RESOLUTION NO. 75069

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING THE CITY ATTORNEY TO EXECUTE A SETTLEMENT AGREEMENT AND RELEASE THAT PROVIDES FOR THE PAYMENT OF $700,000 TO INTERNATIONAL DISPOSAL CORPORATION OF CALIFORNIA, INC. ("IDC") BY THE CITY OF SAN JOSE IN EXCHANGE FOR IDC'S RELEASE OF ALL EXISTING AND POTENTIAL CLAIMS FOR COSTS REQUIRED BY REGULATIONS ADOPTED BEFORE JANUARY 1, 2009; AND FOR AMENDING THE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND IDC TO ESTABLISH A NEW BASIS FOR FUTURE REGULATORY COSTS AND TO REFLECT CHANGES TO THE RESIDENTIAL AND COMMERCIAL SOLID WASTE MANAGEMENT PROGRAM, AS AUTHORIZED BY THE CITY COUNCIL IN CLOSED SESSION ON JUNE 2, 2009

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

The City Attorney is hereby authorized to execute a Settlement Agreement and Release that provides for the payment of $700,000 to International Disposal Corporation of California, Inc. ("IDC") by the City of San Jose in exchange for IDC's release of all existing and potential claims for costs required by laws and regulations, and material changes in interpretation or enforcement of laws and regulations adopted before January 1, 2009 and; for amending the Agreement between the City of San Jose and International Disposal Corporation of California, Inc. to establish a new basis for calculating regulatory costs on or after January 1, 2009, and to reflect changes to the residential and commercial solid waste management program, as authorized by the City Council in Closed Session on June 2, 2009.

RD:RLT:SBM
6/8/2009

RES. NO. 75069

ADOPTED this 23rd day of June, 2009, by the following vote:

AYES:	CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.
NOES:	NONE.
ABSENT:	CHIRCO.
DISQUALIFIED:	NONE.

Chuck Reed

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This settlement agreement and mutual general release ("Agreement") is entered into by and between the City of San Jose, a municipal corporation in the State of California ("CITY") and International Disposal Corporation of California, a California corporation ("IDC") as of the date of CITY's execution ("Effective Date").

RECITALS

WHEREAS, CITY and IDC have entered into that certain Agreement Between the City of San Jose and International Disposal Corporation for Disposal of Municipal Solid Wastes, dated August 9, 1985 ("Disposal Agreement"); as amended by the First Amendment to Disposal Agreement dated December 5, 1995, to provide long-term disposal of solid waste generated within the City of San Jose;

WHEREAS, the Disposal Agreement defines Regulatory Costs as costs of Newby Island Sanitary Landfill ("Newby Island") which are directly attributable to changes in laws or regulations on or after June 6, 1985, and material changes in the enforcement or interpretation of laws or regulations affecting Newby Island on or after January 6, 1987, and section 5.4 provides that the City's annual compensation to IDC shall include payment for Regulatory Costs;

WHEREAS, CITY currently compensates IDC for Regulatory Costs in the amount of $1,177,090.56 each year for claims which CITY and IDC tentatively agree;

WHEREAS, CITY and IDC disagree on several issues including, but not limited to, the appropriate formula to determine the CITY's pro-rata share of IDC's total Regulatory Costs, the appropriate means of reimbursement for environmental control systems, reimbursement for costs to show financial responsibility for landfill closure and post-closure, credit to the CITY for IDC's increased ability to use alternative daily cover and other beneficial reuse material and credit to CITY for IDC's revenue related to beneficial use of the landfill gas recovery system ("Regulatory Costs Issues"); and

WHEREAS, CITY and IDC desire to resolve all existing and potential claims for past reimbursement of Regulatory Costs owed to IDC and have agreed on a mechanism for the reimbursement of future Regulatory Costs and have reached a final settlement that is embodied in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

1. It is understood and agreed that this settlement of the Regulatory Costs Issues is the compromise of disputed claims, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released; and that said release deny liability therefore and intend merely to avoid litigation.

2. IDC releases and discharges CITY from any obligation to pay IDC for all existing and potential claims arising from Regulatory Costs of Newby Island which are required by laws or regulations adopted before January 1, 2009 and material changes in the enforcement or interpretation of laws or regulations which are adopted or occurred before January 1, 2009 ("Past Regulatory Costs").

3. CITY and IDC shall amend the Disposal Agreement to establish a new basis for calculating Regulatory Costs required by laws or regulations adopted on or after January 1, 2009, or material changes in the enforcement or interpretation of laws or regulations which are adopted or occurred on or after January 1, 2009 ("Future Regulatory Costs"); and make other amendments required by changes to the residential and commercial solid waste management program as reflected in the Memorandum to the City Council dated June 2, 2009 for the City Council's consideration on June 23, 2009 to obtain authority to negotiate and execute a Second Amendment to the Disposal Agreement.

4. CITY and IDC shall amend the Disposal Agreement to expressly and more completely describe the following new basis for calculating Future Regulatory Costs and such amendments shall include, but are not limited to, allowing IDC to exclude some alternative daily cover and other beneficially reused material from the formula for calculating the CITY's pro-rata share of Future Regulatory Costs; limiting the CITY's pro-rata share of IDC's total Future Regulatory Costs to 25%; provide that City may choose but would not be required to pay Future Regulatory Costs over a 12 month period during the years 2009 through 2012 if these costs are required by laws or regulations, and material changes in the enforcement or interpretation of laws or regulations adopted on or after January 1, 2009 through December 31, 2012 and that payment for these improvements by the City shall begin once the work has been completed with the regular monthly payment for July of the next Contract Year; and reserving the CITY's and IDC's ability to mutually determine payment terms for Future Regulatory Costs required by laws or regulations, and material changes in the enforcement or interpretation of laws or regulations adopted on or after January 1, 2013 for a period consistent with the useful life of the improvement.

5. IDC releases and discharges CITY from any obligation to pay IDC for any carrying costs for funding environmental control systems at Newby Island. CITY and IDC shall amend the Disposal Agreement to expressly exclude any carrying cost as Future Regulatory Costs. IDC releases and discharges CITY from any obligation to pay IDC for the cost to demonstrate financial responsibility for closure and post closure of Newby Island required by laws or regulations and material changes in the enforcement or interpretation of laws or regulations adopted before January 1, 2009. CITY and IDC shall amend the Disposal Agreement to expressly and more completely include as Future Regulatory Costs, the cost to demonstrate financial responsibility for closure and post closure of Newby Island if such cost is required by the adoption of laws or

regulations that exclusively limits the method to demonstrate financial responsibility for closure and post closure is to purchase third party insurance, and the requirement to purchase third party insurance is not due to IDC or any parent companys' inability to satisfy any financial means test. The City shall only then be responsible for its pro-rata share of that portion of the third party insurance cost which is in excess of the amount IDC pays as of January 1, 2009, and if the increase in the cost of third party insurance is required by the adoption of the new regulation or law.

6. CITY releases and discharges IDC from any obligation to credit CITY's Past Regulatory Costs due to IDC's increased ability to accept alternative daily cover or other beneficially reused material required by laws or regulations, and material changes in the enforcement or interpretation of laws or regulations adopted before January 1, 2009.

7. CITY releases and discharges IDC from any obligation to credit CITY's Past Regulatory Costs due to IDC's revenues from beneficial use of the landfill gas recovery system required by laws or regulations, and material changes in the enforcement or interpretation of laws or regulations adopted before January 1, 2009.

8. In consideration for IDC's release of its claims against the CITY under the Disposal Agreement for reimbursement of all existing and potential claims arising from Past Regulatory Costs; and for amending the Disposal Agreement to expressly and more completely describe a new basis for calculating Future Regulatory Costs and other amendments consistent with Section 3 of this Agreement, the CITY shall issue a check made payable to IDC in the amount of SEVEN HUNDRED THOUSAND DOLLARS ($700,000), which number is an agreed sum to compromise IDC's claims for Past Regulatory Costs. This payment is not for Future Regulatory Costs. The payment shall not be due to IDC until ten (10) business days after the Second Amendment to the Disposal Agreement has been duly approved and executed by the parties.

9. CITY and IDC hereby mutually release, relinquish, and forever discharge each other from any and all past, present or future claims, demands, damages, obligations, causes of actions or suits, known and unknown, or from any and all manner of action or actions, cause or causes of action, in law or in equity, any suits, penalties, debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, losses, costs, or expenses, of any nature whatsoever, known or unknown, fixed or contingent, that either party now has or may hereafter have against the other, or any of them, by reason of any matter, cause, or thing whatsoever arising out of, based upon, or in any way related to the Regulatory Costs Issues.

Section 1542 of the Civil Code of California provides as follows:

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

CITY and IDC, each on behalf of themselves, hereby represent and certify that Civil Code Section 1542 has been read and reviewed by their counsel, understood and voluntarily accepted, and that CITY and IDC, each on behalf of themselves, hereby waive all present and future rights and benefits under and the application of Section 1542 in connection with any and all claims of injuries, damages, interest penalties or losses (whether known or unknown, foreseen or unforeseen, or patent or latent) which CITY or IDC may have arising from the Regulatory Costs Issues.

10. This Agreement represents the entire agreement and understanding between the parties regarding the final resolution and settlement of matters pertaining to the Regulatory Costs Issues and supersedes any and all prior and contemporaneous agreements, representations, and negotiations regarding these matters.

11. Each person executing this Agreement on behalf of any other person or persons hereby warrants that he or she has full authority to do so.

12. This Agreement may be executed in counterparts, which counterparts taken together shall constitute the agreement of the parties.

13. Each party shall bear its own attorneys' fees and costs in connection with this Agreement and the underlying dispute.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below by CITY.

City of San Jose, a municipal corporation of the State of California

By: _____
GEORGE RIOS
Assistant City Attorney as
Authorized Agent for City of San Jose

Date: _____

International Disposal Corporation of California, Inc., a California corporation

By: _____
MICHAEL A. CAPRIO
Area President

Date: _____

APPROVED AS TO FORM

By: _____