

THOUSAND OAKS CITY COUNCIL



Supplemental Information Packet

D. Lawrence

Agenda Related Items - Meeting of June 23, 2015
Supplemental Packet Date: June 18, 2015

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed, typically a minimum of two—one available on the Thursday preceding the City Council meeting and the second on Tuesday at the meeting. The Thursday Supplemental Packet is available for public inspection in the City Clerk Department, 2100 E. Thousand Oaks Boulevard, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2) Both the Thursday and Tuesday Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2100 E. Thousand Oaks Boulevard.

Americans with Disabilities Act (ADA):

In compliance with the ADA, if you need special assistance to participate in this meeting or other services in conjunction with this meeting, please contact the City Clerk Department at (805) 449-2151. Assisted listening devices are available at this meeting. Ask City Clerk staff if you desire to use this device. Upon request, the agenda and documents in this agenda packet, can be made available in appropriate alternative formats to persons with a disability. Notification at least 48 hours prior to the meeting or time when services are needed will assist City staff in assuring reasonable arrangements can be made to provide accessibility to the meeting or service.



Public Works Department
MEMORANDUM

2100 Thousand Oaks Boulevard • Thousand Oaks, CA 91362
Phone 805/449.2400 • Fax 805/449.2475 • www.toaks.org

TO: Scott Mitnick, City Manager
FROM: Jay T. Spurgin, Public Works Director
DATE: June 18, 2015
SUBJECT: **Agenda Item 8J – Biosolids Recycling Program Hill Canyon Wastewater Treatment Plant**

The Ventura Regional Sanitation District (VRSD) Board approved the termination agreement at today's Board meeting, effective June 30, 2015. The termination agreement is attached.

Attachment – VRSD Contract 08-024 Termination Agreement

DPW: 290-10\vm\etm\dlz\Council\062315 Biosolids Recycling Program Supplemental.doc

2015 JUN 18 PM 4:00
CITY CLERK DEPARTMENT
CITY OF THOUSAND OAKS

TO COUNCIL 6-18-2015
AGENDA ITEM NO. 8-J.
MEETING DATE 6-23-2015

**AGREEMENT TO TERMINATE VRSD CONTRACT NO. 08-024
AGREEMENT FOR COMMITMENT AND TREATMENT OF BIOSOLIDS**

THIS AGREEMENT TO TERMINATE ("Agreement") is entered into this 23rd day of June, 2015 between the **CITY OF THOUSAND OAKS**, a municipal corporation (the "City") and **VENTURA REGIONAL SANITATION DISTRICT**, a public agency formed pursuant to California Health and Safety Code § 4700, *et.seq.*, (the "District"), also known collectively as "the Parties".

RECITALS

- A. The City owns and operates the wastewater treatment facility known as the Hill Canyon Wastewater Treatment Plant from which biosolids are generated from the treatment of wastewater.
- B. The District owns and operates the Toland Road Landfill. District developed, owns, and operates a biosolids facility at the landfill.
- C. On May 15, 2008 City and District entered into *VRSD Contract No. 08-024 Agreement for Commitment and Treatment of Biosolids* ("2008 Agreement"), a true and correct copy of which is attached hereto as Exhibit "A".
- D. City and District desire to terminate the 2008 Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and in exchange for other valuable consideration, the receipt of and sufficiency of which are hereby acknowledged, City and District hereby agree as follows:

- 1. Termination of Agreement. Pursuant to paragraph 21 of the 2008 Agreement and to the condition specified in paragraph 3, below, the 2008 Agreement, and all rights and obligations of the parties thereunder, shall terminate as of the Effective Date (as defined in paragraph 3, below.) As of the Effective Date, City and District shall each have no further obligations to the other with respect to the 2008 Agreement, except City shall pay any Fees remaining due for Biosolids delivered to and accepted by District prior to the Effective Date.
- 2. Termination Payment Waived. District agrees to waive any and all Termination Payments remaining and delineated in paragraph 21 of the 2008 Agreement and City will not be charged any monetary amount or penalty by District as a result of terminating the 2008 Agreement.
- 3. Effective Date. This Agreement shall constitute City's Notice of Termination. The "Effective Date" of this Agreement and the termination of the 2008 Agreement shall be June 30, 2015. District further waives the notice provisions

outlined in paragraph 21 of the 2008 Agreement and both District and City agree that the effective date may occur prior than one (1) year beyond the date of the Notice of Termination.

4. Mutual Release. The parties and their respective officers, directors, employees and agents hereby fully release and forever discharge one another, including their respective officers, directors, employees and agents, from and on account of any and all claims, demands, damages, penalties, costs, causes of action, rights, and obligations of the parties, and liabilities or charges of any nature, known or unknown, suspected or unsuspected, which they may have had claim to have had, or now have or now claim to have, or hereafter may have or assert to have, which arise out of or are in any manner whatsoever directly or indirectly related to the 2008 Agreement. The parties acknowledge and agree that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to this release, and they agree that this general release shall remain effective notwithstanding such different or additional facts. Each party further expressly agrees that all rights under Section 1542 of the California Civil Code are hereby waived. Civil Code Section 1542 reads as follows:

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

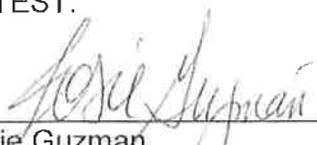
5. Entire Agreement. This Termination Agreement constitutes the entire agreement and understanding between the parties regarding its subject matter and supersedes all prior or contemporaneous negotiations, representations, understandings, correspondence, documentation, and agreements (written or oral).

IN WITNESS WHEREOF, the parties have executed this Termination Agreement as of the Effective Date in Ventura County, California.

Dated: June 18, 2015

Ventura Regional Sanitation District

ATTEST:



Josie Guzman
Clerk of the Board

By: 

Rick Neal, Chairman
Board of Directors

[SIGNATURES CONTINUED ON NEXT PAGE]

APPROVED AS TO FORM:
Arnold LaRoche Mathews VanConas & Zirbel LLP



Mark A. Zirbel
Legal Counsel for District
Dated: June 18, 2015

City of Thousand Oaks

By: _____
Al Adam, Mayor

ATTEST:

Linda D. Lawrence, City Clerk

APPROVED AS TO ADMINISTRATION:

Scott Mitnick, City Manager

APPROVED AS TO FORM:
Office of the City Attorney

Felicia Liberman, Assistant City Attorney

Exhibit "A"

VRSD CONTRACT NO. 08- 024
AGREEMENT FOR COMMITMENT AND TREATMENT OF BIOSOLIDS
BETWEEN
VENTURA REGIONAL SANITATION DISTRICT
AND
CITY OF THOUSAND OAKS
(BIOSOLIDS FACILITY AT TOLAND ROAD LANDFILL)

THIS AGREEMENT dated May 15, 2008, is made and entered into by and between Ventura Regional Sanitation District, a public agency formed pursuant to California Health & Safety Code §4700 *et seq.*, ("District"), and City of Thousand Oaks, a municipal corporation of the State of California, ("City").

RECITALS

- A. District owns and operates the Toland Road Landfill ("Landfill").
- B. City owns and operates the Hill Canyon Treatment Plant ("Plant").
- C. District will develop, own and operate the Biosolids Facility ("Facility") located at the Landfill.
- D. District and City desire to secure environmentally sound, economic and reliable transportation, treatment and disposition of Biosolids generated at the Plant and to secure a reliable supply of Biosolids to the Facility.
- E. On January 11, 2007, District's Board of Directors, approved and certified the Mitigated Negative Declaration/Initial Study for the Toland Road Landfill Biosolids Facility and Electrical Generation Project, November 2007 (State Clearinghouse No. 2006061093) ("MND").

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements set forth, the parties agrees as follows:

1. **TERM.** The term of this Agreement shall begin on the date first stated above ("Agreement Date"), and shall terminate June 30, 2018, unless terminated earlier under the terms of this Agreement.

2. **CITY BIOSOLIDS DELIVERY COMMITMENT.**

(a) **Delivery Commitment Effective As Of Operation Commencement Date.** City shall begin delivering Biosolids to District under the terms of this Agreement on the date ("Operation Commencement Date") established in a written notice delivered by District to City at least thirty (30) days before the commencement of the operation of the Facility in accordance with this Agreement.

(b) **City's Delivery Commitment.** Effective on the Operations Commencement Date and continuing through out the term of this Agreement, City shall deliver to District, all Biosolids generated at the Plant. The delivery commitment under this subsection 2(b) shall be referred to as the "City's Delivery Commitment". District acknowledges that City intends to increase the solids content of the Biosolids, which would result in a reduction of the tons delivered under the City's Delivery Commitment.

(c) **Title to Biosolids.** City warrants that City has good title to all Biosolids delivered under this Agreement. Title to all Biosolids delivered by City to District under this Agreement shall be conveyed to District upon acceptance by District.

3. **DISTRICT SERVICE COMMITMENT.**

(a) **Commitment to Accept Biosolids.** Effective on the Operations Commencement Date, and, thereafter, during the term of this Agreement, District shall accept the City's Delivery Commitment of Biosolids delivered by City. District's obligation to accept City's Delivery Commitment of Biosolids under the terms of this Agreement shall not be subject to any other condition. The intent of the parties is

that the City shall rely upon District's service commitment and that City shall not be required to make other arrangements for the management, hauling, processing, use and/or disposal of the Biosolids covered by this Agreement. In short, the District hereby commits to build the Facility and accept delivery of all the Biosolids generated at the Plant, for the entire Term of this Agreement, subject to the terms of this Agreement. In the event the Operation Commencement Date does not occur on or before March 31, 2009, City shall have the right to provide District with written notice of its intent to terminate this Agreement. If District fails to commence operations within sixty (60) days after such written notice is given, City shall have the right to terminate this Agreement effective upon such date as City shall designate. Upon such termination, all rights, obligations and remedies provided for under this Agreement shall have no further force or effect.

(b) District Facility and Landfill Operation Responsibility. District shall be solely responsible for the hauling, treatment and disposition of Biosolids delivered in compliance with this Agreement and for the administration and enforcement of all agreements and regulatory requirements relating to the operation of the Facility and the Landfill. District will conduct monitoring to ensure that the Facility meets all regulatory requirements imposed pursuant to the Facility Permits or otherwise imposed by the County of Ventura, Ventura County Air Pollution Control District, California Department of Health Services, California Integrated Waste Management Board, California Regional Water Quality Control Board, Los Angeles Region, United States Environmental Protection Agency and any other regulatory agency with jurisdiction over the Facility.

(c) Processing Service. Biosolids will be unloaded, processed and dried at the Facility as generally described in the MND, and as more specifically required under the terms of the Facility Permits as defined below. The District shall endeavor to dry and reuse the Biosolids as alternative daily cover at the Landfill. However, in the event of upsets or other conditions which may require the District to use alternative means of disposition, the District, at its option exercised at its sole discretion, may (1) divert the Biosolids for direct utilization as alternative daily cover if consistent

with all operational and regulatory requirements, or (2) directly bury the Biosolids in the Landfill consistent with all operational and regulatory requirements, or (3) undertake other commercially feasible alternatives consistent with all operational and regulatory requirements.

(d) **Operating Obligation.** The Facility shall receive Biosolids six (6) days per week, Monday through Saturday and process Biosolids seven (7) days per week, Monday through Sunday, consistent with the definition of Operating Hours set forth below. Notwithstanding any modification to Operating Hours, District's commitment to accept and process or dispose of all City's Delivery Commitment shall remain in full force and effect and District shall be responsible for making plans and implementing measures to meet its service commitment and managing these Biosolids seven days a week.

(e) **Transportation Service.** At the Plant, City shall load all Biosolids into trailers supplied by District for transportation by District. District shall provide Biosolids hauling services required to transport the Biosolids delivered under this Agreement from the Plant to the Facility. These transportation services shall comply with the following provisions:

(1) **Compliance with Plant Traffic Rules.** District shall comply with all traffic scheduling, routing and safety rules and regulations governing traffic to and from the Plant.

(2) **Requirements for Trailers.** District shall supply an adequate number of trailers to transport Biosolids from the Plant to the Facility. No fewer than two (2) (or more if additional commitments are made) trailers will be available on-site at the Plant at all times to accommodate City solids dewatering schedule. The trailers shall have capacity for a minimum of twenty-two (22) tons and shall meet all California Vehicle Code requirements for weight and load distribution when normally filled. City shall attempt to load the trailers reasonably close to, but not over, the capacity of the trailers. Trailers shall be free of any Biosolids on the exterior, tightly covered and closed in with a water tight seal capable of preventing dripping

during transportation. City will make available a trailer wash down area on the Plant site to allow for cleaning before departure, if necessary.

(3) **Routine Scheduling.** District and City shall coordinate in developing a routine schedule for the transport of Biosolids. The schedule shall provide the hauler with a dependable departure time while keeping pace with Plant production and not exceeding the reserve capacity of the trailers available. Transportation will occur on Facility Operating Days in accordance with the Plant and Facility Permits. The only on site storage of Biosolids at the Plant shall be in the trailers and no loaded trailer shall remain on site longer than forty-eight (48) hours, unless City provides written approval of an extension of this time limit. City shall be responsible for loading and shuttling trailers to and from the Plant loading area. Following disconnection of the empty trailer, District shall connect the filled trailer as designated by City.

(4) **Traffic Safety and Responsibility.** District shall agree to be responsible for inspecting each trailer for roadworthiness as required by California Vehicle Code and shall correct any safety problems before transporting Biosolids. All traffic citations issued by law enforcement agencies shall be the responsibility of the District.

(5) **Weight and Load Requirements.** It shall be the responsibility of the District to assure that each transported load meets weight and load distribution requirements before transport. If any load does not meet these requirements, District will notify the City's representative before moving the trailer outside the Plant and District and City personnel will coordinate to redistribute the load as required.

4. UNACCEPTABLE AND HAZARDOUS WASTE DELIVERED TO FACILITY.

(a) **District Refusal Rights.** District may refuse delivery of any Biosolids that do not contain Biosolids as defined below or that do contain Unacceptable Waste or Hazardous Waste in any quantities.

(b) **Screening and Removal of Unacceptable Waste and/or Hazardous Waste.** City shall not knowingly deliver, and shall use all legal means reasonably available, in cooperation with District, to prevent the delivery of Unacceptable Waste and/or Hazardous Waste to the District. District may inspect all Biosolids delivered by City before or after loading, for the presence of Unacceptable Waste and/or Hazardous Waste. District and City shall conduct any and all Biosolids monitoring and reporting requirements established under their respective permits in compliance with all applicable laws.

(c) **Disposal Responsibility and Costs.** District shall remove, and dispose of, or cause the removal and disposal of, all Unacceptable Waste and Hazardous Waste delivered to District. City shall pay District all reasonable costs and expenses incurred by District in connection with its obligations under this section.

5. BIOSOLIDS FEES.

(a) **Biosolids Fee.** In consideration for District's performance of all requirements of this Agreement, City shall pay District Fifty-Two Dollars (\$52.00) per wet ton of Biosolids delivered ("Biosolids Fee"). This Fee includes all costs incurred by District, including, but not limited to, the management, permitting, hauling, processing, use and/or disposal of the Biosolids covered by this Agreement. This Biosolids Fee includes an assumed Ten Dollars (\$10.00) per ton fee component for Biosolids hauling cost, which District shall adjust up or down based on the actual cost of hauling services obtained using reasonable commercial efforts to obtain the lowest cost, consistent with the service requirements of this Contract. City reserves the right to haul its own Biosolids, subject to traffic, scheduling and operational requirements applicable to the District's hauling operation. In the event City hauls its own Biosolids, the Biosolids Fee shall be reduced by the District's avoided costs.

(b) **Adjustment of Biosolids Fee.** The Biosolids Fee set forth above shall remain in effect during the period from the Agreement Date through June 30, 2009. Thereafter, the amount of the Biosolids Fee may be adjusted annually by the District's Board of Directors at a Regular District Board Meeting to be held at least four

months before the start of the next District Fiscal Year ("Annual Meeting"). City shall be provided written notice of the Annual Meeting and any proposed adjustment at least thirty (30) days prior to the meeting. At the Annual Meeting the District's Board of Directors shall review the Fee and make adjustments, to be effective the next July 1st, based on the following elements, as determined by the Board of Directors, following receipt of any input from City and other interested parties:

(1) An annual increase, not to exceed three and one-half percent (3.5%); plus

(2) Any increase in the actual cost to District of providing the services under this Agreement, caused by: (a) any new regulatory fee or tax or additional fees imposed by other governmental agencies after the date of this Agreement, (b) any new or revised statutory or regulatory requirement, modified or adjusted permit conditions, or administrative action, judicial actions or judgment, imposed after the date of this Agreement, including, but not limited, to costs for additional technical or environmental studies, associated attorney and consultant fees, costs of new mitigation and/or monitoring requirements, and costs of new operational requirements, and/or (c) costs of new capital improvement requirements.

(3) Any adjustment required to reflect the then current actual cost of hauling services as described above in Section 5(a).

(c) Payment of Fees Irrespective of Biosolids Deliveries. The intent of this Agreement is that City shall deliver or cause to be delivered to District all of the Biosolids specified in the City's Delivery Commitment during the term of this Agreement. In order to establish the remedy available in the event this commitment is not fulfilled, the parties agree that City shall pay District the Fees as provided hereunder during the term of this Agreement, whether or not City delivers or causes to be delivered any, a portion of, or all of the City's Delivery Commitment of Biosolids to District; provided that City shall not be charged a hauling fee component for unused hauling services which District can terminate without liability. For purposes of calculating Fees payable under this paragraph, the tonnage amount of the City's Delivery Commitment shall be based on the actual tons of Biosolids generated at the Plant for delivery under

this Agreement over the immediately preceding three (3) months of operations. The obligation of City to pay these Fees shall be absolute and unconditional. City hereby acknowledges that the services to be provided by District pursuant to this Agreement are of a valuable and unique nature to City and that the Fees to be paid by City to District constitute fair consideration therefore. City further acknowledges that District has undertaken the obligation to develop the Facility and provide the services provided for herein based upon City's commitment made in this Agreement.

6. MEASUREMENT.

The tonnage used to calculate the Fee shall be based on the weight of each loaded Biosolids delivery truck measured at the weight scales described below minus the certified tare weight for each truck. District shall install, operate, and maintain an adequate scale system at the Landfill to weigh these Biosolids delivery trucks, or District shall use other certified scales. District shall maintain and make available to City the following information: (1) Day of the week; (2) Calendar date; (3) Time of day; (4) Vehicle identification; and (5) Total number of tons of Biosolids delivered to the Facility that is accepted by District. All scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability specified in the California Code of Regulations. District or its contractors shall establish the tare weight of each delivery truck.

7. PAYMENT OF FEES.

(a) **Monthly Statement.** On or before the tenth (10th) working day following the end of any month for which payments are required to be made under this Agreement ("Billing Period"), District shall mail to City a bill setting forth the Fees for such prior month based on the number of tons delivered and accepted by District and the price per ton established pursuant to the Agreement. On or before the thirtieth (30th) working day following the post marked date of such bill, City shall mail the payment to District of the full amount of such Fees.

(b) **Disputes.** If City disputes any amount billed by District in any Billing Statement, City shall nonetheless pay the undisputed amount and shall mail to District detailed written objection within twenty (20) working days of the receipt of such Billing Statement indicating the amount that is being disputed and providing all reasons then known to City for its objection to or disagreement with such amount. If City and District are not able to resolve such dispute within twenty (20) working days after City's objection, either party may pursue legal remedies.

8. OPERATING HOURS.

The Facility's operating days and hours for receiving Biosolids will be established by District Resolution and made available to City. The Facility shall receive deliveries six (6) days a week, Monday through Saturday, except for established holidays, emergencies, upset conditions or closures District determines to be necessary to comply with the Landfill's and/or Facility's operating or regulatory requirements. The Facility's dryers shall operate seven (7) days a week except for emergencies, upset conditions, closures, maintenance or repair District determines to be necessary to comply with the Facility's operating or regulatory requirements.

9. CLASS A BIOSOLIDS REUSE.

In addition to the management of the Biosolids, District shall, to the extent permitted by operational and regulatory requirements, provide City with the option to deliver to District, Biosolids meeting the EPA requirements for Class A generated at the Plant to the Landfill for reuse as alternative daily cover ("ADC"). This ADC shall be transported to the Landfill under the "Transportation Services" procedures established for Biosolids above. City shall pay District an "ADC Fee" of the then current gate rate for refuse disposal plus the District's actual cost of the transportation services, payable under the procedures for payment of the Biosolids Fee above. This ADC Fee includes all costs incurred by District, including, but not limited to, the management, permitting, hauling, application and monitoring of the ADC.

10. **RIGHT OF SITE INSPECTION.**

Subject to the provisions of the operating permits and agreements, District and City shall permit duly authorized representatives of District and City to enter and inspect the Facility and Plant upon notice to the other party during usual business hours for the purpose of coordinating the implementation of this Agreement. All records of transactions relating to Biosolids delivered to the Facility, including, but not limited to, documents regarding the characteristics of the Biosolids, calibration of scales, truck maintenance and driver training shall be made available to City's representatives upon request.

11. **PROTECTION OF PERSONS AND PROPERTY.**

District shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its performance, including the performance of all its contractors, including contractors hauling waste to the Facility under this Agreement. District shall take all reasonable precautions for the safety of, and provide for reasonable protection to prevent damage, injury or loss to, all City, District and other related hauler employees and all other persons who may be affected thereby and other property at the Facility site or Landfill site or adjacent thereto, including roadways, structures and utilities. District shall promptly remedy all damage or loss to any property referred to above caused in whole or in part by District or other related haulers or contractors or anyone directly or indirectly employed by any of them. District shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

12. **COMPLIANCE WITH LAWS AND ORDINANCES.**

District shall keep itself fully informed of all laws, ordinances, regulations, orders and permits which in any manner affect those engaged and employed herein or the materials used, or which in any way affect the conduct of operations on or off the Facility site, including all permit conditions and other requirements relating to the Facility

operation. District at all times shall observe and comply with, and shall cause all of its agents, employees and contractors to observe and comply with, all such existing and future laws, ordinances, regulations, orders and permits, and shall hold harmless, indemnify and defend City and its elected officials, officers and employees from liability for violations of such requirements caused by District or other related haulers or contractors. District or other related haulers and subcontractors shall obtain all licenses and permits required to perform work under this Agreement. Evidence of such permits and licenses shall be provided to City upon City's request to District.

13. RECORDS AND ACCOUNTS.

District and City shall each, respectively, keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of the transactions relating to the Facility and Plant, including records of the quantity, quality and other characteristics of Biosolids delivered by City and accepted by District. Such books shall at all reasonable times be subject to the inspection of the authorized representative of the other party.

14. INDEMNITY.

(a) **District.** District agrees to hold City harmless from and to indemnify and defend City, and its elected officials, officers, employees, agents, representatives and independent contractors, against any and all liabilities, claims, actions, lawsuits, costs and expenses, including reasonable attorney fees, liens, judgments and demands, including but not limited to claims of regulatory violation, damage to property, or bodily injury or death, due to or arising out of the, District's negligent performance or willful misconduct in performance of all services provided under this Agreement including District's operations at the Facility and/or Landfill, except to the extent such claim(s) result from the negligence or willful misconduct of City.

(b) **City.** City agrees to hold District harmless from and to indemnify and defend District against any and all liabilities, claims, actions, lawsuits, costs and

expenses, including reasonable attorney fees, liens, judgments and demands, including but not limited to claims of regulatory violations, damage to property, or bodily injury or death, due to or arising out of City's negligent performance or willful misconduct in performance of its obligations under this Agreement, including City's operations of the Plant, except to the extent such claim(s) result from the negligence or willful misconduct of District.

(c) **Joint Defense.** To the extent practical and consistent with ethical constraints of legal counsel, when both parties or employees, agents, representatives, haulers and/or independent contractors of both parties are negligent, the parties shall participate in the joint defense of the matter. The parties shall execute appropriate agreements to effectuate such joint defense including necessary waivers.

(d) **Joint Negligence.** Notwithstanding the preceding sections, when both parties or employees, agents, representatives, haulers and/or independent contractors of both parties are negligent and such joint negligence causes liabilities, claims, actions, lawsuits, costs, expenses, liens, judgments and demands, including but not limited to claims of regulatory violation, damage to property, or bodily injury or death, then each party shall be responsible and liable in proportion to the amount of fault attributable to each party and/or each party's employees, agents, representatives, haulers and/or independent contractors, for such damages and costs, including the cost of any joint defense, however each party shall bear its own attorney fees. In the situation where the parties undertake a joint defense of the matter, any determination of proportional fault shall be determined by agreement of the parties or by submitting the issue for resolution in a separate action where each party is represented by separate counsel.

15. INSURANCE.

(a) **City Self Insured.** The City is a duly authorized and funded self-insured entity under the laws of the State of California, Government Code Sections 989 and 990. The City is self-insured against workers' compensation claims in accordance with Labor Code section 3700(b).

(b) **District Insurance.** District will not commence or continue to perform under this Agreement unless it has provided for liability coverage, by the California Sanitation Risk Management Authority or a California licensed insurance company with ratings acceptable to City, for any liability, loss, expense or claim which may arise out of or result from the performance District under this Agreement with the following limits, which limits, shall be increased One Million Dollars (\$1,000,000) effective five (5) years from the Agreement Date.

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

(2) Automobile liability, including comprehensive form, including loading and unloading, owned, hired and non-owned coverage, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit coverage; and

(3) Workers' compensation insurance as required by law.

(c) **Certificates.** Memorandum of coverage or certificates of insurance shall be filed by District prior to commencement of any operation or performance under this Agreement. District shall also require its haulers to provide such insurance coverage to City. These memorandums or certificates shall provide that the City is an additional covered party for coverage in (1) and (2) above, that the coverage afforded shall not be canceled until at least thirty (30) days' prior written notice has been given to the respective parties.

16. **SUCCESSORS/ASSIGNMENT.**

(a) **Binding on Successors.** District and City each binds itself and its successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Agreement.

(b) **Assignment.** This Agreement is made by both parties specifically based upon their review of and reliance on each party's facilities, governance and performance capability. Subject to the written consent of the District, City may assign, in

whole (up to forty [40] tons) or in part, its rights and obligations, including, but not limited to, the obligation under Section 5(c); provided, if only a portion of the rights and obligations are assigned, then District, City and assignee shall agree to amend this Agreement to specify the number of tons of the City's Delivery Commitment and the number of tons of the assignee's Delivery Commitment under this Agreement, provided the total of the City's and assignee's Delivery Commitment shall not exceed forty (40) tons. Such an amendment of the Agreement shall also revise the buy out schedule at Section 21 below to establish the City's and assignee's proportionate share of any buy out by both or either of them based on their respective Delivery Commitments. Similarly, such an amendment of the Agreement shall also revise the put or pay provisions of Section 5(c) above to establish the City's and assignee's proportionate share of any payment due under Section 5(c) by both or either of them based on their respective Delivery Commitments. Assignment may only be made to another City or governmental agency engaged in wastewater treatment operations within the County of Ventura.

(c) Responsibility for Subcontractors. City and District shall be fully responsible for all acts and omissions of their haulers, subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of persons directly employed by it.

17. RELATIONSHIP OF DISTRICT TO CITY.

It is expressly understood between the parties hereto that no employee-employer relationship is intended, the relationship of City to District being that of an independent contractor. City shall not be required to make any payroll deductions or provide Workers Compensation Insurance coverage or health benefits to District employees. District is solely responsible for selecting the means, methods and procedures for performing hereunder, and for coordinating all portions of its performance.

18. **DEFAULT/REMEDIES.**

(a) **Default by City.** City shall be deemed in default under this Agreement only if City shall fail, neglect or refuse to keep and perform any of the covenants, conditions, stipulations or agreements herein agreed to be performed by City, and such failure to perform is not cured within sixty (60) days after written notice specifying the nature and extent of such failure has been given to City. Upon City's failure to cure such default, District, at its option, may declare this Agreement terminated effective upon such date as District shall designate.

(b) **Default by District.** District shall be deemed in default under this Agreement only if District shall fail, neglect or refuse to keep and perform any of the covenants, conditions, stipulations or agreements herein agreed to be performed by District, and such failure to perform is not cured within sixty (60) days after written notice specifying the nature and extent of any such failure has been given to District. Upon District's failure to cure such default, City, at its option, may declare this Agreement terminated effective upon such date as City shall designate.

(c) **Remedies and Waiver.** Except as otherwise herein expressly provided, all rights and remedies of either party shall be cumulative and none shall exclude any other right or remedy allowed by law; the exercise by either party of any remedy provided for herein or by law shall not be to the exclusion of any other remedy. Either party's failure to take advantage of any default or breach of covenant on the part of the other party shall not be construed as a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or lessen the right of either party to insist upon the performance by the other of any term, covenant or condition hereof, or to exercise any rights given it on account of any such default. A waiver of a particular breach or default shall not be deemed to be a waiver of the same right or any other subsequent breach or default.

19. **DEFINITIONS.**

(a) **Administrative Action.** Petitions, objections, letters of opposition, requests for reconsideration, requests for modification, and other administrative appeals with the County of Ventura, Regional Water Quality Control Board - Los Angeles Region, Local Enforcement Agency, California Integrated Waste Management Board, State Water Resources Control Board, and/or other public agencies having jurisdiction over the Landfill.

(b) **Biosolids.** Unless District, in its sole discretion, specifically determines, in writing, that the Biosolids otherwise meets the criteria for the Facility's Permits and operational requirements, the Biosolids delivered shall be digested and dewatered organic material resulting from physical, chemical and/or biological treatment of sewage sludge generated at the Plant and meet the criteria for Class B Biosolids as established by the United States Environmental Protection Agency ("EPA") and have a solids content above fifteen percent (15%). Biosolids shall not contain lime or corrosive additives or other additives which are not certified by Fenton Environmental Technologies, Inc. as being consistent with the efficient operation of the Facility. Biosolids shall not be dried in or stored on the ground or in any other containment location where the material can pick up gravel or rocks.

(c) **Hazardous Waste.** Any waste under Article 1, Chapter 11, Division 4.5 (section 66261.3 *et seq.*) of Title 22 of the California Code of Regulations.

(d) **Landfill.** Toland Road Landfill located at the end of Toland Road in the unincorporated area of Ventura County.

(e) **Landfill Permits.** Includes the Conditional Use Permit No. CUP 3141 as approved and modified by the County of Ventura, Waste Discharge Requirements, Order No. 96-053, as approved and modified by the Regional Water Quality Control Board - Los Angeles Region, Solid Waste Facility Permit, SWFP #56-AA-0005 as approved and modified by the California Integrated Waste Management Board and the County of Ventura Environmental Health Division acting as the Local Enforcement Agency for the California Integrated Waste Management Board and all other regulatory Approvals necessary for the operation of the Landfill.

(f) **Facility.** Biosolids Drying Facility located at the Landfill.

(g) **Facility Permits.** Includes the Conditional Use Permit No. CUP 3141, as approved and modified by the County of Ventura, Waste Discharge Requirements, Order No. 96-053, as approved and modified by the California Regional Water Quality Control Board - Los Angeles Region, Solid Waste Facility Permit, SWFP #56-AA-0005, as approved and modified by the California Integrated Waste Management Board and the County of Ventura Environmental Health Division acting as the Local Enforcement Agency for the California Integrated Waste Management Board and all other regulatory Approvals necessary for the operation of the Facility.

(h) **Plant.** The Hill Canyon Wastewater Treatment Plant located at 9600 Santa Rosa Road, Camarillo, California.

(i) **Unacceptable Waste.** Waste which does not meet the criteria for Biosolids specified in this Agreement.

20. **GENERAL PROVISIONS.**

(a) **Time.** Time is of the essence of this Agreement. Any reference herein to days, unless otherwise defined, shall be interpreted as referring to calendar days.

(b) **Notices.** Any notice to be given under this Agreement shall be in writing and shall be deemed given two (2) days after being sent by first class mail, addressed to:

District:

General Manager
Ventura Regional Sanitation District
1001 Partridge Drive, Suite 150
Ventura, California 93003-5562

City:

Hill Canyon Wastewater Treatment Plant
9600 Santa Rosa Road
Camarillo, California. 93012

or to such other address as either party may designate hereinafter in writing delivered to the other party.

(c) **Governing Law/Venue.** This Agreement, and all matters relating to this Agreement, shall be governed by the laws of the State of California in force at the time any need for interpreting this Agreement or any decision or holding concerning this Agreement arises. Venue for any Superior Court action relating to this Agreement shall be in Ventura County.

(d) **Severability.** If any clause, provision, paragraph or section of this Agreement shall be ruled invalid by any court of jurisdiction, then the parties shall: (1) promptly meet and negotiate a substitute for such clause, provision, paragraph or section which shall, to the greatest extent legally permissible, effect the intent of the parties therein; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (3) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, paragraph or section shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

(e) **Prior Understandings and Usage.** This Agreement contains the entire agreement between the parties and supersedes all previous written or oral negotiations, commitments, understandings, proposals and writings. It is expressly understood by the parties that the terms of this Agreement shall not be modified by course of performance, course of dealing, usage or informal arrangements which may occur from time to time over the term of this Agreement or by evidence of additional terms not expressly contained in this Agreement.

(f) **Amendments.** No amendments to this Agreement may be made except by a writing signed by the parties.

2017	\$ 600,000
2018	N/A

For example, the earliest date on which City could deliver a Notice of Termination would be January 1, 2009. The earliest Termination Date that could be specified in such notice would be December 31, 2009. On or before December 31, 2009 the City would make a payment of \$3,000,000 to the District.

(e) The City hereby acknowledges that any Termination Payment would be made in consideration of the District's service commitment made under this Agreement including, but not limited to, District's agreement to incur the costs related to the management, planning, permitting, regulatory compliance, capital development, processing, and disposal of the Biosolids covered by this Agreement. The City further acknowledges that District has undertaken the obligation to develop the facility and incur the costs associated with this project and to provide the services provided for herein based upon City's Delivery Commitment made in this Agreement. In light of the District's investment in this project, City hereby further acknowledges that the Termination Payment constitutes fair consideration to District for costs incurred by District under this Agreement.

22. INTERIM DISPOSAL OBLIGATIONS

In consideration of the making of this Agreement, District and City further agree that, effective on the Agreement Date, City shall be obligated to deliver and District shall be obligated to accept all Biosolids generated at the Plant for disposal at the Landfill until the Operation Commencement Date. The foregoing obligation shall be called the "Interim Disposal Obligation". Any time after March 31, 2009, District may terminate the Interim Disposal Obligation by providing six (6) months written notice to City. The Interim Disposal Obligation shall be performed in accordance with and subject to all the terms and conditions of this Agreement; provided that, in lieu of the Biosolids Fee, City shall pay to District an Interim Disposal Fee composed of a transportation charge of Three Hundred Sixteen Dollars and Twenty-Five Cents (\$316.25) per truck load delivered plus a disposal charge of Twenty-Three Dollars and

(g) **Execution in Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if one document were signed by all parties.

(h) **Force Majeure.** Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control, including, but not limited to, acts of God, strikes, lockouts, war, epidemics, fire, earthquake or other disaster.

21. TERMINATION FOR CITY'S CONVENIENCE

City shall have the right to terminate this Agreement for its convenience upon the provision of a written "Notice of Termination" to District and payment to District of a "Termination Payment" subject to the following conditions:

(a) The Notice of Termination shall not be given prior to January 1, 2009, and

(b) The Notice of Termination shall specify a "Termination Date" at least one (1) year beyond the date the Notice of Termination is given, and

(c) City shall deliver the Termination Payment to District prior to the specified Termination Date, and

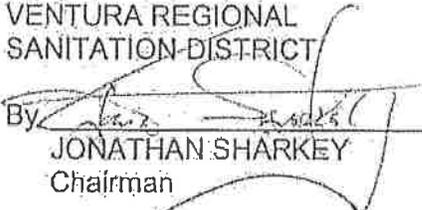
(d) The Termination Payment shall be paid in immediately available funds in the amount listed below which corresponds with the date listed below.

<u>Year Termination Notice Given</u>	<u>Termination Payment</u>
2008	N/A
2009	\$3,000,000
2010	\$2,700,000
2011	\$2,400,000
2012	\$2,100,000
2013	\$1,800,000
2014	\$1,500,000
2015	\$1,200,000
2016	\$ 900,000

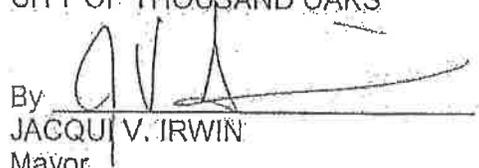
Sixty-Six Cents (\$23.66) per wet ton of Biosolids delivered. The disposal charge component of this Interim Disposal Fee shall be increased effective July 1, 2008 to Twenty-Six Dollars and Thirty-Three Cents (\$26.33) per wet ton delivered.

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

VENTURA REGIONAL
SANITATION DISTRICT

By 
JONATHAN SHARKEY
Chairman

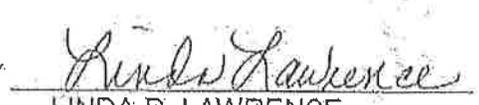
CITY OF THOUSAND OAKS

By 
JACQUIE V. IRWIN
Mayor

ATTEST:

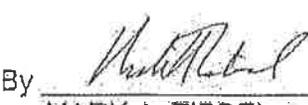
By 
RHONDA CATRON
Clerk of the Board

ATTEST:

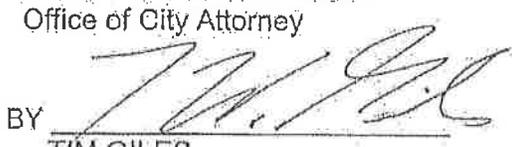
BY 
LINDA D. LAWRENCE
City Clerk

APPROVED AS TO FORM:

ARNOLD, BLEUEL, LaROCHELLE,
MATHEWS & ZIRBEL, LLP

By 
MARK A. ZIRBEL
Legal Counsel for DISTRICT

APPROVED AS TO FORM:
Office of City Attorney

BY 
TIM GILES
Assistant City Attorney

lg3
05-06-08

PWD:290-30/slb/Council/2008/May 13/HCTP Biosolids