

LANDELL GAS FIELD FACILITIES

Between

Brown Vence & Associates Lfg Corporation

And

The County of Santa Cruz

February, 1999

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LANDFILL GAS FIELD FACILITIES LEASE AGREEMENT

THIS LANDFILL GAS FIELD FACILITIES LEASE AGREEMENT (this "Lease Agreement") dated as of February ,____ 1999, is by and between Brown Vence & Associates Lfg Corporation, a California corporation duly authorized to conduct business in California, ("BVA LFG") and the County of Santa Cruz, a municipal corporation organized under the laws of the State of California, (the "County").

WITNESSETH:

WHEREAS, BVA LFG is a California corporation formed and existing under the laws of the State of California, and is authorized and empowered to enter into this Lease Agreement (as hereinafter defined);

WHEREAS, the County is authorized and empowered to enter into this Lease Agreement;

WHEREAS, the County owns and operates a landfill located at 123 1 Buena Vista Drive, Watsonville, California, as more particularly described in Article I, Definitions, included herein and made a part hereof, which contains Landfill Gas, consisting primarily of methane and carbon dioxide which occurs from the decomposition of waste within the Landfill;

WHEREAS, the County is willing to allow BVA LFG to occupy a portion of the Landfill through a lease in order to produce, extract and utilize for its own account Landfill Gas from the Landfill;

WHEREAS, the County is willing to lease the Gas Collection System and to grant to BVA LFG the exclusive right to produce, extract and utilize for its own account Landfill Gas existing at the Landfill and own and utilize such Landfill Gas and the products derived therefrom for its own account; and

WHEREAS, the County and BVA LFG desire to enter into this Lease Agreement whereby BVA LFG will lease the Gas Collection System for the foregoing purposes from the County.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto formally covenant, agree, and bind themselves as follows, to wit.

ARTICLE I DEFINITIONS

The capitalized terms defined in this Article shall, for all purposes of this Lease Agreement, have the meanings specified in this Article, unless the context clearly otherwise requires.

1. **"Actual Knowledge of the County"** (or similar references to the County's knowledge) shall mean the actual knowledge of or receipt of notice by the County representative as defined herein, as such knowledge has been obtained (i) in the normal conduct of the business of the County

or (ii) in connection with the preparation of the Exhibits and Schedules to this Lease Agreement and the furnishing of information to BVA LFG as contemplated by this Lease Agreement after having made a reasonable investigation of the accuracy of the representations and warranties made by the County in this Lease Agreement or other writing furnished by the County to BVA LFG pursuant to this Lease Agreement or otherwise in connection with such documents.

2. “Business Day” shall mean any day during which banks are open for business in San Francisco, California.

3. “BVA LFG Representative” shall mean the person at the time designated to act on behalf of BVA LFG by written certificate furnished to the County, and signed by BVA LFG. Such certificate may designate an alternate or alternates and may be revoked or changed by BVA LFG from time to time. The BVA LFG Representative may be an employee of BVA LFG and shall file his or her specimen signature with the County if requested.

4. “County Representative” shall mean the person at the time designated to act on behalf of the County by written certificate furnished to BVA LFG, and signed by the County. Such certificate may designate an alternate or alternates and may be revoked or changed by the County from time to time. The County Representative may be an employee of the County and shall file his or her specimen signature with BVA LFG if requested.

5. “County’s Facilities” shall mean the flare currently installed at the Landfill and all modifications, replacements, additions and expansions thereof, and all other facilities or equipment owned or operated by County on such real property, now or in the future, which beneficially reuses Landfill Gas, including a proposed electric power generation plant.

6. “Claims” shall have the meaning set forth in Section 10.01.

7. “Closing” shall have the meaning set forth in Section 2.14 below.

8. “Closing Date” shall have the meaning set forth in Section 2.14 below.

9. “Code” shall mean the Internal Revenue Code of 1986, as amended.

10. “Early Termination Date” shall have the meaning set forth in Section 9.01 below.

11. “Environmental Claim” shall mean claims, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements (i) relating to the Landfill or the Gas Collection System, the operations or activities thereon or the use or occupancy thereof, and (ii) arising out of any (A) past or present violation of any applicable Environmental Law, (B) action by a Governmental Entity for enforcement, clean-up, removal, response or remedial action or damages, pursuant to any Environmental Law, or (C) action by a third party seeking penalties, damages, contribution, indemnification, cost recovery, compensation, or injunctive relief resulting from injuries to persons or property due to Hazardous Substances or alleged violation of any Environmental Law.

12. “Environmental Laws” shall mean any applicable federal, state, or local governmental law or quasi-governmental law, statute, rule, regulation, order, consent decree, decree, judgment, license, covenant, deed restriction, ordinance or other requirement or standard relating to pollution or the regulation or protection of health, safety, natural resources, or the environment, as now existing or hereafter in effect, including, without limitation, those relating to releases, discharges, emissions, injections, **leachings**, or disposal of Hazardous Substances or hazardous materials into air, water, land, or groundwater, to the withdrawal or use of groundwater, or to the use, handling, treatment, removal, storage, disposal, processing, distribution, transport, or **management** of Hazardous Substances. “Environmental Laws” shall include, but shall not be limited to the Clean Air Act; the federal Water Pollution Control Act; the Safe Drinking Water Act; the Toxic Substances Control Act; the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Occupational Safety & Health Act; the Hazardous Materials Transportation Act; the Oil Pollution Act of 1990; and any similar federal, state, or local statutes and regulations.

13. “Event of Breach” shall have the meaning set forth in Section 8.01 of this document.

14. “Force Majeure” shall mean acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act, or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances; explosions; or any other cause or event, not reasonably within the control of the party claiming Force Majeure (other than the financial inability of such party), which precludes that party from carrying out, in whole or in part, its obligations under this Lease Agreement. Nothing in this provision is intended to excuse any party **from** performing due to any governmental act, failure to act, or order, where it was reasonably within such party’s power to prevent, correct, anticipate, or guard against such act, failure to act, or order.

15. “Gas Purchase Agreement” shall mean the Landfill Gas Purchase Agreement between Brown Vence & Associates Lfg Corporation and the County of Santa Cruz executed concurrently herewith, as it may hereafter be amended, modified and supplemented in accordance with its provisions.

16. “Gas Collection System” shall mean the network of Landfill Gas collection headers, interconnecting pipes, valves, monitoring and measuring equipment, any knock-out vessels, any Landfill Gas scrubber, any Landfill Gas cooler, any necessary vacuum pumps, blowers and compressors, the Sales Meters, and any and all additional equipment, machinery, and fixtures currently installed or to be installed at, in or on the Landfill and used for or in connection with the extraction, collection, production, selling, or transporting of Landfill Gas up to the Points of Delivery, and all modifications, replacements, additions and expansions thereof, but excluding in all cases (i) the Flare Station, (ii) facilities for the production of electrical power, (iii) **leachate** vaporization facilities, and (iv) other facilities for the productive use of the Landfill Gas.

17. “Gas Purchaser” shall mean the purchaser of Landfill Gas produced by the Gas Collection System and sold by BVA LFG pursuant to the Gas Purchase Agreement, or any

succeeding agreement(s) providing for the sale of Landfill Gas produced by the Gas Collection System.

18. “Good Engineering Practice” shall mean any practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with reliability, safety, environmental protection, expedition, project economics, and applicable laws and regulations for similar facilities in the State of California. “Good Engineering Practice” is not intended to be limited to the consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods, or acts.

19. “Governmental Entity” shall mean any court or tribunal in any jurisdiction or any federal, state, municipal, or other governmental body, agency, authority, department, commission, board, bureau, or instrumentality other than the County.

20. “Improvements” mean (i) any replacements, modifications, additions and expansions to or of the Gas Collection System, and (ii) if repairs to or of the Gas Collection System in any year exceed \$50,000 in the aggregate, then the repairs which give rise to any such excess amounts.

21. “Landfill” shall mean the Buena Vista Landfill located at 123 1 Buena Vista Drive in Watsonville, California.

22. “Landfill Gas” shall mean any and all gases which qualify for Section 29 tax credits under the Internal revenue Code of 1986, as amended, resulting **from** the biological decomposition of landfill solid wastes, including, but not limited to, methane, carbon dioxide, hydrogen, and traces of other gases or any combination thereof.

23. “Lease Agreement” shall mean this Landfill Gas Field Facilities Lease Agreement, as it may hereafter be amended, modified and supplemented in accordance with its provisions.

24. “Lease Payments” shall mean **the** payments set forth in Article III of this Landfill Gas Collection System Lease Agreement.

25. “Losses” shall have the meaning set forth in Section 10.01.

26. “Material Adverse Effect” shall mean events or circumstances which, individually or in the aggregate, would have, or would reasonably be likely to have, a material adverse effect on the business, assets, results of operations, condition (financial or otherwise), or prospects of the business conducted by the County, BVA LFG, or another party as the case may be, or on the ownership, operation or condition (financial or otherwise) of the System Interests or any material portion thereof; or which would result in the imposition of any material lien or other material encumbrance on the System Interests or on the ability of the County to perform its obligations hereunder.

27. “MMBtu” shall mean 1 ,000,000 British Thermal Units.

28. **“Notice of Proposed Adjustment”** (sometimes referred to as a “30-day letter”) shall mean a notice from the Internal Revenue Service taking the position that tax credits under Section 29 of the Code are unavailable for part or all of the Landfill Gas sold pursuant to the Gas Sales Agreement.

29. **“O&M Agreement”** shall mean the Landfill Gas Field Facilities Operations and Maintenance Agreement between Brown Vence & Associates LFG Corporation and the County of Santa Cruz, executed concurrently herewith, as it may hereafter be amended, modified and supplemented in accordance with its provisions.

30. **“Operator”** shall mean the Operator as defined in the Operations and Management Agreement of this date between BVA LFG or any successor operations and management agreement with respect to the Gas Collection System.

31. **“Operations and Maintenance Manual”** means the Plan of Operation and Gas System Operation and Maintenance Manual for the County Landfill, and any revisions thereto.

32. **“Permits”** shall mean all material authorization forms, permits and licenses issued by, consents and approvals of, filings with, notices **from**, and registrations with, any Person and all Governmental or quasi-Governmental Entities (including all conditions thereof), which are currently required to be obtained, or may be required in the future, with respect to applicable Environmental Laws or otherwise, for or in connection with (i) the production or sale of Landfill Gas from the Gas Collection System, (ii) the operation, maintenance, possession or ownership of the Gas Collection System, or (iii) the exercise by BVA LFG of any of its rights under this Lease Agreement.

33. **“Permitted Encumbrances”** shall mean as of any particular time, (i) liens for taxes not then delinquent, (ii) this Lease Agreement and (iii) any other lien, encumbrance, charge, or cloud on title that BVA LFG certifies will not materially impair the use of the Gas Collection System for their intended purpose and the Landfill for landfilling.

34. **“Person”** shall mean any natural person or corporate or other legal entity.

35. **“Points of Delivery”** shall mean the downstream exit flange of the blowers (which are part of the Gas Collection System), or the downstream flange of the compressors (which are also part of the Gas Collection System), or the downstream flange on the gas preprocessors (also part of the Gas Collection System).

36. **“Premises”** shall mean the area of the Landfill to be occupied by BVA LFG pursuant to the lease granted pursuant to Article II hereof for purposes of operating the Gas Collection System.

37. **“Projected Production”** shall mean with respect to the Gas Collection System cumulatively for any calendar year, 160,000 MMBtus.

38. “Public Records Act” shall mean Sections 6250-6268 of the California Government Code.

39. “Related Agreements” shall mean the Lease, the O&M Agreement, the Gas Purchase Agreement and Additional Sales Contracts, if any.

40. “Sales Meters” shall mean the meters and other measuring devices currently installed and to be installed as part of the Gas Collection System (and any replacements or modifications to such meters), installed for the purpose of measuring in accordance with Good Engineering Practice the volumes of the Landfill Gas produced by the Gas Collection System and sold to Gas Purchaser at the Points of Delivery. The gas calorimeters associated with the sales meters measure the methane content and hence the MMBtus contained in such Landfill Gas. These instruments are also part of the definition of the Sales Meters.

41. “State” shall mean the State of California.

42. “System Interests” shall mean the rights and interests transferred or leased pursuant to Section 2.01 of this Lease Agreement.

43. “Transactions” shall mean the transactions contemplated by this Lease Agreement and the Gas Purchase Agreement.

44. “Work Scope” means the Work Scope for Operation, Monitoring and Maintenance of the Landfill Gas Collection System at the Landfill in Santa Cruz, California, a description of which is attached as Exhibit A to the O&M Agreement and made a part hereof.

Unless the context indicates otherwise, all capitalized terms used herein and not defined herein shall have the meanings specified in the Lease or the O&M or Gas Purchase Agreements and such definitions shall be incorporated by reference herein.

ARTICLE II LEASE OF LANDFILL GAS COLLECTION FACILITY

SECTION 2.01(a). Lease of Landfill Gas Collection Facility. Subject to the terms and conditions of this Lease Agreement, the County hereby leases the Premises and related surface area of the Landfill to BVA LFG for purposes of the operation and maintenance of the Gas Collection System and the extraction, production and sale of Landfill Gas therefrom. BVA LFG shall have the exclusive ownership and control of all Landfill Gas extracted by BVA LFG from the Landfill using the Gas Collection System, and any additions thereto, during the term of this Lease Agreement. BVA LFG and its employees, agents, representatives, vendors and independent contractors shall have the right to use or access the Gas Collection System, or any part thereof, by foot or otherwise, such part of the Landfill as they deem necessary; provided, however, such rights granted shall be subject to, and shall not interfere with, those previously granted and recorded easements, rights-of-way, permits and other such grants of authority; and provided further that such rights granted do not include the right to place any pipeline on the surface or subsurface of the Landfill other than as reasonably necessary for Gas Collection System modifications, improvements or expansions, or for

transporting and sale of Landfill Gas. BVA LFG and its employees, agents, representatives and independent contractors shall have the right to transport over such routes of access all goods and services necessary for the conduct of their operations on the Premises. This right of access shall be available on a twenty-four (24) hours a day and seven (7) days a week basis. Except as otherwise provided herein, BVA LFG shall peacefully have, hold and enjoy the Gas Collection System and the Premises. The parties agree that, during the term of this Lease Agreement, the Landfill Gas extracted and produced by BVA LFG shall be the property of BVA LFG until delivery of the Landfill Gas to the Points of Delivery.

(b) Additions to Gas Collection System. As new refuse disposal modules are added to the Landfill and begin to produce Landfill Gas, BVA LFG shall have the option, but not the obligation, to expand the Gas Collection System into these new modules at BVA LFG's expense. Such expansions shall become part of the Gas Collection System and shall be subject to all other terms and conditions of this Lease Agreement.

(c) Payment of Taxes. ~~the second sentence herein,~~ the County shall pay before delinquency any and all assessments, taxes (excluding sales taxes, so long as the County shall be exempt from paying sales taxes, and income taxes attributable to BVA LFG or its tax paying affiliate), and governmental fees and charges, including all taxes arising from or relative to this Lease Agreement or the Gas Collection System, and all such taxes, licenses, and permit fees necessary or required by law for the conduct of its business. If the County wishes to contest, by appropriate proceedings and diligently pursue, any tax, assessment, fee, or charge prior to payment and such nonpayment could result in the imposition of a lien or encumbrance on any interests of BVA LFG, the County shall notify BVA LFG of such intent and shall provide BVA LFG with such security as BVA LFG may reasonably require to protect BVA LFG's interests from such lien or encumbrance.

(d) Reversion to County. At the conclusion of the term specified in Section 12.01 hereof or upon termination pursuant to Section 8.02 hereof, all rights of BVA LFG hereunder shall revert to the County. Any additions or improvements to the Gas Collection System made by BVA LFG or its affiliates shall become the property of the County, and shall be free of any liens or encumbrances without the written consent of the County, which consent shall not be unreasonably withheld.

(e) Lease of Gas Collection System. On the terms and conditions set forth in this Lease Agreement, the County hereby leases and delivers to BVA LFG, and BVA LFG accepts from the County all right, title and interest of the County as owner in the Gas Collection System and possession thereof, subject to such reservations of rights that appear herein. The County also grants to BVA LFG the right to utilize and operate under the Permits affecting the Gas Collection System; and in the case of permits affecting both the Gas Collection System and the Landfill, the right to benefit from permits held by the County to the extent required for BVA LFG's operation of the Gas Collection System.

SECTION 2.02. Further. Notwithstanding any other provision of this Lease Agreement to the contrary, it is understood and agreed by the parties (i) that the County's primary obligation and purpose is the efficient conducting of its landfill and refuse disposal operations in

accordance with all regulatory requirements pertaining to the control of gas migration at the Landfill and pertaining to the closure and post-closure of the Landfill, and (ii) that the needs of the Gas Collection System and the rights granted to BVA LFG hereunder shall not materially interfere with Landfill operations and the need for the County to meet all applicable regulatory and permit requirements, including the operation of the Landfill in a safe, healthy, and environmentally acceptable manner, or to interfere with the County's right to access the Premises for these purposes.

SECTION 2.03. Obligations of County. County (i) shall not materially interfere with BVA LFG's operation of its exploration or gas extraction process or knowingly cause the disruption or destruction of the biological decomposition of Landfill solid wastes producing Landfill Gas, (ii) shall prevent its independent contractors, agents, employees and invitees from committing such interference or causing such disruption or distraction, and (iii) shall not damage, and shall prevent its independent contractors, agents, employees and invitees from causing damage to, any part of the Gas Collection System or the Premises. Upon request of BVA LFG, County shall cause the assignment to BVA LFG of such Permits and approvals it has already received, but only as may be necessary to conform with any regulatory requirements or requirements for BVA LFG to conduct the activities permitted by this Lease Agreement, including, but not limited to, the exploration, extraction, transport, and sale of Landfill Gas. The County shall not be liable for damages for breach of this Agreement if it is impossible or reasonably impracticable to assign such Permits to BVA LFG; but BVA shall have the right to terminate this Lease Agreement if the County's inability to assign such Permits materially interferes with BVA LFG's ability to obtain the benefits it has bargained for under this Lease Agreement.

SECTION 2.04. Covenant of BVA LFG Not To Interfere With Permit Compliance. BVA LFG covenants that the needs of the Gas Collection System and the rights granted to BVA LFG hereunder shall not materially interfere with Landfill operations and the need for the County to meet all applicable regulatory and permit requirements, including the operation of the Landfill in a safe, healthy, and environmentally acceptable manner, and BVA LFG agrees not to interfere with the County's right to access the Premises for these purposes. Nothing in this Lease Agreement shall be construed as limiting the County's ability to comply with laws and regulations applicable to the operation of the Landfill or to comply with the County's permits and approvals for the Landfill.

SECTION 2.05. Environmental Permits. County shall, at its own expense, obtain and maintain in effect all necessary Permits to operate and Permits to construct the Gas Collection System required by law, and shall prepare and file applications concerning the Gas Collection System and diligently prosecute such applications with a view to obtaining all Permits which may be required for the Gas Collection System under applicable Environmental Laws, or other applicable local, state, and federal laws and regulations in connection with producing, collecting, and marketing Landfill Gas, and those other activities described in this Lease Agreement. County agrees to make available to BVA LFG copies of all environmental information, reports, environmental impact reports, air impact assessment studies, risk assessments and other pertinent data relating to and used in connection with the conducting of any of its activities on the Landfill.

SECTION 2.06. Full Cooperation. County shall, in good faith and using its best efforts, cooperate fully with BVA LFG to meet its responsibilities under this Lease Agreement. BVA LFG

shall, in good faith and using its best efforts, cooperate fully with County to meet its responsibilities under this Lease Agreement.

SECTION 2.07. Liabilities. Notwithstanding anything contained herein to the contrary, BVA LFG shall assume no obligations or liabilities of the County not expressly assumed herein (including without limitation, those that relate to or are otherwise attributable to an activity or operation occurring prior to the Closing). BVA LFG acknowledges that it shall have certain duties to the County and recognizes and understands that the operation and maintenance of the Gas Collection System is at all times subject to the County's obligation to conduct its Landfill and refuse disposal operations in an efficient manner and in accordance with all applicable regulatory requirements, including those pertaining to the control of Landfill Gas migration and the closure and post-closure of the Landfill. BVA LFG shall maintain and preserve the Gas Collection System in good repair, working order and condition. In addition, in the instance of any exercise by the County of its rights under and in accordance with this Lease Agreement, BVA LFG shall be deemed to permit the County to utilize any portion of the Gas Collection System essential for the safe disposal of Landfill Gas, and to make any modifications to the Gas Collection System essential for such purpose.

SECTION 2.08. Operation of Gas Collection System. BVA LFG's operations at the Premises will be in compliance with all federal, state, county, and local laws and regulations and will be in accordance with Good Engineering Practice.

SECTION 2.09. County's Right to Visit Gas Collection System. County or its authorized representatives shall have the right to visit the Premises in accordance with reasonable safety procedures, subject to giving BVA LFG 24 hours prior notice where such visit may reasonably be expected to interfere with the operation of the Gas Collection System.

SECTION 2.10. BVA LFG's Responsibility for. BVA LFG shall have no responsibility or liability whatsoever for (i) Landfill Gas that is not collected by the Gas Collection System or any component thereof, (ii) the control or containment of or any damage occasioned by Landfill Gas migration within or beyond the grounds of the Premises, or (iii) monitoring or otherwise detecting or controlling surface emissions, and its only responsibilities with respect to migration control are those that are specifically described in Section 2.11 below and which are integral to those gas recovery activities which are BVA LFG's primary activities at the Premises; provided, however, that nothing herein shall preclude County's rights under Section 2.12 below.

SECTION 2.11. Migration Control System Gas. Notwithstanding anything in this Lease Agreement to the contrary, in the event that the County installs or causes to be installed a Migration Control System outside of the Landfill's permitted airspace and separate and apart from the Gas Collection System, BVA LFG shall have no obligation to take any available Landfill Gas from such system, unless such taking (or the resulting necessary operation or expansion of the Gas Collection System) is economical for BVA LFG and not unduly burdensome and BVA LFG shall so agree.

SECTION 2.12. Permits; Compliance with Laws. County represents that (i) it has received all Permits necessary to be obtained by it as of the date of this Lease Agreement or will modify or amend existing Permits or secure new Permits as necessary to maintain compliance with laws; (ii) such Permits are valid and in full force and effect; (iii) County and its operations are in compliance

therewith, except for any violation which would not result in a Material Adverse Effect; and (iv) there exists no reasonably foreseeable event or condition, which after notice or lapse of time, or both, would constitute a breach by County thereunder. Each party agrees that its performance of its obligations under this Lease Agreement shall be in compliance with all applicable laws, ordinances, rules and regulations, and with any and all applicable orders, decrees, judgments and Permits of any governmental or judicial authority. In addition, each party shall not cause, by its actions or failures to act under or in connection with this Lease Agreement, the other party to be in violation of any of the foregoing. Without limiting the foregoing, in their respective ownership, leasing, possession and use of the Premises, County and BVA LFG shall each comply with all applicable laws. County further covenants and agrees that it will dispose of or treat all condensate generated in the Gas Collection System from the Landfill Gas in accordance with applicable Environmental Law.

SECTION 2.13. Maintenance of Gas Collection System by BVA T.F.G. BVA LFG agrees that as long as it has an interest in the Gas Collection System during the term of this Lease Agreement, it shall, at its own expense, maintain, preserve, and keep the Gas Collection System or cause the Gas Collection System to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof in good repair, working order and condition, excepting however reasonable wear and tear and damages not due to the fault of BVA LFG. In addition, BVA LFG hereby agrees not to take any action which would damage, or prevent the proper operation or maintenance of the Gas Collection System, cancel any of County's rights at law or in equity or substantially and adversely affect the safety or the effective operation of the Landfill.

SECTION 2.14. Closing. The closing of the Transactions contemplated by this Lease Agreement ("the Closing") shall take place concurrently when the County has delivered to BVA LFG this Lease Agreement and all other documents, opinions, and reports collateral to the above agreements, in form and substance satisfactory to BVA LFG, and duly executed by all parties thereto, except BVA LFG has delivered to the County this Lease Agreement and all other documents collateral to these documents, in form and substance satisfactory to the County, and duly executed by BVA LFG. The Closing Date shall be no later than March 30, 1999, or at such later date as the parties may mutually agree.

ARTICLE III LEASE PAYMENTS

SECTION 3.01. Payment Rate.

A. Prior to the Early Termination Date described in Section 9.01, BVA LFG shall pay to County Lease Payments equal to 15.8 cents per **MMBtu** of all Landfill Gas sold by BVA LFG pursuant to the Gas Purchase Agreement during the preceding calendar quarter or portion thereof during the term of this Lease Agreement.

B. If the following two conditions are met: (1) the County does not elect the Early Termination of this Lease Agreement by the Early Termination Date described in Section 9.01; and (2) the County also does not construct and operate or cause to be operated an electric generation facility using Landfill Gas as the fuel source, then commencing with the Early Termination Date,

BVA LFG shall pay to County during the remaining term hereof total Lease Payments equal to Fifty Percent (50%) of the total value of tax credits that BVA LFG or its assignee claims and determines in its reasonable judgment are available pursuant to Section 29 of the Code **from** the sale of Landfill Gas **from** the Gas Collection System following the Early Termination Date, less the amount of the payments made by BVA LFG to County for operation and maintenance of the Gas Collection System under the Operations and Maintenance Agreement between the County and BVA LFG of even date herewith; provided, however, that under no circumstances shall County receive a Lease Payment less than Two Thousand Five Hundred Dollars per month. By way of example, if during a calendar quarter the value of fifty percent of the available Section 29 tax credits equals \$30,000 and during that same quarter BVA LFG has paid the County \$7,500 for operations and maintenance of the Gas Collection System, then the net Lease Payment owed to the County would be \$22,500. The value of such credits for Landfill Gas produced and sold shall be based on the last Section 29 rate as published by the Internal Revenue Service ("IRS") on or about April 1 of each year. For the purposes of Lease Payments, BVA LFG shall calculate the value of the Section 29 credits generated based on the metered energy value in MMBtus of Landfill Gas produced and sold. Notwithstanding the foregoing, BVA LFG's obligation to pay the County fifty percent of the available tax credits is conditioned on BVA LFG's ability to monetize these tax credits.

C. If the following two conditions are met: (1) the County does not elect the Early Termination of this Lease Agreement by the Early Termination Date described in Section 9.0 1; and (2) the County does construct and operate or cause to be operated an electric generation facility using Landfill Gas as the fuel source, then commencing with the Early Termination Date, BVA LFG shall pay to County during the remaining term hereof total Lease Payments equal to the base rate of 15.8 cents per MMBtu (plus any adjustments for inflation as provided in this subparagraph) of all Landfill Gas sold by BVA LFG pursuant to the Gas Purchase Agreement or to any successor Gas Purchaser(s) during the preceding calendar quarter or portion thereof. The base rate of 15.8 cents per MMBtu shall be adjusted to reflect inflation on the first and each succeeding anniversary of this Lease Agreement by increasing the then current base rate by a factor equal to eighty percent (80%) of the percentage increase in the Consumer Price Index-- All Urban Consumers-- San Francisco Bay Area ("CPI") for the twelve month period immediately preceding the anniversary date. Should the CPI index described above be unavailable for any reason, the parties shall agree on a substitute inflation index or either party may submit the selection of an appropriate inflation index to binding arbitration by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Nothing herein shall prohibit the parties from mutually agreeing on alternative Lease Payment arrangements should the County develop an **electric** generation facility.

SECTION 3.02. **Payment Schedule.** The Lease Payments due under Section 3.01 above for Landfill Gas produced and sold shall be paid quarterly in arrears, no later than the twentieth (20th) Business Day following each calendar quarter. Notwithstanding the previous sentence, if BVA LFG disputes in good faith any portion of any Lease Payment, BVA LFG shall provide County with notice of the amount so disputed. The disputed portion of any Lease Payment will be withheld **from** payment to County until such dispute is resolved. The parties shall each use their best efforts to resolve any such dispute in good faith as soon as practicable. Any resulting overpayment or underpayment to County shall be, respectively, deducted or added to the Lease Payments made in the next quarter, such deduction or addition to be computed with interest at eight percent (8%) compounded annually. In the case of any resulting underpayment to County, BVA LFG shall make

an adjustment as defined above to the Lease Payments made in April of the following year, except that the final such adjustment shall be made within ninety days after the termination of this Lease Agreement, which adjustment shall be paid by transfer of funds between the parties.

SECTION 3.03. Suspension of Lease Payments. Notwithstanding the above, if BVA LFG or its tax filing parent receives a Notice of Proposed Adjustment, BVA LFG may suspend any Lease Payments due after the date of such Notice of Proposed Adjustment reflecting the portion of the tax credits addressed by such Notice. Upon sustaining its position with the Internal Revenue Service, BVA LFG shall make the withheld Lease Payments to County, with interest computed at eight percent (8.0%), compounded annually. In the event that BVA LFG's position is not sustained, and a retroactive adjustment of Lease Payments is necessary, in no event, shall Lease Payments previously made be refunded. Rather, BVA LFG may make such adjustment through withholdings from subsequent Lease Payments.

ARTICLE IV REPRESENTATIONS, WARRANTIES, COVENANTS

SECTION 4.01. By the County. Except as set forth on Exhibit E attached and made a part of this document, the County makes the following representations, warranties, and covenants, as the basis for the undertakings on the part of BVA LFG contained in this Lease Agreement:

(a) Authority and Binding Obligation. The County has all requisite power and authority to execute and perform its obligations under this Lease Agreement. The execution and delivery of this Lease Agreement to which the County is a party and the consummation of the Transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action on the part of the County. This Lease Agreement is a legal, valid and binding obligation of the County, enforceable in accordance with its terms.

(b) No Conflicts. Neither the execution and delivery of this Lease Agreement by the County nor the consummation by the County of the Transactions contemplated by this agreement, nor compliance by the County with the provisions of this Lease Agreement will (i) conflict with or result in a violation of the County's charter, any provision of law (including any writ, injunction, or decree) applicable to the County or its properties at the time of Closing, the regulations promulgated thereunder or any other statutory or other provision governing its organization and internal affairs, (ii) conflict with or result in a breach of any provision of, or constitute (with or without the giving of notice or the passage of time or both) a breach under or give rise (with or without the giving of notice or the passage of time or both) to any right of termination, cancellation or acceleration under, or require any consent, approval, authorization, or waiver of, or notice to, any party to any agreement or other instrument or obligation to which the County is a party, or by which the County or any of its properties or assets is bound or any Permit held by the County, or (iii) result in the creation or imposition of any lien, security interest or other encumbrance of any kind or character upon any of the System Interests.

(c) Governmental Approvals. No consent, approval or other action by, or filing with any Governmental Entity is required in connection with the execution and delivery by the County

of this Lease Agreement or the consummation by the County of the Transactions contemplated hereby or thereby, other than those consents, approvals or other action that the County has obtained or taken.

(d) Transfer of Property and Related Matters. Except as set forth on Exhibit E attached hereto, the transfer to BVA LFG, pursuant to the terms and conditions set forth in this Lease Agreement, of the Premises and the Gas Collection System, is made free and clear of all liens, security interests, or encumbrances of any kind or character. The existing System Interests include all properties and interests (real, personal and mixed, tangible and intangible), and all agreements and instruments which are reasonably necessary for the successful conduct of the Landfill Gas collection business of the County as presently conducted and as intended by the parties herein, and such business of the County is now being conducted without conflict with any right or asserted right of others. The County has taken or will take all required action consistent with this Lease Agreement to put BVA LFG in physical possession and operating control of the Gas Collection System and to remove the impediment caused by the scheduled item.

(e) Environmental Laws.

(i) In connection with its lease, construction, possession, maintenance, operation and all other aspects of the System Interests, the County is in compliance with all applicable Environmental Laws, except for any violation which would not result in a Material Adverse Effect; and there does not exist any current unsatisfied obligation, except for such obligation which would not result in a Material Adverse Effect if left unsatisfied, to perform any cleanup, removal, containment or other remediation pursuant to any applicable Environmental Laws. To the Actual Knowledge of the County, there are not any facts, events, conditions or circumstances pertaining to such items which could reasonably be expected to subject the County or BVA LFG to any remedial obligations under any applicable Environmental Laws.

(ii) Except for any Environmental Claim which would not result in a Material Adverse Effect if resolved in favor of the Person(s) making such Environmental Claim, no Environmental Claim against the County has been made or commenced, or is pending, or to the Actual Knowledge of the County, is being threatened or contemplated by any Person, and to the Actual Knowledge of the County there is no valid basis for any such Environmental Claim to be asserted.

(iii) Except as set forth on Exhibit C hereto, there are no proceedings pending or, to the Actual Knowledge of the County, threatened, relating (whether on-site or off-site) to the System Interests and the County's conduct of the business related thereto under any applicable Environmental Law by any Governmental Entity or any third party, except for such proceedings which would not result in a Material Adverse Effect if resolved in favor of the Governmental Entity or third party. The County has not received relating to the System Interests or the County's conduct of the business related thereto any written notice of any investigation, inquiry, judicial or administrative proceeding, order, judgment, decree, dispute, negotiations, agreement, or settlement by or with any Governmental Entity or third party and related in any way to any applicable Environmental Laws, any remedial action required thereunder, any violation thereof, or any claims or liabilities thereunder.

(iv) Except notices required by Proposition 65 of California law, the County has not filed, and does not expect to file, any notice under any Environmental Laws applicable to the conduct of the Gas Collection System (i) indicating past or present treatment, storage or disposal of Hazardous Substances in violation of any applicable Environmental Laws, (ii) reporting a release of any Hazardous Substance in violation of any applicable Environmental Laws, or (iii) reporting any other violation of applicable Environmental Laws.

(v) No lien (with “super-priority” or otherwise) has been established, fixed or filed under any applicable Environmental Laws against the County to the extent such lien relates to the Gas Collection System.

(vi) To the Actual Knowledge of the County there are not now and have never been any underground storage tanks located at, on or under the Gas Collection System.

(vii) The County will cooperate in good faith with BVA LFG and execute those documents needed to effectuate the transfer of those Permits to BVA LFG as required by law.

(f) **Litigation.** Exhibit C attached and made a part of this document lists all actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or, to the Actual Knowledge of the County, threatened, whether at law or in equity, whether civil or criminal in nature or whether before any Governmental Entity or arbitrator, against or affecting the County or any of its properties, which, if decided adversely to the County, would have a Material Adverse Effect. Without limiting the foregoing, there are no such actions, suits, claims, complaints, investigations or proceedings pending or, to the Actual Knowledge of the County, threatened with respect to the County’s compliance with any applicable laws. There are no actions, suits, claims, complaints, investigations or legal or administrative or arbitration proceedings pending or, to the Actual Knowledge of the County, threatened, seeking to restrain, prohibit, or obtain damages or other relief in connection with this Lease Agreement or the Transactions contemplated hereby or thereby or which would preclude the use of the Landfill and the Project for the purposes intended by BVA LFG pursuant to this Lease Agreement. There is no outstanding order, writ, injunction, decree, judgement or award by any court, arbitration panel or Governmental Entity against or affecting the System Interests or the operation of the County’s business related thereto, except for such orders, writs, injunctions, decrees, judgements or awards which would not result in a Material Adverse Effect.

(g) **Permits.** Exhibit D attached and made a part of this document contains a true and complete list of all existing Permits material to this agreement and will modify or amend such existing Permits or secure new Permits as necessary to maintain compliance with laws material to this agreement. The County has furnished to BVA LFG true and correct copies thereof; and no other Permits are necessary for BVA LFG to carry out the Transactions and business contemplated hereby. Such Permits are valid and in full force and effect. The County and its operations are in compliance therewith, except for any violation that would not result in a Material Adverse Effect. There exists no reasonably foreseeable event or condition, which after notice or lapse of time, or both, would constitute a breach by the County thereunder or permit the revocation or termination thereof. To the extent any Permit requires transfer to BVA LFG or the consent of the permitting authority, such transfer or consent has been obtained.

The parties agree that for convenience and where it is permitted by applicable laws and regulations, a Permit shall continue to be held after Closing by and in the name of the County or jointly by and in the name of BVA LFG or the County, in either case for the benefit of BVA LFG. None of the Permits is subject to any restriction, limitation, condition or other provision which is reasonably likely to have a Material Adverse Effect. To the extent any Permit requires transfer to BVA LFG or the consent of the permitting authority, such consent has been received.

(h) **Title.** The County has good and marketable title to the Landfill and the existing components of the Gas Collection System free and clear of any and all liens, claims, easements, charges and encumbrances. No Person has any right with respect to the Landfill or the existing components of the Gas Collection System that would prevent or interfere with the business proposed to be conducted by BVA LFG pursuant to this Lease Agreement.

(i) **Taxes.** As to each of the Gas Collection System, all taxes and assessments based on, relating to or measured by, in whole or in part, the ownership of the Gas Collection System or the receipt of proceeds therefrom at any time have been or will be fully and properly paid.

(j) **Tax Credits.** No Person or entity has claimed or reported, or has the right to claim or report, for Federal income tax purposes, the credits under Section 29 of the Code with respect to the Landfill Gas. No Person or entity has claimed or reported, or has the right to claim or report for Federal income tax purposes, tax credits with respect to the Gas Collection System under any other section of the Code. The County shall notify BVA LFG immediately if it receives any Actual Knowledge that any other Person (other than BVA LFG or its assignees) has claimed or reported or may claim or report such credits with respect to the Landfill Gas after the Closing. In any such case, the County shall provide all assistance to BVA LFG as it may reasonably request in refuting such claims for credits under Section 29 of the Code.

(k) **Other Tax Matters.** The funds used for the acquisition, construction, or installation of the Gas Collection System, or any portion thereof, came from the income generated by the County's conduct of its business. No funds arising from grants, tax exempt bonds or subsidized energy financing programs under any federal, state or local program were used by the County or any other party in connection with the acquisition, construction, or installation of the Gas Collection System or any portion thereof. The County will prevent the use of any such funds in connection with the acquisition, construction or installation of any addition, expansions, enhancements or modifications of the Gas Collection System or any portion thereof.

(l) **Gas Collection System Operation.** The Gas Collection System was placed in service prior to July 1, 1998.

(m) **Landfill Gas Flow.** The Landfill Gas production projections set forth on Exhibit B hereto contain a good faith estimate of the energy content (expressed in **MMBtus**) of the Landfill Gas to be produced from the Landfill by the Gas Collection System and to be sold to the Gas Purchaser or its designee or assignee pursuant to the Gas Purchase Agreement.

(n) **L a n d f i l l** . The Landfill Gas being produced and to be produced in the future by the Gas Collection System does not and will not contain the following constituents at levels exceeding the following iimits:

Maximum Dust Quantity	1.4 g/ft ³ 26 mg/m ³
Maximum Dust Granule Size	3
H ₂ S	650 ppm 1035 mg/m ³
Maximum Halogen Content (TOTAL Cl + 2 x FI)	50 ppm 51.75 mg/m ³
Maximum Silicon Content	7 ppm 10.35 mg/m ³
Maximum Ammonia Content	36 ppm

The foregoing constituent limits assume 500 Btu per standard cubic foot. Higher limits on the foregoing maximum constituent limits shall be allowed if consistent with the engine manufacturer's warranty program.

(o) **Production Testing**. Within sixty (60) days of the execution of this Lease Agreement, County shall have provided BVA LFG with documentation, reasonably acceptable to BVA LFG, of the successful production of Landfill Gas at or above the Projected Production Amount during a two-week metering test period at the Gas Collection System, and BVA LFG's engineering consultants shall have confirmed such test results. Such testing shall demonstrate Landfill Gas production in an amount equal to or greater than one hundred percent (100%) of the Projected Production Amount. Metering must be done on a 24-hour continuous basis for at least ten (10) Business Days during the two-week gas tests.

(p) **Landfill and Gas Collection System** All Landfill Gas will be produced from organic waste, municipal waste, industrial waste or sludge deposited in the Landfill. The Landfill Gas produced at or **from** the Premises has been and shall be combustible. The Gas Collection System will contain all equipment necessary to extract, produce, filter, compress, measure and sell Landfill Gas at the Points of Delivery. The Gas Collection System and leasehold interests for the Landfill are **free** and clear of any liens, encumbrances or security interests. The County has good title to the Landfill and the Landfill Gas **free** and clear of any liens or encumbrances with full authority to grant the leases granted hereunder.

(q) **Disclosure.** This Lease Agreement, as modified by the attached Schedules, does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements contained therein, in the light of the circumstances in which they were made, not misleading. There is no fact peculiar to the County or any of the System Interests which may cause any Material Adverse Effect or in the future could (so far as The County can now reasonably foresee) cause any Material Adverse Effect to the System Interests and which has not been set forth in connection with the Transactions contemplated hereby.

BVA LFG acknowledges and agrees that (i) while it has conducted its own due diligence with respect to the Transactions contemplated by this Lease Agreement and has been given every opportunity to ask questions and has been provided with any and all additional information it may have requested in connection therewith, it has not relied upon any oral statement made by any director, officer, employee or other agent of the County or any other Person in making its decision to enter into the Transaction; and (ii) that with respect to any projections provided, while the County has provided such projections in good faith, there can be no assurances that such projections will be realized and, upon any failure of such projections to be realized, BVA LFG will have only the remedies specifically provided for in this Lease Agreement with respect to the failure of such projections to be realized.

(r) **Liabilities.** The County has no liabilities or obligations, the collection or assertion of which, would have a Material Adverse Effect.

(s) **Labor.** With respect to the Landfill, to the Actual Knowledge of the County, there is no organizing activity involving the employees of the County that would have a Material Adverse Effect. The County has complied in all material respects with all legal requirements relating to employment, equal employment and opportunity, non-discrimination, immigration, wages, hours, benefits, the payment of social security and similar taxes, and occupational safety and health. To the Actual Knowledge of the County, it has no liability or potential liability for employment related injuries, illnesses or other health related matters which would have a Material Adverse Effect.

(t) **Compliance With Laws.** The County is in compliance with all laws and regulations applicable to the County or the conduct of its business or operations, the non-compliance of which would have a Material Adverse Effect.

(u) **Tax.** There are no tax liens filed on the Gas Collection System or the County's interests therein.

(v) **No Bankruptcy Decree.** There has been no entry of a decree or order by a court having jurisdiction adjudging the County bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of or in respect to the County under Chapter 9 the federal Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator, or other similar official in respect to the County or in respect to any substantial part of its property, or ordering the winding up or liquidation of its affairs.

(w) No Bankruptcy Filing. There has been no institution by the County of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the Chapter 9 of the federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, or similar official or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of action by it in furtherance of any such action.

SECTION 4.02. By BVA LFG. BVA LFG makes the following representations, warranties, and covenants, as the basis for the undertakings on the part of The County herein contained:

(a) Formation and Power. BVA LFG is duly formed, validly existing and in good standing under the laws of the State of California, has the power to enter into this Lease Agreement and the Gas Purchase Agreement, and to carry out its obligations hereunder and under the Gas Purchase Agreement. By proper action, BVA LFG has been duly authorized to execute and deliver this Lease Agreement.

(b) Authority and Binding Obligation. Neither the execution and delivery of this Lease Agreement or the consummation of the Transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the provisions of this Lease Agreement by BVA LFG will materially conflict with or result in a breach of any of the terms, conditions, or provisions of any restriction or any agreement or instrument to which BVA LFG is a party or by which it is bound, or will constitute a breach under any of the foregoing. This Lease Agreement is the legal, valid and binding obligation of BVA LFG, enforceable in accordance with its terms.

(c) Tax Credits. BVA LFG assumes all risks that the structure of the Transactions provided for herein and in the Gas Purchase Agreement will be sufficient to qualify Landfill Gas sold under the Gas Purchase Agreement for tax credits under Section 29 of the Code.

(d) No Bankruptcy Decree. There has been no entry of a decree or order by a court having jurisdiction adjudging BVA LFG bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of or in respect to any of them under the federal Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator, or other similar official in respect to any of them or in respect to any substantial part of their property, or ordering the winding up or liquidation of their affairs.

(e) No Bankruptcy Filing. There has been no institution by BVA LFG (or any of its members) of proceedings to be adjudicated a bankrupt or insolvent, or the consent by any of them to the institution of bankruptcy or insolvency proceedings against them, or the filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or state law, or the consent by any of them to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, or similar official or the making by them of an assignment for the benefit of creditors, or the admission by any of them in writing of

their inability to pay their debts generally as they become due, or the taking of action by any of them in furtherance of any such action.

(f) Securities Representation. BVA LFG agrees that in entering into the Transaction, (i) it is not expecting to benefit solely from the efforts of the County or a third party after the Closing, and is not purchasing an “investment contract” or “security” for purposes of the federal securities laws or the securities laws of any state; (ii) it is a corporation all of whose equity owners are corporations not formed for the specific purpose of entering into the Transactions, with total assets in excess of \$5,000,000; and (iii) its members possess the experience and expertise in the landfill energy business necessary to evaluate the benefits and risks associated with its entering into the Transactions.

(g) Authority To Do Business. BVA LFG shall at all times be qualified to do business in the State of California.

ARTICLE V IMPROVEMENTS OF THE GAS COLLECTION SYSTEM

SECTION 5.01. Repairs by RVA LEG. BVA LFG or the Operator as agent of BVA LFG, may, after the execution and delivery of this Lease Agreement, cause such repairs or improvements as may be necessary to be made to the Gas Collection System.

SECTION 5.02. Improvements. The County will have no obligation to improve the Gas Collection System. However, either the County or BVA LFG may make improvements to the Gas Collection System, at its sole expense, that either the County or BVA LFG may identify in its reasonable engineering judgment to maintain or improve the production of Landfill Gas. Such improvements shall be made pursuant to Good Engineering Practice. The County or BVA LFG, as the case may be, desiring to make improvements, shall first advise the other party of the specific nature of the improvements at least (30) days in advance of making such improvements and must first receive the other party’s written consent thereto, which consent shall not be unreasonably withheld. Any such improvements made either by the County or BVA LFG, shall be the property of the County, subject to the lease granted under this Lease Agreement.

ARTICLE VI SPECIAL COVENANTS AND WARRANTIES

SECTION 6.01. Warranty of Facility. The County warrants and agrees that the design, construction, installation and condition of the Gas Collection System upon conveyance to BVA LFG, and of the Gas Collection System enhancements and other work designed, constructed or installed by or on behalf of the County, shall be pursuant to Good Engineering Practice, shall be adequate for the intended purposes of the Gas Collection System and for the capacity of Landfill Gas generated by the portions of the Landfill served, shall be adequate for the purposes specified in this Lease Agreement, and shall be in conformance with all applicable laws, regulations and Permits,

including without limitation, applicable Environmental Laws in effect at the time, except for any violation which would not result in a Material Adverse Effect.

SECTION 6.02. Operations and Management Reports. BVA LFG and the County will deliver or cause to be delivered to the other party any reports, letters, projections, estimates, and other documents, relevant to the responsibilities of the party receiving or requesting such document, prepared by or on behalf of them with respect to the operations and/or management of the Gas Collection System.

SECTION 6.03. Further Licenses etc. In the event it may be necessary or appropriate for the proper performance of this Lease Agreement, or for the protection of any rights hereunder, on the part of the County or BVA LFG that any application or applications for any permit, license, authorization, or consent be made to any Governmental Entity by BVA LFG or the County, BVA LFG and the County each shall execute upon the reasonable request of the other such application or applications.

SECTION 6.04. Confidentiality. The County and BVA LFG and their agents and employees (i) shall promptly notify the other party in the case of any request, subpoena, or other proceeding seeking documents or information concerning this Lease Agreement, or the Transaction contemplated herein; (ii) shall maintain in strict confidence all confidential information, oral or written, obtained by them, in connection with this Lease Agreement, including without limitation, the processes and construction techniques of each of them, this Lease Agreement and the structuring of the Transactions contemplated hereby, and (iii) shall not issue any press release or publish any writings regarding the Transaction without the prior written consent of the other party. Notwithstanding the above, the County shall remain free to publish any writings or make any presentations, not inconsistent with the terms and provisions of this Lease Agreement, that address gas collection and utilization generally but not the Transaction involving this Lease Agreement. Notwithstanding the foregoing, nothing in this section shall interfere with or limit the County's compliance with applicable Public Records Act laws and regulations.

SECTION 6.05. Further Assurances and Corrective Instruments. The County and BVA LFG will execute and deliver such amendments of or supplements to this Lease Agreement and any such further instruments as may be necessary for the purposes of correcting any inadequate or incorrect description of the Gas Collection System or carrying out the intention or facilitating the performance of this Lease Agreement.

SECTION 6.06. The County and BVA LFG Representatives. r t h e p r o v i s i o n s of this Lease Agreement the approval of the County or BVA LFG is required, unless express provision is otherwise made therefor, or the County or BVA LFG is required to take some action pursuant to the request or instruction of the other party, such approval, request or instruction shall be given for the County by a the County Representative and for BVA LFG by a BVA LFG Representative and the other party hereto shall be authorized to act and conclusively rely on any such approval, request or instruction.

SECTION 6.07. Liens. The County agrees that it will not permit nor cause the attachment or imposition of any lien, security interest or encumbrance of any kind or character on the Gas

Collection System or the System Interests, except that the County may, to the extent necessary, grant a lien, security interest or encumbrance in connection with financing needed to install, or put in place, a beneficial use for Landfill Gas, provided that to the extent any such lien, security interest or encumbrance has a Material Adverse Effect on BVA LFG or its interests hereunder, the County shall indemnify and make BVA LFG whole for any Losses or damages incurred as a result of any such lien, security interest or encumbrance.

ARTICLE VII ASSIGNMENT

SECTION 7.01. Assignment by BVA LFG. BVA LFG may not convey, transfer, or assign the Gas Collection System, nor may this Lease Agreement be assigned to any Person, without the prior written consent of the County, which consent shall not be unreasonably withheld, it being understood that it shall be reasonable for the County to withhold consent until it has received adequate assurances of the ability of the assignee to comply with the obligations of BVA LFG hereunder, such assurances to include but not be limited to the continued operation and management of the Gas Collection System in accordance with Good Engineering Practice and in good working order to ensure the safe collection and management of Landfill Gas, and the financial capabilities of the assignee. If (i) BVA LFG assigns all or substantially all of its interests hereunder in accordance with this Section 7.01 and (ii) the assignee assumes all of BVA LFG's obligations hereunder, then from the date of such assumption BVA LFG shall be released in full from all such obligations. In the event of an assignment by BVA LFG, BVA LFG agrees to reimburse the County for its out of pocket costs, including attorneys fees, reasonably incurred in connection with such assignment, not to exceed Five Thousand Dollars (\$5,000.00). BVA LFG agrees that it will not grant any lien or encumbrance or to the Premises or the Gas Collection System without the express written consent of the County.

SECTION 7.02. Assignment by County. Except as provided in section 6.07, County may not convey, transfer, or assign this Lease Agreement to any Person without the prior written consent of BVA LFG, which consent shall not be unreasonably withheld.

SECTION 7.03. Assignment to Lenders. The County agrees that it will make no assignment or conveyance of its interest to a lender in the leachate disposal systems, wastewater destruction injunction system, electrical generation systems or other beneficial use of Landfill Gas at the Landfill unless the related loan agreements provide for BVA LFG, in the case of any assignment or conveyance, a right of first offer in such interest, or in the case of a mortgage or encumbrance, in the event the County is in breach, the right of BVA LFG to acquire the interest and cure such breach.

ARTICLE VIII EVENTS OF BREACH AND REMEDIES

SECTION 8.01. Events. Any one or more of the following shall be "Events of Breach" under this Lease Agreement:

(a) Failure by BVA LFG to pay any Lease Payment, or any installment thereof on the date such payment is due and payable (except for payments suspended pursuant to Article III hereof), which failure shall have continued for a period of thirty (30) Business Days after written notice of such failure shall have been given by the County to BVA LFG provided, however, BVA LFG shall not be in breach for failure to pay any amount of the Lease Payment that is being disputed in good faith, provided that BVA LFG has paid the undisputed portion of the Lease Payment when such amount is due and payable;

(b) Failure by BVA LFG or the County to observe or perform to a material extent any covenant, condition, or agreement on their part to be observed or performed hereunder, other than as referred to in the foregoing subsection (a), for a period of sixty (60) days after written notice specifying such failure, requesting that it be remedied, and stating that it is a notice of breach and has been given to the other party; provided, however, that, if said breach is such that it cannot be corrected within the applicable period, it shall not constitute an Event of Breach until 180 days after said breach if corrective action is instituted by the party in breach within such 60-day period and diligently pursued until the breach is corrected. The foregoing notwithstanding, the breaching party shall remain liable to the other party for any damages incurred during the period such corrective action is being taken;

(c) The entry of a decree or order by a court having jurisdiction adjudging BVA LFG or the County bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment, or composition of or in respect of any of them under the federal Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator, or other similar official in respect to such party or in respect to any substantial part of its property, or ordering the winding up or liquidation of its affairs. The foregoing notwithstanding, if any order appointing a receiver, liquidator, assignee, trustee, sequestrator or other similar official is dismissed within 60 days, such order shall not create a breach under this Lease Agreement or the Gas Purchase Agreement;

(d) The institution by BVA LFG or the County of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, or similar official or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of action by any of them in furtherance of any such action. The foregoing notwithstanding, if any such proceeding is dismissed within 60 days, such proceedings shall not create a breach under this Lease Agreement or the Gas Purchase Agreement;

(e) Any Event of Breach by either party within the meaning of the Gas Purchase or O&M Agreements.

(f) Any Event of Breach by the County occurring under any agreement with a lender whereby the lender's remedy against the County as the borrower could be against the leachate disposal systems, wastewater destruction injection system or the electrical generation systems

located at the Landfill or where the remedy available to the lender could have a Material Adverse Effect on BVA LFG's interest in the System Interests.

(g) Any material representation or warranty made in this Lease Agreement shall prove to have been incorrect when made.

(h) Failure of the County to have placed in service a beneficial use for at least 800 cubic feet per minute (800 **cfm**) of Landfill Gas produced by the Gas Collection System by June 30, 2000, in the form of an electrical power generation facility or other beneficial use which shall be satisfactory to BVA LFG.

The foregoing provisions of this Section 8.01 are subject to the following limitations: If by reason of Force Majeure either party is unable in whole or in part to carry out the obligations on its part contained in this Lease Agreement (other than BVA LFG's obligations referred to in subsection 8.01(a)), such party shall not be deemed in breach during the first 180 days of the continuance of such inability, provided that (i) the party unable to carry out its obligations, within ten (10) Business Days after the occurrence of the Force Majeure, gives the other party written notice describing the particulars of such occurrence; (ii) the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure and shall not in any event be longer than a 180-day period; (iii) no obligations of the party unable to carry out its obligations which arose prior to the occurrence causing the suspension of performance shall be excused as a result of such occurrence; and (iv) the non-performing party shall use its best efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

SECTION 8.02. Termination.

(a) The County and BVA LFG shall each have the right to terminate this Lease Agreement in the event the other party commits an Event of Breach under the terms of this Lease Agreement.

(b) BVA LFG shall have the right to terminate this Lease Agreement, upon 90 days notice, in the event that, in BVA LFG's reasonable judgment (or that of its O&M Operator), projected gas production in the following calendar year will not exceed 160,000 **MMBtus**.

(c) BVA LFG shall have the right to terminate this Lease Agreement in the event that County (i) fails to have in operation by June 30, 2000 an electrical power generation facility or other beneficial use for at least 800 cubic feet per minute (800 **cfm**) of Landfill Gas produced by the Gas Collection System satisfactory to BVA LFG; (ii) indefinitely discontinues the production of electricity, the operation of the **leachate** evaporation facility, the wastewater destruction injection system or the other beneficial use for the Landfill Gas satisfactory to BVA LFG; and (iii) is not purchasing the Landfill Gas for a beneficial use satisfactory to BVA LFG.

(d) BVA LFG shall have the right to terminate this Lease Agreement in the event that, upon 90 days' written notice to County, BVA LFG certifies that it is a defendant in a lawsuit or administrative action related to this Transaction, or such action is threatened where an alleged basis of such action is other than some act or omission directly attributable to BVA LFG.

(e) BVA LFG shall have the right to terminate this Lease Agreement if there is a ruling by the Internal Revenue Service causing the full value of tax credits available under Section 29 of the Code to fall below \$250,000 per year.

SECTION 8.03. Rights on Termination or Expiration. In the event of termination or expiration of this Lease Agreement the following rights shall apply:

BVA LFG shall not remove any of the underground or **aboveground** elements of the Gas Collection System or the underground or aboveground pipeline installed in or on the Landfill (regardless of who paid for such items). However, nothing herein shall impair any rights of either party to cure or seek indemnification for, or damages in respect of, any Event of Breach or other matters bringing about a right of termination. In the event of termination, County shall promptly assume physical possession and operating control of the rights hereunder and the Gas Collection System and BVA LFG shall (i) execute and deliver such documents as are reasonably requested by County in order to put County in possession and operating control of the Gas Collection System, and (ii) convey all System Interests to County free of all liens, security interests, or encumbrances of any kind or character except for any Permitted Encumbrances.

SECTION 8.04. Termination of Gas Purchase Agreement. Provided that BVA LFG has not committed an Event of Breach hereunder, in the event BVA LFG terminates the Gas Purchase Agreement due to a breach thereunder by Gas Purchaser, BVA LFG shall have the right to keep this Lease Agreement in full force and to sell Landfill Gas to a new purchaser.

SECTION 8.05. No Remedy Exclusive. No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity, except as may be otherwise expressly stated herein. To the extent permitted by law, no delay or omission to exercise any right or power accruing upon any breach shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised **from** time to time and as often as may be expedient. Any such waiver shall be in writing and signed by the party against whom it is to operate. In order to entitle the County to exercise any remedy hereunder, it shall not be necessary to give any notice other than as may be required in this Lease Agreement.

SECTION 8.06. Attorney's Fees and Expenses. In the event either party should breach under any of the provisions of this Lease Agreement and the other party should employ counsel or incur other reasonable expenses for the collection of amounts payable under **this** Lease Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the party in breach, the party in breach will on demand **therefor** pay to the other party the reasonable fees and disbursements of such counsel and such other reasonable expenses so incurred by the party not in breach.

SECTION 8.07. Waiver. To the extent permitted by law, no delay or omission to exercise any right or power accruing upon any Event of Breach shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be expedient. Any such waiver shall be in writing and signed by the party

against whom it is to operate. In order to entitle either party to exercise any remedy hereunder, it shall not be necessary to give any notice other than as may be required in this Lease Agreement. In the event either party should breach any covenant contained in this Lease Agreement and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Lease Agreement.

ARTICLE IX EARLY TERMINATION

SECTION 9.0 1. Early Termination. Notwithstanding any other provision herein, County shall have the right, in its sole discretion, and with or without cause, to elect an early termination of this Lease Agreement. Such election must be in writing, signed by the County Representative, and delivered to BVA LFG on or before the date that is 180 days after the Closing Date (the "Early Termination Date"). The effective date of such notice shall be determined in accordance with Section 12.02. Upon the timely delivery to BVA LFG of such written notice, this Lease Agreement shall terminate and be of no further force and affect thirty days after the effective date of such notice, except for those obligations of the parties which have fully accrued prior to the Early Termination Date and the mutual continuing indemnity obligations of the parties.

ARTICLE X GENERAL INDEMNITY

SECTION 10.0 1. Release Covenants.

(a) BVA LFG agrees that it will at all times indemnify, defend and hold harmless County and its officers, employees, servants, agents, successors and assigns, and any sublessees of County (collectively hereinafter referred to in this Section 10.01 as the "County Indemnitee") against any and all Losses, costs, claims (including without limitation, third party claims for personal injury or real or personal property damage or damages to natural resources), damages, liabilities, fines, penalties, charges, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses, consultants and experts fees and expenses and all costs incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work by or under the order of any Governmental Entity), causes of action, suits, judgments or litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments directly or indirectly resulting from, arising out of, or related to one or more Claims (hereinafter defined) (collectively, the "Losses"), except to the extent that, in whole or in part, such Losses or Claims, or both, were directly or indirectly caused by one or more acts or omissions constituting gross negligence or willful wrongdoing of the County Indemnitee or any breach of any representation, warranties or the commission of any Event of Breach by any County Indemnitee under this Lease Agreement or in connection with the System Interests. The term "Claims" as used herein shall mean all claims, lawsuits, causes of action, and other legal and administrative actions and proceedings of whatsoever nature, (including but not limited to Persons employed by the County

Indemnitee or any other Person and all property owned or claimed by the County Indemnitee, BVA LFG, any affiliate of BVA LFG, or any other person) brought against an County Indemnitee or to which an County Indemnitee is a party, even if groundless, false or fraudulent, that result **from** or arise out of a breach by BVA LFG or any of its officers, employees, agents, or Persons acting on its behalf of any of their obligations, covenants, representations or warranties under this Lease Agreement or which arise from the negligence (gross or ordinary) or willful misconduct of BVA LFG or any of its officers, employees, agents or Persons acting on its behalf in connection with the Gas Collection System. The obligations of BVA LFG under this subsection (a) shall apply to all Losses or Claims, or both, that result from, or arise out of such breach or negligent or willful misconduct occurring prior to termination of this Lease Agreement, whether such Losses or Claims or both are asserted prior to termination of this Lease Agreement or thereafter. The obligations of BVA LFG under this subsection (a) shall not be affected by a permitted assignment or other transfer by the County Indemnitee of its rights or interests under this Lease Agreement, and will continue to inure to the benefit of the County Indemnitees both prior to and after any such assignment or transfer, but in all cases only to the extent such obligations are in respect of a breach by BVA LFG occurring prior to any such assignment or transfer. If an County Indemnitee receives insurance proceeds in respect of an indemnified claim that was previously satisfied hereunder, such County Indemnitee shall surrender such insurance proceeds to BVA LFG.

In case any action shall be brought or to the knowledge of an County Indemnitee threatened against any of them in respect of which indemnity may be sought against BVA LFG, the County Indemnitee shall promptly notify BVA LFG in writing and BVA LFG shall have the right to assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. An County Indemnitee shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by the County Indemnitee unless the employment of such counsel has been authorized by BVA LFG. BVA LFG shall not be liable for any settlement of any such action without its consent but, if any such action is settled with the consent of BVA LFG or if there be final judgment for the plaintiff in any such action, BVA LFG shall indemnify and hold harmless the County Indemnitee from and against any Losses by reason of such settlement or judgment. BVA LFG shall not settle any indemnified claim without the consent of the County Indemnitee(s) if such settlement provides for equitable relief against such County Indemnitee(s).

Notwithstanding anything contained in this Section 10.01(a) or in any other provision of this Lease Agreement, BVA LFG shall have no obligation under this Section 10.01(a) or anywhere else in this Lease Agreement to indemnify, defend or hold harmless an County Indemnitee for any Environmental Claim, except to the extent that such Environmental Claim is proximately caused by the conduct or omission of BVA LFG. Both parties acknowledge and agree that the statement contained in the foregoing sentence is and shall continue to be a material condition to BVA LFG's entering into this Lease Agreement and its continued performance hereunder.

(b) County agrees that it will at all times indemnify, defend and hold harmless BVA LFG, and its officers, members, directors, employees, servants, agents, independent contractors, successors and assigns, and any sublessee of BVA LFG (collectively hereinafter referred to in this Section 10.01 as the "BVA LFG Indemnitee"), from and against any and all Claims (including without limitation, third party claims for personal injury or real or personal property damage or

damages to natural resources), Losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings (including informal proceedings) and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to, reasonable attorneys' fees and expenses, consultants' and experts' fees and expenses, and all costs incurred in connection with any investigation or monitoring of site conditions or any clean-up, remedial, removal or restoration work by or under the order of any Governmental Entity), which in any way arise (i) pursuant to any Environmental Claim, including an Environmental Claim arising from the presence of Hazardous Substances at the Landfill, unless such Environmental Claim is proximately caused by the conduct or omission of BVA LFG, (ii) in connection with the lease, possession, operation or maintenance of the System Interests by County or the operation of the Landfill Gas collection business at the Gas Collection System due to acts, omissions, or circumstances that occur prior to the date of this Lease Agreement; (iii) from a breach of any of County's representations, warranties, obligations or covenants contained in this Lease Agreement or any agreement made pursuant thereto by County; or any of its officers, employees, agents or Persons acting on its behalf (iv) from the defense against adverse claims of title to the System Interests; (v) from the exercise of remedies against the System Interests made by any lenders to County, (vi) for any damage incurred by an BVA LFG Indemnitor as a result of a breach by County under any loan agreement by which it is a borrower, (vii) for the negligent (gross or ordinary) or willful misconduct of County or its agents or employees causing damage to an BVA LFG Indemnitor (viii) for any loss incurred by an BVA LFG Indemnitor as a result of litigation brought against County in connection with the System Interests (not proximately caused by the negligence or willful misconduct or other direct action of the BVA LFG Indemnitor) and (ix) from any other liability or obligation of, or claim against County and not against BVA LFG (whether absolute, accrued, contingent or otherwise) not specifically assumed by an BVA LFG Indemnitor pursuant to this Lease Agreement. Any Losses or Claims comprising taxes, penalties and interest resulting from the loss of any tax benefits or from the receipt of indemnity payments hereunder are specifically addressed by the immediately following paragraph of this Section 10.01(b), and not pursuant to this paragraph. If an BVA LFG Indemnitor receives insurance proceeds in respect of an indemnified claim that was previously satisfied hereunder, such BVA LFG Indemnitor shall surrender such insurance proceeds to County.

Notwithstanding anything contained herein or in the Gas Purchase Agreement, County shall not have any obligation to indemnify, defend or hold harmless any BVA LFG Indemnitor hereunder for any Losses or Claims comprising taxes, penalties and interest resulting from the loss of any tax benefits, including without limitation tax credits under Section 29 of the Code; provided, however, that County shall indemnify any BVA LFG Indemnitor for the loss of any tax benefits claimed by the BVA LFG Indemnitor under section 29 of the Code and any assessed tax penalties and associated interest, where such tax benefits are claimed by the BVA LFG Indemnitor in connection with the Lease Agreement or the Gas Purchase Agreement, and to the extent that the tax benefits are lost because of a fact which is found to be contrary to one or more of the factual representations of County set forth in sections 4.01(j), 4.01(k), 4.01 (l) or the first sentence of 4.01(o) of this Lease Agreement. In such case, County's indemnification obligation shall be limited to the recovery by the BVA LFG Indemnitor of any Lease Payments made pursuant to Article III hereof based on the assumed availability of such tax benefits, net of the corresponding gas revenues received from the Gas Purchaser under the Gas Purchase Agreement excluding operations and maintenance expenses, plus interest thereon at the rate of 8 percent per annum. The BVA LFG Indemnitor shall in all

events provide its own defense regarding any such IRS proceedings. Moreover, the parties agree and acknowledge that this paragraph precludes any obligation of County to indemnify, defend or hold harmless BVA LFG or its taxpaying affiliate hereunder for any losses of tax benefits as described herein if such BVA LFG Indemnitee has been previously reimbursed for such loss of tax benefits as a result of payments or recovery from any other Person or source.

In case any action shall be brought or, to the knowledge of an BVA LFG Indemnitee, threatened in respect of which indemnity may be sought against County, the BVA LFG Indemnitee shall promptly notify County in writing and County shall have the right to assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The BVA LFG Indemnitee shall have the right to employ separate counsel in any such action and participate in the investigation and defense thereof, but the fees and expenses of such counsel shall be paid by the BVA LFG Indemnitee unless the employment of such counsel has been authorized by County. County shall not be liable for any settlement of any such action without its consent but, if any such action is settled with the consent of County or if there be final judgment for the plaintiff in any such action, County shall indemnify and hold harmless all BVA LFG Indemnitees from and against any Losses by reason of such settlement or judgment. County shall not settle any indemnified claim without the consent of the BVA LFG Indemnitees if such settlement provides for equitable relief against the BVA LFG Indemnitees.

Notwithstanding anything contained in this Section 10.01(b) or in any other provision of this Lease Agreement, County shall have no obligation under this Section 10.01(b) or anywhere else in this Lease Agreement to indemnify, defend or hold harmless any BVA LFG Indemnitees for any Environmental Claim, except to the extent that such Environmental Claim is proximately caused by the conduct or omission of County. Both parties acknowledge and agree that the statement contained in the foregoing sentence is and shall continue to be a material condition to County's entering into this Lease Agreement and its continued performance hereunder and thereunder.

(c) Notwithstanding any provision of this Lease Agreement, any indemnification of one party by the other which includes an obligation to provide or pay for a legal defense shall be subject to the following limitations: (i) the party obligated to provide or pay for the defense may retain counsel to provide a joint defense for both the County Indemnitees and the BVA LFG Indemnitees, to the extent no conflict of interest exists between the County Indemnitees and the BVA LFG Indemnitees relative to such defense ~~and~~ provision of such joint defense is otherwise consistent with law including applicable laws concerning the professional responsibility of attorneys; and such obligated party, in all events, shall have the right to approve any legal counsel retained to provide any defense or part thereof, such approval not to be unreasonably withheld; and (ii) any obligation to provide or pay for a legal defense applies only to the defense to be provided relative to any third party's claim against the indemnified party. Any such obligation relative to providing or paying for a legal defense specifically does not entitle either party hereto to recover any legal expenses (including attorneys' fees) incurred relative to resolving any dispute between the parties concerning the right to be indemnified fi-om any third party's claim or to any other dispute between the parties regarding any other aspect of indemnification, or any other matter, under this Lease Agreement; except that the prevailing party in any dispute between the parties (or any insurance carrier) regarding the right to indemnification shall be entitled to recover legal expenses (including

attorneys' fees) if said party is found to have no responsibility or liability relative to the event giving rise to the Damages for which indemnification is sought.

(d) Both parties agree and acknowledge that the rights to indemnification contained in this Section 10.01 hereof are and shall continue to be a material condition to either party's entering into this Lease Agreement and its continued performance hereunder and thereunder.

SECTION 10.02. General. Notwithstanding any provision contained herein or the application of any statute of limitations, the provisions of this Article X shall survive the termination of this Lease Agreement for a period of four (4) years.

ARTICLE XI INSURANCE

SECTION 11 .01. Insurance Required of BVA LFG. In order to insure against damage to BVA LFG's and County's interests in the Gas Collection System, pursuant to the Lease Agreement, and BVA LFG's and County's interests in the System Interests, pursuant to this Lease Agreement between the parties, BVA LFG agrees to maintain, at all times during the term of this Lease Agreement, the following types of insurance from insurers with deductibles acceptable to County, with the limits shown:

1. Commercial General Liability Insurance of \$2,000,000 coverage on an occurrence basis, including but not limited to endorsements for the following coverage: Personal injury, premises, property damage liability, blanket contractual liability, products and completed operations, independent contractors liability, and XCU (explosion, collapse and underground) liability.
2. Automobile Liability Insurance of not less than One Million Dollars (\$1 ,000,000) combined single limit per occurrence for bodily injury and property damage for each of BVA LFG's vehicles used in the performance of this Lease Agreement, including owned, non-owned (e.g. owned by BVA LFG's employees), leased or hired vehicles.
3. Environmental Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence.
4. Full Workers' Compensation and Employers' Liability Insurance covering all employees of BVA LFG as required by law in the State of California. This requirement is waived so long as BVA LFG has no employees in California.
5. All-risk property insurance for income losses, extra expenses, and casualty losses to the Gas Collection System, limited to replacement costs of property insured no to exceed One Million Dollars (\$1 ,000,000). County shall be named as loss payee on the all-risk policy described in this Section 11 .01 to the extent that such proceeds are for Losses to the Project Facilities.

SECTION 11.02. Other Insurance Requirements.

1. BVA LFG's liability policies described in this Article XI shall provide coverage separately to each insured who is seeking coverage or against who a claim is made or a suit is brought, except with respect to BVA LFG's limit of liability.
2. All policies required of this Article XI are to be primary and non-contributing with any insurance or self-insurance programs carried or administered by County.
3. BVA LFG shall furnish proof of coverage satisfactory to the County as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to the Risk Manager, or be provided through partial or total self-insurance likewise acceptable to the Risk Manager.
4. The County, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this agreement are concerned. This provision shall apply to all liability policies except Workers' Compensation and professional liability insurance policies. Proof that County is named additional insured shall be made by providing the County with a certified copy, or other acceptable evidence, or an endorsement to BVA LFG insurance policy naming County County additional insured.
5. In the event BVA LFG cannot provide an occurrence policy, BVA LFG shall provide insurance covering claims made as a result of performance of this contract for not less than three (3) years following completion of performance of this contract.
6. Any deductibles or self-insured retentions must be declared to and approved by County. Deductibles of \$25,000 on the umbrella policy and on the environmental coverage are acceptable.
7. All insurance policies required herein shall be endorsed such that no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to the County at the office of:

Public Works Department, Solid Waste Division
Attn. Division Manager
Santa Cruz County
701 Ocean Street, Room 410
Santa Cruz, CA 95060
Tel: (831) 454-2160
Fax: (831) 454-2385
8. BVA LFG agrees that the insurance required herein shall be in effect at all times during the term of this Lease Agreement. In the event said insurance coverage

expires at any time or times during the term of this contract, BVA LFG agrees to provide at last thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less and one (1) year (for an occurrence policy) or three (3) years (for a claims made policy). New certificates of insurance are subject to the approval of the Risk Manager.

9. BVA LFG shall not commence performance of this contract unless and until compliance with each and every requirement of the insurance provisions is achieved.
10. Failure of BVA LFG to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire contract.
11. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees or volunteers.
12. BVA LFG's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees or volunteers shall be excess of BVA LFG's insurance and shall not contribute with it.
13. The insurance companies shall have no recourse against the County, its officers, agents, employees, or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
14. BVA LFG's obligations shall not be limited by the insurance required herein and shall survive the expiration of this contract.
15. Should BVA LFG subcontract any work under this contract, BVA LFG shall require each of its subcontractors of any tier to provide the insurance requirements in this Article XI, or BVA LFG may insure subcontractors under its own policies. In addition, if the subcontractor provides professional services, the subcontractor must provide a professional liability policy with County's standard limit and coverage requirements. The requirement for Worker's Compensation and Employers' Liability Insurance is waived so long as any subcontractor has no California employees.
16. The aforementioned requirements of this Article XI shall be the minimum requirements. The limits of insurance may be adjusted upwards by the County to meet industry standards and changing liability from time to time with the concurrence of BVA LFG which concurrence shall not be unreasonably withheld.
17. All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

“The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under this Lease Agreement with the County of Santa Cruz.”

18. BVA LFG agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide County on or before the effective date of this Lease Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to the addressee under item (7) above.

SECTION 11.03. Policies ~~to Be Primary and Non-Contributory~~ required of this Article XI are to be primary and non-contributing with any insurance or self-insurance programs carried or administered by BVA LFG.

SECTION 11.04. Failure Constitutes. Failure on the part of BVA LFG to procure or maintain required insurance shall constitute a material breach of this Lease Agreement upon which County may terminate this Lease Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by County shall be repaid by BVA LFG to County upon demand. All insurance required shall be maintained in force at all times by BVA LFG. Failure to maintain said insurance, due to expiration, cancellation, or for any other reason shall be cause for County to give notice to immediately suspend BVA LFG's business activities at the Landfill. Failure to reinstate said insurance within thirty (30) days shall be cause for termination and forfeiture of this Lease Agreement.

ARTICLE XII MISCELLANEOUS

SECTION 12.01. Term of Lease Agreement. This Lease Agreement shall become effective on the date of Closing described in Section 2.14, and shall terminate on December 31, 2019, unless sooner terminated in accordance with other provisions of this Lease Agreement.

SECTION 12.02. Notices. All notices, certificates, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed properly served (i) by hand delivery, telecopy or other facsimile transmission, on the day and at the time on which delivered to the intended recipient at the address or telecopier number set forth in this Lease Agreement; (ii) if sent by mail, on the third Business Day **after** the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Lease Agreement; or (iii) if by Federal Express or other reputable express mail service for overnight delivery, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Lease Agreement. All notices required or permitted to be served upon either party hereunder will be directed to:

if to the County to:

Public Works Department, Solid Waste Division
Attn. Division Manager
Santa Cruz County
701 Ocean Street, Room 410
Santa Cruz, CA 95060
Tel: (83 1) 454-2160
Fax: (83 1) 454-2385

With copy to:

if to BVA LFG to:

BVA LFG Corporation
120 Montgomery Street, Suite 1000
San Francisco, CA 94 104
Tel: (415) 434-0900
Fax: (415) 956-6220

With copy to:

The County and BVA LFG may, by notice given hereunder, designate any further or different addresses or Telecopier numbers to which notices, certificates, or other communications shall be sent.

SECTION 12.03 **Severability**. If any term or provision of this Lease Agreement or the application thereof to any party or circumstance be invalid or unenforceable to any extent, the remainder of this Lease Agreement and the application of such terms and provisions to Persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Lease Agreement shall be valid and be enforceable to the fullest extent permitted by law.

SECTION 12.04. **Amendments**. This Lease Agreement may not be amended or altered nor any of its provisions waived except by the written agreement of the County and BVA LFG.

SECTION 12.05. **Execution in Counterparts**. This Lease Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

SECTION 12.06. **Governing Law**. All questions with respect to the construction of this Lease Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws and regulations of the State of California.

SECTION 12.07. **Captions**. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Lease Agreement.

SECTION 12.08. ~~Entire Agreement~~. This Lease Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the parties relating to the subject matter hereof.

SECTION 12.09. ~~No Joint Venture~~. Nothing in this Lease Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party or to create any joint venture or fiduciary or other relationship between the parties, other than that of buyer and seller or lessor and lessee.

SECTION 12.10. ~~Transfer Taxes~~. BVA LFG shall pay all sales, transfer or other similar taxes which may be payable in connection with the Transactions contemplated by this Lease Agreement.

SECTION 12.11. ~~Emission Credits~~. BVA LFG and the County agree that any emission credits that arise from BVA LFG's collection, treatment or sale of Landfill Gas at the Landfill shall belong proportionally to the party(s) paying for or acquiring said credits as allowed by law.

SECTION 12.12. ~~Specific Provisions~~. To the extent there are any inconsistencies between any general provisions of this Lease Agreement and specific provisions of this Lease Agreement, the more specific provision shall govern.

SECTION 12.13. ~~Binding~~:. This Lease Agreement shall inure to the benefit of and be binding upon County and BVA LFG and their respective successors and assigns subject to the limitations contained in Article X. No provision hereof shall, however, be construed to impose any personal or pecuniary liability upon any member, officer or employee of County or BVA LFG. This Lease Agreement shall not (directly, indirectly, contingently or otherwise) confer or be construed as conferring any rights or benefits on any Person or entity not named as a party hereto, except as otherwise specifically provided in Article X.

SECTION 12.14. ~~Equal Employment Opportunity~~. During and in relation to the performance of this Lease Agreement, BVA LFG agrees as follows:

(a) BVA LFG shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, transfer. BVA LFG agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

(b) If this Lease Agreement provides compensation in excess of \$50,000 to BVA LFG and if BVA LFG employs fifteen (15) or more employees, the following requirements shall apply:

- (1) BVA LFG shall, in all solicitations or advertisements for employees placed by or on behalf of the BVA LFG, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, pregnancy, sex, sexual orientation, age (over 18), veteran status, or any other non-merit factor unrelated to job duties. In addition, the BVA LFG shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in BVA LFG's solicitation of goods and services. Definitions for Minority/Women/Disabled Business Enterprises are available from the County General Services Purchasing Division.
- (2) BVA LFG shall furnish County Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the sex, race, physical or mental disability and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.
- (3) In the event of the BVA LFG'S non-compliance with the non- discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said BVA LFG may be declared ineligible for further agreements with the county.
- (4) BVA LFG shall cause the foregoing provisions of this Subparagraph (b) to be inserted in all subcontracts for any work covered under this Lease Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

SECTION 12.15. Independent Contractor Status. BVA LFG and County have reviewed and considered the principal test and secondary factors below and agree that BVA LFG is an independent contractor and not an employee of County. BVA LFG is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. BVA LFG is not entitled to any employee benefits. County agrees that BVA LFG shall have the right to control the manner and means of accomplishing the result contracted for herein.

Principal Test: The BVA LFG rather than County has the right to control the manner and means of accomplishing the result contracted for.

Secondary Factors: (a) The extent of control which, by agreement, County may exercise over the details of the work is slight rather than substantial; (b) BVA LFG is engaged in a distinct occupation or business; (c) In the locality, the work to be done by BVA LFG is usually done by a specialist without supervision, rather than under the direction of an employer; (d) the skill required in the particular occupation is substantial rather than slight; (e) The BVA LFG rather than the County supplies the instrumentalities, tools and work place; (f) The length of time for which BVA

LFG is engaged is of limited duration rather than indefinite; (g) The method of payment of BVA LFG is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of County; (i) BVA LFG and County believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) the County conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that BVA LFG is an independent contractor.

By their signatures to this Lease Agreement, each of the undersigned certifies that it is his or her considered judgment that the BVA LFG engaged under this Lease Agreement is in fact an independent contractor.

SECTION 12.16. Prevailing Wages. BVA LFG is responsible to pay prevailing wages and maintain records to the extent required by Labor Code Section 1770 and following.

SECTION 12.17. Retention and Audit of Records. BVA LFG shall retain records pertinent to this Lease Agreement for a period of not less than five (5) years after final payment under this Lease Agreement or until a final audit report is accepted by County, whichever occurs first. BVA LFG hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Lease Agreement.

SECTION 12.18. Presentation of Claims. Presentation and processing of any or all claims arising out of or related to this Lease Agreement shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

ARTICLE XIII CONDITIONS TO CLOSING

SECTION 13.01 Conditions Precedent to Obligation of BVA LFG to Close. The obligation of BVA LFG to consummate the transactions contemplated by this Lease Agreement and the Gas Purchase Agreement is subject to the fulfillment of the following conditions, on or prior to the Closing Date:

- (a) All representations and warranties of the County contained herein shall be true and correct;
- (b) All covenants to be performed by the County under this Agreement prior to the Closing Date have been performed, including under section 4.01(n);
- (c) Execution by the County of the O&M Agreement and Gas Purchase Agreement;

(d) All due diligence undertaken by or on behalf of BVA LFG, including but not limited to engineering review, shall have been completed to its satisfaction and the County shall have cooperated fully in such due diligence and provided all information in connection therewith as shall have been reasonably requested;

(e) Receipt by BVA LFG from its tax counsel, with copy to the County, of advice satisfactory to BVA LFG with respect to the credits under Section 29 of the Code, as calculated for each Gas Collection System, in form satisfactory to BVA LFG;

(f) Receipt in form satisfactory to BVA LFG of proof of recordation of the Lease Memorandum in the respective jurisdiction where the Landfill is located. County hereby agrees to allow this lease Agreement to be entered into the official records of the Recorder's Office of the County of Santa Cruz and, therefore, agrees to provide notarized signatures to this agreement.

(g) Receipt by BVA LFG of financial statements of the County in form satisfactory to BVA LFG to show the County's ability to maintain self-insurance.

SECTION 13.02 Conditions Precedent to Obligation of the County to Close. The obligation of the County to consummate the Transactions contemplated by this Lease Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions:

(a) All representations and warranties of BVA LFG contained herein shall be true and correct at and as of the Closing Date;

(b) All covenants to be performed by BVA LFG prior to the Closing Date have been performed;

(c) Authorization, execution and delivery of this Lease Agreement by the County and the Gas Purchase Agreement by the Gas Purchaser;

(d) The County shall have been furnished with the articles of incorporation of BVA LFG;

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the County and BVA LFG have caused this Lease Agreement to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

COUNTY OF SANTA CRUZ
DEPARTMENT OF PUBLIC WORKS

BROWN VENCE & ASSOCIATES LFG
'CORPORATION

By: _____
Director of Public Works

By: Thomas Vence
Vice-President & Secretary

Address:
Brown, Vence and Associates Lfg Corporation
120 Montgomery Street, Suite 1000
San Francisco, CA 94 104

Telephone: (415) 434-0900

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: D. McPae 1-29-99
Assistant County Counsel

By: Thomas M. Swen
Counsel for BVA LFG

DISTRIBUTION: Public Works

RECORDATION PAGES FOLLOW

Approved as to insurance
By: Janet McKinley
Risk Management Division Chief
Date 1-29-99

STATE OF CALIFORNIA
COUNTY OF SANTA CRUZ

On _____, 1999, before me, _____, Notary Public, personally known to me -OR- proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

DATED: _____, 1999

Director of Public Works

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LIST OF EXHIBITS

- A. Description of Gas Collection System
- B. Projected Production Amounts
- C. Litigation
- D. Permits
- E. Exceptions to the County's Representations and Warranties

EXHIBIT A

DESCRIPTION OF GAS COLLECTION SYSTEM

Attached hereto is a true and correct description of the Gas Collection System at the Buena Vista Landfill which is the subject of this Lease Agreement.

EXHIBIT A
DESCRIPTION OF PROJECT FACILITY

Equipment Identification	Number of Wells	Date Placed in Service*	Date of Contract for Installation	Estimated Installed Value	Replaced Old Wells? (Y/N)	Reason for Replacement	Date Old Wells Installed
UENA VISTA LANDFILL							
Wells							
EW-1 to EW-8	8	6/86	Not applicable - County crews used	\$22,960	N	Not applicable	Not applicable
EW-9 to EW-10	CLOSED	8/90	Not applicable - County crews used	\$5,740	CLOSED	CLOSED	CLOSED
EW-1 1	1	8/90	Not applicable - County crews used	\$2,870	N	Not applicable	Not applicable
EW-12-EWI 4	3	1/93-10/93	Not applicable - County crews used	\$8,610	N	Not applicable	Not applicable
EW-15	CLOSED	1193-10193	Not applicable - County crews used	\$2,870	CLOSED	CLOSED	CLOSED
EW-16-22	7	1/93-10193	Not applicable - County crews used	\$20,096	N	Not applicable	Not applicable
EW-23-31	9	before 6/98	Not applicable - County crews used	\$35,618	N	Not applicable	Not applicable
MD-1 to MD-3	3	7/97	Master contract 6/96, Task order specifying work on MD wells dated 12/96	\$15,624	Y	Replaced slope "T" collectors EW-9, 10 & 15 which failed due to settlement or pipe collapse	EW 9, 10 8/90; EW-15 1/93-10193
MD-4 to MD-6	3	7/97	Master contract 6/96, Task order specifying work on MD wells dated 12/96	\$15,624	Y	Settlement and damage during final cover placement	6/86
MD-7	1	7/97	Master contract 6/96, Task order specifying work on MD wells dated 12/96	\$4,173	Y	Settlement and damage during final cover placement	6/86
MD-8	CLOSED		Master contract 6/96, Task order specifying work on MD wells dated 12/96	\$4,173	CLOSED	CLOSED	CLOSED
OLD-1	CLOSED		Installed 1984	unknown	CLOSED	CLOSED	CLOSED
OLD-2 -OLD-8	7	1/97	Master contract 6/96, Task order specifying work on OLD wells dated 12/96	\$29,214	Y	Settlement, collapse, or damage due to earthquake debris storage & disposal	1984
New Wells H-7	17	before 6/98	Not applicable - County crews used	\$45,000	N	Not applicable	Not applicable
Blower, Flare (capacity 1800 cfm)		1997	Purchase Order for equipment dated 9/96, County Board of Supervisors awarded Contract for installment 12/96, Contract execution mid-1/97	\$359,558	Y	Replaced old blower and flare with a capacity of 750 cfm	8/86

*Connected together and started routine gas flow.

hh

EXHIBIT B

**LANDFILL GAS FIELD FACILITIES LEASE
GAS PRODUCTION ESTIMATES**

Year	Santa Cruz LFG(cfm)*
1998	799
1999	829
2000	859
2001	889
2002	919
2003	949
2004	980
2005	1010
2006	1041
2007	1072
2008	1103
2009	1135
2010	1167
2011	1199
2012	1231
2013	1264
2014	1297
2015	1330
2016	1364
2017	1398
2018	1433
2019	1468
2020	1412

EXHIBIT C
LITIGATION

There is no pending or threatened litigation against the County requiring disclosure pursuant to this Lease Agreement.

EXHIBIT D

PERMITS

Attached hereto is a true and correct copy of the County's Air District Operating Permit for the Buena Vista Landfill.



MONTEREY BAY

Unified Air Pollution Control District

serving Monterey, San Benito, and Santa Cruz Counties

AIR POLLUTION CONTROL OFFICER
Douglas Quetin

24580 Silver Cloud Court • Monterey, California 93940 • 408/647-941 • FAX 408/647-850 J

JAN 23 1998

DISTRICT BOARD MEMBERS

CHAIR:
Oscar Rios
Watsonville

VICE CHAIR:
Judy Pennycook
Monterey County

JACK Barlich
Del Rey Oaks

Rav Belgard
Santa Cruz County

Edith Johnson
Monterey County

John Myers
King City

Tom Perkins
Monterey County

Ron Rodrigues
San Benito County

Celia Scott
Santa Cruz

Alan Styles
Salinas

Walt Symons
Santa Cruz County

John Fantham
County of Santa Cruz
Department of Public Works
701 Ocean Street, Room 410
Santa Cruz, CA 95060

Subject: PERMIT TO OPERATE 8125 - LANDFILL GAS COLLECTION- &
FLARE SYSTEM
CONSOLIDATION OF PERMIT ANNUAL RENEWAL DATES
CANCELLATION OF PERMIT TO OPERATE 6967A

-Dear Mr. Fantham:

The District has completed its review of the emission test results for the new landfill flare system at the Buena Vista Landfill located at 150 Rountree Lane, Watsonville. The equipment, with operating restrictions, has the capability to comply with District emission standards.

Accordingly, I have enclosed Permit to Operate 8125 authorizing the operation of the landfill gas collection & flare system. **This permit must be posted or kept readily available at the operating premises.**

Please review the permit and note each of the operating conditions included on it. In particular, Condition 2 limits the amount of landfill gas vented to the flare to 2.4 million **cubic feet** per day.

In addition, the District has consolidated the permit renewal dates for the county of Santa Cruz's two landfill gas collection & flare systems to December 28. Annual renewal information sheets will be mailed to you approximately 30 days before the anniversary date requesting process information from each operation for the previous twelve months. The submitted information will be used to determine the annual renewal fees for the forthcoming twelve months. 1998 renewal fees for Permit to Operate 8125 will be prorated from May 1998 to December 1999, a period of nineteen months.

Lastly, per a November 5, 1997 correspondence with Patrick Mathews, Permit to Operate 6967A has been cancelled.

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County of Santa Cruz
Department of Public Works
Permit to Operate 8125
Page Two

If you have any questions please contact me at the District office.

Sincerely,

Mary Giraud
Mary Giraud
Air Quality Engineer

Enclosure: Permit to Operate 8125

MONTEREY BAY UNIFIED AIR POLLUTION CONTROL DISTRICT
PERMIT TO OPERATE

8125

OPERATION UNDER THIS PERMIT MUST BE CONDUCTED IN COMPLIANCE WITH ALL DATA AND SPECIFICATIONS INCLUDED WITH THE APPLICATION UNDER WHICH THIS PERMIT IS ISSUED. THE EQUIPMENT MUST BE PROPERLY MAINTAINED AND KEPT IN GOOD CONDITION AT ALL TIMES THIS PERMIT TO OPERATE MUST BE POSTED OR ACCESSIBLE

LEGAL OWNER OR OPERATOR: COUNTY OF SANTA CRUZ
Department of Public Works

EQUIPMENT LOCATED AT: Buena Vista Landfill
150 Rountree Lane
Watsonville, California

EQUIPMENT DESCRIPTION AND CONDITIONS: THIS PERMIT TO OPERATE IS ISSUED AND IS VALID FOR THIS EQUIPMENT ONLY WHILE IT IS IN THE CONFIGURATION SET FORTH IN THE FOLLOWING DESCRIPTION:

LANDFILL GAS COLLECTION & FLARE SYSTEM:

1. Landfill Gas Collection System Blowers. Three Centrifugal Blowers, Lamson, Model 554-2-2-GD, Equipped With One 25-Hp Motor Each, Gathering Landfill Gas From The Following:
 - a) Buena Vista Landfill - Collection Wells With A Maximum Landfill Gas Flow Rate Of 1300 CFM.
 - b) City of Watsonville Landfill - Collection Wells With A Maximum Landfill Gas Flow Rate Of 500 CFM.

Gathered Landfill Gas Discharging To Flare System, Via Condensate Knockout Vessel.

2. Callidus Technologies, Inc. Enclosed Ground Flare System, 8 Feet Outside Diameter x 40 Feet Overall Height, 54.0 MMBTU/Hr Maximum Firing Rate, 1800 CFM Maximum Landfill Gas Input Rate, 0.06 MMBTU/Hr Propane Pilot Burner With Electric Ignition.

THE EQUIPMENT FOR WHICH THIS PERMIT TO OPERATE IS ISSUED MAY BE OPERATED ONLY WHEN IN COMPLIANCE WITH THE FOLLOWING CONDITIONS:

Conditions:

1. Annual volume of landfill gas flared and propane gas consumed shall be reported to the District, upon request, at the time of permit renewal.
2. The amount of landfill gas vented to the flare shall not exceed 1.8 million cubic feet per day.

** Page 1 of 2 **

THIS PERMIT BECOMES VOID UPON ANY CHANGE OF OWNERSHIP OR ADDRESS. OR ANY ALTERATION.

THIS PERMIT DOES NOT AUTHORIZE THE EMISSIONS OF AIR CONTAMINANTS IN EXCESS OF THOSE ALLOWED BY ARTICLE 1 CHAPTER 3 PART 4 DIVISION 26 OF THE HEALTH & SAFETY CODE OF THE STATE OF CALIFORNIA OR THE RULES AND REGULATIONS OF THE AIR POLLUTION CONTROL DISTRICT THIS PERMIT CANNOT BE CONSIDERED AS PERMISSION TO VIOLATE EXISTING LAWS ORDINANCES REGULATION OR STATUTES OF OTHER GOVERNMENTAL AGENCIES


AIR POLLUTION CONTROL OFFICER

DATE JAN 23 1998

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3. Emissions from the flare shall not exceed the following limits

<u>Pollutant</u>	<u>Emission Level</u>	<u>Emission Limit</u>
NOx	0.06 lb/MMBTU	137 lbs/day
THC	0.03 lb/MMBTU	137 lbs/day
co	0.59 lb/MMBTU	550 lbs/day

4. The overall hydrocarbon destruction efficiency of the flare shall be 98 percent or greater.

5. The minimum residence time in the flare shall be 0.6 seconds.

6. The flare combustion temperature shall be maintained at 1400°F or greater.

7. Instrumentation shall be installed which continuously records the combustion temperature during flare operation. Temperature data records shall be available to District staff upon request.

8. A volumetric flow measuring device capable of determining the amount of landfill gas vented to the flare shall be operated at all times the flare is in operation. A daily log of the amount of landfill gas vented to the flare shall be maintained on site and made available to the District staff upon request.

9. No air contaminant shall be discharged into the atmosphere for a period or periods aggregating more than three (3) minutes in any one hour which is as dark or darker than Ringelmann 1 or equivalent 20 percent opacity.

10. No emissions shall constitute a public nuisance.

11. The County of Santa Cruz shall comply with District Rule 437, New Source Performance Standards (NSPS), Subpart Cc, Sections 60.751-60.759.

12. Any representative of the Monterey Bay Unified Air Pollution Control District authorized by the Air Pollution Control Officer shall be permitted, pursuant to the authority contained in Section 41510 of the California Health and Safety Code:

- a) to enter upon the premises where the source is located or in which any records are required to be kept under the terms and conditions of the Permit to Operate;
- b) to have access to and copy any records required to be kept under the terms and conditions of this Permit to Operate;
- c) to inspect any equipment, operation, or process described or required in this Permit to Operate; and,
- d) to sample emissions from the source.

NOTE: This permit replaces Permit to Operate 6967A issued to County of Santa Cruz - Public Works Department on August 3, 1995. The annual renewal date is December 28.

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EXHIBIT E

EXCEPTIONS TO COUNTY REPRESENTATIONS AND WARRANTIES

There are no exceptions to the County's representations and warranties in this Lease Agreement.

COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

TO: Board of Supervisors
County Administrative Officer
County Counsel
Auditor-Controller

FROM: PUBLIC WORKS

(Dept.)
(Signature) (1-27-99 e)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

1. Said agreement is between the COUNTY OF SANTA CRUZ (Agency)
BROWN, VENCE AND ASSOCIATES LFG, CORPORATION
and 120 MONTGOMERY STREET, SUITE 1000, SAN FRANCISCO, CA 94104 (Name & Address)

2. The agreement will provide FOR LEASE OF LANDFILL GAS FIELD AND COLLECTION EQUIPMENT
LOCATED AT THE BUENA VISTA LANDFILL.

3. The agreement is needed. BECAUSE THIS WORK CAN BE PERFORMED MOST EXPEDITIOUSLY BY CONTRACT

4. Period of the agreement is from BOARD APPROVAL to JUNE 30, 1999

5. Anticipated REVENUE is \$30,000 (Fixed amount; Monthly rate; Not to exceed)

6. Remarks:

7. REVENUES are budgeted in 625110 (Index#) 0440 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and have been encumbered. Contract No. R-690 Date 1/28/99

GARY A. KNUTSON, Auditor - Controller
By Ronald J. Silva Deputy.

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the
DIRECTOR OF PUBLIC WORKS to execute the same on behalf of the DEPARTMENT OF PUBLIC WORKS

(Agency). County Administrative Officer

Remarks: By Peter Oster Date 2/1/99

Agreement approved as to form. Date

RPM/mg

Distribution:
Bd. of Supv. - White
Auditor-Controller - Blue
County Counsel - Green
Co. Admin. Officer - Canary
Auditor-Controller - Pink
Originating Dept. - Goldenrod

*To Orig. Dept. if rejected.

State of California)
County of Santa Cruz) ss
I _____ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,
State of California, do hereby certify that the foregoing request for approval of agreement was approved by
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered
in the minutes of said Board on _____ County Administrative Office
_____ 19 _____ By _____ Deputy Clerk