

LANDEILL GAS FIELD FACILITIES
OPERATIONS AND MAINTENANCE AGREEMENT

Between

Brown Vence & Associates Lfg Corporation
And
The County of Santa Cruz

February, 1999

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LANDFILL GAS FIELD FACILITIES
OPERATIONS AND MAINTENANCE AGREEMENT

This Landfill Gas Field Facilities Operations and Maintenance Agreement (this "O&M Agreement") is made as of February __, 1999, 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 "Operator" or "County").

WHEREAS, BVA LFG is the Lessee of the Premises identified and defined by the Lease Agreement (as hereinafter defined);

WHEREAS, BVA LFG desires to have County operate, maintain and repair its Gas Collection System located on the Premises pursuant to the terms and conditions of this O&M Agreement; and

WHEREAS, County has the special skills necessary to provide such services.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, BVA LFG and County do hereby agree as follows:

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 O&M Agreement and the furnishing of information to BVA LFG as contemplated by this O&M Agreement after having made a reasonable investigation of the accuracy of the representations and warranties made by the County in this O&M Agreement or other writing furnished by the County to BVA LFG pursuant to this O&M 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 of the Lease Agreement.

7. **"Closing"** shall have the meaning set forth in Section 2.14 of the Lease Agreement.

8. **"Closing Date"** shall have the meaning set forth in Section 2.14 of the Lease Agreement.

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 of the Lease Agreement.

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 Super-fund 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 O&M 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.

1 8 . “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 the Landfill Gas Field Facilities Lease 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.

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 of the Lease Agreement.

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 this Landfill Gas Field Facilities Operations and Maintenance Agreement between Brown **Vence &** Associates LFG Corporation and the County of Santa Cruz, 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 O&M Agreement.

33. “Permitted Encumbrances” shall mean, as of any particular time, (i) liens for taxes not then delinquent, (ii) this O&M 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 of the Lease Agreement 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, 100,000 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 the Lease Agreement.

43. **"Transactions"** shall mean the transactions contemplated by this O&M 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 this 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 TERM

Subject to the other provisions hereof, this O&M Agreement shall be effective on the same date as the Lease Agreement becomes effective and shall remain in force during the same term as the Lease Agreement between the parties.

ARTICLE III GAS COLLECTION SYSTEM OPERATION AND MAINTENANCE

A. Duties. County shall operate and maintain the Gas Collection System (including all Improvements), on behalf of BVA LFG, in accordance with (i) Good Engineering Practice,

(ii) the Work Scope, (iii) the other provisions of this O&M Agreement and (iv) the applicable standards set forth in the Related Agreements. County recognizes that the most important overall goal of BVA LFG for the operation and maintenance of the Gas Collection System is to produce and deliver the maximum commercial quantities of Landfill Gas for beneficial reuse consistent with Good Engineering Practice, and County hereby agrees to use its best efforts to operate and maintain the Gas Collection System so as to provide BVA LFG with such maximum quantities of Landfill Gas, to the extent that such operation does not unreasonably interfere with protection of the environmental safeguards installed by the County at the Landfill and compliance with appropriate permits. In all events, and without any limitation on this obligation except for events of Force *Majeure*, throughout the term of this O&M Agreement, County shall so operate and maintain the Gas Collection System that County shall cause to be delivered to the Gas Purchaser at the Point of Delivery a minimum content of Twenty Two Million (22,000,000) Btus per hour at a minimum methane content of Four Hundred and Fifty (450) BTU per standard cubic foot for at least 7,884 hour per calendar year.

In addition, without limiting any of the foregoing but subject to Article VIII (B) below, County shall:

- (i) Keep the Gas Collection System in good repair, condition and working order;
- (ii) Replace any part of the Gas Collection System which needs to be replaced because of damage, loss or normal wear and tear as long as such part is required for the continued operation of the Gas Collection System;
- (iii) Furnish any and all supplies (including consumables), labor, tools, materials, parts, mechanisms and devices to keep the Gas Collection System in good repair, condition and working order; and
- (iv) Carry out the duties and obligations set forth in the Work Scope.

County shall carry out the foregoing services for the fees set forth in Article VI hereof and, except as otherwise set forth in Article VIII, without any additional cost or expense to BVA LFG.

B. Permits. County shall, itself or cause others to, at its own expense, prepare and file applications for Permits and diligently prosecute such applications with a view to obtaining and maintaining all Permits (including without limitation, those pertaining to Improvements) which may be required, from time to time. County shall, itself or cause others to, at its own expense, maintain (or cause the maintenance of) all such Permits, whether new or existing, in full force and effect without interruption and shall not take or omit to take (or permit the taking or omission of) any action which would result in any restriction or encumbrance on, or any violation of, any Permit; provided, however, that BVA LFG shall at its own expense be responsible for the processing of Permit applications or modifications needed to avoid the loss or restriction of any Permits where such Permit applications or modifications are necessitated due to the negligence or misconduct of BVA LFG and not due to any fault of County. To the extent

legally required and allowed, all Permits shall be transferred to or obtained and maintained (solely or jointly) in the name of BVA LFG and current copies thereof shall be provided to BVA LFG. A breach of this Article III (B) by County shall be deemed to be a material breach for the purposes of Article IX (A).

ARTICLE IV OPERATION AND STANDARDS

A. Landfill Operations. County agrees that the operation of the Gas Collection System shall not unreasonably interfere with any and all operational requirements of the Landfill, and any such interference shall be to the minimum extent required and shall not unreasonably interfere with protection of the environmental safeguards installed by Lessor at the Landfill and compliance with appropriate permits.

B. Compliance with Laws, Agreements etc. County's performance of its obligations under this O&M Agreement shall be in material compliance with (i) all applicable laws, ordinances, rules and regulations, (ii) any and all applicable orders, decrees, judgments and Permits of any governmental or judicial authority, and (iii) the Work Scope, Good Engineering Practice, and the applicable provisions of the Related Agreements. In addition, County shall not cause, by its actions or failures to act under or in connection with this O&M Agreement, BVA LFG or the Gas Collection System to be in violation of any of the foregoing.

C. Condensate and Waste. As part of its responsibilities under this O&M Agreement, County shall be responsible for, and shall bear all costs and expenses incurred in connection with, the proper return to the Landfill of any and all waste material (including without limitation, condensate, all materials and minerals therein, all contaminants and all excavated refuse) produced or collected by the Gas Collection System prior to the Point of Delivery to the purchasers under the Gas Purchase Agreement or any Additional Sales Contract, or otherwise released inside or from the Premises. To the extent such return is not permitted by the Lease or applicable laws and regulations, County shall be responsible for the proper collection, treatment, removal and disposal of such waste material. Such disposal shall at all times be in accordance with applicable laws and regulations.

D. Measurement of Landfill Gas.

1. Measuring Equipment for Sales of T andfill Gas. County shall maintain and operate the Sales Meter(s). County shall maintain all charts and records for the term of this Agreement and upon termination hereof and upon request, shall furnish copies of such charts and records to BVA LFG. County shall have the right to retain copies and to provide copies of such records to the applicable regulatory authorities as required pursuant to any permits. The parties and their representatives shall have access at all reasonable times to inspect, test and repair such Sales Meter(s), and to inspect or copy such charts and records.

2. Meter Test Notice. County shall conduct a test of the Sales Meter(s) which are used for the billing of Landfill Gas sold to the Buyer at least once every 12 months at

County's expense. Such test shall be carried out by County in accordance with the recommendations and guidelines of the manufacturer of such Sales Meter(s) and Good Engineering Practice. County shall give BVA LFG notice of the times of all tests of the Sales Meters sufficiently in advance so that BVA LFG may conveniently have its representative(s) ready to observe such tests, if desired BVA LFG shall have the right to conduct tests of the Sales Meter(s), at its expense, at all reasonable times.

3. Correction Errors of Sales. If, upon the completion of any test of the Sales Meter(s), any Sales Meter is determined to be recording outside the normal range of accuracy according to the manufacturer's specifications, records thereof shall be corrected for a period extending back to the time such inaccuracy occurred, if such time is ascertainable by Good Engineering Standards, or if not ascertainable or if the amount of Landfill Gas in MMBtus cannot be ascertained because a meter or device is out of service or being repaired, County and BVA LFG shall estimate in good faith the volume and quality delivered based upon BVA LFG's and County's other operating records for the period in question. Following any test, any measuring equipment found to be inaccurate to any significant degree shall be adjusted or replaced immediately to measure accurately.

E. Environment, Security and Safety. County shall be responsible for (i) the security and safety of the Gas Collection System, Premises and all items of tangible property belonging to BVA LFG or County located on the Landfill, (ii) implementing and overseeing a safety program at the Premises, and (iii) ensuring that the operations and maintenance of the Gas Collection System are in compliance with all applicable environmental, health and safety laws, ordinances, rules and regulations. In addition, to the extent that any damage occurs to the Gas Collection System or the Premises proximately caused by the activities of County, or any contractor, agent or employee of County, all of such damages shall be the responsibility of County. Without limiting the foregoing, in its operation and maintenance of the Gas Collection System on behalf of BVA LFG hereunder, County shall comply, and shall use its best efforts to ensure that the Gas Collection System and the Premises comply, with all laws, regulations, ordinances and orders pertaining to environmental matters, including without limitation, (i) those relating to the discharge, control, reporting, use, storage, treatment and disposal of Hazardous Materials and (ii) those necessary to ensure protection of environmental safeguards installed at the Landfill and compliance with appropriate permits.

F. No Liens. In connection with the performance of its duties hereunder, County shall not (i) create, or suffer the creation of; any lien or encumbrance on the Gas Collection System, any Permit, the Premises, the Landfill or any interest in or portion thereof, (ii) take any action which would otherwise cause BVA LFG to cease to have good and marketable title to the Gas Collection System, or (iii) remove any material part of the Gas Collection System from the Premises.

G. BVA LFG's Right to Cure Operator's Breaches. If County shall breach or neglect to carry out any of its obligations under this O&M Agreement and shall fail within 30 days after receipt of written notice from BVA LFG to County to commence and continue correction of such breach or neglect with diligence and promptness, BVA LFG may, without prejudice to any other remedy or right it may have, make good such deficiencies. In such case, the cost of correcting

such deficiencies shall be paid by County to BVA LFG promptly after receipt of an invoice therefor.

H. **Disclosure.** To the best of County's knowledge, none of the documents or other written information furnished by or on behalf of County to BVA LFG pursuant to this O&M Agreement or any of the Related Agreements contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading. County is not aware of any fact peculiar to County which materially adversely affects or in the future could (so far as County can now reasonably foresee) materially adversely affect the Gas Collection System and which has not been set forth in this O&M Agreement or in other written material furnished to BVA LFG by or on behalf of County prior to the date hereof in connection with the transactions contemplated hereby.

I. **No Relocation.** County shall not take, or permit the taking of, any action which would cause the Gas Collection System to be moved to a different landfill.

ARTICLE V REPORTING PROGRAM

County shall provide BVA LFG with the reports summarizing operations hereunder at the Landfill and the production and sales reports all as called for in the Work Scope. County shall include a section in the report which indicates potential or actual material problems in the supply of Landfill Gas that have or are likely to arise. Such reports will be made in a mutually agreeable format. County shall also promptly notify BVA LFG after becoming aware of (i) any material breach of any Related Agreement, Permit or any other material agreement or instrument pertaining to any of the foregoing, or (ii) any material pending or threatened litigation or proceedings regarding the Gas Collection System or any of the foregoing instruments.

ARTICLE VI PAYMENT

For the operation and maintenance services described herein, BVA LFG shall pay to County the base rate of 18.4 cents per MMBtu (plus any adjustments for inflation as provided in this subparagraph) for all Landfill Gas purchased by County or any successor Gas Purchaser from BVA LFG during any calendar quarter during the term hereof. BVA LFG shall pay all such sums to County as are due under this O&M Agreement on a quarterly basis. The payments hereunder to County in respect of any quarter shall be made on the same day as the payment by BVA LFG to the County of the Lease Payment under the Lease Agreement. The base rate of 18.4 cents per MMBtu shall be adjusted to reflect inflation on the first and each succeeding anniversary of this O&M 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.

ARTICLE VII INDEMNIFICATION

1. County agrees to indemnify, hold harmless and defend BVA LFG and its partners and each such party's shareholders, directors, officers, employees, agents, independent contractors and representatives, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees) causes of action, suits or judgments incurred by or involving any one of the foregoing parties and arising, directly or indirectly, from or in connection with (i) any breach by County of any of its representations, obligations, covenants or warranties contained in this O&M Agreement, or (ii) any action or omission of County or its officers, employees, agents or subcontractors taken or made in connection with County's performance of its obligations hereunder, provided such action or omission constitutes negligence or **wilful** misconduct. County further agrees to investigate, handle, respond to and defend any such claim, suit or demand, at its own expense.

2. BVA LFG agrees to indemnify, hold harmless and defend County and its partners and each such party's shareholders, directors, officers, employees, agents, independent contractors and representatives, ~~from~~ and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees) causes of action, suits or judgments incurred by or involving any one of the foregoing parties and arising, directly or indirectly, from or in connection with (i) any breach by BVA LFG of any of its representations, obligations, covenants or warranties contained in this O&M Agreement, or (ii) any action or omission of BVA LFG or its officers, employees, agents or subcontractors taken or made in connection with BVA LFG's performance of its obligations hereunder, provided such action or omission constitutes negligence or wilful misconduct and further provided that the County has fully performed all of its obligations hereunder. BVA LFG further agrees to investigate, handle, respond to and defend any such claim, suit or demand, at its own expense.

3. Notwithstanding the application of any other statute of limitations, each party's right to such indemnification shall survive the termination of this O&M Agreement for a period of four (4) years. If either party becomes entitled to any amounts as indemnification under Article IV (F) or this Article VII or under any of the Related Agreements, that party may set off such amounts against any sums or payments owed or to be owed by them to the other party under this O&M Agreement or any Related Agreement.

ARTICLE VIII EXTRAORDINARY WORK

A. Improvements. BVA LFG shall undertake, build and install all Improvements which are (i) requested by BVA LFG and approved by County, or (ii) recommended by County

to BVA LFG and approved by BVA LFG as being necessary or desirable to produce and deliver the maximum commercial quantities of Landfill Gas from the Landfill, or (iii) necessary to ensure protection of environmental safeguards installed at the Landfill and compliance with appropriate permits. In the event County declines to undertake, build and install any Improvement requested by BVA LFG and a third party can carry out such Improvement at a cost substantially lower than proposed by County, then BVA LFG may engage such third party to carry out such Improvement and County shall cooperate with such third party in such undertaking, provided the right to install said improvements shall be exercised only with the consent of County, which consent shall not be unreasonably withheld or delayed.

B. **Cost of Improvements.** BVA LFG shall bear all costs (labor and material) necessary to undertake any and all such approved Improvements, except for the cost of:

- (i) any Improvement to the extent it is covered by insurance required under Article IV(G);
- (ii) any Improvement caused, directly or indirectly, by a breach by County of any of its representations, warranties, covenants or obligations under this O&M Agreement;
- (iii) any Improvement for which County is required to indemnify BVA LFG under the terms of Article VII;
- (iv) any Improvement which is being made primarily to protect environmental safeguards installed at the Landfill and/or compliance with appropriate permits; and
- (v) any addition or expansion to the Gas Collection System for which BVA LFG is not required to pay pursuant to the Lease Agreement or by mutual agreement of the parties hereto.

C. **Standards.** County shall design, build and install any and all Improvements (i) in a good and workmanlike manner, able to withstand the normal and usual landfill operations at the Landfill, and (ii) in accordance with Good Engineering Practice, and in conformance with all applicable laws, regulations, ordinances and orders. Such Improvements shall be designed, built and installed so as to be suitable for the operation of the Gas Collection System.

D. **Possession of Improvements.** All approved Improvements shall become part of the Premises leased to BVA LFG once installed at the Landfill. County hereby warrants that BVA LFG shall have possession of any future improvements upon its installation free and clear of all liens, encumbrances and security interests, and agrees to do all things and execute all documents, at its own expense, necessary for BVA LFG to enjoy such possession.

ARTICLE IX TERMINATION

A. BVA LFG's Right to Terminate. BVA LFG shall have the right to terminate this O&M Agreement only in the event (i) County commits an act or omission which is a material breach by County under this O&M Agreement, provided that where BVA LFG asserts a material breach BVA LFG notifies County in writing and allows County a reasonable period of time but not less than 60 days to cure the breach and further provided that if such material breach is due to an event of *Force Majeure*, such material breach shall not be grounds for termination, unless the event of *Force Majeure* could prevent County from performing any of its obligations hereunder for a period of more than 180 days and/or County is not diligently seeking to cure such event of *Force Majeure*, or (ii) the Lease Agreement or the Gas Purchase Agreement is terminated for any reason. In the event BVA LFG terminates this O&M Agreement due to County's material breach, BVA LFG agrees to replace County for the balance of the term remaining hereunder with a new operator proposed by County, as long as such operator (i) demonstrates to BVA LFG's reasonable satisfaction that it is capable of performing the duties and obligations of County hereunder, (ii) secures and maintains, at its own expense, throughout the remaining term of this O&M Agreement the insurance policies (with the coverages and minimum amounts, insureds and special provisions) identified in Article XI hereof; and (iii) such operator consents in writing to assume all of the rights and obligations of County hereunder. Notwithstanding any termination of County as Operator, BVA LFG shall remain obligated to pay County the amounts set forth in Article VI hereof based on Landfill Gas produced and sold, less any amounts actually paid by BVA LFG for a substitute operator to perform the duties and obligations of County under this O&M Agreement.

B. County's Right to Terminate. County shall have the right to terminate this O&M Agreement only in the event BVA LFG commits an act or an omission which is a material breach under this O&M Agreement, provided that where County asserts a material breach County notifies BVA LFG in writing and allows BVA LFG a reasonable period of time but not less than 60 days to cure the breach and further provided that if such material breach is due to an event of *Force Majeure*, such material breach shall not be grounds for termination, unless such event of *Force Majeure* prevents BVA LFG from performing any of its obligations for a period of more than 180 days.

ARTICLE X SUBCONTRACTING OR ASSIGNMENT

A. No Assignment. No assignment by either party of any or all of its respective rights and duties hereunder shall be permitted, without the consent of the other party, which consent shall not be unreasonably withheld, and any assignment without such consent shall be null and void, except as specifically permitted in this Article X or as set forth in Article IX(A), above.

ARTICLE XI INSURANCE

A. Insurance Required of BVA LFG. In order to insure against damage to BVA LFG's and County's interests in the Project Facility, pursuant to this O&M Agreement, and BVA LFG's and County's interests in the System Interests, pursuant to this O&M Agreement between the parties, BVA LFG agrees to maintain, at all times during the term of this O&M 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 O&M 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 Project Facility, limited to replacement costs of property insured not to exceed One Million Dollars (\$1,000,000). County shall be named as loss payee on the all-risk policy described in this section to the extent that such proceeds are for Losses to the Project Facilities.

B. 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 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: (83 1) 454-2160
Fax: (83 1) 454-2385

8. BVA LFG agrees that the insurance required herein shall be in effect at all times during the term of this O&M 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 O&M 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 O&M 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.

C. Policies to Be Primary and Non-Contributory. 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 BVA LFG.

D. Failure Constitutes Material Breach. Failure on the part of BVA LFG to procure or maintain required insurance shall constitute a material breach of this O&M Agreement upon which County may terminate this O&M 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 O&M Agreement.

ARTICLE XII MISCELLANEOUS

A. ~~Notices~~ Notices, demands, requests, consents or other communications required or permitted to be given or made under this O&M Agreement shall be in writing and if to BVA LFG to:

BVA LFG Corporation
120 Montgomery Street, Suite 1000
San Francisco, CA 94104

Tel: (415) 434-0900
Fax: (4 15) 956-6220

if to County:

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

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this O&M 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 O&M Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this O&M Agreement. Either party may change its address for the purpose of this Article XII (A) by giving the other party prior notice thereof in accordance with this provision.

B. Successors and Assigns. Subject to the restrictions on assignment herein contained, the terms and provisions of this O&M Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns and personal representatives of the respective parties hereto. This O&M 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 provided in Article X.

C. Applicable Law and Related Matters. All questions with respect to the construction of this O&M Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State of California.

In any litigation arising from this O&M Agreement, the prevailing party shall be entitled to receive from the non-prevailing party all reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by the prevailing party by reason of the event giving rise to such litigation.

Prior to the initiation of litigation, either party shall initiate dispute resolution under this section. Dispute resolution will be initiated by either party delivering notice to the other, setting forth the nature of the dispute. The parties agree to meet or otherwise confer expeditiously to resolve the dispute, and to submit the dispute to non-binding third party mediation if the dispute cannot be resolved within 15 days following the delivery of the notice. If a notice of breach has been issued, the period of time allowed to cure the breach shall be stayed pending dispute resolution for a period not to exceed 45 days (including third party mediation) unless otherwise agreed to by the parties hereto.

D. Expenses. Each party hereto shall pay all expenses incurred by it in connection with its entering into this O&M Agreement, unless otherwise specified, including without limitation, all attorneys' fees and expenses.

E. Counterparts. This O&M Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

F. Severability. If any provision of this O&M Agreement or the application thereof to any party or circumstance be invalid or unenforceable to any extent, the remainder of this O&M Agreement and the application of such provision to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby and each provision of this O& M Agreement shall be valid and enforceable to the fullest extent permitted bylaw.

G. Interpretation Matters. Except to the extent expressly provided herein, the provisions of this O&M Agreement, and the rights and obligations of the parties hereto, shall be construed so as to be consistent with the provisions of the Lease and the other Related Agreements and the applicable rights and obligations of the parties thereunder. County acknowledges it has received and reviewed the Lease and each of the Related Agreements and is familiar with the terms thereof. The Exhibit hereto (Work Scope) is an integral part of this O&M Agreement, however, if there is any inconsistency between any provision in the foregoing Articles and any provision in the Work Scope, including, without limitation, the Operations and Maintenance Manual, if any, the former shall prevail.

H. Entire Agreement:. This O&M Agreement (including without limitation, the Exhibit hereto and the Operations and Maintenance Manual, if any), 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. This O&M Agreement may only be amended or modified by a written instrument signed by both parties hereto.

I. ~~No~~waiver by either party hereto of any one or more breaches by the other party in the performance of any provision of this O&M Agreement shall operate or be construed as a waiver of any nature, breach, whether of alike or different character. No failure on the part of either party hereto to complain of any action or non-action on the part of the other party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the party so failing, A waiver of any of the provisions of this O&M Agreement shall only be effective if made in writing and signed by the party who is making such waiver.

J. No Joint Venture. Nothing in this O&M 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 relationship between the parties. County is and shall remain an independent contractor in the performance of this O&M Agreement, maintaining complete control of its personnel, workers, subcontractors and operations required for its performance hereunder.

K. ~~This Work Product~~ shall be considered the work product of all parties hereto, and, therefore, no rule of strict construction shall be applied against any party hereto.

L. Equal Employment Opportunity. During and in relation to the performance of this O&M 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 O&M 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 O&M 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.

M. Independent Contractor Status 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 O&M Agreement, each of the undersigned certifies that it is his or her considered judgment that the BVA LFG engaged under this O&M Agreement is in fact an independent contractor.

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

O. Retention and Audit of Records BVA LFG shall retain records pertinent to this O&M Agreement for a period of not less than five (5) years after final payment under this O&M 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 O&M Agreement.

P. Presentation of Claims. Presentation and processing of any or all claims arising out of or related to this O&M 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.

IN WITNESS WHEREOF, the County and BVA LFG have caused this O&M 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: Thom Vence
Vice-President and Secretary

Address:

Brown, Vence and Associates Lfg Corporation
120 Montgomery Street, Suite 1000
San Francisco, CA 94104

Telephone: (4 15) 434-0900

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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

By: Thomas McEwen
Counsel for BVA LFG

DISTRIBUTION: Public Works

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

EXHIBIT A

WORK SCOPE FOR OPERATION, MONITORING AND MAINTENANCE OF THE LANDFILL GAS COLLECTION SYSTEM AT THE OPERATING SITE

This scope of work provides for the operation, monitoring, and maintenance services on the Landfill Gas Collection System located at the Buena Vista Landfill in Watsonville, California.

I. OPERATION, MONITORING, AND MAINTENANCE

Operation, monitoring, and maintenance consists of activities required to maximize collection of Landfill Gas from the Landfill while maintaining the operating criteria and preventing intrusion of air into the Landfill and “over pulling” of the wells in a particular area to the detriment of gas production and landfill safety. Specific operating criteria are contained in the Data Gathering statement (see Section II below). Operation, monitoring and maintenance services are divided into the following categories:

Routine Monitoring and Maintenance.

Non-Routine Maintenance.

Unscheduled Emergency Services.

A . Routine Monitoring and Maintenance.

Routine monitoring and maintenance services on the Gas Collection System terminating at the downstream flange of the blowers (as defined in the Landfill Gas Lease), and includes the following:

As-Needed: Coordinate with BVA LFG and its agents for smooth operation of the Gas Collection System.

Coordinate with the Landfill Owner to minimize damage to the Gas Collection System as landfill activities proceed.

Prepare and maintain inspection/maintenance logs.

Notify BVA LFG of operating problems/issues as they occur.

Pump condensate traps, as needed.

Sample, analyze and dispose of condensate, as appropriate.

Daily: Monitor the Sales Meter(s) and analyze the inlet gas for percent methane and oxygen, flow and vacuum and record information on Form No.2 (see Section V herein).

Unscheduled emergency services include events that require immediate response. These may include, but are not limited to:

Repair of header or lateral line breaks (resulting in significant air intrusion or limited gas flow to the gas processing facility).

Repair of broken flexible connections.

Repair of severely settled pipelines restricting gas flow.

Repair/maintenance and trouble shooting of Gas Collection System components.

Responses to the urgent nature of these items are such that they **cannot** be scheduled. County should promptly respond to these conditions, as needed. Unscheduled emergency services will be performed as required. County will use its best business judgment and Good Engineering Practice to effectuate repairs as soon as possible, especially where the continued operation of the Gas Collection System is concerned. The statements under the above caption are subject to the provisions of Article VIII above.

II. OPERATING CONDITIONS

This Work Scope has been developed with the following understanding:

1. County will be responsible, on behalf of BVA LFG, for the operation, monitoring and maintenance of the Gas Collection System as currently existing and as it may be subsequently expanded or modified. The system currently consists of vertical and horizontal extraction wells, condensate traps, header lines, and lateral lines, the primary condensate system, blowers and may also include flow metering facilities.

2. County will have reasonable access to the wellfield during performance of its services consistent with the terms of the Lease.

3. County will be the only party designated to adjust the extraction wells during the period of its O&M Agreement. BVA LFG can request adjustments to the well field, and County shall comply with such requests except where compliance with such request would conflict with its other obligations hereunder.

4. County will employ and provide appropriately skilled persons to adjust, maintain, and troubleshoot the landfill gas collection and monitoring system. This shall include, but not be limited to, the taking of gas samples, and/or analyses vacuum readings, valve adjustments and well field balancing.

5. County will provide general administration and management responsibilities to oversee field personnel.

Monitor wells on a daily basis and check each well at least once per month for methane content, vacuum, oxygen content, temperature, and wellhead valve position with information being logged on the attached Form No. 1.

Prepare and maintain test data logs using the attached Forms.

Weekly: Monitor the annubar station and monitoring points, if any, and record flows.

Prepare flow reports and operating issues.

Bi-Weekly: Inspect Gas Collection System components and Landfill site surface for surface cracks/settlement or locations in the interim cover and the clay cap in the closed locations for potential points of air intrusion that might adversely affect operation of the system and determine integrity of the Gas Collection-System. Perform minor maintenance, as required, including replacing broken sample lab cock valves, securing loose flexible connections, cleaning fill away from enclosures, repair of clay seal around well, drain condensate from laterals and/or headers, etc.

Prepare and maintain inspection/maintenance logs.

Monitor the Gas Collection System for gas composition, vacuum distribution, and flow (as required); adjustments to be made as necessary (see Section II below).

Prepare and maintain test data/field activity logs.

Monthly: Prepare and submit a report to BVA LFG containing the data collected, a trend analysis, summary of the system operation and maintenance, and forecast of anticipated maintenance activities for next month.

Where possible, during the performance of routine services, personnel will perform minor non-routine services, such as tightening bolts, replacement of sample lab cock valves, replacement of flexible connections, etc.

B. Non-Routine Maintenance

Non-routine maintenance consists of corrective repairs or maintenance work identified during the routine visits. This work may include items such as resetting of vaults, repair of broken lateral and header lines, lowering of well heads and localized settlement and regrading of pipes and/or landfill surface to address condensate blockages and surging vacuum, and possible replacement of inoperable wells. This work is essential to the achievement of the Gas Collection System operational goals. However, it is considered the type of work that can generally be scheduled to allow for procurement of materials, equipment, scheduling of personnel, etc., and County will attempt to provide maximum notice to BVA LFG prior to such activity. This paragraph is subject to the provisions of Article VIII above.

C. Unscheduled emergency services.

Unscheduled emergency services include events that require immediate response. These may include, but are not limited to:

Repair of header or lateral line breaks (resulting in significant air intrusion or limited gas flow to the gas processing facility).

Repair of broken flexible connections.

Repair of severely settled pipelines restricting gas flow.

Repair/maintenance and trouble shooting of Gas Collection System components.

Responses to the urgent nature of these items are such that they cannot be scheduled. County should promptly respond to these conditions, as needed. Unscheduled emergency services will be performed as required. County will use its best business judgment and Good Engineering Practice to effectuate repairs as soon as possible, especially where the continued operation of the Gas Collection System is concerned. The statements under the above caption are subject to the provisions of Article VIII above.

II. OPERATING CONDITIONS

This Work Scope has been developed with the following understanding:

1. County will be responsible, on behalf of BVA LFG, for the operation, monitoring and maintenance of the Gas Collection System as currently existing and as it may be subsequently expanded or modified. The system currently consists of vertical and horizontal extraction wells, condensate traps, header lines, and lateral lines, the primary condensate system, blowers and may also include flow metering facilities.

2. County will have reasonable access to the wellfield during performance of its services consistent with the terms of the Lease.

3. County will be the only party designated to adjust the extraction wells during the period of its O&M Agreement. BVA LFG can request adjustments to the well field, and County shall comply with such requests except where compliance with such request would conflict with its other obligations hereunder.

4. County will employ and provide appropriately skilled persons to adjust, maintain, and troubleshoot the landfill gas collection and monitoring system. This shall include, but not be limited to, the taking of gas samples, and/or analyses vacuum readings, valve adjustments and well field balancing.

5. County will provide general administration and management responsibilities to oversee field personnel.

6. County will manage and coordinate the necessary subcontractors and vendors required to support ongoing operations hereunder.

7. County will maintain the required insurance coverage on its field personnel and any other employees involved with the Gas Collection System on its behalf.

8. County shall be responsible for providing the necessary portable field instrumentation and small hand tools required to support the performance of services covered under this contract.

9. County shall control the vacuum on the wells to optimize recovery while not unduly hindering the anaerobic decomposition of refuse at the Landfill and to maintain a gas content of not less than Twenty Two Million (22,000,000) Btus per hour at a minimum methane content of Four Hundred and Fifty (450) BTU per standard cubic foot for at least 7,884 hour per calendar year.

10. County shall be responsible for testing the Landfill Gas at least annually for the following constituents, and shall ensure that the constituents in all Landfill Gas delivered through the Gas Collection System to the Gas Purchaser shall not exceed the following limits:

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 5 1.75 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.

11. County shall be responsible for the engineering and design of any facilities,

equipment or system in connection with the operation or expansion of the Gas Collection System.

12. County shall be responsible for the suitability of the Gas Collection System to meet any environmental requirements or operating criteria in the Lease or the other provisions of this O&M Agreement.

13. Any drawings, field notes and specifications developed pursuant to this O&M Agreement shall be provided to BVA LFG at no additional cost for the first three copies and at actual cost for additional copies requested by BVA LFG.

14. County shall be responsible for training, educating and, if necessary, licensing its own and Subcontractor personnel in general to conform to OSHA and SARA requirements as well as any other local, state and federal requirements applicable to the Gas Collection System and County activities.

15. This scope of work includes purchase of spare parts.

16. This scope of work includes the cost for services of any maintenance required to be performed by the manufacturer of the Sales Meter(s) and monitoring and testing equipment.

17. This scope of work includes reporting and/or analyses that may be required by regulatory bodies.

18. At any time during the term of this O & M Agreement, by mutual agreement of both parties, the Work Scope can be revised.

19. County will meet periodically with BVA LFG and/or its designated representatives to review operations of the Gas Collection System, maintenance of performance standards and compliance with this O&M Agreement, and to assist in any inspections of the Gas Collection System and related data.

III. MONITORING

1. Daily readings shall be taken at the Sales Meter(s) and recorded on Form No. 2. In addition, a gas analysis shall be done on the total Landfill Gas flow to determine the following:

methane content;
oxygen content;
temperature; and
blower vacuum.

2. At least monthly the Landfill Gas wells will be tested. Data will be collected, recorded, and stored on County's computer data base, if available; otherwise it shall be recorded manually on the attached Form No. 1. Test parameters will include the following:

methane concentration;
oxygen concentration;
flow rate, if possible;
wellhead vacuum;
lateral vacuum; and
gas temperature at wellhead.

3. At least once each month the wellfield piping and wells will be observed for the following:

vandalism;
malfunctions.

4. Operator shall conduct all other periodic tests required by the Technical Instructions of the manufacturer of the electric power generation engines using any of the Landfill Gas.

Monitoring report forms on well testing and total flow and gas content are attached.

IV. REPORTING

Once each month, County will prepare a letter report to BVA LFG containing the data collected and a summary of all activity performed on the Gas Collection System during the reporting period. Any data maintained in a computer data base to allow tracking of long term trends will be provided on a monthly basis sufficient for BVA LFG to determine total gas quantity and Btu content. In addition, any past month's major maintenance and/or operational problems and future major scheduled activities will be described in a cover letter with the monthly data. Monthly reports will also include details of any areas where operations may not have been in compliance with applicable laws and regulations or existing Permits or any areas where such non-compliance may occur in the future or gas flows and/or quality is significantly different than was projected by County. Special attention should be paid to environmental issues in these reports.

Once each year at a mutually agreeable time, County shall provide BVA LFG with an annual projection of Landfill Gas expected to be recovered. County shall provide BVA LFG on a quarterly basis, by the 15th day of each calendar quarter, estimates of anticipated Landfill Gas flow and quality for the following quarter and such other information as BVA LFG may reasonably request.

County shall promptly upon becoming aware notify BVA LFG of (i) the loss of any property, plant or equipment essential to the operation of the Gas Collection System either due to destruction or damage which is uneconomical to repair, or other rendering of such property, plant or equipment permanently unfit for normal use for any reason whatsoever; (ii) an event which results in a total loss (constructive or otherwise) or an insurance settlement with respect to the Gas Collection System that is based on a total loss thereof; or (iii) the condemnation,

confiscation, seizure or requisition of use of a portion or all of the Gas Collection System.

V. DATA GATHERING

Following data to be gathered at:

a. The Gas Handling System/BVA LFG's Facility (to be done daily)

1. Landfill vacuum.
2. Inlet temperatures of gas prior to blowers.
3. Methane content.
4. Oxygen content.
5. Carbon dioxide content.
6. Nitrogen content.
7. Landfill gas flow rates (Sales Meter(s)).

b. Wells/wellfield (to be done on a monthly basis)

1. Gas temperature at wellhead.
2. Wellhead vacuum.
3. Line vacuum.
4. Wellhead valve position.
5. Methane percentage.
6. Oxygen percentage.
7. Annubar measurements.

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) [Signature] (Date) 1-27-99

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)
and BROWN, VENCE AND ASSOCIATES LFG, CORPORATION (Name & Address)
120 MONTGOMERY STREET, SUITE 1000, SAN FRANCISCO, CA 94104
2. The agreement will provide FOR PAYMENTS TO THE COUNTY FOR OPERATION AND MAINTENANCE OF,
THE LEASED LANDFILL GAS COLLECTION SYSTEM 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 ~~costs~~ REVENUE ~~XXX~~ \$ 5,000 (Fixed amount; Monthly rate; Not to exceed)
6. Remarks: _____

7. ~~REVENUES~~ REVENUES are budgeted in 625110 (Index#) 2118 (Subobject)

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

Appropriations are available and have been encumbered. Contract No. R-691 Date 1/28/99
are not will be

GARY A. KNUTSON, Auditor - Controller
By Ronald J. Libon 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).

Remarks: _____
(Analyst) BY Peter C. [Signature] Date 2/1/99
County Administrative Officer

Agreement approved as to form. Date _____

RPM/mg

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

To Orig. Dept. if rejected.

ADM - 29 (6/95)

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 Officer
_____ 19 _____ BY _____ Deputy Clerk