manner Landlord may see fit, or if Landlord gives written notice to Tenant to that effect, the property shall be removed by Tenant at Tenant's sole cost and expense. If this Agreement terminates early for any reason other than the default of Tenant, Tenant shall have a reasonable time not exceeding thirty (30) days thereafter to remove its personal property, anything to the contrary notwithstanding.
- (d) Landlord shall not be responsible for any loss or damage occurring to any personal property, fixtures, furniture or equipment owned by Tenant.

The provisions of this Section 7.6 shall survive the expiration or earlier termination of this Agreement.

7.7 Holdover. Should Tenant hold over in possession after the termination of this Agreement, such holding over shall not be deemed to extend the term of or renew this Agreement for any fixed term, but the tenancy thereafter shall continue as a tenancy from month to month which shall be terminable by Landlord or Tenant upon sixty (60) days' prior notice to the other and upon the terms and conditions herein contained. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Agreement shall constitute a failure to vacate to which this Section 7.7 shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose, including preparation for a new tenant. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

ARTICLE VIII: LANDLORD'S RIGHTS AND REMEDIES

In addition to the rights set forth elsewhere in this Agreement (including those provided under Article IX on default) and as provided by applicable law, Landlord has and may freely exercise the following rights and have the following remedies with respect to the Premises and this Agreement:

8.1 Landlord's Right to Transfer. Landlord may sell, exchange, assign, transfer, convey, contribute, distribute, or otherwise dispose of all or any part of Landlord's interest in the Premises, the Improvements or this Agreement (including Landlord's reversion); provided, however, any such sale, exchange, assignment, transfer, conveyance, contribution, distribution, or other disposition shall be subject to Tenant's full interests and rights under and pursuant to this Agreement.

8.2 Subordination; Landlord's Right to Encumber. Landlord may encumber, mortgage, pledge, or otherwise hypothecate Landlord's fee simple interest in the Premises; provided, however, any such encumbrance, mortgage, pledge, or hypothecation (collectively "Encumbrance") shall be subject to Tenant's full interests and rights under and pursuant to this Agreement. If, however, any lender holding an Encumbrance requires that this Agreement be subordinate to the Encumbrance, this Agreement shall be subordinate to the Encumbrance if the holder thereof agrees in writing with Tenant that so long as Tenant performs its obligations under this Agreement no foreclosure, deed given in lieu of foreclosure, or sale pursuant to the terms of the Encumbrance, or other steps or procedures taken under the Encumbrance shall affect Tenant's rights under this Agreement. If the foregoing condition is met, Tenant shall execute the written agreement and any other documents required by the holder of the Encumbrance to accomplish the purposes of this Section 8.2. If the Premises are sold as a result of foreclosure of any Encumbrance thereon, or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee.

8.3 Inspection and Access. This Agreement, the Premises and the Improvements, and Tenant's use thereof, are subject to the following provisions for inspection and access:

- (a) Tenant shall permit Landlord, or the authorized representative of Landlord, to enter the Premises and the Improvements at all reasonable times during usual business hours for purposes of inspecting the Premises and making any repairs or performing any work that Tenant has neglected or refused to make in accordance with the terms, covenants, and conditions of this Agreement. Nothing in this Agreement shall imply any duty or obligation on the part of Landlord to do any such work or to make any improvements of any kind whatsoever to the Premises (including repairs and other restoration work made necessary due to any fire, other casualty, or partial condemnation, irrespective of the sufficiency or availability of any fire or other insurance proceeds, or any award in condemnation, that may be payable). The performance of any work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the work.
- (b) During the progress of any work on the Premises or Improvements performed by Landlord pursuant to this Section 8.3, Landlord may keep and store on the Premises all necessary materials, tools, supplies, and equipment, but said keeping and storage of any or all said necessary materials, tools, supplies and/or equipment shall not reasonably interfere with Tenant's use and operation of the Premises at the Facility. As long as Landlord does not cause any unreasonable interference with Tenant's use and operation of the Premises at the Facility, Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business, or other damage of Tenant or any user by reason of making the repairs or performing any such work, or on account of bringing materials, tools, supplies, and equipment onto the Premises or into the Improvements during the course of the work, and the obligations of Tenant under this Agreement shall not be affected by the work.
- (c) Landlord shall have the right to enter on the Premises and the Improvements at all reasonable times during usual business hours for the purpose of showing them to prospective purchasers of Landlord's interest and, at any time within two (2) years before the Term expires, for the purpose of showing them to prospective tenants. Landlord's right to enter the Premises shall not, however, unreasonably interfere with Tenant's use and operation of the Premises as the facility.

8.4 Landlord's Right to Perform Tenant's Covenants. Landlord may perform Tenant's covenants as follows:

- (a) If Tenant at any time fails to make any payment or perform any act on Tenant's part to be made or performed, Landlord may, after ten (10) days' written notice to Tenant (or without notice in case of an emergency) and without waiving or releasing Tenant from any obligation of Tenant in this Agreement or from any default by Tenant and without waiving Landlord's right to take the action as may be permissible under this Agreement as a result of the default (but shall be under

no obligation to) make any payment or perform any act on Tenant's part to be made or performed as provided in this Agreement, and may enter the Premises and the Improvements for any such purpose, and take all such action Landlord may deem necessary. To the extent that Landlord enters the Premises and undertakes any activities thereon to the Premises, Landlord and its agents shall have, at a minimum, the same insurance protection required of Tenant and its contractors and agents as required in this Agreement.

- (b) All sums so paid by Landlord and all costs and expenses incurred by Landlord, including reasonable attorney fees, in connection with the performance of any such act, together with, if Tenant does not pay them within the 60-day period after notice from Landlord, interest at one and one half percent (1 ½ %) per month from the date of the payment or incurring by Landlord of the cost and expense until paid, shall constitute a loan by Landlord to Tenant, and shall be paid by Tenant to Landlord on demand. In the event such loan is outstanding for one hundred twenty (120) days, Tenant shall be in default under this Agreement and Landlord shall be entitled to terminate the Agreement with no further obligations to Tenant.

8.5 Exculpation and Indemnity. This Agreement, the Premises and the Improvements, and Tenant's use thereof, are subject to the following provisions for exculpation and indemnity:

- (a) Landlord and Tenant acknowledge that Tenant shall not have exclusive control of the Premises during the Term of this Agreement. Tenant acknowledges that throughout the Term of this Agreement Landlord, or Landlord's agents, other tenants, subtenants, contractors, employees, licensees, or invitees may require access onto or through the Premises, or make other use of the Premises, as part of their use of Landlord's Property. Subject to Landlord's obligations pursuant to Section 7.3 and except for Landlord's or Landlord's agents', other tenants', subtenants', contractors', employees', licensees', or invitees' activities and/or conduct, Landlord shall not be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Improvements, or for any injury or damage to the Premises or the Improvements or to any property, whether belonging to Tenant or to any other person, caused by any fire, breakage, leakage, defect, or bad condition in any part or portion of the Premises or of the Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Improvements from the drains, pipes, or plumbing work of the Premises or the Improvements, or from the street, subsurface, or any place or quarter, or due to the use, misuse, or abuse of all or any of the Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Improvements, including defects in construction of the Improvements, latent or otherwise.
- (b) Tenant shall completely and fully defend, indemnify, and hold Landlord harmless against and from all actions, causes of action, charges, claims, costs, damages,

demands, expenses (including reasonable architect and attorney fees), liabilities, obligations, and penalties that may be imposed on or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term: (i) any work or thing done in, on, or about all or any part of the Premises or the Improvements by Tenant or Tenant's agents, subtenants, contractors, employees, licensees or invitees; (ii) any use, non-use, possession, occupancy, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements by Tenant or Tenant's agents, subtenants, contractors, employees, licensees or invitees; (iii) any negligence on the part of Tenant or any of Tenant's agents, subtenants, contractors, employees, subtenants, licensees, or invitees which results in any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements; and (iv) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations in this Agreement to be performed or complied with by Tenant, except to the extent Landlord or its agents negligently perform any of said covenants, agreements, terms, provisions, conditions or limitations on behalf of Tenant.

Landlord shall completely and fully defend, indemnify, and hold Tenant harmless against and from all actions, causes of action, charges, claims, costs, damages, demands, expenses (including reasonable architect and attorney fees), liabilities, obligations, and penalties that may be imposed on or incurred by or asserted against Tenant by reason of any of the following occurrences during the Term: (i) any work or thing done in, on, or about all or any part of the Premises or the Improvements by Landlord or Landlord's agents, other tenants, subtenants, contractors, employees, licensees, or invitees; (ii) any use, non-use, possession, occupancy, condition, operation, maintenance, or management of all or any part of the Premises or the Improvements by Landlord or Landlord's agents, other tenants, subtenants, contractors, employees, licensees, or invitees; (iii) any negligence on the part of Landlord or any of Landlord's agents, other tenants, subtenants, contractors, employees, licensees, or invitees which results in any accident, injury, or damage to any person or property occurring in, on, or about the Premises or the Improvements; and (iv) any failure on the part of Landlord to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations in this Agreement to be performed or complied with by Landlord, except to the extent Tenant or its agents negligently perform any of said covenants, agreements, terms, provisions, conditions or limitations on behalf of Landlord.

- (c) Subject to the provisions and limitations of this Agreement, with regard to any Remediation Costs or cleanup of any contamination resulting from Tenant's activities or any post-Agreement remediation that Landlord may be required to perform by any governmental body or in compliance with any Legal Requirements, judicial decree, administrative order, or directive, including any fines or penalties assessed in connection with the foregoing, Landlord may seek reimbursement, and Tenant shall reimburse Landlord, for any and all Remediation

Costs, cleanup and removal expenses, and any other charges, fines, penalties, or costs incurred by Landlord resulting from the remediation, cleanup, or removal of any Prohibited Substances or contamination arising from Tenant's or Tenant's agents', subtenants', contractors', employees', licensees' or invitees' activities on the Premises, including damages for personal injury or property damages suffered by Landlord or paid by Landlord to third parties or any governmental entity. Tenant expressly reserves the same rights as against Landlord with respect to any contamination or Prohibited Substances present in, on, beneath, or emanating from the Premises prior to the Commencement Date or resulting from Landlord's or Landlord's agents', other tenants', subtenants', contractors', employees', licensees', or invitees' activities on or about the Premises.

- (d) As between Landlord and Tenant, Landlord shall under no circumstances be considered the generator of any Prohibited Substances resulting from Tenant's or Tenant's agents', subtenants', contractors', employees', licensees' or invitees' activities on the Premises, except to the extent said Prohibited Substances come to be located in, on, beneath, or emanating from the Premises as a result of Landlord's negligence or Landlord's or Landlord's agents', other tenants', subtenants', contractors', employees', licensees', or invitees' activities or conduct.
- (e) Landlord expressly reserves the right to sue Tenant for indemnification, contribution, or reimbursement under the terms of this Agreement or any Legal Requirements, for or because of any damages or losses resulting from any contamination arising from Tenant's or Tenant's agents', subtenants', contractors', employees', licensees' or invitees' activities on the Premises, or to recover costs for complying with Legal Requirements, governmental cleanup orders, or damages for personal injury or property damage, including natural resources, suffered by Landlord or paid by Landlord to third parties or any governmental body resulting from any contamination arising from Tenant's or Tenant's agents', subtenants', contractors', employees', licensees' or invitees' activities on the Premises. Tenant expressly reserves the same rights as against Landlord with respect to Landlord's or Landlord's agents', other tenants', subtenants', contractors', employees', licensees', or invitees' activities on or related to the Premises or any contamination or Prohibited Substances present in, on, beneath, or emanating from the Premises prior to the Commencement Date.
- (f) Tenant shall further indemnify, defend, protect, and reimburse Landlord for, and hold Landlord harmless from, and against any and all claims, costs, expenses, demands, suits, judgments, expenses, fines, penalties, and losses arising out of or in connection with bodily injury (including death) to persons or damage to property, including natural resources, and causes of action or proceedings, including administrative proceedings or legal actions and attorneys' and consultants' fees and expenses, arising from: (i) Tenant's lease of, operation of, or activities on the Premises from and after the Commencement Date; (ii) except as expressly otherwise provided in this Agreement, the default by Tenant in the performance

of any obligation, covenant, or agreement in this Agreement; or (iii) the presence, origination, release, or deposit of any Prohibited Substances, in, on, or about the Premises arising from Tenant's activities on the Premises, if so present, deposited, or released on the Premises on or after the Commencement Date, whether or not Tenant was aware of or directly involved in the generation or introduction of the materials in, on, or about the Premises, except to the extent the loss, damage, injury, or death is caused by or contributed to by the negligence of Landlord or Landlord's agents, other tenants, subtenants, contractors, employees, licensees, or invitees or otherwise. In addition to its rights to indemnification as set forth elsewhere in this Agreement, Tenant expressly reserves the same rights as against Landlord with respect to Landlord's or Landlord's agents', other tenants', subtenants', contractors', employees', licensees', or invitees' activities on or related to the Premises prior to the Commencement Date, and following the Commencement Date to the extent the loss, damage, injury or death is caused by or contributed to by the negligence of Landlord or Landlord's agents, other tenants, subtenants, contractors, employees, licensees, or invitees or otherwise.

- (g) If any action or proceeding is brought against Landlord by reason of any such claim, Tenant shall, upon written notice from Landlord and at Tenant's expense, resist or defend the action or proceeding by counsel approved by Landlord in writing, which approval shall not be unreasonably withheld by Landlord. If any action or proceeding is brought against Tenant by reason of any such claim, Landlord shall, upon written notice from Tenant and at Landlord's expense, resist or defend the action or proceeding by counsel approved by Tenant in writing, which approval shall not be unreasonably withheld by Tenant.
- (h) Tenant shall look solely to the then interest of Landlord in the Premises, or of any successor of Landlord as owner of the Premises, for the satisfaction of any remedy of Tenant for failure to perform any of Landlord's obligations under this Agreement, express or implied, or under any law. Neither Landlord, nor any disclosed or undisclosed principal or beneficiary of Landlord (or member or agent of Landlord, or trustee, officer, director, shareholder, partner, or agent of any such principal), nor any successor of any of them, shall have any personal liability for any such failure under this Agreement or otherwise. The provisions of this Section 8.5 apply only to Landlord and to the foregoing persons and are not for the benefit of any insurance company or any other third party.

The indemnification obligations of each party to indemnify the other pursuant to this Section 8.5 shall apply to any common-law cause of action, whether or not codified, including causes of action arising in tort, trespass, nuisance, and strict liability, to federal and state statutory causes of action, and to proceedings or causes of action based on Legal Requirements; and this obligation shall survive the termination or expiration of this Agreement, except, however, to all applicable defenses which Landlord or Tenant may have, including, but not limited to, statute of limitations and/or laches.

ARTICLE IX: DEFAULT AND REMEDIES

9.1 Events of Default. The occurrence of any one or more of the following events of default constitutes a breach of this Agreement by Tenant:

- (a) Tenant's failure, whether by action or inaction, to pay or perform any of Tenant's obligations under this Agreement and the failure continues and is not remedied within sixty (60) days after Landlord has given Tenant a notice specifying the default, or, in the case of a default that can be cured but not within a period of sixty (60) days, if Tenant has not notified Landlord of Tenant's intention to cure the default and begun curing the default within the 60-day period, and continuously and diligently completed the cure of the default.
- (b) If Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or voluntarily takes advantage of any such act by answer or otherwise, or makes an assignment for the benefit of creditors.
- (c) If involuntary proceedings under any bankruptcy law or insolvency act are instituted against Tenant or any guarantor, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant or any guarantor, and the proceedings are not dismissed or the receivership or trusteeship vacated within twenty (20) days after the institution or appointment.
- (d) If Tenant vacates or abandons the Premises, or if this Agreement or the Premises are transferred to or pass to any other person or entity, except as expressly permitted under this Agreement.

9.2 Landlord's Remedies Upon Tenant's Default. Upon the occurrence of an event of default, Landlord may exercise any one or more of the remedies set forth in this paragraph or any other remedy available under applicable law or in this Agreement:

- (a) Landlord or Landlord's agents and employees may reenter the Premises pursuant to their statutory rights afforded by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise.
- (b) If and upon Tenant's eviction from the Premises subsequent to a ruling by a court and subsequent to enforcement by any such judgment, Landlord may relet the whole or any part of the Premises from time to time, either in the name of Landlord or otherwise, to other tenants, for the terms ending before, on, or after the expiration date of the Term, at the rentals and on any other conditions (including concessions and free rent) Landlord may determine to be appropriate. To the extent allowed under California law, Landlord shall have no obligation to relet all or any part of the Premises and shall not be liable for refusal to relet the Premises, or, if there is such a reletting, for refusal or failure to collect any rent due on the

reletting; and any action of Landlord shall not operate to relieve Tenant of any liability under this Agreement or otherwise affect the liability. Landlord at Landlord's option may make any physical changes to the Premises that Landlord, in Landlord's sole discretion, considers advisable and necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Agreement or otherwise affecting Tenant's liability. Landlord's rights hereunder are subject to Landlord's duty to mitigate any and all of its alleged damages.

- (c) Whether or not Landlord retakes possession or relets the Premises, Landlord has the right to seek recovery of damages, legal expenses, and all costs incurred by Landlord in restoring the Premises and the Improvements or otherwise preparing the Premises for reletting, and all reasonable costs incurred by Landlord in reletting the Premises.
- (d) To the extent permitted under California law, Landlord may sue periodically for damages as they accrue without barring a later action for further damages.
- (e) In the event of a breach by Tenant of any of the terms or conditions of this Agreement, Landlord shall have the right of injunction to restrain Tenant and the right to invoke any remedy allowed by law or in equity, as if the specific remedies of indemnity or reimbursement were not provided in this Agreement.

9.3 No Waiver. No failure by a party to insist on the strict performance of any agreement, term, covenant, or condition of this Agreement or to exercise any right or remedy consequent upon a breach constitutes a waiver of any such breach or of the agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by a party, and no breach by a party, shall be waived, altered, or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Agreement, but each and every agreement, term, covenant, and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

9.4 Rights and Remedies Cumulative. Each right and remedy provided for in this Agreement is cumulative and is in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

9.5 Costs and Attorney Fees. If any suit or action is filed by any party to enforce this Agreement or otherwise with respect to the subject matter of this

Agreement, the prevailing party shall be entitled to recover reasonable attorney fees incurred in preparation or in prosecution or defense of the suit or action as fixed by the trial court, and if any appeal is taken from the decision of the trial court, reasonable attorney fees as fixed by the appellate court, and if any petition on review is taken from the decision of the appellate court, reasonable attorney fees as fixed by the higher court.

ARTICLE X: CONDEMNATION

- 10.1 Total Taking. If, after the execution of this Agreement and prior to the expiration of the Term hereof, the whole of the Premises and/or the Improvements shall be taken under power of eminent domain by any public or private authority, or conveyed by Landlord to said authority in lieu of such taking, then this Agreement and the Term hereof shall cease and terminate as of the date when possession of the Premises and the Improvements shall be taken by the taking authority and Landlord shall have no further obligation or duty to Tenant pursuant to this Agreement including, but not limited to, the duty to relocate Tenant.
- 10.2 Partial Taking. If, after the execution of this Agreement and prior to the expiration of the Term hereof, any public or private authority shall, under the power of eminent domain, take, or Landlord shall convey to said authority in lieu of such taking, property which results in a reduction by twenty-five (25%) percent or more of the area in the Premises, or of a portion of the Premises and/or the Improvements that substantially interrupts or substantially obstructs Tenant's use of the Premises; then Tenant may, at its election, terminate this Agreement by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking. In the event of termination by Tenant under the provisions of this Section 10.2, this Agreement and the Term hereof shall cease and terminate as of the date when possession shall be taken by the appropriate authority, and Landlord shall have no further obligation or duty to Tenant pursuant to this Agreement including, but not limited to, the duty to relocate Tenant.
- 10.3 Restoration. In the event of a taking in respect of which Tenant shall not have the right to elect to terminate this Agreement or, having such right, shall not elect to terminate this Agreement, this Agreement and the Term thereof shall continue in full force and effect and Tenant shall restore the remaining portions of the Premises and or the Improvements to an architectural whole in substantially the same condition that the same were in prior to such taking.
- 10.4 The Award. All compensation awarded for any taking, whether for the whole or a portion of the Premises and/or the Improvements, shall be the sole property of the Landlord whether such compensation shall be awarded for diminution in the value of, or loss of, the leasehold or for diminution in the value of, or loss of, the fee in the Premises and/or the Improvements, or otherwise. The Tenant hereby assigns to Landlord all of Tenant's right and title to and interest in

any and all such compensation. However, Landlord shall not be entitled to and Tenant shall have the sole right to make its independent claim for and retain any portion of any award made by the appropriating authority directly to Tenant for loss of business, or damage to or depreciation of, and cost of removal of fixtures and personalty installed in or upon the Premises or the Improvements by, or at the expense of Tenant, and to any other award made by the appropriating authority directly to Tenant.

10.5 Dispute over Taking. If there is any dispute between Tenant and Landlord with respect to any issue of fact arising out of a taking mentioned in this Article X, the dispute shall be resolved by the same court in which the condemnation action is brought, in proceedings appropriate for adjudicating the dispute.

10.6 Release. In the event of any termination of this Agreement as the result of the provisions of this Article X, the parties, effective as of such termination, shall be released, each to the other, from all liability and obligations thereafter arising under this Agreement.

ARTICLE XI: LANDLORD'S RIGHT TO RELOCATE THE FACILITY

11.1 Landlord's Right to Relocate the Facility. Landlord shall have the exclusive right upon one hundred twenty (120) days' prior written notice, to relocate the Facility to another location within the Property or location within the Los Angeles County. Landlord's right to relocate Tenant shall be subject to the condition that the new premises designated by Landlord shall be substantially as desirable as the Premises with respect to size and zoning and shall not materially frustrate Tenant's purposes as set forth in Section 3.1 of this Agreement. If Landlord shall exercise its right hereunder, the replacement premises shall thereafter be deemed for the purposes of this Agreement as the "Premises". Tenant shall vacate the initial Premises and surrender vacant and exclusive possession of such Premises to Landlord on or before the date of relocation, provided that Landlord has theretofore delivered vacant and exclusive possession of the replacement Premises to Tenant. Landlord shall be solely responsible for implementing all work relating to relocating the Facility.

11.2 Cost of Relocation. In the event of such a relocation, the cost of relocating Tenant and the cost of altering the new space to make it comparable to the Premises shall be borne by Landlord as follows: (a) Landlord shall pay two-thirds (2/3) of the Relocation Costs; and (b) Tenant shall pay one-third (1/3) of the Relocation Costs. As used herein, the term "Relocation Costs" shall mean all costs incurred by Landlord in connection with relocating to the new Premises pursuant to this Article XI including all reasonable moving expenses and costs incurred in connection with the alteration, improvement or construction thereof; provided, however, that Relocation Costs shall not include out-of-pocket expenses incurred by either Party for attorneys.

- 11.3 Payment of Relocation Costs. Landlord shall submit to Tenant copies of bills and invoices evidencing such Relocation Costs for which reimbursement is sought. Tenant shall, within thirty (30) days after the receipt of such bills or invoices, pay to Landlord the amounts for which reimbursement is sought.

ARTICLE XII: MISCELLANEOUS

- 12.1 Amendments. This Agreement may be amended only by an instrument in writing executed by Landlord and Tenant.
- 12.2 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
- 12.3 Binding Effect. This Agreement binds and benefits Landlord, and Landlord's successors and assigns, and Tenant, Tenant's successors, and, without waiving restrictions on assignment, Tenant's assigns. Nothing in this Agreement, express or implied, confers, or shall be construed or deemed to confer, upon any person, firm, or other entity not a party to this Agreement, or the legal representatives of any such person, firm, or entity, any rights, claims, or remedies of any nature or kind whatsoever under, with respect to, or by reason of, this Agreement. Each person signing this Agreement warrants authority to do so and to bind principals.
- 12.4 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to "Parties" in this Agreement is a reference to Landlord and Tenant. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.
- 12.5 Invalidity of Particular Provisions. If any term or provision of this Agreement or the application of the Agreement to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 12.6 No Partnership. No provision of this Agreement creates, or shall be deemed to create, a partnership, joint venture, or other relationship between Landlord

and Tenant except that of landlord and tenant. Landlord shall have no liability for Tenant's debts, liabilities, or obligations whatsoever.

12.7 Non-Merger. There shall be no merger of this Agreement, or of the leasehold estate created by this Agreement, with the fee estate in the Premises by reason of the fact that this Agreement, the leasehold estate created by this Agreement, or any interest in this Agreement or in any such leasehold estate, may be held, directly or indirectly, by or for the account of any person who shall own the fee estate in the Premises or any interest in the fee estate, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Premises and all persons having an interest in this Agreement, or in the leasehold estate created by this Agreement, shall join in a written instrument effecting the merger and shall duly record the instrument.

12.8 Notices. The following provisions govern all notices required or permitted under this Agreement:

- (a) Any notice required or permitted by the terms of this Agreement shall be deemed given if delivered personally to an officer, agent, employee, member, or manager of the party to be notified or sent by United States certified mail, postage prepaid, return-receipt requested, and addressed to the party at its address stated below, or any other addresses designated by either party by written notice to the other. Except as otherwise provided in this Agreement, every notice, demand, request, or other communication shall be deemed to have been given or served on actual receipt.
- (b) Tenant shall immediately send to Landlord, in the manner prescribed above for giving notice, copies of all notices with respect to the Premises or Improvements given by Tenant to, and copies of all such notices that Tenant receives from, any government authorities, fire regulatory agencies, and similarly constituted bodies, and copies of Tenant's responses to the notices.
- (c) Notwithstanding anything in this Section 12.8 to the contrary, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Agreement or this Section 12.8 shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of the person or party to accept delivery of the notice.

AZUSA LAND RECLAMATION, INC.:

General Counsel
Waste Management
7025 N. Scottsdale Rd.
Scottsdale, AZ 85253

COUNTY OF LOS ANGELES:

Los Angeles County, Dept. Public Works
Environmental Programs Division
900 S. Fremont Ave., Annex 3rd Floor

- 12.9 Authority. Only the Board of Supervisors of the County of Los Angeles ("Board of Supervisors") has the authority, by formally approving and/or executing this Agreement, to bind Tenant to the terms included herein. Each individual executing this Agreement on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Tenant, and that this Agreement is binding upon Tenant in accordance with its terms. Landlord understands that no material terms of this Agreement may be altered or deleted, nor may any new material terms be added to this Agreement, without the express written approval of the Board of Supervisors, either through an amendment to the Agreement or by other formal board action. No County of Los Angeles officer, employee, agent or independent contractor has any authority to alter, add or delete the material terms of this Agreement and Landlord may not rely upon any representations to the contrary. This limitation of authority applies to all material terms of the Agreement. Each individual executing this Agreement on behalf of Landlord represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of Landlord, and that this Agreement is binding upon Landlord in accordance with its terms.
- 12.10 Solicitation of Consideration. Landlord acknowledges that it is aware of the following provision: It is improper for any County officer, employee or agent to solicit consideration in any form from a landlord with the implication, suggestion or statement that the landlord's provision of the consideration may secure more favorable treatment for the landlord in the award of the lease or that landlord's failure to provide such consideration may negatively affect the County's consideration of the landlord's offer to lease. A landlord shall not offer or give, either directly or through an intermediary, consideration in any form to a County officer, employee or agent for the purpose of securing favorable treatment with respect to the award of the lease. Landlord shall immediately report any attempt by a County officer, employee or agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.
- 12.11 Consideration of GAIN/GROW Program Participants. Should Landlord require additional or replacement personnel after the effective date of this Agreement, Landlord shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence ("GAIN") Program or General Relief Opportunities for Work ("GROW") Program who meet Landlord's minimum qualifications for the open position. The County will refer GAIN/GROW participants by job category to Landlord.
- 12.12 Quiet Enjoyment. Tenant, on observing and keeping all covenants and conditions of this Agreement on Tenant's part to be kept, shall quietly have and enjoy the Premises during the Term without hindrance or molestation by anyone

claiming by, through, or under Landlord as such, subject, however, to the exceptions, reservations, and conditions of this Agreement.

12.13 Attorney's Fees. In the event this Agreement gives rise to a lawsuit, arbitration, or other legal proceeding among any of the parties hereto, the prevailing party shall be entitled to recover actual court costs and reasonable attorneys' fees in addition to any other relief to which such party may be entitled.

12.14 Entire Agreement. This Agreement (including exhibits) sets forth the parties' complete, entire, and exclusive understanding about the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties about the subject matter.

In Witness Whereof, the parties hereto have executed this Agreement on the day and year first above written.

LANDLORD

AZUSA LAND RECLAMATION, INC.

By: 
Its: President

APPROVED AS TO FORM:

By: 
Attorneys for Azusa Land Reclamation, Inc.

TENANT

COUNTY OF LOS ANGELES

By: _____
Chair, Board of Supervisors

ATTEST:
SACHI HAMAI
Executive Officer-Clerk of the Board

By: _____
Deputy

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
County Counsel

By: 
Deputy
Attorneys for County of Los Angeles

EXHIBIT A
Legal Description of Property

LOCKMAN & ASSOCIATES

CONSULTING ENGINEERS AND PLANNERS

A CORPORATION

249 E. POMONA BOULEVARD, MONTEREY PARK, CALIFORNIA 91754
TEL (213) 724-0250
ANNEX OFFICE: MONTEREY PARK TEL (213) 727-7971
TRI-COUNTIES OFFICE: VENTURA TEL (805) 648-3135

PRINCIPALS
W.J. LOCKMAN
NORBERT W. WEINBERG
RONALD J. LOFY, PH.D.
LELAND F. JOHNSON

March 3, 1986

ASSOCIATES
ROBERT L. McGRATH
DENNIS A. KACHMARSKY
TERENCE M. BOSTON
CHARLES W. LOCKMAN
MICHAEL E. ANDERSON
ROBERT J. STEARNS

LEGAL DESCRIPTION
SOUTHWESTERN PORTLAND CEMENT COMPANY
AZUSA LANDFILL

All of Lots 25, 28, 29 and those portions of Lots 30, 46, 47, 48 of Subdivision No. 2, Azusa Land and Water Company, partly in the City of Irwindale and partly in the City of Azusa, in the County of Los Angeles, State of California, as per map recorded in Book 43, Page 94 of Miscellaneous records in the Office of the County Recorder of said County, and all of Blocks 9, 10, 13, 14, 15, 16, 17, 18, 19 and 20 and those portions of Blocks 5, 11 and 12, together with that portion of First Street, vacated by Resolution No. 4933 of the City of Azusa, recorded December 9, 1965, as Document No. 3030 of Official Records of said County, and those portions of Van Ness Avenue, Broadmoor Avenue, Arlington Avenue, Piedmont Avenue, McKinley Street, Paramount Street, Roosevelt Street, that certain alley in said Block 5, all vacated by Resolution No. 2762 of the City of Azusa, Recorded May 5, 1953, as Document No. 3516 of Official Records of said County, all shown on Tract No. 8507, in the City of Azusa, in the County of Los Angeles, State of California, as per map recorded in Book 102, Pages 78, 79 and 80 of Maps, in the Office of the County Recorder of said County, described as a whole as follows:

Beginning at the Northwesterly corner of said Lot 25; thence Easterly along the Northerly lines of said Lots 25, 30 and 46, to the Northeasterly corner of said Lot 46; thence Southerly along the Easterly line of said Lot 46 to the Northerly line of said Lot 47; thence Westerly along said last mentioned Northerly line to the Easterly line of the West 5 acres of the East 10 acres of the North Half of said Lot 47; thence Southerly along said last mentioned Easterly line to the Northerly line of the South Half of said Lot 47; thence Easterly along said last mentioned Northerly line to the Easterly line of said Lot 47; thence Southerly along said Easterly line to the Northerly line of said Lot 48; thence Westerly along said Northerly line to the Westerly line of the Easterly 20 feet of said Lot 48; thence Southerly along said Easterly line to the Northerly line of the Southerly 450 feet of said Lot 48; thence Westerly along said last mentioned Northerly line to the Westerly line of the Easterly 30 feet of said Lot 48; thence Southerly along said last mentioned Westerly line to the Southerly line of said Lot 48; thence Westerly along said Southerly line to the Easterly line of the Westerly 290 feet of the East Half of the East Half of said Lot 48; thence Northerly along said last mentioned Easterly line to the Northerly line of the Southerly 450 feet of said Lot 48; thence Westerly along

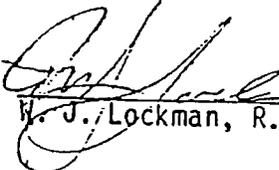
said Northerly line to the Easterly line of the West Half of the East Half of said Lot 48; thence Northerly along said last mentioned Easterly line to the Southerly line of the North Half of the West Half of the East Half of said Lot 48; thence Westerly along said last mentioned Southerly line to the Easterly line of the West Half of said Lot 48; thence Southerly along said last mentioned Easterly line to the Northerly line of the Southerly 254 feet of said Lot 48; thence Westerly along said last mentioned Northerly line to the Easterly line of the West Half of the West Half of said Lot 48; thence Southerly along said last mentioned Easterly line to the Southerly line of said Lot 48; thence Westerly along the Southerly line of said Lots 48 and 28 to and along the Southerly line of said Tract No. 8507 to the Westerly line of said Block 5; thence Northerly along said last mentioned Westerly line to Westerly prolongation of the Southerly line of Parcel 1 of Record of Survey, filed in Book 76, Page 87 Records of said County; thence Easterly along said Westerly prolongation to the Southwesterly corner of said Parcel 1; thence Easterly, North-easterly and Northerly along the Southerly and Easterly lines of said Record of Survey to the Westerly line of said Block 11; thence Northerly along said last mentioned Westerly line to the Northwesterly corner of said Block 11; thence Northerly along the Northerly prolongation of said last mentioned Westerly line to and along the Westerly line of said Block 10 to the Northwesterly corner of said Block 10; thence Northerly along the Northerly prolongation of said last mentioned Westerly line to and along the Westerly line of said Block 9 to the Northwesterly corner of said Block 9; thence Northerly along the Northerly prolongation of said last mentioned Westerly line to the Southerly line of said Lot 25 of said Subdivision No. 2, Azusa Land and Water Company; thence Westerly along said Southerly line to the Westerly line of said Lot 25; thence Northerly along said Westerly line to the Point of Beginning.

Excepting therefrom those portions of Lots 30 and 46 of Subdivision No. 2 of Lands of Azusa Land & Water Co., in the City of Azusa, County of Los Angeles, State of California, as per map recorded in Book 43 Page 94 of Miscellaneous Records, in the office on the County Recorder of said County, described as follows:

Beginning at the intersection of the Southerly prolongation of the center line of Coney Avenue as shown on map of Tract 10660 recorded in Book 164 Pages 13 and 14 of Maps, in the office of the County Recorder, with the Northerly line of said Lot 46; thence southerly along said southerly prolongation of said center line of Coney Avenue 130.00 feet; thence westerly parallel to the Northerly line of said Lots 46 and 30 a distance of 1675.38 feet; thence northerly parallel to said center line of Coney Avenue a distance of 130.00 feet to a point in the Northerly line of said Lot 30; thence easterly along the Northerly lines of said Lots 30 and 46 a distance of 1675.38 feet to the point of beginning.

Also excepting that portion of Lot 25, Subdivision No. 2, Azusa Land & Water Company, Book 43, Page 94 of Miscellaneous Records on file with the Los Angeles County Recorder, lying westerly of a line parallel with and distant easterly 635 feet measured at right angles from the easterly line of Irwindale Avenue 100 feet wide as shown on County Surveyor's Map No. B-2644, Sheet 3 on file in the offices of the County Engineer of said County.

Also excepting therefrom all mineral, oil, gas and other hydrocarbon substances that may be produced from Lot 25, except the North 3 chains of said lot, below 500 feet from the surface; provided, however, no right of access or entry to the surface of said land for the purpose of exploring, producing or developing any such mineral interest is reserved hereby, as reserved in Deed from John D. Bicknell Bagg, et al., recorded August 12, 1957, as Instrument No. 242.


W. J. Lockman, R. C. E. 10290

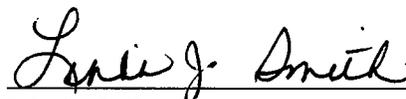
WJL:jr

EXHIBIT B
Legal Description of Premises

CERTIFICATE

The undersigned, Linda J. Smith, Secretary of Azusa Land Reclamation, Inc., a California corporation (the "Corporation"), does hereby certify that Duane C. Woods holds the position of President and that in such capacity he is authorized, in accordance with appropriate corporate policies and procedures, to execute and deliver documents on behalf of the Corporation, including, but not limited to the Environmental Collection Center Lease Agreement by and between the Corporation and the County of Los Angeles.

Executed in Houston, Texas this 6th day of November, 2007.

A handwritten signature in cursive script that reads "Linda J. Smith". The signature is written in black ink and is positioned above a horizontal line.

Linda J. Smith
Secretary