

WASTE DISPOSAL AGREEMENT

This waste disposal agreement (“Agreement”) is entered into as of this 5th day of May, 2009 (“Effective Date”), by and between Republic Services of Southern California LLC, a Delaware limited liability company (“Republic”) and the City of Redlands (“City”). Republic and City are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

RECITALS

WHEREAS, City owns and operates the California Street Landfill; and

WHEREAS, Republic is a provider of solid waste collection and transportation services; and

WHEREAS, Republic desires to dispose of waste at City’s California Street Landfill upon the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and such other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City of Redlands and Republic Services of Southern California LLC, agree as follows:

AGREEMENT

1. Definitions. For the purpose of this Agreement, the following terms shall have the meanings set forth below:

A. “Force Majeure” means any event relied upon by a Party, which was beyond the reasonable ability of that Party to control or avoid and which materially interferes with that Party’s performance of its obligations under this Agreement, shall excuse that Party from performing such obligations, but only to the extent performance is prevented by the Force Majeure event and only for so long as the material interference continues. Force Majeure events shall include, without limitation: (i) an act of God, landslide, lightning, earthquake, fire, explosion, wind, storm, flood or similar occurrence; (ii) any act of any federal, state, county or local court, administrative agency or governmental office or body, including such acts that temporarily suspend operations at the California Street Landfill or that stay, invalidate, or otherwise affect either Party’s performance of this Agreement, or the operation of, or any permits or licenses associated with or related to, the California Street Landfill with respect to the acceptance and/or disposal of Waste; (iii) the delay, denial, loss, suspension, expiration, termination, failure of renewal of a permit or approval, or (iv) the attainment of any maximum disposal amounts within any applicable time period, of any permit, license or other governmental approval required to accept and/or dispose of Waste at the California Street Landfill; or (v) the institution of a legal or administrative action, or similar proceeding, by any person or entity which delays or prevents any aspect of the acceptance and/or disposal of Waste at the California

Street Landfill.

B. “Hazardous Materials” means any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substances, regulated under or pursuant to any federal or California environmental laws. The term “Hazardous Materials” also includes any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substance that is, after the Effective Date of this Agreement, deemed hazardous by any federal or California judicial or governmental entity, body or agency having jurisdiction to make that determination.

C. “Hazardous Waste” means any waste regulated under or pursuant to any federal or California environmental laws. The term “Hazardous Waste” also includes any waste that is, after the Effective Date of this Agreement, deemed hazardous by any federal or California judicial or governmental entity, body or agency having jurisdiction to make that determination.

D. “Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials or other pollutants through the ambient air, soil, subsurface water, groundwater, wetlands, lands or subsurface strata.

E. “Special Waste” means non-hazardous waste that requires special handling or management due to its composition or volume. All such waste must comply with the City’s published Special Waste procedures prior to acceptance.

F. “Ton” means 2,000 pounds.

G. “Unacceptable Waste” means any and all solid waste which the California Street Landfill is not authorized to accept for disposal pursuant to its permits and licenses, including, highly flammable substances, Hazardous Materials, Hazardous Waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive materials, and other materials deemed by California or federal law, or in the reasonable discretion of City, to be dangerous or threatening to the environment or the operations conducted at the California Street Landfill.

H. “Waste” means any and all non-hazardous solid waste, including any Special Waste delivered to the California Street Landfill by Republic which the California Street Landfill is authorized to accept for disposal pursuant to its permits and licenses in existence at such time.

I. “Outside Waste” means any solid waste generated outside City’s municipal collection program.

2. Term. Unless earlier terminated pursuant to of this Agreement, the term of this Agreement shall commence on May 1, 2009, and shall remain in full force for five (5) years

thereafter (the “Term”).

3. Disposal Fees.

3.01 Republic shall pay City disposal fees at the rate of \$ 27.20 per Ton for Republic’s disposal of Waste at the California Street Landfill (the “Disposal Rate”). Republic shall be billed monthly at the Disposal Rate multiplied by the applicable Minimum Monthly and Excess Monthly Tonnages for the month as calculated in accordance with Section 4.01. Commencing on the first anniversary of the Effective Date of this Agreement, the Disposal Rate shall be increased by 2.5% and by such same percentage annually thereafter.

3.02 If City, at Republic’s request, performs disposal services for Republic’s disposal of Waste outside its regular business hours or any additional services in connection with Republic’s disposal of Waste, City may adjust the Disposal Rate to offset the additional costs of performing such services.

3.03 Each month City shall send Republic an invoice for Republic’s disposal of Waste, and Republic shall pay City the full amount of such invoice within thirty (30) days of the date of the invoice. Unpaid invoices shall carry interest at the lesser of (i) one and one half percent (1.5%) per month, or (ii) the maximum amount permitted under applicable law. The obligations of Republic to pay the Disposal Rate and other amounts payable hereunder shall be absolute and unconditional. In the event that Republic fails to timely pay any outstanding amount, City may, after giving Republic ten calendar days notice to cure said non-payment, in addition to any other remedies available to City, suspend Republic’s right to dispose of Waste at the California Street Landfill and/or terminate this Agreement by giving fifteen (15) days written notice to Republic.

3.04 In the event that (i) Republic desires to dispose of any Special Waste, or (ii) City agrees to dispose of any Unacceptable Waste, Republic and City shall determine in advance, on a case-by-case basis, the charge to Republic for City’s disposal of such wastes. Payment for such disposal shall be upon the same terms as the payment of the Disposal Rate.

4. Delivery and Acceptance of Waste.

4.01 Republic shall deliver, Monday through Friday (except holidays and certain City-specified Saturdays), Waste to the California Street Landfill in the minimum amount of seventy five (75) Tons per day for the first one-hundred and eighty (180) days of the Term of this Agreement, and a minimum of one hundred twenty five (125) Tons per day thereafter, all on a “put or pay basis,” determined based on the average daily tonnage delivered to the California Street Landfill by Republic over all working days in a given calendar month, with an absolute daily maximum amount of one hundred seventy five (175) Tons per day.

4.02 Throughout the Term of this Agreement, Republic covenants to deliver to the California Street Landfill a minimum of three hundred seventy five (375) Tons of Waste at an average of seventy five (75) Tons per day (Mon. – Fri.) for each month on the first one hundred eighty (180) days of the Term, and thereafter a minimum of six hundred twenty five

(625) tons of Waste at an average of one hundred twenty five (125) Tons per day (Mon. – Fri.) for each month, all on a “put or pay basis” (the “Minimum Monthly Tonnage”). On a monthly basis, City shall calculate the actual tonnage of Waste delivered by Republic in excess of the Minimum Monthly Tonnage and such excess shall be known as the Excess Monthly Tonnage.

4.03 On a monthly basis, Republic shall be billed for the Minimum Monthly Tonnage for each month, or part thereof (at 75 or 125 tons per weekday, as applicable) multiplied by the Disposal Rate. In addition, each monthly invoice Republic shall be billed the Excess Monthly Tonnage delivered during the month, multiplied by the Disposal Rate. Republic acknowledges and agrees that in no event shall Excess Monthly Tonnage it delivered in one month offset or credit against its failure to deliver the Minimum Monthly Tonnage in any other month.

4.04 If daily Republic access to the California Street Landfill is suspended or restricted by City, through no fault of Republic, prior to Republic’s achievement of the minimum daily tonnage for that day, then the minimum daily tonnage requirement for that day shall not apply and the Minimum Monthly Tonnage for that month shall be adjusted downward accordingly.

4.05 For weeks that contain holidays that have been agreed to by the Parties, the minimum daily tonnage for that day will be subtracted from the Minimum Monthly Tonnage for the month in which the holiday falls.

4.06 Republic acknowledges that the California Street Landfill operates under permitted tonnage limits, and that the aforesaid maximum tonnage limits and the case-by-case waiver of such limits, in the sole discretion of City, is essential to the California Street Landfill permit compliance. Therefore, Republic’s vehicles shall not be allowed entry to the California Street Landfill where such delivery would cause Republic to exceed the said maximum tonnage limits, unless Republic has requested, in advance and in writing, permission to exceed such maximum limit.

4.07 City shall have the right to weigh all vehicles delivering Waste to the California Street Landfill. At any time, City may confirm the weight of any vehicle delivering Waste to the California Street Landfill by or on behalf of Republic.

4.08 Republic acknowledges that City intends to reject Waste that, in City’s sole determination, would be in violation of this Agreement, City’s then existing licenses or permits, or which would result in a violation of applicable federal, state or local laws or regulations.

4.09 Ownership of Waste delivered to the California Street Landfill by or on behalf of Republic shall pass to and be accepted by City when the vehicle transporting the Waste is fully unloaded at the California Street Landfill. Ownership of Unacceptable Waste delivered to the California Street Landfill by or on behalf of Republic shall not pass to City at any time unless City agrees in writing in advance to accept such Unacceptable Waste.

4.10 City may temporarily detain and inspect the contents of all vehicles owned or operated by, or delivering Waste on behalf of, Republic that are delivering Waste to the California Street Landfill. Republic agrees to monitor and inspect on a regular basis the contents of its vehicles in order to ensure that the Waste being delivered to the California Street Landfill contains no Unacceptable Waste.

4.11 Republic shall not deliver to the California Street Landfill or dispose of any Unacceptable Waste at the California Street Landfill. If any Unacceptable Waste is delivered to the California Street Landfill by or on behalf of Republic, City shall have the right to refuse or reject such waste or, if not detected prior to acceptance at the California Street Landfill, City shall provide three (3) business days' prior written notice to Republic to remove such waste and thereafter City may remove such waste and assure its proper disposal, all at Republic's expense, which expense Republic agrees to promptly pay upon presentation by City of an invoice with supporting documentation setting forth the costs in reasonable detail.

4.12 To the extent that any improper delivery of waste, including, without limitation, Unacceptable Waste, is made by Republic, and that delivery disrupts, or otherwise affects, the normal operations of the California Street Landfill, or to the extent that City incurs any liabilities, obligations, costs, expenses (including reasonable expert, consultant and/or attorneys' fees and costs) or damages as a result of the delivery of such waste, Republic shall be liable to City, and upon presentation by City of an accounting in reasonable detail and with supporting documentation, Republic shall promptly pay, perform and discharge City for and indemnify and hold City harmless against all such liabilities, obligations, costs, expenses or damages that City incurs as a result of the improper delivery.

4.13 In addition to other remedies provided in this Agreement, City may suspend Republic's right to dispose of Waste at the California Street Landfill, or suspend and/or terminate this Agreement upon the repeated delivery of significant quantities of Unacceptable Waste by Republic. City shall provide written notice to Republic of all such deliveries of Unacceptable Waste promptly when they occur. Waste that the City accepts for disposal at the California Street Landfill shall be deemed to be acceptable Waste unless the City provides written notice to Republic within ten calendar days from delivery that the Waste is Unacceptable Waste. City shall notify Republic in writing of its intention to suspend and/or terminate this Agreement pursuant to this Section, and such suspension and/or termination shall become effective upon the date of such notice.

4.14 City shall not be responsible for the transportation of Waste to the California Street Landfill. City shall not be responsible for the transportation or redelivery to Republic, or elsewhere, of any waste, including, without limitation, Unacceptable Waste delivered to the California Street Landfill by or on behalf of Republic.

5. Termination.

5.01 Default Termination/Remedies. In addition to the rights of City to suspend and/or terminate this Agreement in accordance with its terms and conditions, either Party may terminate this Agreement, upon (i) any material breach or default of any

representation or warranty of the other Party upon thirty (30) days written notice and such breach or default remaining uncured at the end of such thirty (30) day period, or (ii) any material breach or default of any covenant or agreement of the other Party upon thirty (30) days written notice and such breach or default remaining uncured at the end of a thirty (30) day cure period. Upon any such suspension and/or termination pursuant to Section 3.03 hereof or the immediately preceding sentence, the aggrieved Party shall, in addition to its rights and remedies herein, have the right to any and all remedies at law or equity.

5.02 Conditional Extension of Cure Period. If any such breach or default cannot be cured within the aforesaid thirty (30) day period despite diligent effort and the other Party demonstrates in writing that it is undertaking reasonable, good faith efforts to cure the same, an additional thirty (30) days shall be allowed to cure such breach or default prior to any rights of termination.

5.03 Effect of Force Majeure. In the event of Force Majeure, the Party claiming excuse from performance due to Force Majeure shall promptly notify the other Party in writing of such event and the effect thereof. The Party providing such notice shall thereafter be excused from performing its obligations under this Agreement to the extent that Party's performance is prevented by the Force Majeure event and only for so long as the material interference continues. In addition, City may suspend Republic's right to dispose of Waste at the California Street Landfill pursuant to this Agreement and City shall not have any liability to Republic due to such Force Majeure or such suspension, and, furthermore, in the event that an event of Force Majeure continues unabated for a period of sixty (60) days and renders City unable, wholly or in part, to carry out any material part of its obligations under this Agreement, then City shall have the right to terminate this Agreement and shall not have any liability to Republic due to such Force Majeure event or such termination.

6. Representations and Warranties of Republic. Republic represents and warrants to City as follows:

6.01 This Agreement has been duly executed and delivered by Republic and constitutes a legal, valid and binding obligation of Republic, enforceable against Republic in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity.

6.02 Republic has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. Republic has taken all action necessary to authorize the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby to be consummated by it.

7. Representations and Warranties of City. The undersigned representatives of the City and the City represent and warrant to Republic as follows:

7.01 This Agreement has been duly authorized by the City Council in compliance with the Brown Act and other applicable laws including the City Municipal Code, has been duly executed and delivered by the City, and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles regardless of whether such enforceability is considered in a proceeding at law or in equity.

8. Indemnification/Insurance.

8.01 Republic shall defend, indemnify and save harmless City, and its elected officials, officers, employees and attorneys from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement, court costs, reasonable attorneys' fees and expert witness and consultation fees), caused by or resulting from (i) any negligent or willful act or omission of Republic, its agents or employees in connection with this Agreement, (ii) a breach by Republic of any of the covenants, agreements, representations, or warranties of Republic set forth in this Agreement, or (iii) the disposal of Unacceptable Waste in the California Street Landfill which was delivered to the California Street Landfill by Republic.

8.02 Republic shall purchase and maintain, during the term of this Agreement, insurance reasonably acceptable to Disposal Operator, in accordance with the insurance requirements attached as the Insurance Schedule hereto.

8.03 City shall defend, indemnify and hold harmless Republic, its officers, directors, employees, affiliates, and parent and subsidiary companies, with counsel reasonably acceptable to Republic, from any and all costs, claims, lawsuits or other liabilities that result or are claimed to have resulted directly or indirectly from: (1) the Release of contaminants or pollutants in, on, at, from or under the Landfill, except to the extent that such Release is caused by Republic's delivery of Unacceptable Waste to the Landfill; and (2) the closure and post-closure maintenance and monitoring of the Landfill. This indemnity is intended to operate as an agreement pursuant to CERCLA, 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364.

8. Notices. All notices or other communications to be given hereunder shall be in writing and shall be sent by facsimile, overnight delivery or registered or certified United States mail, return receipt requested, properly addressed as follows:

To City:
City of Redlands
Attn: Gary van Dorst
35 Cajon Street
Redlands, CA 92373

To Republic:
Republic Services of Southern California, LLC
Attn: General Manager
2059 East Steel Road
Colton, CA 92324

9. First Right of Refusal. If City proposes to accept additional volumes of Outside Waste from third parties during the Term of this Agreement, Republic shall have the right of first refusal to deliver Waste to City's California Street Landfill at such additional volumes, and at the Disposal Rate. Should City propose to accept additional volumes of Outside Waste from third parties after the Term of this Agreement, Republic shall have the right of first refusal to deliver Waste to City's California State Landfill at such additional volumes, and at the disposal rate agreed to by such third parties with City.

10. Transfer or Assignment of Agreement. This Agreement, and the rights and privileges granted to the Parties hereto pursuant to this Agreement, shall be binding upon and inure to the benefit of the successors and assigns of such Parties hereto; provided, however, that no Party may transfer or assign (whether by operation of law, merger or otherwise) this Agreement, or its rights or obligations under this Agreement, without the prior written consent of the other Party hereto (such consent to be exercised in such Party's sole discretion), except that City may transfer and/or assign (whether by operation of law, merger or otherwise) this Agreement, and its rights and obligations under this Agreement, to any successor of City to the ownership or operation of the California Street Landfill; provided, further, that in the event of the sale of the assets and/or customer accounts of Republic which generate the Waste disposed of at the California Street Landfill pursuant to this Agreement, the purchaser of such assets and/or customer accounts shall be automatically subject to the terms and conditions of this Agreement, subject to City's written consent as provided in this Section. In addition, in the event that Republic is involved in any merger, consolidation, change in control, sale of stock or ownership interests, reorganization or other business combination or transaction, whether by operation of law or otherwise, which results in a new third party owning, or controlling, enough of the ownership interests of Republic to dictate its management, direction and decisions, City shall have the right to terminate this Agreement at any time upon fifteen (15) days prior written notice to Republic. In the event (a) of any such transfer or assignment (whether by operation of law, merger or otherwise) by Republic of this Agreement, or Republic's rights or obligations under this Agreement, or (b) that City does not consent (in its sole discretion) to any such requested transfer or assignment by Republic of this Agreement, or Republic's rights or obligations under this Agreement, Republic shall remain liable to City for Republic's agreements and obligations set forth in this Agreement.

11. Miscellaneous.

A. This Agreement sets forth the entire agreement and understanding of the Parties hereto with respect to the subject matter of this Agreement and supersedes all arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of either Party.

B. This Agreement may not be modified, amended, supplemented, canceled or discharged, except by written instrument executed by all of the Parties. There are no restrictions, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein.

C. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted the waiver.

D. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part.

E. This Agreement is not intended to confer upon any third parties, any rights or remedies.

F. This Agreement shall be construed and enforced in accordance with the laws of the State of California. All covenants with respect to any payment obligations of any Party and Sections 4.09, 4.11, 4.12, 4.14, 6, 7, 8, 9, 10, 11, 12, and 13 of this Agreement shall survive the termination of this Agreement for any reason.

G. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

H. In the event of any action or proceeding arising out of or related to this Agreement, the prevailing Party shall be entitled to recover from such losing Party all of its costs and expenses incurred in connection with such proceeding, including, without limitation, court costs, reasonable attorney's fees, including fees for us of in-house counsel by a Party, and expert witness and consultation fees, incurred at either the trial level or the appellate level.

12.. Arm's Length Negotiations. Each Party expressly represents and warrants to the other Party that (a) before executing this Agreement, said Party has fully informed itself of the terms, contents, conditions and effects of this Agreement; (b) said Party has relied solely and completely upon its own judgment in executing this Agreement; (c) said Party has had the opportunity to seek and has obtained the advice of counsel before executing this Agreement; (d) said Party has acted voluntarily and of its own free will in executing this Agreement; (e) said Party is not acting under duress, whether economic or physical, in executing this Agreement; and (f) this Agreement is the result of arm's length negotiations conducted by and among the Parties and their respective counsel.

13. Construction. The Parties agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumptions or burdens of proof shall arise favoring any Party by virtue of the authorship of any of the provisions of this Agreement. 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. If any Party has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached shall not detract from or mitigate the fact that the Party is in breach of the first representation, warranty, or covenant.

[signatures on next page]

IN WITNESS WHEREOF, the Parties execute this Agreement as of the date first above written.

CITY:

CITY OF REDLANDS

Jon Harrison, Mayor

ATTEST:

City Clerk, City of Redlands

CUSTOMER:

REPUBLIC SERVICES OF CALIFORNIA, LLC
A Delaware limited liability company

By: _____
Name: _____
Title: _____