



THOMAS L. BOLICH  
DIRECTOR OF PUBLIC WORKS

# County of Santa Cruz

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## DEPARTMENT OF PUBLIC WORKS

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### AGENDA: JUNE 19, 2001

June 12, 2001

#### SANTA CRUZ COUNTY BOARD OF SUPERVISORS

701 Ocean Street  
Santa Cruz, California 95060

SUBJECT: BUENA VISTA LANDFILL GAS POWER PROJECT

Members of the Board:

On February 13, 2001, your Board received a report on the proposal from Brown, **Vence** and Associates LFG, Inc. (BVALFG) for development of the Buena Vista Landfill Gas Power Project and authorized the Director of Public Works to execute a Letter of Intent (LOI) to develop this project. The LOI outlined the terms and conditions proposed for a Landfill Gas Generation Facility Agreement including financing arrangements, turn-key construction, operating provisions, revenue sharing and operational responsibilities. A copy of the LOI is included for your reference as Attachment A. Public Works was directed to negotiate a final agreement with BVALFG based upon the terms and conditions outlined in the LOI and return on May 1, 2001. However, due to the length of time required to **draft** the agreement and finalize the terms and conditions, the item was deferred to June 19, 2001.

Management of landfill gas is mandated under state and federal law. Several hundred million cubic feet of methane is burned annually through our flare system with the resulting energy value being released into the atmosphere as heat. The landfill methane we burn has value as an alternative fuel, and using this gas as a resource for higher and better purposes is the basis for this project proposal. Negotiations have been completed, and the proposed agreement has been reviewed and commented on by County Counsel, the Auditor-Controller and the County Administrative Office. Directives received **from** your Board, the Auditor-Controller and the County Administrative **Office** have been to create a project that could be accomplished in a cost beneficial **manner** and with financial risks to the County are minimized. It is Public Works' opinion that the terms and conditions outlined in the agreement meet these basic criteria. Attached you will find the completed Landfill Gas Generation Facility Agreement for your consideration and approval.

### Agreement Outline

This project is structured as a joint public/private venture. Capital expenses for the project will be shared. BVALFG will be responsible for generation facility construction and operations, and the County will be responsible for construction and management of the landfill gas collection and delivery system. Net present value of this project for the County is estimated at \$2.4 million. A copy of the project's financial proforma is included for your reference as Attachment B. Attachment C is a flow chart outlining the flow of cash through the project. The following is a summary of the key elements of this agreement with cross reference to the appropriate section,

- ▶ County funding contribution for the power plant will be \$1.5 million (4.0 1 .A)
- ▶ BVALFG funding contribution for the power plant will be \$1.5 million (4.0 1 .B)
- ▶ If project costs exceed \$3.0 million BVALFG will fund the balance (4.02)
- ▶ BVALFG and the County will share in the liability for any non-refundable generation equipment deposit expenses prior to the construction (4.03)
- ▶ Repayment of the County's capital investment will be at a 6.5 percent interest rate over 15 years (Article I, "County Payment")
- ▶ County will hold title to the entire power plant asset, including that portion funded by BVALFG (2.10)
- ▶ BVALFG will design and construct the power plant (2.04)
- ▶ BVALFG will assume all responsibility for operation and maintenance of the power plant (5.01)
- ▶ BVALFG will be responsible for marketing electricity on behalf of the County (plant owner) (5.05)
- ▶ BVALFG will provide surety for the project financing in the form of a manufacturer's salvage guarantee for the power plant equipment and insurance or bonding for the combined outstanding debt and lien balance on the project in excess of the salvage value or depreciated book value, whichever is greater (4.04)
- ▶ BVALFG must provide all sureties and guarantees in forms acceptable to the County prior to the construction date (60 days after agreement execution) (2.01 .A.9)
- ▶ Revenues above the baseline costs outlined in the agreement (6.01 .B) will be shared 40 percent to the County and 60 percent to BVALFG (6.03)
- ▶ BVALFG will pay the County \$30,000 per year for operations and maintenance (O&M) of the landfill gas collection system (6.04 and previously approved O&M agreement, February 9, 1999)
- ▶ County and BVALFG may jointly or individually fund expansion of generation facility capacity as availability of landfill gas increases (7.02)
- ▶ BVALFG will provide, in addition to standard County required insurances, Environmental Liability Insurance, Property Insurance for the Generation Facility, and bonding insurance for the designated financial agent for the project (12.01)

### Project Risks

Electrical generation projects such as this are not risk free; however, risks can be managed and controlled to an acceptable level. The following is a summary of the basic project risks and how they are managed under this agreement.

- ▶ **Project Financing** - As outlined above, County financing risks are controlled in several ways. BVALFG will furnish a manufacturer's salvage guarantee for the generation facility that provides for a fixed resale guarantee over the project life. This guarantee must be provided prior to the construction date which is set as 60 days after execution of this agreement. The salvage value of the equipment is not likely to be sufficient to cover the outstanding debt on the project and, therefore, BVALFG will provide a secondary insurance or bond for all outstanding debt in excess of the salvage value at any given time during the project. Please note that the generation equipment will be portable containerized units that can be moved or sold as used equipment at any time and project infrastructure at the landfill will be limited to 200 to 300 feet of gas piping, a level concrete pad, fencing and electrical connections.

In the unlikely event of default or termination as defined in the agreement, the County would have the option to continue operating our generation asset or use the salvage guarantee and insurance to clear all outstanding project debts. Protection of the County investment was the highest priority for the project structure and these conditions met that requirement.

- ▶ **Gas production** - The County will retain responsibility for production and delivery of landfill gas to the project. We have over 12 years of experience with management of landfill gas at the Buena Vista Landfill. The current landfill is producing approximately 25-30 percent more gas than is necessary to operate the permitted generation facility. Well field expansion for the 2001/02 fiscal year will increase the available gas another 30-35 percent and allow for potential generation facility expansion in the near future. The only potential risk would be a catastrophic failure of the gas production capacities of the landfill, which is a highly unlikely event given the nature of landfill decomposition and our historic experience. If this unlikely event were to occur, the County would be responsible for providing alternative fuel or assuming project expenses until fuel could be delivered.
- ▶ **Generation Facility Operations** - BVALFG will be responsible for all aspects of generation facility operations, including operation of the facility to maximize electrical output, and assumes all the operational risks and expenses. Failure on BVALFG's part to meet the operational parameters outlined in Section 5 of the agreement would result in termination and County exercise of the surety provisions of this agreement.

### Timelines

The primary revenue source for this project is the sale of electricity. The Governor's office, through the State Department of Water Resources (DWR), is requesting bids for the purchase of electricity at a fixed rate of ten cents per kilowatt hour for a five-year period. The condition of this bid is that the generating capacity be online by September 30, 2001. While this is not essential to the success of this project, it does provide some additional management of market risks for the project for the first five years. Approval of this agreement in June will give us an opportunity to meet the online date set by DWR.

In December 1999, we also informed your Board that we had been successful in securing a \$767,000 grant from the California Energy Commission to support development of the Buena Vista Landfill Gas Power Project. In order to receive the full amount of this grant, our

generating facilities must be online by January 1, 2002. The project implementation deadline in the grant, in combination with the current energy markets that strongly favor new electrical generation projects, also warrants expeditious action.

The agreement defines the generation facility construction date as 60 days from execution of the agreement. During this 60-day period both BVALFG and the County are required to complete several tasks necessary to begin construction. These tasks are included in Section 2.01 of the agreement. The most important of these tasks is the ordering of the generating equipment, which can require several months lead time. In order to meet the timelines for the two programs outlined above, the generation equipment must be ordered very soon after contract execution. BVALFG is in the process of finalizing the equipment vendor selection, which will further clarify the project construction timelines, deposit requirements, deposit refund policy in the event of a termination for cause during the 60-day pre-construction period, and salvage value schedule. This information will be provided to your Board during the staff and developer presentation for this agenda item.

s u m m a r y


This is an opportune time to move forward with an alternative energy project such as the Buena Vista Landfill Gas Power Project. The many federal and state incentives, grants and high energy prices favor new generating capacity. Public Works' staff continues to receive weekly calls from the Governor's "Green Team" which is charged with assisting developers of new electrical capacity in overcoming the many hurdles, regulatory and otherwise, to meet California's expanding energy needs. There is a strong governmental interest in moving new energy projects forward expeditiously. We have a usable fuel resource that is currently being burned with no recovery of energy value. The proposed Landfill Gas Generation Facility Agreement allows for the use of this landfill gas as a fuel resource to generate electricity needed in our state and under a managed risk to the County. The cost of this project is \$1,500,000, plus a start-up operational reserve of \$30,000. Sufficient funds are available in the CSA-9C Solid Waste and Recycling budget for this purpose.

It is therefore recommended that your Board take the following actions:

1. Authorize the Director of Public Works to sign the attached Landfill Gas Generation Facility Agreement with Brown, **Vence** and Associates LFG, Inc. for design, construction and operation of the landfill gas power project at the Buena Vista Landfill for the not-to-exceed amount of \$1,530,000.00.
2. Direct Public Works to take all related actions necessary to complete this project and authorize the Director of Public Works to execute all related applications and agreements required by this Landfill Gas Generation Facility Agreement.

3. Direct Public Works to return on or before September 25, 2001, with a status report on the project.

Yours truly,

  
THOMAS L. BOLICH  
Director of Public Works

RPM:bbs

Attachments

RECOMMENDED FOR APPROVAL:

  
County Administrative Officer

copy to: Brown, **Vence** and Associates LFG (w/a)  
Auditor-Controller (w/a)  
Public Works Department

**LANDFILL GAS GENERATION FACILITY AGREEMENT**

Between

Brown, Vence & Associates Lfg Corporation, Inc.

And

The County of Santa Cruz

dated as of

\_\_\_\_\_, 2001

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## **LANDFILL GAS GENERATION FACILITY AGREEMENT**

This Landfill Gas Generation Facility Agreement is made as of \_\_\_\_\_, 2001, between Brown, Vence & Associates Lfg Corporation, Inc., 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, the County owns and operates a landfill located at 123 1 Buena Vista Drive, Watsonville, California, which contains landfill gas which occurs from decomposition of waste within such landfill; and

WHEREAS, pursuant to the Lease (as hereinafter defined), the County has leased to BVA LFG a landfill gas collection system located at such landfill and granted to BVA LFG the exclusive right to use, extract and utilize for its own account such landfill gas; and

WHEREAS, pursuant to the O&M Agreement (as hereinafter defined), BVA LFG has engaged the County to operate, maintain and repair such landfill gas collection system; and

WHEREAS, pursuant to the Gas Purchase Agreement (as hereinafter defined), the County has agreed to purchase from BVA LFG such landfill gas; and

WHEREAS, the County desires to engage BVA LFG to design and construct a landfill gas-fueled generation facility and to operate and maintain such generation facility pursuant to the terms and provisions of this Agreement; and

WHEREAS, BVA LFG 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 the County do hereby agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

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

"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 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 attachments to this Agreement and the furnishing of information to BVA LFG as contemplated by this Agreement after having made a reasonable investigation of the accuracy of the representations and warranties made by the County in this Agreement or other writing furnished by the County to BVA LFG pursuant to this Agreement or otherwise in connection with such attachments hereto.

“Affiliate” means any person, corporation or other entity directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

“Agreement” means this Landfill Gas Generation Facility Agreement, as it may hereafter be amended, modified and supplemented in accordance with its provisions.

“Applicable Law” means any law, rule, regulation, requirement, guideline, action, determination or order of, or Legal Entitlement issued by, any Governmental Entity having jurisdiction, applicable from time to time to the siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of the Generation Facility, or any other transaction or matter contemplated by this Agreement (including any of the foregoing which concern health, safety, fire, environmental protection, gas processing, quality and use, labor relations, mitigation or monitoring plans, building codes, nondiscrimination and the payment of minimum wages).

“Base Management Fee” means for each calendar month the positive amount, if any, remaining after subtracting the amounts paid pursuant to subparts (i) through (iv) of Section 6.01(B)(1) hereof from the number obtained by multiplying the total megawatt hours of electricity sold during such month by the Base Price.

“Base Price” means initially Fifty-Five Dollars (\$55.00). The Base Price shall be adjusted to reflect inflation on the first and each succeeding anniversary of the date of this Agreement by increasing the then current Base Price by a factor equal to fifty percent (50%) 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 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.

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

“BVA LFG Additional Financing” has the meaning specified in Section 4.02 of this Agreement.

“BVA LFG Initial Financing” has the meaning specified in Section 4.01(B) of this Agreement.

“BVA LFG Financing” shall mean the BVA Initial Financing and the BVA LFG Additional Financing, if any.

“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.

“Capital Improvement” means any replacements, modifications, additions and expansions to or of the Generation Facility.

“Change Order” means a written order authorizing or requiring changes to the Generation Facility and issued pursuant to Section 2.09 of this Agreement.

“Close-Out Requirements” means the obligations of BVA LFG for closing out applicable Generation Facility Construction Work and completing documentation of the applicable Generation Facility Construction Work pursuant to this Agreement, including such matters as submittal of “as-built” (or record) drawings, as-built surveys and manuals; cleanup and removal of construction materials and debris; and all other matters which this Agreement requires BVA LFG to do and perform as part of the completion and winding-up of the Generation Facility Construction Work.

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

“Commercial Operations” shall have the meaning set forth in Section 3.01 of this Agreement.

“Commercial Operations Commencement Date” shall mean the date on which Commercial Operations commence.

“Contract Date” means the date on which this Agreement has been executed and delivered by both of the parties hereto as indicated on the signature page hereof. The “as of” date on the cover page and the initial page of this Agreement is the last date reflected on the signature page hereof, which is the date that this Agreement shall take effect.

“Cost Substantiation” means, with respect to any cost incurred or to be incurred by BVA LFG hereunder, delivery to the County of a certificate signed by the BVA LFG Representative, setting forth the amount of such cost, stating that such cost is not greater than the fair market price for the service or materials supplied or to be supplied and that such services and materials are required pursuant to this Agreement, and accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been or will be paid or incurred. Such documentation shall include reasonably detailed information concerning (to the extent applicable) (1) all Subcontracts, (2) the amount and character of materials furnished, the persons from whom purchased, the amounts payable therefore and related delivery and transportation costs and any sales or personal property taxes, and (3) a statement of the equipment used and any rental payable therefore.

“County Distribution” means an amount equal to forty percent (40%) of Net Cash Flow; provided, however, should BVA LFG determine that tax credits under Section 29 of the Code are not available for Landfill Gas sold after the Contract Date and before January 1, 2008 or should the Internal Revenue Service disallow any such tax credits, the term “County Distribution” for the period from such determination or disallowance until December 31, 2007 shall mean an amount equal to forty percent (40%) of Net Cash Flow less the smaller of (i) twenty percent (20%) of Net Cash Flow, or (ii) Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$37,500) per operating calendar quarter.

"County Funding" has the meaning specified in Section 4.0 1 (A) of this Agreement.

"County Loan" means the deemed loan of the County Funding, to be "repaid" as specified in Section 6.01(B)(1)(iii)(b) of this Agreement and Section 6.03(A) of this Agreement.

"County Payment" means the monthly amount which, if the County Funding were treated as a loan bearing interest payable in arrears at six and one-half percent (6½%) per annum, would equal interest only on the principal amount of such loan for the period from disbursement until the Commercial Operations Commencement Date and thereafter would equal the sum necessary to amortize the principal amount of such loan in equal monthly payments of principal and interest over a period of fifteen (15) years. Within ten (10) days after the Commercial Operations Commencement Date, or such later date upon which the County and BVA LFG may agree, the "County Loan Amortization Schedule Appendix" which sets forth the amortization schedule for the County Loan shall be approved by the parties, such approval not to be unreasonably withheld, delayed or conditioned, and attached to this Agreement. All amounts received by the County pursuant to Section 6.03(A) of this Agreement shall be treated as prepayments of the principal amount of the deemed loan of the County Funding, and, in the event of any such prepayments, the amount of the County Payment shall not be adjusted, but at the time the County receives each such prepayment, the "County Loan Amortization Schedule Appendix" shall be revised to reflect the new maturity date of the County Loan which results from such prepayment.

"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.

"Deliverable Material" means the work product required to be delivered to the County by the Facility Scope of Work.

"Encumbrance" means any lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Generation Facility.

"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, the Gas Collection System, the Facility Site or the Generation Facility or 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 Materials or alleged violation of any Environmental Law.

"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 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 Materials. "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.

"Facility Scope of Work" means the work specified in the "Facility Scope of Work Appendix" to be approved by the parties hereto and attached to this Agreement on or prior to the date sixty (60) days after the Contract Date, or such later date upon which the County and BVA LFG may agree.

"Facility Site" means the site on which the Generation Facility is to be constructed, as more particularly described in the "Facility Site Appendix" to be approved by the parties hereto and attached to this Agreement on or prior to the date sixty (60) days after the Contract Date, or such later date upon which the County and BVA LFG may agree.

"Final Completion" has the meaning specified in Section 3.06(C) of this Agreement.

"Final Punch List" has the meaning specified in Section 3.06(A) of this Agreement.

"Force Maieure" 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 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.

"Gas Collection System" shall mean the system whereby Landfill Gas is collected and made available for commercial use, as more specifically defined in the Lease.

"Gas Collection System Operations Shortfall" shall mean the amount arrived at by subtracting the amount paid by the County for Landfill Gas pursuant to the Gas Purchase Agreement from the sum of (i) lease payments received by the County under the Lease and (ii) payments received by the County under the O&M Agreement.

"Gas Purchase Agreement" shall mean the Landfill Gas Purchase Agreement dated February, 1999, 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.

“Generation Facility” or “Facility” means the generation facility to be designed constructed, developed, operated and maintained pursuant to this Agreement, including administrative offices and all landscaping, improvements, appurtenant structures, additions and machinery and equipment, all as more particularly described in the Facility Scope of Work, together with all Capital Improvements thereto.

“Generation Facility Construction Date” means the first date on which all of the Generation Facility Construction Date Conditions shall be satisfied or waived,

“Generation Facility Construction Date Conditions” has the meaning specified in Section 2.01(A) of this Agreement.

“Generation Facility Construction Period” means the period from and including the Generation Facility Construction Date to and including the day preceding the Generation Facility Verification Date.

“Generation Facility Construction Work” means everything required to be furnished and done for and relating to the Generation Facility by BVA LFG pursuant to this Agreement during the Generation Facility Construction Period, all as more particularly described in the Facility Scope of Work.

“Generation Facility Fuel” means all Landfill Gas, natural gas and other combustible materials used as fuel for the Generation Facility which is allowable under the operating permit or permits.

“Generation Facility Operations and Maintenance Manual” means the operations and maintenance manual provided by the manufacturer of the generation equipment and delivered to the County pursuant to Section 3.04(D) of this Agreement.

“Generation Facility Verification” means demonstration by BVA LFG in accordance with Article III of this Agreement and the Facility Scope of Work that the Generation Facility Verification Tests have been conducted and the Generation Facility Verification Standards have been achieved.

“Generation Facility Verification Date” means the date on which Generation Facility Verification occurs or is deemed to have occurred under Article III of this Agreement.

“Generation Facility Verification Date Conditions” means those conditions which must be satisfied in order for the Generation Facility Verification Date to occur as set forth in Section 3.04 of this Agreement.

“Generation Facility Verification Standards” means the standards for the Generation Facility conducted pursuant to Section 3.04 of this Agreement to demonstrate Generation Facility Verification.

“Generation Facility Verification Tests” means the tests of the Generation Facility Verification set forth in the Facility Scope of Work.

“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.

“Gross Revenue” means all receipts, revenues, income and proceeds of sales of every kind derived directly or indirectly from the Generation Facility, including, without limitation, employee fidelity insurance proceeds with respect to the loss of funds which have not previously been included in Gross Revenue, business interruption insurance proceeds and any amounts recovered in any legal action or proceeding or settlement thereof which arose out of the operation of the Generation Facility (net of expenses) which have not been previously included in Gross Revenue, but excluding any receipts, revenues, income or proceeds from the sources described in Section 6.03 of this Agreement.

“Hazardous Material” means (a) any material which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous substance, hazardous chemical substance or mixture, or asbestos under any Environmental Laws; or (b) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954(42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40; or (c) a chemical listed by the United States Environmental Protection Agency in accordance with Section 302(a) or Section 313(c) of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C.A. §§ 11002(a), 11023(c) (Supp. 1993), in each case as the same may be amended, replaced, or superseded; or (d) a material or substance which may endanger health or safety including, but not limited to, any material or substance or combination of materials or substances which are explosive, volatile, radioactive, toxic, corrosive, flammable, reactive, an irritant, or a strong sensitizer, or which generate pressure through decomposition, heat or other means if such materials or substances may cause injury, illness or harm to humans, to domestic animals or livestock or to wildlife.

“Incentive Management Fee” means an amount equal to sixty percent (60%) of Net Cash Flow; provided, however, should BVA LFG determine that tax credits under Section 29 of the Code are not available for Landfill Gas sold **after** the Contract Date and before January 1, 2008 or should the Internal Revenue Service disallow any such tax credits, the term “Incentive Management Fee” for the period from such determination or disallowance until December 31, 2007 shall mean an amount equal to sixty percent (60%) of Net Cash Flow plus the smaller of (i) twenty percent (20%) of Net Cash Flow, or (ii) Thirty-Seven Thousand Five Hundred and No/100 Dollars (\$37,500).

“Landfill” shall mean the Buena Vista Landfill located at 1231 Buena Vista Drive in Watsonville, California.



“Landfill Gas” shall mean any and all gases resulting from the biological decomposition of landfill solid wastes located at the Landfill, including, but not limited to, methane, carbon dioxide, hydrogen and traces of other gases or any combination thereof.

“Lease” shall mean the Landfill Gas Field Facilities Lease Agreement dated February, 1999, 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.

“Legal Entitlement” means material authorization forms, permits and licenses issued by, consents and approvals of, filings with, notices from and registrations with, any Person and all Governmental Entities or quasi-governmental entities (including all conditions thereof), which are currently required to be obtained, or may be required in the future, under Applicable Law or otherwise, for or in connection with (i) the design and construction of the Generation Facility, (ii) the production or sale of electricity from the Generation Facility, (iii) the operation, maintenance, possession or ownership of the Generation Facility, or (iv) the exercise by the County of any of its rights under this Agreement.

“Legal Proceeding” means every action, suit, litigation, administrative proceeding and other legal or equitable proceeding arising out of the obligations of the parties under this Agreement.

“Lender” means any Person who provides any financing to the County as contemplated in this Agreement or any refinancing thereof.

“Loan Shortfall Surety” has the meaning set forth in Section 4.04 of this Agreement,

“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 Landfill, the Facility Site, the Gas Collection System or the Generation Facility or any material portion thereof, or which would result in the imposition of any material lien or other material encumbrance on the Landfill, the Facility Site, the Gas Collection System or the Generation Facility or on the ability of the County to perform its obligations hereunder.

“Net Cash Flow” means, for each applicable period, Gross Revenue less all payments made pursuant to Section 6.01(B)(1) of this Agreement.

“O&M Agreement” shall mean the Landfill Gas Field Facilities Operations and Maintenance Agreement dated February, 1999 between Brown Vence & Associates Lfg Corporation and the County of Santa Cruz, as it may hereafter be amended, modified or supplemented in accordance with its provisions.

“O&M Work Scope” means the work specified in the “Work Scope for Operation and Maintenance of Generation Facility Appendix” to be approved by the parties hereto and attached to this Agreement on or prior to the date sixty (60) days after the Contract Date, or such later date upon which the County and BVA LFG may agree.

“Operating Advances” has the meaning set forth in Section 6.02 of this Agreement.

“Operating Expenses” means any and all amounts incurred in connection with the operation and maintenance of the Generation Facility, including, without limitation, preventive, routine and non-routine repairs performed on a basis that insures the reliable, long-term and safe operation of the Generation Facility. Operating Expenses shall include, without limitation, all administrative expenses and overhead costs incurred by BVA LFG in performing its obligations under this Agreement, all costs of insurance required to be in effect from and after the Commercial Operations Commencement Date, all costs of providing the guaranty of the liquidation or salvage value of the Generation Facility and the Loan Shortfall Surety required by Section 4.04 hereof incurred after the Commercial Operations Commencement Date, except as limited by Section 5.02(J) hereof, all costs of Generation Facility Fuel and, except as limited by Section 9.01 hereof or Section 9.02 hereof, all costs and expenses (including attorneys’ fees), liabilities and damages arising from any litigation regarding the operation of the Generation Facility.

“Operation Services ” has the meaning specified in Section 5.01(A) of this Agreement.

“Permitted Encumbrances” shall mean, as of any particular time, (i) liens for taxes not then delinquent, (ii) this Agreement and each Encumbrance contemplated by this Agreement, and (iii) any other lien, encumbrance, charge or cloud on title that BVA LFG certifies will not materially impair the use of the Generation Facility for its intended purpose.

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

“Prudent Utility Practices” shall mean the practices, methods and acts (including but not limited to practice, methods and acts engaged in or approved by a significant portion of the electric utility industry) that at a particular time, 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. With respect to the Generation Facility, Prudent Utility Practices include, but are not limited to, taking reasonable steps to ensure that:

- (i) Adequate materials, resources and supplies, including a Generation Facility Fuel supply sufficient for continuous operation, are available to meet the Generation Facility’s needs;
- (ii) While the Generation Facility will not be staffed during most operating hours, experienced, trained and (as necessary) licensed operating personnel are available to operate the Generation Facility properly and efficiently and to respond to emergency conditions;
- (iii) Preventive, routine and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation and are performed by knowledgeable, trained and experienced personnel

utilizing proper equipment, tools and procedures and in accordance with the requirements of the manufacturer of the generation equipment;

- (iv) Appropriate monitoring and testing is done to ensure equipment is functioning as designed and to provide assurance that equipment will function properly under both normal and emergency conditions; and
- (v) Equipment is not operated in a reckless manner or in a manner unsafe to workers, the general public or the environment.

“Prudent Utility Practices” 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.

“**PURPA**” means the Public Utility Regulatory Policies Act of 1978, Public Law 95-617, as amended and superceded.

“Related Agreements” shall mean this Agreement, the Lease, the O&M Agreement and the Gas Purchase Agreement.

“Sales Meters” shall mean the meters and other measuring devices to be installed as part of the Generation Facility (and any replacements or modifications to such meters) for the purpose of measuring in accordance with Prudent Utility Practices the quantity of the electricity produced at the Generation Facility and the quantity of electricity sold to electricity customers.

“Scheduled Generation Facility Verification Date” means the day one hundred eighty (180) consecutive calendar days following the Generation Facility Construction Date, as adjusted due to any Force Majeure.

“State” shall mean the State of California.

“Subcontract” means an agreement between BVA LFG and a Subcontractor or between two Subcontractors, as applicable.

“Subcontractor” means every person (other than employees of BVA LFG) employed or engaged (including every sub-subcontractor of whatever tier) for any portion of the work required under this Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone and telecommunications) and all piping, wiring, conduit and other fixtures of every kind whatsoever related thereto or used in connection therewith.

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

## ARTICLE II

### CONSTRUCTION OF GENERATION FACILITY

#### 2.01 GENERATION FACILITY CONSTRUCTION DATE CONDITIONS.

(A) Generation Facility Construction Date Conditions Defined. Promptly following the Contract Date, BVA LFG shall proceed in good faith and with due diligence to satisfy all of the responsibilities described in this Section with respect to the development of the Generation Facility. Except as provided in Section 2.01(D) hereof, Generation Facility Construction Work shall not commence until all of the following conditions necessary for the construction of the Generation Facility (the “Generation Facility Construction Date Conditions”) are satisfied:

(1) Legal Entitlements. All Legal Entitlements required for the design and construction of the Generation Facility shall have been duly obtained, made, given or taken and shall be in full force and effect, and none thereof shall be the subject of any pending or threatened administrative or judicial proceedings. If such Legal Entitlements are not available, this condition shall not be satisfied. As soon as practicable following the Contract Date, the County shall file applications for all such Legal Entitlements, if any, which have not been obtained and shall use all reasonable efforts to diligently prosecute such applications until such Legal Entitlements have been granted or it is determined that such Legal Entitlements, or any one of them, cannot or will not be granted, or this Agreement has been terminated pursuant to the provisions hereof. If requested by the County, BVA LFG shall assist the County in obtaining such Legal Entitlements. The County shall diligently pursue receipt of Legal Entitlements to allow a gross capacity at the Generation Facility of approximately 1.98 megawatts.

(2) Plans and Specifications. Unless waived by BVA LFG, BVA LFG shall have received from the County in the most complete form which is in the possession of the County on the Contract Date the plans and specifications for the improvements located on and within the Landfill and the Facility Site and for the improvements necessary to get the Landfill Gas to the Facility Site.

(3) Soils and Engineering Reports. Unless waived by BVA LFG, (i) BVA LFG shall have received from the County a copy of any and all reports in the County’s possession relating to the condition of the Facility Site, including but not limited to the soil, seismological, geological, oil and mineral reserves and drainage conditions of the Facility Site (to the extent in the possession of the County on the Contract Date), and (ii) BVA LFG shall have received from the County a copy of the results of such additional soil test borings and analyses of subsurface conditions, inspections and site history reviews of the Facility Site as BVA LFG shall consider necessary under good construction and engineering practice as preparation for excavation and construction hereunder with respect to the Generation Facility in accordance with Applicable Law. All such additional tests and analyses shall be conducted by the County at its sole cost and expense, and the cost thereof shall not be reimbursed out of the financing sources specified in Section 4.01 hereof and Section 4.02 hereof.

(4) Environmental Study. Unless waived by BVA LFG, (i) BVA LFG shall have determined either by itself or from its environmental consultants that the soil, seismological, geological and drainage conditions and the flood and wind characteristics of the

Facility Site are satisfactory to BVA LFG in the sole discretion of BVA LFG, and (ii) BVA LFG shall have received from the County a copy of the results of all such tests and inspections as BVA LFG shall consider necessary to satisfy BVA LFG as to the soil, seismological, geological and drainage conditions and the flood and wind characteristics of the Facility Site. All such tests and inspections shall be conducted by the County at its sole cost and expense, and the cost thereof shall not be reimbursed out of the financing sources specified in Section 4.01 hereof and Section 4.02 hereof.

(5) Litigation. The County shall not be a party to any pending or outstanding action, suit, proceeding, judgment, order, decree, default, delinquency or deficiency, nor to the Actual Knowledge of the County shall any such matter be threatened, involving the Landfill or the County, which could affect the County's ability to carry out its obligations under this Agreement. The County shall provide BVA LFG with all information which the BVA LFG may reasonably request concerning all such matters.

(6) Access, Utilities and Legality. Unless waived by BVA LFG, BVA LFG shall have determined in its sole and absolute discretion: (a) that there is such access to the Facility Site from the nearest dedicated highway or public road as is necessary or appropriate for the performance required by the parties pursuant to this Agreement; and (b) that all utilities to the Facility Site, including but not limited to water, gas and sewerage, are available or can be made available without cost (or at a reasonable cost) for the duration of this Agreement in sufficient capacities and without the consent of any other person or entity, except for applicable utility companies.

(7) Survey. Unless waived by BVA LFG, BVA LFG shall have obtained a copy of a current survey of the Facility Site satisfactory in form and substance to BVA LFG, in the sole discretion of BVA LFG, prepared and certified by licensed surveyors chosen by BVA LFG showing (a) the location and dimensions of the Facility Site and all improvements thereon, (b) the location of all means of access to the Facility Site and of all easements relating to or affecting the Facility Site, (c) no encroachment on the Facility Site, and (d) no encroachment by any part of any improvement on the Facility Site onto property adjoining the Facility Site.

(8) Design Submittals. BVA LFG shall have prepared and provided to the County copies of all plans, technical specifications, blueprints, drawings and other design documents relating to the Generation Facility required prior to construction in accordance with the Facility Scope of Work.

(9) Salvage Value Guaranty; Loan Shortfall Surety. BVA LFG shall have furnished the guaranty of the liquidation or salvage value of the Generation Facility and the Loan Shortfall Surety required pursuant to Section 4.04 hereof.

(10) Required Insurance. BVA LFG shall have submitted to the County certificates of insurance for all insurance required to be in effect during the Generation Facility Construction Period pursuant to Section 12.01 hereof

(11) County. Unless waived by BVA LFG, BVA LFG shall be satisfied that the County Funding is available and the initial disbursement thereof shall have been made as provided in Section 4.03 hereof.

(12) BVA LFG Initial Financing. Unless waived by the County, the BVA LFG Initial Financing shall have closed.

(13) O&M Work Scope. The “Work Scope for Operation and Maintenance of Generation Facility Appendix” shall have been approved by the parties hereto, such approval not to be unreasonably withheld, delayed or conditioned, and attached to this Agreement.

(14) Facility Scope of Work. The “Facility Scope of Work Appendix” shall have been approved by the parties hereto, such approval not to be unreasonably withheld, delayed or conditioned, and attached to this Agreement.

(15) Facility Site. The “Facility Site Appendix” shall have been approved by the parties hereto, such approval not to be unreasonably withheld, delayed or conditioned, and attached to this Agreement.

(B) Cost of Offsets and Other Conditions to Legal Entitlements. All costs and expenses incurred in obtaining Legal Entitlements necessary for the Generation Facility, including, without limitation, (i) the cost of all air emissions offsets or emission credits necessary to obtain and maintain such Legal Entitlements, and (ii) all other costs of meeting any other conditions of obtaining and maintaining such Legal Entitlements, shall be paid by the County and shall not be a cost of the Generation Facility to be reimbursed from the funding sources specified in Section 4.01 hereof and Section 4.02 hereof

(C) Supply of Information. The County agrees to cooperate with BVA LFG and to supply BVA LFG with all information as BVA LFG may reasonably request for purposes of conducting any feasibility or other due diligence inquiries by BVA LFG or by any Lender or prospective Lender or otherwise required by BVA LFG to meet the conditions set forth in Section 2.01(A) or otherwise in the performance of its obligations hereunder.

(D) Equipment Order. Notwithstanding that the Generation Facility Construction Date Conditions may not have been satisfied, immediately following the Contract Date, BVA LFG shall order the generation equipment described in the Facility Scope of Work or, if the “Facility Scope of Work Appendix” has not yet been approved by the parties hereto, such generation equipment as is approved by the parties hereto, such approval not to be unreasonably withheld, delayed or conditioned.

## 2.02 SATISFACTION OR FAILURE OF GENERATION FACILITY CONSTRUCTION DATE CONDITIONS.

(A) Satisfaction of Conditions. The parties shall give each other prompt written notice when each of the Generation Facility Construction Date Conditions has been achieved. Where applicable, written documents or instruments constituting or evidencing satisfaction of the Generation Facility Construction Date Conditions shall be furnished to each party as soon as available.

(B) Failure of Generation Facility Construction Date Conditions. If, by the date sixty (60) days following the Contract Date, or such later date upon which the County and BVA LFG may agree, any of the Generation Facility Construction Date Conditions are not satisfied, the

provisions of this Section 2.02(B) shall apply. In such circumstances, at the election of either party, exercised by written notice to the other party no later than the date sixty-five (65) days following the Contract Date, or such later date upon which the County and BVA LFG may agree, this Agreement, the Gas Purchase Agreement, the O&M Agreement and the Lease shall terminate and each party shall bear their own costs and expenses without reimbursement by the other party; provided, however, in the event of the termination of this Agreement pursuant to this Section 2.02(B) and in the event the County cancels the order of the generation equipment ordered pursuant to Section 2.01(D) hereof, BVA LFG shall promptly reimburse to the County one-half (1/2) of the amount of the deposit for such generation equipment which is not returned to the County. Upon request of BVA LFG, the County shall submit evidence to BVA LFG of the amount of such deposit not returned to the County.

**2.03 TERMINATION FOR CAUSE PRIOR TO CONSTRUCTION.** The County shall have the right prior to the Generation Facility Construction Date to terminate this Agreement for cause pursuant to Section 11.02(B) hereof, without cost or liability to the County. BVA LFG shall have the right prior to the Generation Facility Construction Date to terminate this Agreement for cause pursuant to Section 11.02(A) hereof, without cost or liability to BVA LFG.

#### **2.04 AGREEMENT TO CONSTRUCT.**

(A) Commencement of Construction. Promptly following the occurrence of the Generation Facility Construction Date, BVA LFG shall undertake, perform and complete the Generation Facility Construction Work in accordance with all of the provisions and requirements of this Agreement. BVA LFG shall commence the preparation of the Facility Site, the disposal of any debris thereon and any soil excavated therefrom and the construction of the Generation Facility in accordance with the Facility Scope of Work, shall proceed with due diligence to cause the Generation Facility to be constructed in accordance with the Facility Scope of Work and the final design of the Generation Facility, shall cause applicable shakedown operations to occur and shall cause the Generation Facility to be tested for Generation Facility Verification in accordance with this Agreement, all so that the Generation Facility is suitable and adequate for the purposes for which it is intended in accordance with this Agreement and so that Generation Facility Verification occurs on or before the Scheduled Generation Facility Verification Date. Subcontracts entered into by BVA LFG for the construction of the Generation Facility shall neither supersede nor abrogate any of the terms or provisions of this Agreement. Laydown and staging areas for construction materials shall be located on the Facility Site, or at other locations arranged with the County.

(B) Construction Costs and Financing n s e s o f t h e G e n e r a t i o n Facility Construction Work of any kind or nature whatsoever shall be paid from the funding sources specified in Section 4.01 hereof and Section 4.02 hereof Such costs and expenses, without limiting the generality of the foregoing, shall include all costs of permitting and regulatory compliance; obtaining and maintaining any credit enhancement required hereunder; payments due under Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of BVA LFG; general supervision by BVA LFG of all construction; preparation of schedules, budgets and reports by BVA LFG; keeping all construction accounts and cost records; and all other costs required to achieve Generation Facility Verification.

(C) Construction Practice. Unless the Facility Scope of Work expressly provides otherwise, BVA LFG shall perform the Generation Facility Construction Work in accordance with generally accepted construction practices and shall have, as between the County and BVA LFG, exclusive responsibility for all construction means, methods, techniques, sequences and procedures necessary or desirable for the correct, prompt and orderly prosecution and completion of the Generation Facility Construction Work as required by this Agreement.

(D) Standard Specifications for Construction and Design. In performing the Generation Facility Construction Work and in making any Capital Improvements prior to the Generation Facility Verification Date, BVA LFG shall comply with the standards and requirements for design and construction as set forth in the Facility Scope of Work.

(E) Changes to Final Facility Scope of Work. BVA LFG acknowledges the County's material interest in the final design drawings, plans and specifications of the Generation Facility delivered and approved pursuant to the Facility Scope of Work and agrees that no change which diminishes the quality, durability or reliability of the Generation Facility or otherwise materially and adversely affects the interests of the County hereunder shall be made to the final design, plans, drawings and specifications without the prior written approval of the County, which approval shall not be unreasonably withheld, delayed or conditioned.

(F) Legal Entitlements Necessary for Construction. The County shall make all filings, applications and reports necessary to obtain and maintain all Legal Entitlements required to be made, obtained or maintained under Applicable Law in order to continue the construction, shakedown and testing of the Generation Facility. If requested by the County, BVA LFG shall assist the County in obtaining such Legal Entitlements.

(G) Required Insurance During Construction Period. BVA LFG shall obtain and maintain during the Generation Facility Construction Period all insurance required pursuant to Section 12.01 hereof. BVA LFG shall not perform Generation Facility Construction Work, or allow any of its or any Subcontractor's employees on the Facility Site, during any period when any such required insurance is not in effect.

(H) Compliance With Applicable Law. In designing, constructing, shaking down and testing the Generation Facility, BVA LFG shall comply with Applicable Law, shall construct and operate all processing, air and water pollution control and other systems comprising the Generation Facility in accordance with Prudent Utility Practices and applicable equipment manufacturer's design requirements and recommendations and shall observe safety standards of a level consistent with the Applicable Law, the requirements of any required insurance and Prudent Utility Practices; provided, however, that BVA LFG will not be deemed in default hereunder as long as it contests the requirements of any Applicable Law in good faith by appropriate proceedings.

(I) County Representative. BVA LFG shall fully cooperate with any County Representative designated by the County to assist the County in connection with the administration of this Agreement. In the performance of such services, BVA LFG agrees that the County Representative may review and monitor construction progress; observe the completion of the Generation Facility Construction Work; review proposed changes to the Facility Scope of Work; review drawings, plans and specifications for compliance with the



Facility Scope of Work and this Agreement; monitor the Generation Facility Verification Tests undertaken by BVA LFG to determine whether the Generation Facility Verification Standards have been satisfied; review and advise the County with respect to material changes to the Generation Facility; and provide certifications and perform such other duties as may be specifically conferred upon the County Representative hereunder. Notwithstanding the foregoing, it is understood that the County Representative shall be an observer only and shall not have authority to interfere with, halt or delay in any way the construction of the Generation Facility or to require or approve changes to the Facility Scope of Work or the plans and specifications made in accordance therewith except upon the issuance of a Change Order pursuant to Section 2.09 hereof. The fees and costs of the County Representative shall be paid by the County, shall not be considered a cost of the Generation Facility and shall not be paid with the funds described in Section 4.01 hereof and Section 4.02 hereof.

(J) Proper Handling of Hazardous Materials. In the event that BVA LFG uncovers or discovers Hazardous Materials on the Facility Site (other than Hazardous Materials brought to the Facility Site by BVA LFG or its Subcontractors), it may elect to (i) handle and dispose of such Hazardous Materials in accordance with Applicable Law, with the cost of disposal of such Hazardous Materials reimbursed by the County or (ii) determine an alternate Facility Site mutually agreeable to the parties with the County remaining solely responsible for the handling and disposal of such Hazardous Materials at the initial Facility Site. All deadlines for construction or completion of the Generation Facility shall be tolled day for day until the Facility Site is remedied or amended pursuant to this Section. The County acknowledges that BVA LFG shall not have any obligation to undertake remediation of conditions relating to Hazardous Materials at the Facility Site except to the extent that such Hazardous Materials were brought to the Facility Site by BVA LFG or its Subcontractors.

## 2.05 PERSONNEL.

(A) Personnel Performance. All persons engaged by BVA LFG for Generation Facility Construction Work shall have requisite skills for the tasks assigned. BVA LFG shall employ or engage engineers and other consultants to perform all engineering and other services specified in this Agreement and as required for the layouts, locations and levels of the Generation Facility Construction Work. Each such engineer and consultant shall have current professional registration or certification to practice in the State (if required by law).

(B) Labor Disputes. BVA LFG shall have exclusive responsibility for disputes or jurisdictional issues among any unions or trade organizations representing employees of BVA LFG or its Subcontractors, whether pertaining to organization of the Generation Facility Construction Work, arrangement or subdivision of the Facility Scope of Work, employee hiring or any other matters.

## 2.06 OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observations. During the progress of the Generation Facility Construction Work, BVA LFG shall at all times during normal working hours afford the County Representative every reasonable opportunity at the County's sole cost, expense and risk, for observing all Generation Facility Construction Work. During any such observation, the County Representative shall comply with all reasonable safety and other rules and regulations applicable

to the Facility Site or the Generation Facility, and shall in no material way interfere with the performance of any Generation Facility Construction Work.

(B) Tests. BVA LFG shall conduct all tests of the Generation Facility Construction Work (including shop tests) or inspections required by the Facility Scope of Work or by Applicable Law or requirements of any required insurance. BVA LFG shall give the County Representative reasonable advance notice of tests or inspections prior to the conduct thereof, unless stated otherwise herein. If required by Applicable Law or the requirements of any required insurance, BVA LFG shall engage a registered engineer or architect to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by a State certified laboratory or, in the absence of such an authorized laboratory in any particular case, shall be subject to the approval of the County, which approval shall not be unreasonably withheld, delayed or conditioned.

(C) Certificates and Reports. BVA LFG shall secure and deliver to the County Representative copies of all required certificates of inspection, test reports, work logs or approvals with respect to the Generation Facility Construction Work as and when required by the Facility Scope of Work or by Applicable Law or the requirements of any required insurance. BVA LFG shall provide to the County, immediately after the receipt thereof, copies of any notice of default or noncompliance received by BVA LFG under or in connection with any Legal Entitlement, Subcontract, performance bond, letter of credit or other agreement pertaining to the Generation Facility Construction Work,

(D) Estimates of Certain Dates. BVA LFG shall use reasonable efforts to keep the County informed of its estimates of the commencement date for shakedown operations, the date upon which the Verification Tests will commence and the Verification Date.

(E) Deliverable Material. BVA LFG shall deliver to the County all Deliverable Material required to be provided under the Facility Scope of Work at the times specified therein.

## 2.07 CORRECTION OF WORK.

(A) Correction of Nonconforming Construction Work. BVA LFG shall complete, repair, replace, restore, rebuild and correct promptly any Generation Facility Construction Work which does not conform with the Facility Scope of Work or the Legal Entitlements.

(B) Relation to Other Obligations. The obligations specified in Section 2.07(A) hereof establish only the specific obligation of BVA LFG to correct the Generation Facility Construction Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of BVA LFG under this Agreement.

## 2.08 DAMAGE TO THE CONSTRUCTION WORK.

(A) Damage Prevention. BVA LFG shall use reasonable care and diligence, and shall take reasonable precautions, to protect the Generation Facility Construction Work from damage during the Generation Facility Construction Period. Should any such damage occur, such damage shall be repaired in accordance with the provisions of Section 2.09(C) hereof

(B) Notice and Reports. BVA LFG shall notify the County and the insurers under any applicable insurance of any damage to the Generation Facility Construction Work, or any accidents on the Facility Site, promptly **after** BVA LFG learns of any such damage or accidents; and, promptly following any such occurrence, BVA LFG shall submit a written report to the County Representative. BVA LFG shall also submit to the County Representative copies of all accident and other reports filed with (or given to BVA LFG by) any insurance company, adjuster or Governmental Entity (other than the County).

## 2.09 ADDITIONAL SERVICES AND EXTRA WORK.

(A) Change Orders. Before the Generation Facility Verification Date, the County may issue Change Orders, in accordance with and subject to the provisions and limitations contained in this Section; provided, however, that (i) such Change Orders may not interfere with or restrict the ability of BVA LFG to operate and maintain the Generation Facility in accordance with this Agreement; (ii) such Change Orders shall not require the issuance of any additional Legal Entitlements which would otherwise not be required or jeopardize or impose additional burdens with respect to any Legal Entitlements; (iii) such Change Orders shall not affect the commercial viability of the Generation Facility or increase the cost of operating the Generation Facility or, if applicable, adversely affect the “qualifying facility” status of the Generation Facility under PURPA, in the sole discretion of the BVA LFG; (iv) such Change Orders shall not result in a delay or likely delay in the Commercial Operations Commencement Date; (v) such Change Orders shall not adversely affect the ability of BVA LFG to cause Generation Facility Verification to occur by the Scheduled Generation Facility Verification Date unless the County and BVA LFG amend this Agreement to extend the Scheduled Generation Facility Verification Date as required due to said Change Orders; and (vi) such Change Orders shall not increase the cost of the Generation Facility Construction Work unless either (a) BVA LFG has consented in writing to such Change Orders or (b) the County acknowledges and agrees that the County will pay for such increased costs in a manner agreed by the parties prior to undertaking such Change Orders; provided, however, that in the event that the parties cannot agree on a manner of payment by the County, the County shall be required to deposit in an escrow account in advance the cost of such Change Orders (as reasonably estimated by BVA LFG), and BVA LFG shall be entitled to draw down the moneys so deposited upon satisfaction of reasonable milestones during the implementation of such Change Orders.

(B) Capital Improvements at BVA LFG Election. BVA LFG shall give the County Representative written notice of any Capital Improvement proposed to be made at the election of BVA LFG before Generation Facility Verification. Any Capital Improvement proposed to be made at the election of BVA LFG under this Section, whether for experimental purposes or otherwise, shall not be materially inconsistent with the Facility Scope of Work or materially and adversely impact the ability of BVA LFG to perform its obligations under this Agreement. The entire cost of each and every such Capital Improvement shall be paid from the **funding** sources specified in Section 4.01 hereof and Section 4.02 hereof

(C) Repairs Due to Casualty. If the Generation Facility is damaged or destroyed for any reason before Generation Facility Verification, BVA LFG shall promptly proceed to make or cause to be made all repairs reasonably necessary to permit BVA LFG to perform its obligations under this Agreement in a manner which is consistent with the Facility Scope of Work. BVA LFG shall give the County written notice of any such proposed repairs. The entire cost of all

such repairs shall be paid from insurance proceeds, and, to the extent insurance proceeds are not sufficient, then from such funding sources as the County and BVA LFG shall determine by mutual agreement.

(D) Increase in Capacity. No Capital Improvement which would result in an increase of the gross capacity of the Generation Facility above approximately 1.98 megawatts shall be made to the Generation Facility prior to Generation Facility Verification except in accordance with this Section 2.09(D). In the event both parties agree to such Capital Improvement, then (i) this Agreement shall be amended to change the Facility Scope of Work to reflect such increase in capacity and, if necessary, to provide for an extension of the Scheduled Generation Facility Verification Date to accommodate such increase in capacity, and (ii) the entire cost of such Capital Improvement shall be paid from the funding sources specified in Section 4.01 hereof to the extent funds are then available from such sources and, if funds are no longer available from such sources, then from such funding sources as the County and BVA LFG shall determine by mutual agreement. In the event that either party objects to a proposal to increase the gross capacity of the Generation Facility or fails to respond within sixty (60) days of receipt of such proposal, then the applicable provisions of Section 7.02(B) hereof shall apply so that the party proposing the increase in capacity may proceed therewith, notwithstanding that said increase in capacity would occur prior to the Generation Facility Verification Date.

## 2.10 OWNERSHIP AND DISCHARGE OF ENCUMBRANCES

(A) Ownership. The Generation Facility, and all related equipment, materials, supplies, plans, drawings and other documentation with respect thereto, shall be owned by the County and not by BVA LFG.

(B) Encumbrances. In performing the Generation Facility Construction Work, BVA LFG shall not create or allow any Encumbrance (other than Permitted Encumbrances) to arise on or against the Generation Facility. If any such prohibited Encumbrance is created or arises, BVA LFG shall cause the Encumbrance to be discharged or fully bonded.

2.11 CONSTRUCTION BOOKS AND RECORDS. BVA LFG shall prepare and maintain proper, accurate and complete books and records regarding the Generation Facility Construction Work and all other transactions related to the permitting, design, construction, shakedown and testing of the Generation Facility, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Generation Facility Construction Work. BVA LFG shall keep and maintain all such construction books and records for at least three (3) years after the Generation Facility Verification Date, or such longer period during which any Legal Proceeding with respect to the Generation Facility commenced within three (3) years of the Generation Facility Verification Date may be pending. The County shall have the right to review any such materials or records upon twenty-four (24) hours' prior written notice to BVA LFG.

## ARTICLE III

### ACCEPTANCE OF GENERATION FACILITY

3.01 COMMERCIAL OPERATIONS. "Commercial Operations" with respect to the Generation Facility Construction Work shall occur when all of the following conditions have been satisfied:

- (i) all applicable Generation Facility Construction Work, excepting the items on the preliminary punch list and the Close-Out Requirements, is substantially complete and in all material respects is in compliance with this Agreement;
- (ii) BVA LFG is authorized, on a temporary or permanent basis, to operate the Generation Facility under Applicable Law, and BVA LFG has commenced electrical generation operations at the Generation Facility;
- (iii) all Utilities required for the operation of the Generation Facility are connected and functioning properly; and
- (iv) BVA LFG has submitted written certification that all of the foregoing conditions have been satisfied.

### 3.02 SHAKEDOWN OPERATIONS,

(A) Notice. BVA LFG shall give the County reasonable prior written notice of the expected date of commencement of shakedown operations at the Generation Facility. BVA LFG may modify such test schedules from time to time on reasonable prior notice to the County.

(B) Testing Plan. BVA LFG shall prepare and submit to the County a detailed plan for Generation Facility Verification Tests within the time required by the Facility Scope of Work. The plan shall define a test program for each objective described in the Facility Scope of Work and shall set forth in detail all procedures to be used, all specific measurements to be made, the proposed usage of permanent and temporary instrumentation, the organization of the test team, the testing schedule (including the estimated date, time and duration of each test) and the operating and maintenance schedule during testing. The testing plan shall also make provision for measuring and determining the output of electricity from the Generation Facility, and shall make provision for the determination of compliance of the Generation Facility with the requirements of Applicable Law. Such plan shall in all material respects conform to, and may be amended from time to time in a manner not inconsistent with, the requirements of the Facility Scope of Work.

### 3.03 VERIFICATION TESTING.

(A) Notices. BVA LFG shall give the County prior written notice of the expected initiation of Generation Facility Verification Tests within the time required by the Facility Scope of Work and the testing plan prepared pursuant to Section 3.02(B) hereof. BVA LFG may modify such test schedules from time to time on reasonable prior notice to the County; provided, however, that if (i) BVA LFG fails to provide at least forty-eight (48) hours' prior notice of the

modification and (ii) any such modification directly results in any additional expense to the County whether as a result of schedule dislocations or otherwise, BVA LFG shall reimburse the County the amount of any such reasonable expense. BVA LFG shall not commence the Generation Facility Verification Tests until Commercial Operations at the Generation Facility have occurred and BVA LFG has conducted shakedown operations and complied with any other pretest requirements as required by the Facility Scope of Work.

(B) Conduct of Verification Tests. At least seven (7) days prior to the commencement of the Generation Facility Verification Tests, BVA LFG will certify to the County that it is ready to begin the applicable Generation Facility Verification Tests and that the shakedown operations required prior to the Generation Facility Verification Tests have been completed or will be completed prior to the initiation of the Generation Facility Verification Tests. BVA LFG shall permit the County Representative to inspect the preparations for the Generation Facility Verification Tests. The County Representative shall be present for the conduct of the Generation Facility Verification Tests for purposes of ensuring compliance with the testing plan and the integrity of the results of the Generation Facility Verification Tests. The County Representative shall not interfere with or delay any such tests.

(C) Repeat of Verification Tests. BVA LFG shall be entitled to repeat the Generation Facility Verification Tests as often as it desires in order to secure General Facility Verification provided that at least seven (7) days written notice is given to the County prior to commencement thereof

### 3.04 VERIFICATION.

(A) Verification Date Conditions. The following conditions shall constitute the "Generation Verification Date Conditions" for the Generation Facility, each of which must be satisfied in all material respects by BVA LFG in order for the Generation Facility Verification Date to occur, and each of which must be and remain satisfied as of the Generation Facility Verification Date:

- (i) BVA LFG shall have completed the applicable Generation Facility Verification Tests, and such tests shall have demonstrated achievement of the Generation Facility Verification Standards;
- (ii) BVA LFG shall have submitted to the County certificates of insurance for all insurance required to be in effect on the Generation Facility Verification Date pursuant to Section 12.01 hereof; and
- (iii) BVA LFG shall have submitted a Final Punch List meeting the requirements of Section 3.06(A) hereof

(B) Test Report. Within thirty (30) days after the successful completion of the Generation Facility Verification Tests, BVA LFG shall furnish the County with a written report describing (i) the results of each element of the Generation Facility Verification Tests, and (ii) the level to which the Generation Facility Verification Standards relating thereto have been satisfied. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the Generation Facility Verification Tests.

(C) Generation Facility Verification Date: Concurrence or Disagreement with Test Results "Generation Facility Verification Date" for the Generation Facility, shall be the day on which the applicable Generation Facility Verification Standards have been achieved as identified in the test report submitted by BVA LFG, subject to the following provisions. If BVA LFG certifies in its written report delivered pursuant to Section 3.04(B) hereof that the Generation Facility Verification Standards have been achieved, the County shall determine, within thirty (30) days of its receipt of such report, whether it concurs in such certification. If the County fails to respond to BVA LFG's certification within thirty (30) days of receipt thereof, then the County shall be deemed to have concurred with BVA LFG's certification of the Generation Facility Verification Tests results. If the County determines at any time during such thirty (30) day review period that it does not concur with such certification, the County shall immediately send written notice to BVA LFG setting forth in detail the basis for its disagreement,

(D) Operations and Maintenance Manual. BVA LFG shall provide to the County a copy of the operations and maintenance manual provided by the manufacturer of the generation equipment at least seven (7) days prior to the commencement of Generation Facility Verification Tests.

3.05 NO ACCEPTANCE; WAIVER OR RELEASE. Except for mandatory reviews or approvals by the County required hereunder or in the Facility Scope of Work (and then only to the extent of such reviews and approvals), none of the following shall be construed as the County's acceptance of any Generation Facility Construction Work which is defective, incomplete or otherwise not in compliance with this Agreement, or as the County's release of BVA LFG from any obligation or guarantee, under this Agreement, or as the County's extension of BVA LFG's time for performance, or as an estoppel against the County or as the County's acceptance of any claim by BVA LFG:

- (i) the County's review of any drawings, submissions, punch lists, other documents or certifications (other than certificates relating to Generation Facility completion or Generation Facility Verification) of the Generation Facility Construction Work by BVA LFG or any Subcontractor;
- (ii) the County's review of any construction applications, means, methods, techniques, sequences or procedures for the Generation Facility Construction Work;
- (iii) the County's failure to request that any item be included on any punch list or similar document;
- (iv) the County's entry at any time on the Facility Site (including any area in which the Generation Facility Construction Work is being performed);
- (v) any inspection, testing or observation of any Generation Facility Construction Work (whether finished or in progress) by the County or any other person; or

- (vi) the failure of the County or any County consultant to respond in writing to any notice or other communication of BVA LFG (other than any County response which is explicitly required to be given within a certain time period pursuant to this Agreement).

### 3.06 FINAL COMPLETION.

(A) Final Punch List. BVA LFG shall submit a Final Punch List to the County Representative for purposes of achieving Generation Facility Verification pursuant to Section 3.04(A) of . The “Final Punch List” shall be a statement of repairs, corrections and adjustments to the Generation Facility Construction Work, and incomplete aspects of the Generation Facility Construction Work which:

- (i) BVA LFG can complete after the Generation Facility Verification Date, and with minimal interference to the occupancy, use and lawful operation of the Generation Facility; and
- (ii) would represent, to perform or complete, a total cost of not more than \$100,000 for all items with respect to the Generation Facility.

(B) Certification of Final Completion. BVA LFG shall further prepare and submit to the County as soon as practicable following the Generation Facility Verification Date, for purposes of demonstrating Final Completion of the Generation Facility, a certificate of the BVA LFG Representative certifying (i) that BVA LFG is not in default under this Agreement and no event has occurred or failed to occur which, with the giving of notice or passage of time, would constitute a default hereunder, and (ii) that all applicable Generation Facility Construction Work has been completed in accordance in all material respects with the Facility Scope of Work. In the event that Final Completion does not occur within ninety (90) days of the Generation Facility Verification Date, the County shall have the right to obtain a portion of the Base Management Fee payable to BVA LFG pursuant to this Agreement in an amount equal to twice the value of the unfinished items preventing Final Completion, as reasonably estimated by the County. The County shall pay any amounts so withheld within fifteen (15) days of the date of Final Completion.

(C) Final Completion. “Final Completion” for the Generation Facility shall occur when all of the following conditions have been satisfied:

- (i) a certificate of occupancy has been issued for the Generation Facility by the applicable Governmental Entity;
- (ii) all applicable Generation Facility Construction Work (including all items on the applicable Final Punch List and all applicable Close-Out Requirements) is complete in all material respects in compliance with this Agreement;
- (iii) any spare parts required by the Facility Scope of Work have been delivered and are in storage at the Generation Facility;



- (iv) BVA LFG has delivered to the County all applicable Deliverable Materials required to be delivered; and
- (v) BVA LFG shall have delivered to the County a final and complete reproducible set of as-built or record drawings for the Generation Facility, as required by the Facility Scope of Work.

## **ARTICLE IV**

### **FINANCING**

#### **4.01 PLAN OF FINANCING.**

(A) Obligation of the County to Provide Financing. The County shall provide funds in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) (the "County Funding"), which amount, less One Hundred Ten Thousand and No/100 Dollars (\$110,000), which is the amount previously incurred by the County in connection with the Generation Facility, will be made available to BVA LFG for costs and expenses incurred in connection with the design, construction, development, shakedown and testing of the Generation Facility.

(B) Obligation of BVA LFG to Provide Financing. BVA LFG shall arrange for and effectuate financing for the Generation Facility in the amount of One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000) (the "BVA LFG Initial Financing"), which financing shall be structured either as a loan to the County secured by the Generation Facility or such portion thereof as required by the Lender providing such loan or as a financing lease of the Generation Facility or such portion thereof financed by such lease or such other structure as the County and BVA LFG shall approve. The County shall execute such documents as the Lender providing the BVA LFG Initial Financing shall reasonably request; provided, however, the terms and provisions of any and all such documentation shall not be inconsistent with the terms and provisions of this Agreement. All proceeds of the BVA LFG Initial Financing will be made available to BVA LFG for costs and expenses incurred in connection with the design, construction, development, shakedown and testing of the Generation Facility.

**4.02 ADDITIONAL FUNDS.** To the extent that the funds specified in Section 4.01 hereof are not sufficient to pay all costs and expenses incurred in the design, construction, development, shakedown and testing of the Generation Facility and any Capital Improvements proposed by BVA LFG as described in Section 2.09(B) hereof, the deficiency shall come from financing arranged by BVA LFG in a manner similar to the financing arranged pursuant to Section 4.01(B) hereof (the "BVA LFG Additional Financing").

**4.03 DISBURSEMENT OF FUNDS.** The County shall pay directly to BVA LFG, or to such other person as directed by BVA LFG, first from the County Funding available for such purpose pursuant to Section 4.01(A) hereof, second from the BVA LFG Initial Financing available for such purpose pursuant to Section 4.01(B) hereof, and finally from the BVA LFG Additional Financing available for such purpose pursuant to Section 4.02 hereof, the full amount of all costs and expenses incurred in connection with the design, construction, development, shakedown and testing of the Generation Facility, including, without limitation, the costs of insurance required to

be in effect prior to the Commercial Operations Commencement Date, the costs of providing the guaranty of the liquidation or salvage value of the Generation Facility and the Loan Shortfall Surety required by Section 4.04 hereof incurred on or before the Commercial Operations Commencement Date and the costs of Generation Facility Fuel incurred on or before the Commercial Operations Commencement Date. Such disbursements shall be made not less frequently than monthly in accordance with mutually agreeable procedures, which, if requested by the County, shall include Cost Substantiation. The initial disbursement from the County Funding shall be made on the Contract Date in the amount of the deposit for the generation equipment ordered pursuant to Section 2.01(D) hereof, but not to exceed Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000). The parties acknowledge that BVA LFG has incurred costs and expenses relating to the Generation Facility prior to the Contract Date in the amount of One Hundred Seventy Thousand and No/100 Dollars (\$170,000), which amount shall be reimbursed to BVA LFG from the County Funding.

4.04 SURETY. On or prior to the date sixty (60) days after the Contract Date, or such later date upon which the County and BVA LFG may agree, BVA LFG shall obtain and provide to the County a guaranteed liquidation or salvage value for the generation equipment to be located at the Generation Facility, which guaranty may be from the vendor of such equipment. To the extent that at any time prior to the payment in full of the BVA LFG Financing and the “payment” in full of the County Loan the guaranteed value is less than the outstanding principal balance on the County Loan and the BVA LFG Financing, BVA LFG will provide a bond, insurance policy, letter of credit or similar surety (the “Loan Shortfall Surety”), in form and from an institution acceptable to the County, for the difference between (i) the sum of (A) the outstanding principal balance of the County Loan and the BVA LFG Financing, plus (B) interest on the outstanding principal balance of the County Loan and the BVA LFG Financing for a period of ninety (90) days at the rate of six and one-half percent (6 ½%) per annum as to the County Loan and at the rate set forth in the documents evidencing the BVA LFG Financing as to the BVA LFG Financing (or if such rate varies from time to time, at the maximum rate permitted under the documents evidencing the BVA LFG Financing), and (ii) the guaranteed liquidation or salvage value, the approval by the County of the Loan Shortfall Surety and the institution providing the same not to be unreasonably withheld, delayed or conditioned. Unless the County shall agree otherwise, the premium or cost of the Loan Shortfall Surety shall be paid in advance and the Loan Shortfall Surety shall provide that it cannot be cancelled by the issuer thereof without the prior approval of the County. The County shall not be entitled to draw any funds under the Loan Shortfall Surety unless and until a default in the payment of principal and interest on the County Loan and the BVA LFG Financing has occurred and continues for at least ninety (90) days.

## **ARTICLE V**

### **OPERATION AND MAINTENANCE OF GENERATION FACILITY**

#### **5.01 ENGAGEMENT OF OPERATOR.**

(A) **Generally.** The County hereby engages BVA LFG as the exclusive operator to operate and maintain the Generation Facility and to perform certain other duties described herein relating to the operation and maintenance of the Generation Facility (collectively, the “Operation Services”), all on the terms and conditions and as more fully described in this Agreement. BVA LFG hereby accepts such engagement and agrees to perform the Operation Services in

accordance with the terms and conditions of this Agreement. BVA LFG shall have the right at any time and from time to time to delegate by subcontract, or otherwise, its duties hereunder to any third party experienced in the operations and maintenance of equipment of the type included in the Generation Facility, subject to the approval of the County, such approval not to be unreasonably withheld, delayed or conditioned.

(B) Duties. BVA LFG shall operate and maintain the Generation Facility (including all Capital Improvements), on behalf of the County, in accordance with (i) Prudent Utility Practices, (ii) the O&M Work Scope, (iii) the other provisions of this Agreement and (iv) the applicable standards set forth in the Generation Facility Operations and Maintenance Manual. BVA LFG recognizes that the most important overall goal of the County for the operation and maintenance of the Generation Facility is to produce and deliver the maximum quantities of electricity for sale consistent with Prudent Utility Practices, and BVA LFG hereby agrees to use its best efforts to operate and maintain the Generation Facility so as to provide the County with such maximum quantities of electricity, to the extent that such operation does not unreasonably interfere with compliance with appropriate permits. In addition, without limiting any of the foregoing, BVA LFG shall:

- (i) Keep the Generation Facility in good repair, condition and working order;
- (ii) Replace any part of the Generation Facility 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 Generation Facility;
- (iii) Furnish any and all supplies (including consumables), labor, tools, materials, parts, mechanisms and devices to keep the Generation Facility in good repair, condition and working order; and
- (iv) Carry out the duties and obligations set forth in the O&M Work Scope.

(C) Legal Entitlements. The County shall prepare and file, or cause to be prepared and filed, applications for all Legal Entitlements required for the operation of the Generation Facility and diligently prosecute such applications with a view to obtaining and maintaining all such Legal Entitlements (including without limitation, those pertaining to Capital Improvements) which may be required, from time to time. BVA LFG 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 such Legal Entitlements.

## 5.02 OPERATION AND STANDARDS.

(A) Landfill Operations. BVA LFG agrees that the operation of the Generation Facility 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 the County at the Landfill and compliance with appropriate permits.

(B) Compliance with Laws and Agreements. The performance by BVA LFG of its obligations under this Agreement shall be in material compliance with (i) Applicable Law, (ii)

any and all applicable orders, decrees and judgments of any governmental or judicial authority, (iii) applicable Legal Entitlements, (iv) the O&M Work Scope and (v) Prudent Utility Practices. In addition, BVA LFG shall not cause, by its actions or failures to act under or in connection with this Agreement, the County or the Generation Facility to be in violation of any of the foregoing.

(C) Waste Materials. As part of its responsibilities under this Agreement, BVA LFG shall be responsible for the proper return to the Landfill of any and all waste material produced or collected by the generation of electricity at the Generation Facility or otherwise released inside or from the Generation Facility. To the extent such return is not permitted for any reason, BVA LFG 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 Law.

(D) Measurement of Electricity.

(1) Measuring Equipment for Sales of Electricity. BVA LFG shall maintain and operate the Sales Meters. BVA LFG 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 the County. BVA LFG shall have the right to retain copies and to provide copies of such records to the applicable regulatory authorities as required pursuant to any applicable Legal Entitlements. The parties and their representatives shall have access at all reasonable times to inspect, test and repair such Sales Meters, and to inspect or copy such charts and records.

(2) Meter Test Notice. BVA LFG shall conduct a test of the Sales Meters which are used for the billing of electricity sold to electricity customers at least once every twelve (12) months. Such test shall be carried out by BVA LFG in accordance with the recommendations and guidelines of the manufacturer of such Sales Meters and Prudent Utility Practices. BVA LFG shall give the County notice of the times of all tests of the Sales Meters sufficiently in advance so that the County may conveniently have a County Representative ready to observe such tests. If desired the County shall have the right to conduct tests of the Sales Meters, at its expense, at all reasonable times, provided that written notice is given to BVA LFG at least seven (7) days prior to commencement of such tests.

(3) Correction for Errors of Sales Meters. If, upon the completion of any test of the Sales Meters, 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 Prudent Utility Practices, or if not ascertainable or if the amount of electricity 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 amount of electricity sold based upon other operating records for the period in question. BVA LFG shall use its best efforts to collect from electricity customers the amount owed for any electricity delivered to such customers but not billed or paid for due to the Sales Meters errors. 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. BVA LFG shall be responsible for (i) implementing and overseeing a safety program at the Generation Facility, and (ii) ensuring that the operation and maintenance of the Generation Facility are in compliance with Applicable

Law. Without limiting the foregoing, in its operation and maintenance of the Generation Facility on behalf of the County hereunder, BVA LFG shall comply, and shall use its best efforts to ensure that the Generation Facility complies, 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 the Operation Services hereunder, BVA LFG shall not (i) create, or suffer the creation of, any Encumbrance on the Generation Facility, (ii) take any action which would otherwise cause the County to cease to have good and marketable title to the Generation Facility, or (iii) remove any material part of the Generation Facility from the Facility Site.

(G) Right to Cure Breaches. If BVA LFG shall breach or neglect to carry out any of the Operation Services under this Agreement and shall fail within thirty (30) days after receipt of written notice from the County to BVA LFG to commence and continue correction of such breach or neglect with diligence and promptness, the County may, without prejudice to any other remedy or right it may have, make good such deficiencies.

(H) Disclosure. To the best knowledge of BVA LFG, none of the documents or other written information furnished by or on behalf of BVA LFG to the County pursuant to this Agreement or any of the other 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. BVA LFG is not aware of any fact peculiar to BVA LFG which materially and adversely affects or in the future could (so far as BVA LFG can now reasonably foresee) materially and adversely affect the Generation Facility and which has not been set forth in this Agreement or in other written material furnished to the County by or on behalf of BVA LFG prior to the Contract Date in connection with the transactions contemplated hereby.

(I) No Relocation. BVA LFG shall not take, or permit the taking of, any action which would cause the Generation Facility to be moved to a different landfill.

(J) Landfill Gas. The County shall make available to BVA LFG for fuel at the Generation Facility, at no additional cost, all Landfill Gas purchased by the County pursuant to the Gas Purchase Agreement. BVA LFG, however, shall not be obligated to use the Landfill Gas as fuel at the Generation Facility if the Landfill Gas is not of sufficient volume and heating value for use in the Generation Facility. The cost of such Landfill Gas shall be an Operating Expense; provided; however, the cost of any Generation Facility Fuel required due to a breach by the County of any of the representations, warranties and covenants contained in Section 4.01(m) or Section 4.01(n) of the Lease shall be paid by the County and shall not be an Operating Expense.

### 5.03 INFORMATION

(A) Information System. BVA LFG shall on and after the Commercial Operations Commencement Date establish and maintain an information system to provide storage and ready

retrieval for the County review and copying of Generation Facility operating data, including all information necessary to verify calculations made pursuant to this Agreement.

(B) Books and Records. BVA LFG shall prepare and maintain proper, accurate and complete books, records and accounts regarding the financial or other transactions related to the Generation Facility. BVA LFG shall keep the relevant portions of the books, records and accounts maintained pursuant to this Section until at least the third anniversary of the termination of this Agreement. The provisions of this Section 5.03(B) shall survive the termination of this Agreement.

(C) Regulatory Reports. BVA LFG shall furnish the County with copies of all reports filed with regulatory authorities as required by Applicable Law.

(D) Notice of Default or Noncompliance Under Legal Entitlements; Notice of Litigation. BVA LFG shall provide to the County, immediately after the receipt thereof, copies of (i) any written notice of a material default or noncompliance received under or in connection with any Legal Entitlement, and (ii) any material pending litigation or proceeding, and any written threat of material litigation, involving the Generation Facility.

(E) Reporting Program. BVA LFG shall provide the County with reports summarizing operations hereunder at the Generation Facility and the production and sales reports all as called for in the O&M Work Scope. Such reports will be made in a mutually agreeable format and will include at least quarterly a report as to total revenue, kilowatts of electricity sold and average price per kilowatt (total revenue divided by total kilowatts sold).

5.04 QUALIFYING FACILITY FILINGS. Prior to the Commercial Operations Commencement Date, if applicable, the County shall file all applications, send all notices and take all other actions on behalf of the County that may be required under PURPA for the Generation Facility to become a “qualifying facility”. If requested by the County, BVA LFG shall prepare all applications and otherwise assist the County in performing its duties pursuant to this Section. The parties agree to negotiate in good faith such changes to this Agreement, if any, as may be required in order for the Generation Facility to achieve and maintain such “qualifying facility” status.

5.05 MARKETING. BVA LFG shall market the electricity generated at the Generation Facility. BVA LFG shall consult with the County as to potential sale opportunities and shall prepare proposals to be submitted to potential electricity customers (the contents of which proposals, including proposed pricing, shall be subject to the approval of the County, such approval not to be unreasonably withheld, delayed or conditioned). Such proposals must reflect the fact that any such sales of electricity to third parties must be made on an “as available”, interruptible basis. Any arrangements for the sale of electricity shall be subject to the prior written approval of both parties and shall be executed in the name of the County. In the event that the County enters into any arrangements with third parties, BVA LFG shall administer such arrangements for the compensation provided in this Agreement.

## ARTICLE VI

### FISCAL MATTERS

#### 6.01 DEPOSIT AND DISBURSEMENT OF GROSS REVENUE.

(A) Deposit of Gross Revenue. BVA LFG, as agent for the County, shall deposit in a bank account opened in the name of the Generation Facility all Gross Revenue. Signatories on all checks relating to such bank account shall be designated by BVA LFG. All such designated signatories shall be bonded in an amount at least equal to the anticipated maximum amount to be held in such account, and the County shall be named as an additional insured under such bond.

(B) Disbursement of Gross Revenue.

(1) Monthly Disbursements. BVA LFG, beginning on the Commercial Operations Commencement Date and continuing thereafter throughout the remaining term of this Agreement, shall disburse Gross Revenue for the following purposes and in the following order:

- (i) To pay all Operating Expenses as and when such Operating Expenses are due and payable;
- (ii) To pay to BVA LFG by the fifteenth (15<sup>th</sup>) day of each calendar month the Gas Collection System Operations Shortfall for the preceding calendar month;
- (iii) To make (a) as and when due all mandatory payments of principal and interest or, if applicable, all mandatory lease payments, on the BVA LFG Financing, and (b) by the fifteenth (15<sup>th</sup>) day of each calendar month the County Payment for such calendar month; provided, however, that in the event there are insufficient funds to make the transfers required pursuant to this clause, then pro-rata among the recipients specified in (a) and (b) of this clause based on the amounts required to be transferred;
- (iv) To pay, with interest as provided in Section 6.02 hereof, any unpaid Operating Advances; and
- (v) To pay to BVA LFG by the fifteenth (15<sup>th</sup>) day of each calendar month the Base Management Fee based on sales of electricity for the preceding calendar month.

(2) Quarterly Disbursements. BVA LFG, on each January 15, April 15, July 15 and October 15 beginning with the first January 15, April 15, July 15 or October 15, as applicable, occurring after the Commercial Operations Commencement Date and thereafter throughout the remaining term of this Agreement, shall disburse Gross Revenue for the following purposes in the following order and after the disbursements for each such month as described in Section 6.0 1 (B)(1) hereof

- (i) To pay to BVA LFG the Incentive Management Fee for the preceding three (3) month period (or shorter period for the first and last periods, as applicable); and
- (ii) To pay to the County the County Distribution for the preceding three (3) month period (or shorter period for the first and last periods, as applicable).

6.02 OPERATING ADVANCES. In the event that Gross Revenue for any month is not sufficient to pay Operating Expenses and the payments described in Section 6.01(B)(1)(ii) hereof, then notwithstanding the provisions of Section 6.01(B)(2)(ii) hereof, the Gross Revenue that otherwise would have been paid to the County as a County Distribution shall be used by BVA LFG to fund such deficiency (or, if applicable, to reimburse BVA LFG for any amount advanced by BVA LFG to fund such deficiency) (such use of Gross Revenue being referred to herein as the "Operating Advances"); provided, however, no Gross Revenue that would otherwise be used as a County Distribution shall be used to make Operating Advances if at the time such Operating Advance is to be made, the then outstanding principal balance of Operating Advances exceeds Thirty Thousand and No/100 Dollars (\$30,000). Operating Advances shall be treated as loans and these loans shall bear interest at six and one-half percent (6½%) per annum and shall be repaid as set forth in Section 6.01(B)(1)(iv) hereof.

### 6.03 INCENTIVE PAYMENTS AND CREDITS

(A) REPI Payments. All payments received from the United States Department of Energy under its Renewable Energy Production Incentive Program ("REPI") shall be paid to the County until such time as the County Payments made pursuant to Section 6.01(B)(1)(iii)(b) hereof and such REPI payments have resulted in the "repayment" in full of the County Loan. Thereafter, all REPI payments shall be split sixty percent (60%) to BVA LFG and forty percent (40%) to the County. The County shall notify BVA LFG in writing following receipt of each REPI payment.

(B) CEC Payments. All payments received from the California Energy Commission from its Renewables Resource Energy Account (the "CEC AB 1890 Program") for the current five (5) year life of the CEC AB 1890 Program shall be paid to BVA LFG, up to a total payment of Seven Hundred Seventy Thousand and No/100 Dollars (\$770,000.00). If the total payments for the current CEC AB 1890 Program exceed Seven Hundred Seventy Thousand and No/100 Dollars (\$770,000.00), or if the current CEC AB 1890 Program is extended beyond five (5) years, all amounts from the current CEC AB 1890 Program in excess of Seven Hundred Seventy Thousand and No/100 Dollars (\$770,000.00) and all amounts received from any extension of the current CEC AB 1890 Program beyond five (5) years shall be split sixty percent (60%) to BVA LFG and forty percent (40%) to the County.

(C) Section 29 Program. All revenues and proceeds received from the sale and/or use of tax credits under Section 29 of the Code for sales of Landfill Gas through the current maturity in 2007 shall be paid to BVA LFG. All revenues and proceeds from the sale and/or use of tax credits under Section 29 of the Code for sales of Landfill Gas after the current maturity date in 2007 shall be split sixty percent (60%) to BVA LFG and forty percent (40%) to the County. The County hereby consents to any assignment by BVA LFG of its right, title and interest, or a



portion thereof, in and to the Lease, the O&M Agreement and/or the Gas Purchase Agreement to the extent determined by BVA LFG to be necessary or desirable in order to permit the sale and/or use of the tax credits under Section 29 of the Code.

(D) Section 45 Program. All revenues and proceeds received from the sale and/or use of tax credits available under Section 45 of the Code will be split sixty percent (60%) to BVA LFG and forty percent (40%) to the County. The County hereby consents to any assignment by BVA LFG of its right, title and interest, or a portion thereof, in and to the Lease, the O&M Agreement and/or the Gas Purchase Agreement to the extent determined by BVA LFG to be necessary or desirable in order to permit the sale and/or use of the tax credits under Section 45 of the Code.

6.04 AMENDMENT TO RELATED AGREEMENTS. The parties agree that within thirty (30) days after the Generation Facility Construction Date, they shall amend the Lease, the Gas Purchase Agreement and the O&M Agreement to provide that the Gas Collection System Operations Shortfall shall not exceed Thirty Thousand and No/100 Dollars (\$30,000) in any calendar year.

## ARTICLE VII

### EXTRAORDINARY WORK: INCREASE IN CAPACITY

#### 7.01 EXTRAORDINARY WORK.

(A) Capital Improvements. From and after the Generation Facility Verification Date, BVA LFG shall undertake, build and install all Capital Improvements which are (i) requested by the County and approved by BVA LFG, or (ii) recommended by BVA LFG to the County and approved by the County, or (iii) necessary to ensure protection of environmental safeguards installed at the Landfill and compliance with each Legal Entitlement relating to the operation of the Generation Facility. The entire cost of each and every such Capital Improvement shall be paid from such funding sources as the County and BVA LFG shall determine by mutual agreement.

(B) Repairs Due to Casualty. If the Generation Facility is damaged or destroyed for any reason from and after Generation Facility Verification, BVA LFG shall promptly proceed to make or cause to be made all repairs reasonably necessary to return the Generation Facility to the same condition as existed prior to such damage or destruction. BVA LFG shall give the County written notice of any such proposed repairs. The entire cost of all such repairs shall be paid from insurance proceeds, and, to the extent insurance proceeds are not sufficient, from such funding sources as the County and BVA LFG shall determine by mutual agreement.

(C) Standards. BVA LFG shall design, build and install any and all Capital Improvements to be made pursuant to Section 7.01(A) hereof and shall make all repairs required to be performed due to damage or destruction of the Generation Facility pursuant to Section 7.01(B) hereof (i) in a good and workmanlike manner, (ii) in compliance with Applicable Law, (iii) in compliance with each applicable Legal Entitlement, and (iv) in accordance with Prudent Utility Practices.

7.02 INCREASE IN CAPACITY. From and after the Generation Facility Verification Date, should either party desire the undertaking of a Capital Improvement which would result in an increase of the gross capacity of the Generation Facility (such gross capacity initially contemplated to be approximately 1.98 megawatts, but subject to increase pursuant to Section 2.09(D) hereof), such party shall provide written notice to the other party and the following provisions shall apply:

(A) Mutual Agreement. If both parties agree to such Capital Improvement, such Capital Improvement shall be made pursuant to Section 7.01(A) hereof, and BVA LFG shall undertake to design, construct, install, shakedown and test such Capital Improvement. All costs and expenses incurred in connection therewith shall be paid from such funding sources as the County and BVA LFG shall determine by mutual agreement.

(B) Unilateral Right.

(1) County Election. In the event the County desires to increase the capacity of the Generation Facility and BVA LFG elects not to participate or fails to respond to the County's notice within sixty (60) days, the County may proceed with the desired Capital Improvement, at the sole cost and expense of the County. In such event, all revenue due to the increased capacity which results from such Capital Improvement shall be paid to the County, and the County shall pay all Operating Expenses allocable to such increased capacity and/or such Capital Improvement.

(2) BVA LFG Election. In the event BVA LFG desires to increase the capacity of the Generation Facility and the County elects not to participate or fails to respond to the notice from BVA LFG within sixty (60) days, BVA LFG may proceed with the desired Capital Improvement, at the sole cost and expense of BVA LFG. In such event, all revenue due to the increased capacity which results from such Capital Improvement shall be paid to BVA LFG, BVA LFG shall pay all Operating Expenses allocable to such increased capacity and/or such Capital Improvement, such Capital Improvement shall be owned by BVA LFG and the County shall have no interest therein, the County shall lease the portion of the Generation Facility upon which such Capital Improvement is located to BVA LFG for nominal rent and the County shall provide Landfill Gas, if available, as needed for such Capital Improvement on the same economic basis as Landfill Gas is provided under the Related Agreements.

## ARTICLE VIII

### REPRESENTATIONS. WARRANTIES. COVENANTS

8.01 BY THE COUNTY. The County makes the following representations, warranties and covenants as the basis for the undertakings on the part of BVA LFG contained in this Agreement:

(A) Authority and Binding Obligation. The County has all requisite power and authority to execute and perform its obligations under this Agreement. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of the County. This

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 Agreement by the County nor the consummation by the County of the transactions contemplated by this Agreement and compliance by the County with the provisions of this 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 on the Contract Date, 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 Legal Entitlement 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 the Landfill, the Facility Site, the Gas Collection System or the Generation Facility or any part thereof.

(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 Agreement or the consummation by the County of the transactions contemplated hereby, other than those consents, approvals or other action that the County has obtained or taken.

(D) Environmental Laws.

(1) Compliance. In connection with its lease ownership, possession, maintenance, operation and all other aspects of the Landfill, the Facility Site, the Generation Facility and the Gas Collection System, 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.

(2) ~~Exempt~~ Exempt 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.

(3) Proceedings. There are no proceedings pending or, to the Actual Knowledge of the County, threatened, relating (whether on-site or off-site) to the Landfill, the Facility Site, the Gas Collection System or the Generation Facility or to 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 Landfill, the Facility Site, the Gas Collection System or the Generation Facility or to 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.

(4) Notices. 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 Landfill, the Facility Site, the Gas Collection System or the Generation Facility (i) indicating past or present treatment, storage or disposal of Hazardous Materials in violation of any applicable Environmental Laws, (ii) reporting a release of any Hazardous Material in violation of any applicable Environmental Laws, or (iii) reporting any other violation of applicable Environmental Laws.

(5) Liens. 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 Facility Site or the Generation Facility.

(6) Storage Tanks. 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 Facility Site or the Generation Facility.

(E) Litigation. 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, 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 Applicable Law. 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 Agreement or the transactions contemplated hereby or which would preclude the use of the Landfill, the Landfill Site, the Gas Collection System or the Generation Facility for the purposes intended by BVA LFG pursuant to the Related Agreements. There is no outstanding order, writ, injunction, decree, judgment or award by any court, arbitration panel or Governmental Entity against or affecting the Landfill, the Facility Site, the Gas Collection System or the Generation Facility or the operation of the County's business related thereto, except for such orders, writs, injunctions, decrees, judgments or awards which would not result in a Material Adverse Effect.

(F) Legal Entitlements. The County has obtained all Legal Entitlements required to carry out the transaction contemplated by this Agreement, and the County has furnished to BVA LFG true and correct copies thereof. No other Legal Entitlements are necessary for BVA LFG to

carry out the transactions and business contemplated hereby. Such Legal Entitlements 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 Legal Entitlement requires transfer to BVA LFG or requires that such Legal Entitlement be issued to the County and to BVA LFG jointly or requires the consent of the permitting authority, such transfer or consent has been obtained. None of the Legal Entitlements is subject to any restriction, limitation, condition or other provision which is reasonably likely to have a Material Adverse Effect.

(G) Title. The County has good and marketable title to the Landfill and the Facility Site free and clear of any and all liens, claims, casements, charges and encumbrances. No Person has any right with respect to the Landfill or the Facility Site that would prevent or interfere with the transactions contemplated by this Agreement.

(H) Taxes. All taxes and assessments based on, relating to or measured by, in whole or in part, the ownership of the Landfill, the Facility Site, the Gas Collection System or the Generation Facility or the receipt of proceeds therefrom at any time have been or will be fully and properly paid.

(I) Disclosure. This Agreement 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 the Landfill, the Facility Site, the Gas Collection System or the Generation Facility 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 Landfill, the Facility Site, the Gas Collection System or the Generation Facility and which has not been set forth in connection with the transactions contemplated hereby.

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

(K) 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, nondiscrimination, 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.

(L) 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 noncompliance of which would have a Material Adverse Effect.

(M) Tax Liens. There are no tax liens filed on the Landfill, the Facility Site, the Gas Collection System or the Generation Facility or the County's interests therein.

(N) 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.

(O) 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,

(P) Related Agreements. The Lease, the O&M Agreement and the Gas Purchase Agreement have been duly and validly authorized, executed and delivered by the County, are legal, valid and binding agreements of the County enforceable in accordance with their terms and have not been terminated, modified or amended since the initial execution and delivery thereof. No default or event which with the giving of notice or the passage of time, or both the giving of notice and the passage of time, would constitute a default has occurred under the Lease, the O&M Agreement or the Gas Purchase Agreement by either party thereto.

The County shall take or cause to be taken all action necessary to cause the foregoing representations, warranties, covenants and agreements to remain true and correct in all respects throughout the entire term of this Agreement, the County shall refrain from taking any action which could cause any of the foregoing representations, warranties, covenants and agreements of the County to become incorrect or untrue at any time during such period, and the County shall notify BVA LFG immediately in writing if the County becomes aware that any of the foregoing representations, warranties, covenants or agreements shall become incorrect or untrue at any time during such period.

8.02 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 and has the power to enter into this Agreement and to carry out its obligations hereunder. By proper action, BVA LFG has been duly authorized to execute and deliver this Agreement.

(B) Authority and Binding Obligation. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby and the fulfillment of or compliance with the provisions of this 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 Agreement is the legal, valid and binding obligation of BVA LFG, enforceable in accordance with its terms.

(C) 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 BVA LFG 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 BVA LFG or in respect to any substantial part of its property, or ordering the winding up or liquidation of its affairs.

(D) No Bankruptcy Filing. There has been no institution by BVA LFG 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 it in furtherance of any such action.

(E) Securities Representation. BVA LFG represents that in entering into this Agreement (i) it is not expecting to benefit solely from the efforts of the County or a third party and is not purchasing an "investment contract" or "security" for purposes of the federal securities laws or the securities laws of any state; and (ii) it possesses the experience and expertise in the landfill energy business necessary to evaluate the benefits and risks associated with its entering into this Agreement.

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

## ARTICLE IX

### INDEMNIFICATION

9.01 INDEMNIFICATION BY COUNTY. The 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 the County of any of its representations, obligations, covenants or warranties contained in this Agreement, or (ii) any action or omission of the County or its officers, employees, agents or subcontractors taken or made in connection with the County's performance of its obligations hereunder, provided such action or omission constitutes negligence or willful misconduct. County further agrees to investigate, handle, respond to and defend any such claim, suit or demand described in part (ii) of the preceding sentence with all costs and expenses related thereto being Operating Expenses;

provided, however, if the action or omission of the County is determined to constitute negligence or willful misconduct, the County shall reimburse all such costs and expenses.

9.02 INDEMNIFICATION BY BVA LFG. 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 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 willful misconduct. BVA LFG further agrees to investigate, handle, respond to and defend any such claim, suit or demand described in part (ii) of the preceding sentence with all costs and expenses related thereto being Operating Expenses; provided, however, if the action or omission of BVA LFG is determined to constitute negligence or willful misconduct, BVA LFG shall reimburse all such costs and expenses.

9.03 SURVIVAL. Notwithstanding the application of any other statute of limitations, each party's right to indemnification as provided in this Article IX shall survive the termination of this Agreement for a period of four (4) years. If either party becomes entitled to any amounts as indemnification under this Article IX or under any of the other 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 Agreement or any other Related Agreement.

## **ARTICLE X**

### **FORCE MAJEURE**

If by reason of Force Majeure either party hereto is unable to carry out, either in whole or in part, its obligations herein contained, such party shall not be deemed to be in breach during the continuation of such inability, provided that: (i) the non-performing party, within two (2) weeks after the occurrence of the Force Majeure, gives the other party written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of either party which arose prior to the occurrence causing the suspension of performance be excused as a result of the occurrence; and (iv) that 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. The foregoing, however, shall not prevent the termination of this Agreement pursuant to Section 11.02, Section 11.03, Section 11.04 or Section 11.05 hereof.

## **ARTICLE XI**

### **TERM; TERMINATION**

11.01 TERM. Subject to the other provisions hereof, this Agreement shall be effective on the Contract Date and shall remain in force until the twentieth (20<sup>th</sup>) anniversary of the Generation Facility Verification Date. The parties agree that within thirty (30) days after the Generation



Facility Verification Date, they shall amend the Lease, the Gas Purchase Agreement and the O&M Agreement to extend the term of each such agreement until the twentieth (20<sup>th</sup>) anniversary of the Generation Facility Verification Date.

#### 11.02 TERMINATION FOR CAUSE.

(A) BVA LFG's Right to Terminate. BVA LFG shall have the right to terminate this Agreement for cause only in the event the County commits an act or omission which is a material breach by the County under this Agreement, provided that where BVA LFG asserts a material breach, notifies the County in writing and allows the County a reasonable period of time (but not less than sixty (60) days) to cure the breach, such material breach shall not be grounds for termination during such cure period if the County is diligently seeking to cure such breach, and, provided further, 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 the County from performing any of its obligations hereunder for a period of more than one hundred eighty (180) days and/or the County is not diligently seeking to cure such event of Force Majeure.

(B) County's Right to Terminate. The County shall have the right to terminate this Agreement for cause only in the event BVA LFG commits an act or an omission which is a material breach by BVA LFG under this Agreement, provided that where the County asserts a material breach, notifies BVA LFG in writing and allows BVA LFG a reasonable period of time (but not less than sixty (60) days) to cure the breach, such material breach shall not be grounds for termination during such cure period if BVA LFG is diligently seeking to cure such breach, and, provided further, 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 one hundred eighty (180) days and/or BVA LFG is not diligently seeking to cure such event of Force Majeure.

11.03 RELATED AGREEMENT TERMINATION. BVA LFG shall have the right to terminate this Agreement by written notice to the County if the Lease, the O&M Agreement, or the Gas Purchase Agreement is terminated for any reason.

11.04 TERMINATION FOR FAILURE TO SATISFY CONSTRUCTION DATE CONDITIONS. This Agreement shall terminate upon a failure to satisfy the Generation Facility Construction Date Conditions in accordance with the provisions of Section 2.02(B) hereof.

11.05 TERMINATION UPON OCCURRENCE OF CERTAIN EVENTS OF FORCE MAJEURE. In the event that after the Generation Facility Verification Date one (1) or more events of Force Majeure occur which, in the aggregate, result in a reduction of the average actual amount of electricity generated at the Generation Facility of fifty percent (50%) or more below the contemplated gross capacity of the Generation Facility (initially approximately 1.98 megawatts, subject to increase pursuant of Section 2.09(D) hereof and Section 7.02 hereof) for eighteen (18) out of any twenty-four (24) consecutive calendar months, then either party shall have the right to terminate this Agreement and the other Related Agreements upon thirty (30) days written notice to the other party.

## 11.06 OBLIGATIONS UPON TERMINATION OR EXPIRATION.

(A) County Rights. Upon termination or expiration of this Agreement, and provided all amounts owed to BVA LFG under this Agreement have been paid in full, BVA LFG shall deliver to the County all books, records, accounts and manuals relating to the Generation Facility. Furthermore, the County shall have the right to take possession of the Generation Facility and all equipment, fuel and supplies located at the Generation Facility for the purposes of performing the Operation Services and may employ any other Person to perform the Operation Services.

(B) Further Obligations. Upon termination or expiration of this Agreement, and provided all amounts owed to BVA LFG under this Agreement have been paid in full, BVA LFG shall perform the following:

- (i) assist the County in preparing an inventory of all equipment, fuel and supplies in use or in storage at the Generation Facility;
- (ii) assign to the County all Subcontracts and other contractual agreements as may be designated by the County; and
- (iii) remove from the Facility Site all rubbish and generally clean the Facility Site.

(C) Limitation. Notwithstanding the foregoing provisions of this Section 11.06, to the extent that BVA LFG is the owner of any Capital Improvement made pursuant to Section 2.0903 hereof or Section 7.02(B)(2) hereof, then upon termination or expiration of this Agreement, at the election of the County, either (i) the County and BVA LFG shall enter into an agreement whereby the County or the Person chosen to perform Operation Services shall continue to operate such Capital Improvement and forward not less frequently than quarterly to BVA LFG an amount equal to the gross revenue due to the increased capacity which results from such Capital Improvement less the Operating Expenses allocable to such increased capacity and/or such Capital Improvement, or (ii) if the County and BVA LFG are unable to agree as to the provisions of such agreement, or if the County shall otherwise so elect, the County shall provide BVA LFG a period of not less than eighteen (18) months for BVA LFG to remove such Capital Improvement from the Facility Site. In such event, until such Capital Improvement is removed by BVA LFG, BVA LFG shall have the right to provide security for such Capital Improvement at the cost and expense of BVA LFG, and BVA LFG shall bear all risk of loss with respect to such Capital Improvement.

## ARTICLE XII

### INSURANCE

12.01 INSURANCE REQUIRED OF BVA LFG. In order to insure against damage to BVA LFG's and the County's interests in the Generation Facility pursuant to this Agreement, BVA LFG agrees to maintain, or to cause its agents or Subcontractors to maintain, as applicable, at all times during the term of this Agreement, the following types of insurance from insurers with deductibles acceptable to the County, with the limits shown:

- (i) Commercial General Liability Insurance of Two Million Dollars (\$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.
- (ii) 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 Agreement, including owned, non-owned (e.g. owned by BVA LFG's employees), leased or hired vehicles.
- (iii) Environmental Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence.
- (iv) Full Workers' Compensation and Employers' Liability Insurance covering all employees of BVA LFG as required by law in the State. This requirement is waived so long as BVA LFG has no employees in the State.
- (v) All-risk property insurance, for income losses, extra expenses, and casualty losses to the Generation 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 Generation Facility.
- (vi) Professional Liability Insurance for professional services performed hereunder in the minimum amount of \$1,000,000.00 combined single limit.

12.02 OTHER INSURANCE REQUIREMENTS. The following additional requirements shall apply to the insurance required pursuant to this Article XII:

- (i) BVA LFG's liability policies described in this Article XII shall provide coverage separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to BVA LFG's limit of liability.
- (ii) All policies required of this Article XII are to be primary and noncontributing with any insurance or self-insurance programs carried or administered by the County.
- (iii) 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 County, or be provided through partial or total self-insurance likewise acceptable to the County.

- (iv) 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 the 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's insurance policy naming the County additional insured.
- (v) 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 Agreement for not less than three (3) years following completion of performance of this Agreement.
- (vi) Any deductibles or self-insured retentions must be declared to and approved by the County. Deductibles of Twenty-Five Thousand Dollars (\$25,000) on the umbrella policy and on the environmental coverage are acceptable.
- (vii) 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

- (viii) BVA LFG agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, 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 this Agreement, 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 County.
- (ix) BVA LFG shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

- (x) 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.
- (xi) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- (xii) BVA LFG's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of BVA LFG's insurance and shall not contribute with it.
- (xiii) 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.
- (xiv) BVA LFG's obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.
- (xv) Should BVA LEG subcontract any work under this Agreement, BVA LFG shall require each of its subcontractors of any tier to provide the insurance requirements in this Article XII, 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 the 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 employees in the State.
- (xvi) The aforementioned requirements of this Article XII 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 LEG which concurrence shall not be unreasonably withheld, delayed or conditioned.
- (xvii) 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 Agreement with the County of Santa Cruz.”
- (xviii) BVA LFG agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide the County on or before the date

sixty (60) days after the Contract Date, or such later date upon which the required coverages. All Certificates of Insurance shall be delivered or sent to the addressee under item (vii) above.

this Article XII are to be primary and noncontributing with any insurance or self-insurance programs carried or administered by BVA LFG.

procure or maintain required insurance shall constitute a material breach of this Agreement upon which the County may terminate this Agreement or, at its discretion, procure or renew such County shall be repaid by BVA LFG to the County upon demand. All insurance required shall expiration, cancellation or for any other reason shall be cause for the County to give notice to immediately suspend BVA LFG's business activities at the Generation Facility. Failure to reinstate said insurance within thirty (30) days shall be cause for termination and forfeiture of this Agreement.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

13 .01 NOTICES. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and if to BVA LFG to:

Brown, Vence & Associates Lfg Corporation, Inc.  
2925 Berry Hill Drive  
Nashville, TN 37204  
Tel: (6 15) 279-9797  
Fax: (6 15) 279-9740

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: (83 1) 454-2160  
Fax: (83 1) 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 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 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 Agreement. Either party may change its address for the purpose of this Section 13.01 by giving the other party prior notice thereof in accordance with this provision.

13.02 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, and any assignment without such consent shall be null and void, except as specifically permitted in this Section 13.02.

13.03 SUCCESSORS AND ASSIGNS. Subject to the restrictions on assignment contained in Section 13.02 hereof, the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns and personal representatives of the respective parties hereto. This 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 Section 13.02 hereof.

13.04 APPLICABLE LAW AND RELATED MATTERS. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the State. In any litigation arising from this 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 fifteen (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 forty-five (45) days (including third party mediation) unless otherwise agreed to by the parties hereto.

13.05 EXPENSES. All out-of-pocket costs and expenses incurred by BVA LFG in connection with the negotiation, execution and delivery of this Agreement, including, without limitation, all attorneys' fees, shall be considered a cost and expense of the Generation Facility and shall be paid from the funding sources outlined in Section 4.01 hereof and Section 4.02 hereof

13.06 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

13.07 SEVERABILITY. If any provision of this Agreement or the application thereof to any party or circumstance be invalid or unenforceable to any extent, the remainder of this 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 Agreement shall be valid and enforceable to the fullest extent permitted bylaw.

13.08 INTERPRETATION MATTERS. Except to the extent expressly provided herein, the provisions of this Agreement, and the rights and obligations of the parties hereto, shall be

construed so as to be consistent with the provisions of the other Related Agreements and the applicable rights and obligations of the parties thereunder. The County acknowledges it has received and reviewed each of the other Related Agreements and is familiar with the terms thereof. The attachments to this Agreement are an integral part of this Agreement, however, if there is any inconsistency between any provision of this Agreement and any provision in the attachments hereto, the former shall prevail.

13.09 ENTIRE AGREEMENT; AMENDMENTS. This Agreement (including without limitation, the attachments hereto) 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 Agreement may only be amended or modified by a written instrument signed by both parties hereto.

13.10 WAIVER. No waiver by either party hereto of any one or more breaches by the other party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future 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 Agreement shall only be effective if made in writing and signed by the party who is making such waiver.

13.11 NO JOINT VENTURE. Nothing in this 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. BVA LFG is and shall remain an independent contractor in the performance of this Agreement, maintaining complete control of its personnel, workers, subcontractors and operations required for its performance hereunder.

13.12 JOINT WORK PRODUCT. This Agreement shall be considered the work product of all parties hereto, and, therefore, no rule of strict construction shall be applied against any party hereto.

13.13 ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY. Nothing in this Agreement shall be interpreted as limiting the right of BVA LFG to bring any legal action against the County, not based on this Agreement, arising out of any act or omission of the County in its governmental or regulatory capacity.

13.14 FURTHER ASSURANCES. Each party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement. The County and BVA LFG, in order to carry out this Agreement, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

13.15 FULL COOPERATION. The County shall, in good faith and using its best efforts, cooperate fully with BVA LFG to meet its responsibilities under this Agreement. BVA LFG



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

13.16 LIABILITIES. Notwithstanding anything contained herein to the contrary, BVA LFG shall assume no obligations or liabilities of the County not expressly assumed herein.

13.17 PAYMENT OF TAXES. 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) and governmental fees and charges, including all taxes arising from or relative to this Agreement or the Generation Facility, and all such taxes, licenses and permit fees necessary or required by law for the conduct of the business contemplated by this Agreement. 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.

13.18 LEGAL ENTITLEMENTS. In the event it may be necessary or appropriate for the proper performance of this 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 Legal Entitlement 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.

13.19 EQUAL EMPLOYMENT OPPORTUNITY. During and in relation to the performance of this Agreement, BVA LFG agrees as follows:

(A) No Discrimination. 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) Other Requirements. If this Agreement provides compensation in excess of Fifty Thousand Dollars (\$50,000) to BVA LFG and if BVA LFG employs fifteen (15) or more employees, the following requirements shall apply:

- (i) BVA LFG shall, in all solicitations or advertisements for employees placed by or on behalf of 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, 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.

- (ii) BVA LFG shall furnish the 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.
- (iii) In the event of BVA LFG'S non-compliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, BVA LFG may be declared ineligible for further agreements with the County.
- (iv) BVA LFG shall cause the foregoing provisions of this Section 13.19(B) to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than Fifty Thousand Dollars (\$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.

13.20 INDEPENDENT CONTRACTOR STATUS. BVA LFG and the 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 the 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. The County agrees that BVA LFG shall have the right to control the manner and means of accomplishing the result contracted for herein.

Principal Test: BVA LFG rather than the 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, the 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) 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 the County; (i) BVA LFG and the 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 Agreement, each of the undersigned certifies that it is its considered judgment that BVA LFG, as engaged under this Agreement, is in fact an independent contractor.

13.21 PREVAILING WAGES. BVA LFG is responsible to pay prevailing wages and maintain records to the extent required by Labor Code Section 1770 and following.

13.22 RETENTION AND AUDIT OF RECORDS. BVA LFG shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by the County, whichever occurs first. BVA LFG hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller and 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 Agreement.

13.23 PRESENTATION OF CLAIMS. Presentation and processing of any or all claims arising out of or related to this 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.

(signatures on following page)

IN WITNESS WHEREOF, the County and BVA LFG have caused this 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 Contract Date.

COUNTY OF SANTA CRUZ  
DEPARTMENT OF PUBLIC WORKS

BROWN, VENCE & ASSOCIATES LFG  
CORPORATION, INC.

By: \_\_\_\_\_  
Director of Public Works

By: Mumma Vence  
Title: Vice President

Date of Execution: \_\_\_\_\_

Date of Execution: 19 June 2001

APPROVED AS TO FORM:

By: D. McRae 6-14-01  
Assistant County Counsel

DISTRIBUTION: Public Works

## **FACILITY SCOPE OF WORK APPENDIX**

(to be attached within 60 days pursuant to Section 2.01(A)(14))

## **FACILITY SITE APPENDIX**

(to be attached within 60 days pursuant to Section 2.01(A)(15))

**WORK SCOPE FOR OPERATION AND MAINTENANCE OF GENERATION**  
**FACILITY APPENDIX**

(to be attached within 60 days pursuant to Section 2.01 (A)(13))

## **COUNTY LOAN AMORTIZATION SCHEDULE APPENDIX**

(to be attached within 10 days of the Commercial Operations Commencement Date)



DATE (MM/DD/YY)  
06/13/2001

INSURERS AFFORDING COVERAGE

INSURER A: Greenwich Insurance Company  
INSURER B: Greenwich Insurance Company  
INSURER C: Greenwich Insurance Company  
INSURER D: \_\_\_\_\_  
INSURER E: \_\_\_\_\_

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

NSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	GEC0001284-01	03/01/01	03/01/02	EACH OCCURRENCE \$2,000,000
	FIRE DAMAGE (Any one firm) \$50,000				
	MED EXP (Any one person) \$5,000				
	PERSONAL & ADV INJURY \$2,000,000				
	GENERAL AGGREGATE \$2,000,000				
	PRODUCTS - COMP/OP AGG \$2,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
B	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	AEC0001285-01	03/01/01	03/01/02	COMBINED SINGLE LIMIT (Per accident) \$2,000,000
	BODILY INJURY (Per person) \$				
	BODILY INJURY (Per accident) \$				
	PROPERTY DAMAGE (Per accident) \$				
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ \$GATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	OTHER Prof. & Environmental Liability	PEC0001286-01	03/01/01	03/01/02	\$2,000,000 Each Claim \$2,000,000 Aggregate \$25,000 Ded. per claim

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENTS/SPECIAL PROVISIONS

Confirmation of Liability Insurance for Buena Vista LFG Project.  
Certificate Holder is named Additional Insured on General Liability policy  
as per attached CG 20 10 10 93.

BVALFG, Inc. included as Additional Insured.

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

**AUTHORIZED REPRESENTATIVE**

Attn: Patrick Mathews

ACORD 25-S (7/97)

ACORD CORPORATION 1988

POLICY NUMBER: GEC0001284-01

CG20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES  
OR CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART****SCHEDULE**

Name of Person or Organization:

The County of Santa Cruz is named additional insured for work performed at the  
Buena Vista Landfill Gas Power Project.(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as  
applicable to this endorsement.)WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule,  
but only with respect to liability arising out of your ongoing operations performed for that insured.Re: Brown & Vence & Associates  
65 Battery Street, Suite #200  
San Francisco, CA 94111Greenwich Insurance Company  
Policy #GEC0001284-01  
Effective: 03/01/2001 to 03/01/2002

**ACORD CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YY)  
06/11/2001**PRODUCER**

Berger & Jones Insurance Agency  
P.O. Box 5158  
San Ramon, CA 94583  
925-277-9090 & FAX 925-277-9095

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURERS AFFORDING COVERAGE****INSURED**

Brown Vence and Associates, Inc.  
65 Battery Street, Suite #200  
San Francisco, CA 94111  
(415) 434-0900

**INSURER A**

INSURER B: American States Insurance Co.

**INSURER C****INSURER D****INSURER E****COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B	GENERAL LIABILITY				EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire) \$
	CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>				MED EXP (Any one person) \$
					PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$
	POLICY <input type="checkbox"/> PRO- JEC <input type="checkbox"/> LOC <input type="checkbox"/>				PRODUCTS - COMBOP AGG \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
HIRED AUTOS					
NON-OWNED AUTOS					
B	SARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	ANY AUTO				OTHER THAN EA ACC \$
					AUTO ONLY AGG \$
B	EXCESS LIABILITY				EACH OCCURRENCE \$
	OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/>				AGGREGATE \$
	DEDUCTIBLE				\$
	RETENTION \$				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	01-WC-984078	07/20/00	07/20/01	X WC STATUTORY LIMITS OTHER \$
					EL EACH ACCIDENT \$1,000,000
					EL DISEASE - EA EMPLOYEE \$1,000,000
					EL DISEASE - POLICY LIMIT \$1,000,000
B	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Confirmation of Workers Compensation Insurance.  
Re: Waste Characterization Study.

**CERTIFICATE HOLDER****ADDITIONAL INSURED, INSURER LETTER:****CANCELLATION**

County of Santa Cruz  
Department of Public Works  
701 Ocean Street, Room #401  
Santa Cruz, CA 95060

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Attn: Dan Degrassi

# **ATTACHMENT A**

**LETTER OF INTENT  
FEBRUARY 13, 2001**

## SANTA CRUZ COUNTY LANDFILL GAS TO ELECTRICITY PROJECT

0181

### LETTER OF INTENT (LOI)

The following summarizes the terms upon which Santa Cruz County, California (County) and Brown, Vence & Associates LFG Corporation, Inc. (BVA LFG) have agreed and will serve as the basis to the commencement of an Electrical Generation Facility Leasing Agreement (EGFLA). The LOI will be in effect for three (3) months from execution of both parties.

1. County desires to pursue a project to recover landfill gas from its solid waste landfill (Buena Vista Landfill) and use it as fuel to generate electricity.
2. County agrees that during the effective term of the LOI, it shall not contact or negotiate with or engage in any discussions or activities with any third party for the study and/or evaluation of a landfill gas to electricity system other than with BVA LFG.
3. The LOI anticipates the eventual signing of an EGFLA for BVA LFG to design, build, operate and manage the landfill gas to electricity generating facility (Facility) for a minimum of fifteen (15) years from start-up of the system.
4. It is anticipated that, subject to mutual agreement, the EGFLA will contain the following provisions:
  - (i) BVA LFG will construct, operate and maintain the Facility;
  - (ii) BVA LFG will manage the production of electricity from the Facility and arrange for the sale of electricity to third parties.
5. The County or its agent shall provide the necessary personnel to coordinate project activities with BVA LFG and provide all relevant technical, operational, commercial and other data and information.
6. All contract terms regarding confidentiality, indemnification, subrogation and liability shall be equal and reciprocal between the County and BVA LFG.
7. BVA LFG shall be considered an independent contractor and, as such, shall be responsible for maintaining Worker's Compensation Insurance and Comprehensive Commercial General Liability Insurance for bodily injury and property damage.
8. Final terms and conditions are subject to the approval of BVA LFG's Management Committee and the Santa Cruz County Board of Supervisors.

### Planning Assumptions

The following list of planning assumptions constitutes the basis for BVA LFG's proposal to construct, operate and maintain the landfill gas to electricity system:

#### **General**

- The County shall provide BVA LFG the land to build the Facility and full access on a 24 hour per day, 7-day per week basis.

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- BVA LFG will provide turnkey engineering, design, procurement, construction, start-up, testing and management of the Facility.
- BVA LFG will assume responsibility for Facility operational costs.
- BVA LFG is to provide applicable insurance and administrative overhead for the Facility.
- The County will retain ownership of the electricity generation assets and lease the assets to BVA for the term of the EGFLA.
- The County will provide \$1.5 million in project financing which will be repaid over the term of the EGFLA at 6.5% interest and terms to be negotiated.
- The County will share in project revenues based on terms agreed to by the County and BVA LFG.

### Environmental

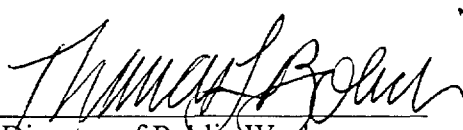
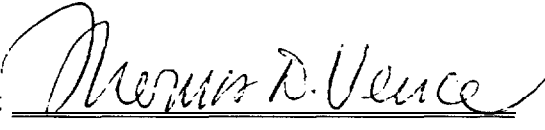
- The Facility will be designed to meet current emissions and other federal, state, and local regulatory requirements.

This LO1 is subject to the following conditions:

- Verification of the availability of sufficient quantities and quality of landfill gas;
- Review and verification of existing program documents;
- Ability to transfer permits to BVA LFG;
- Financing;
- Finalization of energy sales agreements;
- Availability of California Energy Commission (CEC) production credits.

COUNTY OF SANTA CRUZ  
DEPARTMENT OF PUBLIC WORKS

BROWN, VENCE & ASSOCIATES LFG  
CORPORATION

By:  By:   
Director of Public Works

Address:

Brown, Vence & Associates LFG Corporation  
65 Battery Street, Suite 200

(415) 434-0900

# **ATTACHMENT B**

## **PROJECT FINANCIAL PRO-FORMA**

**Santa Cruz County  
Landfill Gas Project  
Negotiating Proposal**

**Perspectives of County of Santa Cruz**

	Before Start Date	1 Jun-01	2 2002	3 2003	4 2004	5 2005	6 2006	7 2007	8 2008	9 2009	10 2010	11 2011	12 2012	13 2013	14 2014	15 2015	16 2016	17 2017	18 2018	19 2019	20 2020	
<b>Investment</b>																						
Funds to Project	\$ 1,500,000																					
Development Reimbursement	\$ 110,000	\$ 110,000																				
Interest Income	\$ 97,500	\$ 93,468	\$ 88,174	\$ 84,601	\$ 79,731	\$ 74,544	\$ 69,020	\$ 63,137	\$ 56,871	\$ 50,198	\$ 43,092	\$ 35,523	\$ 27,463	\$ 18,879	\$ 9,737	\$ (0)	\$ (0)	\$ (0)	\$ (0)	\$ (0)	\$ 892,838	
Principle Repayment	\$ 62,029	\$ 65,061	\$ 70,355	\$ 74,928	\$ 79,768	\$ 84,985	\$ 90,509	\$ 96,393	\$ 102,658	\$ 109,331	\$ 116,437	\$ 124,006	\$ 132,066	\$ 140,650	\$ 149,793	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 1,500,000	
Total Cash Flow to County	\$ 269,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ 159,529	\$ -	\$ -	\$ -	\$ -	\$ 2,397,398	
<b>Energy Purchase (Own-Use)</b>																						
Amount (MWh)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
(Avoided) PG&E Rate Schedule	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Negotiated Price from Project	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Benefit of Self-Serve	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Returns on Equity</b>																						
Allocated Return on Equity	40%	\$ 355,837	\$ 351,306	\$ 346,700	\$ 342,018	\$ 337,258	\$ 332,649	\$ 328,201	\$ 333,934	\$ 339,852	\$ 345,960	\$ 352,265	\$ 358,772	\$ 365,486	\$ 372,415	\$ 379,563	\$ 386,936	\$ 394,543	\$ 202,388	\$ 210,479	\$ 218,623	\$ 424,520
<b>Total Revenues from Project Participation</b>	\$ (1,610,000)	\$ 625,366	\$ 610,835	\$ 598,229	\$ 591,547	\$ 498,787	\$ 262,178	\$ 287,730	\$ 293,463	\$ 299,381	\$ 305,489	\$ 311,794	\$ 318,301	\$ 325,018	\$ 331,944	\$ 339,002	\$ 346,936	\$ 184,543	\$ 202,388	\$ 210,479	\$ 218,623	\$ 5,138,322
<b>NPV</b>	6.5%	\$ 2,376,988																				
<b>Internal Rate of Return</b>		28.3%																				



**Santa Cruz County**  
**Landfil Gas Project**  
Negotiating Proposal

**Project Pro Forma**

**Assumptions**

Number of Units	1 1 = Initial 2 Units
Developer Discount Rate	12.5%
On Line Year	2001
On Line Quarter	1
Plant Life (Years)	20
Last On Line Year	2021
Last On Line Quarter	0

	<b>Initial Units</b>
Size per Engine (gross output, kW)	1,000
Plant Parasitics (%)	2.5%
Availability	92.0%
Net Plant Generation (KW per unit):	a97
Total Hours per Quarter	2,190
Operating Capacity Factor	100%
Operating Hours per Quarter	2,190
Net heat rate (Btu/kWh) - HHV	11,000
Heat content of LFG (btu/scf)	450
LFG required (Per Unit per Hour, scfm)	365
Sales to County (Direct Connect)	- MWh/year
Growth in Sales to County	2.75%
Cap on Sales to County	6.570

**Energy Market Assumptions**

Electric Market	3 Modified Market
Electric Price Series (1 = CEC; 2 = PX Based)	2.50%
Electric Market Escalation Rate	-
Price to County for Direct Sales (per MWh)	0.00%
Direct Sales Escalation Rate	
Green Ticket Pricing Assumptions	
Beginning Price	
Escalation Rate	2.50%

**Production Tax Credits (Using Third Party Investor)**

Rate	\$1.10 MMBTU
Monitized vs Annualized in Cash Flow	1 0 = Monitized; 1 = Annualized
PTC Value to Project	50.0% Net Recovery
Year Terminating	2007 (2015 extension still in legislation)
Escalation	3.0%

**DOE/REPI Subsidy**

Subsidy (YR 2000)	5.00 \$/MWh
Escalation	3.0%

**AB1890 Production Credit**

Production Credit	10.00 \$/MWh
Project share of AB 1890 Consumer Credit	100%
Term of Credit	5 Years

# Cash Flow Analysis

	1	2	3	4	5	6	7	8	9	10	11	12
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>GAS PRODUCTION</b>												
Gas Produced at Landfill 1 (CFM)	829	859	889	919	949	980	1,010	1,041	1,072	1,103	1,135	1,167
Gas Produced at Landfill 2 (CFM)	215	217	220	222	224	227	229	231	234	238	239	241
Total Gas Produced	1,044	1,076	1,109	1,141	1,173	1,207	1,239	1,272	1,306	1,339	1,374	1,408
Total Gas Used by Power Plant(s)	731	731	731	731	731	731	731	731	731	731	731	731
Gas Available for Sale to Power Plant (eligible for Prod Tax Cr.)	900	900	900	900	900	900	900	900	900	900	1,008	1,008
Additional Fuel Available (CFM, ST LFG Cap)	25%	183	183	183	183	183	183	183	183	183	183	183
Gas Available for Additional Generation	496	528	561	593	625	659	691	724	758	791	826	860
<b>ELECTRICITY PRODUCTION</b>												
Number of Engines	2	2	2	2	2	2	2	2	2	2	2	2
KW Output	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794
Total Production (MWh)	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715
Sale to County (Direct Connect, KWh/Yr)	-	-	-	-	-	-	-	-	-	-	-	-
Sale to Market (KWh/Yr)	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715
<b>REVENUE (\$ 1,000)</b>												
Base Sales to Market												
Electric Strike Price (\$/MWh)	\$ 55.89	\$ 56.80	\$ 57.73	\$ 58.66	\$ 59.62	\$ 60.59	\$ 61.57	\$ 62.57	\$ 63.59	\$ 64.62	\$ 65.67	\$ 66.74
Sale	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715
Total Market Revenue	\$ 878,395	\$ 892,669	\$ 907,175	\$ 921,916	\$ 936,897	\$ 952,122	\$ 967,594	\$ 983,317	\$ 999,296	\$ 1,015,535	\$ 1,032,037	\$ 1,048,808
Base Sales to County												
Price Paid by County (\$/MWh)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
AB 1990 Production Credit	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 10.00
DOE Subsidy	\$ 5.00	\$ 5.08	\$ 5.15	\$ 5.23	\$ 5.31	\$ 5.39	\$ 5.47	\$ 5.55	\$ 5.63	\$ 5.72	\$ 5.80	\$ 5.89
Total Price	\$ 15.00	\$ 15.08	\$ 15.15	\$ 15.23	\$ 15.31	\$ 15.39	\$ 15.47	\$ 15.55	\$ 15.63	\$ 15.72	\$ 15.80	\$ 15.89
Sale	-	-	-	-	-	-	-	-	-	-	-	-
Total Revenue from County	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Federal Production Tax Credit (LFG)												
Amount of Gas Subject to Credit (MMBTUs)	212,868	212,868	212,868	212,868	212,868	212,868	212,868	212,868	212,868	212,868	238,412	238,412
Value of Credit (per MMBTU)	\$ 1.10	\$ 1.13	\$ 1.17	\$ 1.20	\$ 1.24	\$ 1.28	\$ 1.31	\$ 1.35	\$ 1.39	\$ 1.44	\$ 1.48	\$ 1.52
Percent Recoverable	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%	50.0%
Total Federal Production Tax Credit Revenue	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577	\$ 439,577
Amount Included in Annual Cash Flow	\$ 117,077	\$ 120,590	\$ 124,207	\$ 127,934	\$ 131,772	\$ 135,610	\$ 139,448	\$ 143,286	\$ 147,124	\$ 150,962	\$ 154,800	\$ 158,638
AB 1990 Payments	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000	\$ 154,000
Misc. Interest Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
On Debt Reserves	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenues	\$ 1,149,472	\$ 1,167,259	\$ 1,185,382	\$ 1,203,850	\$ 1,222,689	\$ 1,241,822	\$ 1,261,222	\$ 1,280,924	\$ 1,300,924	\$ 1,321,224	\$ 1,341,824	\$ 1,362,638
<b>Expenses</b>												
<b>Operating Expenses</b>												
Operating Expense Escalation Series	3.00%	1.000	1.030	1.061	1.093	1.126	1.159	1.194	1.230	1.267	1.305	1.344
Fixed O&M on Power Plant (\$/Year)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Variable O&M on Power Plant (\$ 0.16/KWh)	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447
Gas Facility O&M	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
Engineering/Consulting	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000	\$ 45,000
Charges from County for In-kind Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Operating Expenses	\$ 326,447	\$ 326,897	\$ 331,015	\$ 333,402	\$ 335,860	\$ 338,393	\$ 341,001	\$ 343,688	\$ 346,455	\$ 349,305	\$ 352,241	\$ 355,265
<b>Fuel</b>												
Payment to County for Fuel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Administrative and General</b>												
A&C Expense	\$ 60,000	\$ 60,000	\$ 61,800	\$ 63,654	\$ 65,564	\$ 67,531	\$ 69,556	\$ 71,643	\$ 73,792	\$ 76,006	\$ 78,286	\$ 80,635
Insurance Expense	\$ 25,000	\$ 25,000	\$ 25,750	\$ 26,523	\$ 27,318	\$ 28,138	\$ 28,982	\$ 29,851	\$ 30,747	\$ 31,669	\$ 32,619	\$ 33,598
Power Marketing Expense	\$ 60,000	\$ 61,800	\$ 63,654	\$ 65,564	\$ 67,531	\$ 69,556	\$ 71,643	\$ 73,792	\$ 76,006	\$ 78,286	\$ 80,635	\$ 83,054
Interest Expense (from "Finance" Worksheet)	\$ 97,500	\$ 93,468	\$ 89,174	\$ 84,601	\$ 79,731	\$ 74,544	\$ 69,020	\$ 63,137	\$ 56,871	\$ 50,199	\$ 43,092	\$ 35,523
Depreciation Expense (from "Finance" Worksheet)	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233
Total A&G Expenses	\$ 432,733	\$ 433,051	\$ 433,238	\$ 433,280	\$ 433,163	\$ 432,872	\$ 432,391	\$ 431,702	\$ 430,786	\$ 429,624	\$ 428,193	\$ 426,471
Total Expenses	\$ 759,180	\$ 761,748	\$ 764,253	\$ 766,681	\$ 769,023	\$ 771,264	\$ 773,392	\$ 775,389	\$ 777,241	\$ 778,929	\$ 780,434	\$ 781,735
Net Income From Operations	\$ 390,292	\$ 405,510	\$ 421,130	\$ 437,169	\$ 453,846	\$ 480,857	\$ 494,202	\$ 507,928	\$ 522,055	\$ 536,606	\$ 551,603	\$ 567,073
<b>Statement of Cash Flows</b>												
Net Income from Operations	\$ 390,292	\$ 405,510	\$ 421,130	\$ 437,169	\$ 453,846	\$ 480,857	\$ 494,202	\$ 507,928	\$ 522,055	\$ 536,606	\$ 551,603	\$ 567,073
Plus Depreciation Expense	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233	\$ 190,233
Plus Final Asset Balances (Final Year of Operations)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Cash Available to Cover Debt	\$ 580,525	\$ 595,743	\$ 611,363	\$ 627,402	\$ 643,879	\$ 671,091	\$ 684,436	\$ 698,161	\$ 712,289	\$ 726,839	\$ 741,837	\$ 757,306
Less Debt Principle Payments	\$ (62,029)	\$ (68,061)	\$ (70,355)	\$ (74,928)	\$ (79,798)	\$ (84,985)	\$ (90,509)	\$ (96,393)	\$ (102,658)	\$ (109,331)	\$ (116,437)	\$ (124,006)
Less Working Reserves (trans to "Finance" W/S)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Cash Available for Distribution	\$ (1,603,500)	\$ 518,496	\$ 529,682	\$ 541,008	\$ 552,474	\$ 564,081	\$ 576,105	\$ 588,628	\$ 601,631	\$ 615,109	\$ 629,399	\$ 644,300
<b>Financial Summary to Equity</b>												
IRR	29.6%											
NPV	12.5%	\$ 1,461,211										
<b>Additional Distributions</b>												
Electric Sales (MWh per Year)	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715
Electric Price (\$/MWh)	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 66.63	\$ 68.30	\$ 70.00	\$ 71.75	\$ 73.55	\$ 75.39	\$ 77.27
Market Price	\$ (55.89)	\$ (56.80)	\$ (57.73)	\$ (58.66)	\$ (59.62)	\$ (60.59)	\$ (61.57)	\$ (62.57)	\$ (63.59)	\$ (64.62)	\$ (65.67)	\$ (66.74)
Net Price to Group	\$ 44.11	\$ 43.20	\$ 42.27	\$ 41.34	\$ 40.38	\$ 39.41	\$ 38.43	\$ 37.43	\$ 36.41	\$ 35.37	\$ 34.31	\$ 33.24
Total Revenue	\$ 693,149	\$ 678,875	\$ 664,369	\$ 649,628	\$ 634,647	\$ 619,408	\$ 603,904	\$ 588,143	\$ 572,062	\$ 555,669	\$ 538,974	\$ 521,980
AB 1990 Production Credit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Revenue to Be Split</b>												
Distribution to County	\$ 277,260	\$ 271,550	\$ 265,748	\$ 259,861	\$ 253,859	\$ 247,747	\$ 241,462	\$ 235,047	\$ 228,541	\$ 221,983	\$ 215,311	\$ 208,562
Distribution to Developer	\$ 415,889	\$ 407,325	\$ 398,622	\$ 389,777	\$ 380,788	\$ 371,661	\$ 362,442	\$ 353,096	\$ 343,521	\$ 333,686	\$ 323,663	\$ 313,418
DOE/RPI Subsidy	\$ 5.00	\$ 5.08	\$ 5.15	\$ 5.23	\$ 5.31	\$ 5.39	\$ 5.47	\$ 5.55	\$ 5.63	\$ 5.72	\$ 5.80	\$ 5.89
Total Revenue	\$ 78,577	\$ 79,756	\$ 80,952	\$ 82,166	\$ 83,399	\$ 84,650	\$ 85,920	\$ 87,209	\$ 88,517	\$ 89,844	\$ 91,192	\$ 92,560
Total Revenue to County	\$ 355,837	\$ 351,306	\$ 346,700	\$ 342,018	\$ 337,258	\$ 332,407	\$ 327,469	\$ 322,446	\$ 317,337	\$ 312,152	\$ 306,911	\$ 301,622

# Cash Flow Analysis

	13	14	15	16	17	18	19	20	
	2013	2014	2015	2016	2017	2018	2019	2020	Project Totals
<b>GAS PRODUCTION</b>									
Gas Produced at Landfill 1 (CFM)	1,199	1,231	1,264	1,297	1,330	1,364	1,398	1,433	
Gas Produced at Landfill 2 (CFM)	244	247	249	252	255	258	261	264	
Total Gas Produced	1,443	1,478	1,513	1,549	1,585	1,622	1,659	1,697	
Total Gas Used by Power Plant(s)	731	731	731	731	731	731	731	731	
Gas Available for Sale to Power Plant (eligible for Prod Tax Cr.)	1,008	1,008	1,008	1,008	1,008	1,008	1,008	1,008	
Additional Fuel Available (CFM, ST LFG Cap)	183	183	183	183	183	183	183	183	
Gas Avail for Additional Generation	895	930	965	1,001	1,037	1,074	1,111	1,149	
<b>ELECTRICITY PRODUCTION</b>									
Number of Engines	2	2	2	2	2	2	2	2	
KW Output	1,794	1,794	1,794	1,794	1,794	1,794	1,794	1,794	
Total Production (MWh)	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	314,309
Sales to County (Direct Connect, KWh/Yr)	-	-	-	-	-	-	-	-	
Sales to Market (KWh/Yr)	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	314,309
<b>REVENUE (\$ 1,000)</b>									
<b>Base Sales to Market</b>									
Electric Strike Price (\$/MWh)	\$ 67.82	\$ 68.92	\$ 70.04	\$ 71.18	\$ 72.34	\$ 73.51	\$ 74.71	\$ 75.92	
Sales	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	314,309
Total Market Revenue	\$ 1,065,851	\$ 1,083,171	\$ 1,100,773	\$ 1,118,660	\$ 1,136,838	\$ 1,155,312	\$ 1,174,086	\$ 1,193,166	\$ 20,663,617
<b>Base Sales to County</b>									
Price Paid by County (\$/MWh)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
AB 1890 Production Credit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
DOE Subsidy	\$ 5.98	\$ 6.07	\$ 6.16	\$ 6.25	\$ 6.34	\$ 6.44	\$ 6.54	\$ 6.63	
Total Price	\$ 5.98	\$ 6.07	\$ 6.16	\$ 6.25	\$ 6.34	\$ 6.44	\$ 6.54	\$ 6.63	
Sales	-	-	-	-	-	-	-	-	
Total Revenue from County	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Federal Production Tax Credit (LFG)</b>									
Amount of Gas Subject to Credit (MMBTUs)	238,412	238,412	238,412	238,412	238,412	238,412	238,412	238,412	4,512,802
Value of Credit (per MMBTU)	\$ 1.57	\$ 1.62	\$ 1.66	\$ 1.71	\$ 1.77	\$ 1.82	\$ 1.87	\$ 1.93	
Percent Recoverable	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
Total Federal Production Tax Credit Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,061,156
Amount Included in Annual Cash Flow	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 621,580
<b>AB 1890 Payments</b>									
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 770,000
<b>Misc Interest Income</b>									
On Debt Reserves	\$ -	\$ -	\$ -	\$ -	\$ (9,060)	\$ (9,060)	\$ (9,060)	\$ (9,060)	\$ (36,238.33)
<b>Total Revenues</b>	<b>\$ 1,065,851</b>	<b>\$ 1,083,171</b>	<b>\$ 1,100,773</b>	<b>\$ 1,118,660</b>	<b>\$ 1,127,779</b>	<b>\$ 1,146,252</b>	<b>\$ 1,165,026</b>	<b>\$ 1,184,105</b>	<b>\$ 21,918,959</b>
<b>Expenses</b>									
<b>Operating Expenses</b>									
Operating Expense Escalation Series	1,426	1,469	1,513	1,558	1,605	1,653	1,702	1,754	
Fixed O&M on Power Plant (\$/Year)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Variable O&M on Power Plant (\$.016/KWh)	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 251,447	\$ 5,028,941
Gas Facility O&M	\$ 42,773	\$ 44,056	\$ 45,378	\$ 46,739	\$ 48,141	\$ 49,585	\$ 51,073	\$ 52,605	\$ 836,111
Engineering/Consulting	\$ 64,159	\$ 66,084	\$ 68,067	\$ 70,109	\$ 72,212	\$ 74,378	\$ 76,609	\$ 78,908	\$ 5,865,052
Charges from County for In-kind Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Operating Expenses	\$ 358,379	\$ 361,587	\$ 364,891	\$ 368,285	\$ 371,800	\$ 375,411	\$ 379,130	\$ 382,960	\$ 7,044,219
<b>Fuel</b>									
Payment to County for Fuel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Administrative and General</b>									
A&G Expense	\$ 85,546	\$ 88,112	\$ 90,755	\$ 93,478	\$ 96,282	\$ 99,171	\$ 102,146	\$ 105,210	\$ 1,672,222
Insurance Expense	\$ 35,644	\$ 36,713	\$ 37,815	\$ 38,949	\$ 40,118	\$ 41,321	\$ 42,561	\$ 43,838	\$ 696,759
Power Marketing Expense	\$ 85,546	\$ 88,112	\$ 90,755	\$ 93,478	\$ 96,282	\$ 99,171	\$ 102,146	\$ 105,210	\$ 2,368,982
Interest Expense (from "Finance" Worksheet)	\$ 27,463	\$ 18,879	\$ 6,737	\$ (0)	\$ (0)	\$ (0)	\$ (0)	\$ (0)	\$ 892,938
Depreciation Expense (from "Finance" Worksheet)	190,233	190,233	190,233	0	0	0	0	0	2,853,500
Total A&G Expenses	\$ 424,432	\$ 422,050	\$ 419,295	\$ 225,905	\$ 232,682	\$ 239,683	\$ 246,853	\$ 254,258	\$ 3,746,438
<b>Total Expenses</b>	<b>\$ 782,811</b>	<b>\$ 783,637</b>	<b>\$ 784,187</b>	<b>\$ 594,200</b>	<b>\$ 604,482</b>	<b>\$ 615,074</b>	<b>\$ 625,982</b>	<b>\$ 637,218</b>	<b>\$ 14,686,861</b>
<b>Net Income From Operations</b>	<b>\$ 283,040</b>	<b>\$ 299,534</b>	<b>\$ 316,586</b>	<b>\$ 524,460</b>	<b>\$ 523,296</b>	<b>\$ 531,179</b>	<b>\$ 539,044</b>	<b>\$ 546,887</b>	<b>\$ 7,232,098</b>
<b>Statement of Cash Flows</b>									
Net Income from Operations	\$ 283,040	\$ 299,534	\$ 316,586	\$ 524,460	\$ 523,296	\$ 531,179	\$ 539,044	\$ 546,887	\$ 7,232,098
Plus: Depreciation Expense	\$ 190,233	\$ 190,233	\$ 190,233	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,853,500
Plus: Final Asset Balances (Final Year of Operations)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,065,598
Cash Available to Cover Debt	\$ 473,273	\$ 489,768	\$ 506,819	\$ 524,460	\$ 523,296	\$ 531,179	\$ 539,044	\$ 546,887	\$ 10,527,078
Less: Debt Principle Payments	(132,068)	(140,650)	(149,793)	(0)	(0)	(0)	(0)	(0)	(1,500,000)
Less: Working Reserves (Trans to "Finance" W/S)	0	0	0	0	0	0	0	0	-
<b>Cash Available for Distribution</b>	<b>\$ 341,207</b>	<b>\$ 349,117</b>	<b>\$ 357,027</b>	<b>\$ 524,460</b>	<b>\$ 523,296</b>	<b>\$ 531,179</b>	<b>\$ 539,044</b>	<b>\$ 546,887</b>	<b>\$ 7,423,578</b>
<b>Financial Summary to Equity</b>									
RR									
NPV									
<b>Additional Distributions</b>									
Electric Sales (MWh per Year)	15,715	15,715	15,715	15,715	15,715	15,715	15,715	15,715	314,309
Electric Price (\$/MWh)	\$ 79.20	\$ 81.18	\$ 83.21	\$ 85.29	\$ 87.42	\$ 89.61	\$ 91.85	\$ 94.15	
Less: Strike Price	\$ (67.82)	\$ (68.92)	\$ (70.04)	\$ (71.18)	\$ (72.34)	\$ (73.51)	\$ (74.71)	\$ (75.92)	
Net Price to Group	\$ 11.38	\$ 12.26	\$ 13.17	\$ 14.11	\$ 15.09	\$ 16.10	\$ 17.14	\$ 18.22	
Total Revenue	\$ 178,845	\$ 192,643	\$ 206,936	\$ 221,742	\$ 237,073	\$ 252,948	\$ 269,380	\$ 286,388	\$ 6,070,978
<b>AB 1890 Production Credit</b>									
Total Revenue	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
<b>Total Revenue to Be Split</b>	<b>\$ 178,845</b>	<b>\$ 192,643</b>	<b>\$ 206,936</b>	<b>\$ 221,742</b>	<b>\$ 237,073</b>	<b>\$ 252,948</b>	<b>\$ 269,380</b>	<b>\$ 286,388</b>	<b>\$ 6,070,978</b>
Distribution to County	\$ 71,536	\$ 77,057	\$ 82,775	\$ 88,697	\$ 94,829	\$ 101,179	\$ 107,752	\$ 114,555	\$ 2,428,391
Distribution to Developer	\$ 107,307	\$ 115,586	\$ 124,162	\$ 133,045	\$ 142,244	\$ 151,769	\$ 161,628	\$ 171,833	\$ 3,642,587
DOE/REPI Subsidy	\$ 5.98	\$ 6.07	\$ 6.16	\$ 6.25	\$ 6.34	\$ 6.44	\$ 6.54	\$ 6.63	
Total Revenue	\$ 93,948	\$ 95,358	\$ 98,788	\$ 98,240	\$ 99,713	\$ 101,209	\$ 102,727	\$ 104,268	\$ 1,818,993
<b>Total Revenue to County</b>	<b>\$ 165,486</b>	<b>\$ 172,415</b>	<b>\$ 179,563</b>	<b>\$ 186,936</b>	<b>\$ 194,543</b>	<b>\$ 202,388</b>	<b>\$ 210,479</b>	<b>\$ 218,823</b>	<b>\$ 4,245,384</b>

# Santa Cruz County

## Landfill Gas Project

Negotiating Proposal

### Energy Mkt&Assumptions

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
	Jun-01	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Energy Prices																				
Energy Escalation Rate		2.50%																		
Modified Market Prices	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$66.63	\$66.30	\$70.00	\$71.75	\$73.66	\$75.39	\$77.27	\$79.20	\$81.18	\$83.21	\$85.29	\$87.42	\$89.61	\$91.85	\$94.13
Sales Price to County	\$ -																			
Beginning Price	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Escalation Rate	0.00%	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -	5 -
Green Ticket Prices																				
Beginning Price	\$ -																			
Escalation Rate	2.50%																			
Extended Price Series	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

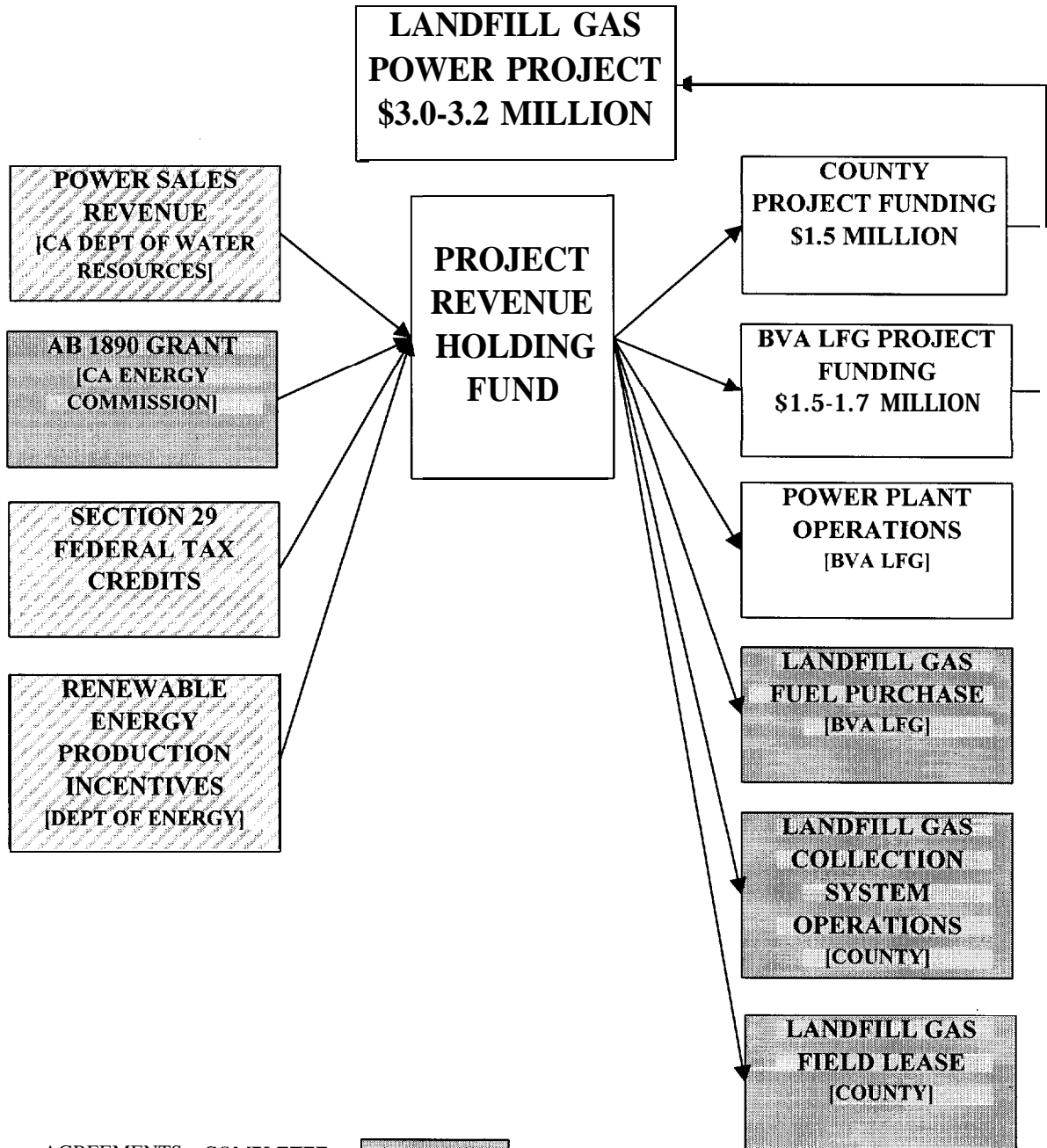
## **ATTACHMENT C**

### **CASH FLOW CHART**

# BUENA VISTA LANDFILL GAS POWER PROJECT CASH FLOW CHART

## REVENUES

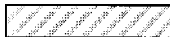
## EXPENSES



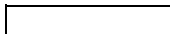
AGREEMENTS - COMPLETED



AGREEMENTS - IN-PROGRESS



AGREEMENTS - NEW



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) (6/12/01) t e )

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

COUNTY OF SANTA CRUZ

(Agency)

BROWN, VENCE AND ASSOCIATES LFG, INC.

and 65 Market Street, Suite 200, San Francisco, CA 94111 (Name & Address)

2. The agreement will provide for the design, construction and operation of the Buena Vista Landfill Gas Power Project

3. The agreement is needed because the work can be handled most expeditiously by contract-

4. Period of the agreement is from Board Approval to June 30, 2001

5. Anticipated cost is \$1,530,000 (Fixed amount; Monthly rate; Not to exceed)

6. Remarks: Contract \$1,530,000; 5% Overhead \$76,500; Total \$1,606,500

7. Appropriations are budgeted in 625110 ! 51046 ! 6610 ! \$1,500,000 6610  
625110 ! 51329 ! 3545 ! \$ 30,000 (Index#) 3590 (Subobject)

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

Appropriations are are available and will be encumbered.

Contract No.

02468

Date

6-12-01

GARY A. KNUTSON, Auditor - Controller

By

*[Signature]*

Deputy.

*W9 to Follow (to A-2) on file*

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:

*DM*

(Analyst)

By

*[Signature]*

a

t

e

Agreement approved as to form. Date

RPM: BBs

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 Officer

By \_\_\_\_\_ Deputy Clerk