

Proposed FINAL
July 3, 2014

AMENDED AND RESTATED
OTAY LANDFILL EXPANSION AGREEMENT

This AMENDED AND RESTATED OTAY LANDFILL EXPANSION AGREEMENT ("Agreement") is entered into effective as of __ ____, 2014 ("Effective Date"), by and between the CITY OF CHULA VISTA, a chartered municipal corporation of the State of California ("City") and OTAY LANDFILL, INC., a Delaware Corporation ("Otay"). Allied Waste North America, Inc., a Delaware corporation ("Allied"), and Allied Waste Systems, Inc. dba Republic Services of Chula Vista ("Republic"), Affiliates of Otay, are also parties to this Agreement to the extent that they guaranty the performance of Otay's obligations hereunder and as otherwise expressly provided herein. Allied, Republic and their Affiliates are sometimes collectively referred to herein as the "Otay Affiliates." Otay, the Otay Affiliates and City are, from time to time, referred to collectively herein as the "Parties."

This Agreement is entered into with reference to the following facts:

A. Otay, a wholly-owned subsidiary of Allied, and an Affiliate of Republic, owns and operates the Otay Landfill, located in San Diego County, California (the "Otay Landfill" or "Landfill").

B. Otay and the City entered into an agreement entitled "Otay Landfill Expansion Agreement" (the "Original Agreement") in July of 1999, dealing among other things with potential impacts of the Otay Landfill Expansion Project on the City of Chula Vista and with the City's use of the Otay Landfill as a disposal site.

C. The Parties now wish to amend and restate the Original Agreement to reflect the passage of time and the subsequent agreement of the Parties to amend some of the terms and conditions of the Original Agreement. This Agreement shall also supersede all prior agreements and understandings between Otay Affiliates and City regarding the Otay Landfill, except for the Collection Franchise Agreement entered into by City and Republic contemporaneously herewith.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, City, Otay and the Otay Affiliates hereby agree as follows:

1.0 Definitions. Whenever in this Agreement the words or phrases hereinafter in this section defined are used, either with initial caps or small case lettering, they shall have the respective meaning assigned to them in the following definitions (unless in the given instance, the context wherein they are used shall clearly indicate a different meaning):

1.1 "Affiliate" means any parent, subsidiary corporation, partnership or other entity controlling, controlled by or under common control with any entity, or any fellow member of an association, joint venture or similar arrangement for the provision of landfill, Solid Waste

disposal or Recycling services in which Otay or Allied holds a direct or indirect interest.

1.2 "Alternative Daily Cover" or "ADC" means cover material other than earthen material placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.

1.3 "Applicable Law" means any federal, state or local rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having any jurisdiction applicable to the subject matter of this Agreement, as now in effect and as amended from time to time. Applicable Law shall include, without limitation, the City Charter, and Municipal Code.

1.4 "CEQA" means the California Environmental Quality Act, codified at Cal. Pub. Res. Code Section 21000 et seq., as amended or superseded, and the regulations promulgated thereunder.

1.5 "Change in Law" means any of the following events or conditions occurring on or after the date hereof:

(a) the enactment, adoption, promulgation, issuance, material modification or written change in Applicable Law or administrative or judicial interpretation of any Applicable Law; or

(b) the order or judgment of any Governmental Body with jurisdiction over the Landfill, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City, Otay, Allied or any Affiliate thereof, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

Notwithstanding the foregoing, a "Change in Law" shall not include a denial by a Governmental Body of a permit for the Landfill Expansion, or any imposition of conditions in connection therewith.

1.6 "City" shall mean the City of Chula Vista, a municipal corporation of the State of California in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

1.7 "Collection Franchise Agreement" means the "Amended and Restated Solid Waste Collection and Recycling Franchise Agreement" entered into between the City and Allied Waste Systems, Inc., an affiliate of Otay, contemporaneously with this Agreement.

1.8 "Governmental Body" means any Federal, State, County, City or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her

authority.

1.9 "Green Waste" means the leaves, grass, weeds, shrubs, tree branches, tree trunk and other wood materials from trees. Green Waste may also include pre-consumer food waste, incidental amounts of waxed or plastic coated corrugated cardboard, unpainted and untreated lumber. Green Waste does not include tree stumps in excess of 100 pounds, more than incidental dirt or rock, plastic, glass, metal, painted or treated lumber, plywood, particle board or other manufactured products that contain glue, formaldehyde, non-organic or non-biodegradable materials.

1.10 "Small Quantity Generators" means all Residential dwellings of four units or less (without restriction on the amount of waste generated by such dwellings) and all Commercial, Industrial and Institutional entities that generate an amount equal to or less than four (4) ninety-six (96) gallon Carts of waste per week excluding source separated Recyclables diverted from Disposal or transformation.

1.11 "Solid Waste" means all putrescible and non-putrescible solid waste, semi-solid and liquid wastes, such as refuse, garbage, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and includes liquid wastes disposed of in conjunction with Solid Wastes at Solid Waste transfer or processing stations or disposal sites, which are generated by residential, commercial or industrial sites. Solid Waste shall not include: hazardous and infectious waste, sewage collected and treated in a municipal or regional sewage system or materials or substances having commercial value or other importance which can be salvaged for reuse, Recycling, composting or resale.

1.12 "Uncontrollable Circumstances" means any of the following acts, events or conditions, if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as a justification for not performing an obligation or complying with any condition required by such party under this Agreement:

(a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the City), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(b) strikes or work stoppages occurring with respect to any activity performed or to be performed under this Agreement; and

(c) pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances: (a) general economic conditions, interest or inflation rates,

currency fluctuations or changes in the cost or availability of commodities, supplies or equipment; (b) changes in the financial condition of City, Otay, Allied or its Affiliates or any subcontractor affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by City, Otay, Allied or its Affiliates or any subcontractor; (d) any failure of any subcontractor to furnish labor, materials, service or equipment for any reason (other than an Uncontrollable Circumstance); (e) equipment failure; and (f) any impact of minimum wage law, prevailing wage law, customs or practices on the operating cost of Otay, Allied or its Affiliates or City.

2.0 Obligations.

2.1 Flow Control. For so long as Republic, or an Affiliate thereof, is City's franchised waste management provider, City agrees to direct disposal of Solid Waste generated in the City (excluding recyclables) to the Landfill.

2.2 Donated Parcel. Pursuant to the Original Agreement, Otay transferred to City the unimproved real property located west of the Landfill described on Exhibit A hereto, consisting of approximately fifty-four (54) acres ("Donated Parcel"). The Donated Parcel may be utilized in City's sole discretion. Otay represents and warrants that the Donated Parcel has not been committed to serve as mitigation property or for any other purpose that would prevent its development. City shall not develop any portion of this parcel for residential housing.

2.3 Community Facilities Improvement Payment. Pursuant to the Original Agreement, Allied made a payment of Four Million Dollars (\$4,000,000) to City ("Community Facilities Improvement Payment"). The Community Facilities Improvement Payment may be utilized in City's sole discretion.

2.4 Annexation. The Otay Affiliates shall support any City proposal to annex into the City (a) the Donated Parcel, (b) that certain parcel adjacent thereto as more particularly described on Exhibit B hereto (the "Adjacent Parcel"), and (c) the Landfill; provided, however, that City shall be responsible for all fees, taxes, costs and expenses arising out of or resulting from such annexation, including, without limitation, annexation costs, environmental review costs, transfer taxes, recording fees, due diligence fees, escrow fees and attorneys' fees. City shall be further responsible for obtaining any necessary County approval for such annexations that may be required by law or pursuant to City/County agreement. Notwithstanding the forgoing, the Otay Affiliates shall have no obligation under this Section 2.4 with respect to the Adjacent Parcel or the Landfill, as the case may be, if annexation of either such property would result in a valuation or assessment for property tax purposes greater than the valuation or assessment that would have resulted if such property had not been annexed into the City. City agrees that the Otay Affiliates may condition their support for annexation on City's agreement to designate for land use purposes (i) the Landfill as the lowest assessed category for open space, and (ii) the Adjacent Parcel as the lowest assessed category for open space so long as Otay maintains its current use for such property. In connection with such annexation, City shall consider becoming certified as the Local Enforcement Agency for the Landfill. City will cooperate with the Otay Affiliates in establishing a connection between the Otay Landfill and existing or future City sanitary sewer lines and other utilities; Otay shall bear the cost of any such connection.

2.5 Residential Setback. City shall not allow the development of residential units on properties within 1,000 feet of the active area of the Otay Landfill, as illustrated on the attached drawing Exhibit B. Similarly, Otay agrees that it shall keep the active area of the Landfill at least 1,000 feet away from any developed residential units. The parties agree to meet and confer from time to time to coordinate, to the extent possible, their respective obligations hereunder. Notwithstanding the foregoing, it is understood that Otay may need to modify the slopes of the Landfill outside the active area of the Landfill from time to time to address settlement, landscaping and other drainage and maintenance requirements and install and operate environmental control systems.

2.6 Heritage Road Alignment. Otay shall grant an easement to City in connection with the Heritage Road alignment for no consideration except as otherwise specifically set forth herein. Such easement shall be at the location and configuration as set forth in the alignment map submitted by City to Otay and attached hereto as Exhibit C. City and Otay shall meet and confer to make any adjustments to the easement as may be recommended by the City Engineer. Adjustments recommended by the City Engineer which do not interfere with proposed Landfill Expansion or Applicable Law shall not be unreasonably withheld. City shall be solely responsible for any environmental review and costs associated with the creation, operation and maintenance of the easement. The easement agreement shall contain a provision in which City agrees to indemnify and defend Otay with respect to any damages they may incur arising out of the use or operation the easement, except those due to the negligence or willful misconduct of Otay. In the event that the grant of the easement results in a loss of mitigation property by OtayCity agrees to exercise best efforts to assist Otay in replacing any lost mitigation property through a no cost or low cost alternative; provided, however, that nothing contained herein shall obligate City to expend City funds or purchase new property.

2.7 Reasonable Access on Maxwell Road. Upon City's request, Otay shall grant an easement to City which allows for reasonable access to the Donated Parcel from Maxwell Road, for no consideration except as otherwise specifically set forth herein. City and Otay shall meet and confer to determine the exact location of the easement, with roadway construction specifications satisfactory to the City Fire Marshall and City Engineer, based on standards comparable to those for other roadways.

2.8 Litter Collection and Sweeping. Otay shall hand collect litter as needed but not less than weekly to keep the public streets listed below free of debris. The hand pick-up shall include the lesser of the following areas: (i) from the curb of the street to up to 20 feet of adjoining property from the curb or (ii) from the curb of the street to the closest fence line. Otay shall provide or contract for street sweeping with a broom or re-circulating air sweeper capable of providing service comparable to that used by City for street sweeping services. The service shall be provided as needed to remove material associated with the removal and disposal of waste but not less than weekly. The commitment to provide such service is in addition to that provided by City and its contractor or as arranged by City with other agencies to mitigate any impacts their operations may have on the area. Otay shall be responsible for providing the services described in this Section 2.7 in the following areas: (i) Otay Valley Road from the South entrance of the Sleep Train Amphitheater to Interstate 805, (ii) Maxwell Road from the Landfill

to Otay Valley Road, (iii) Heritage Road from Otay Valley Road to Olympic Parkway (including an easterly extension of Otay Valley Road when such extension is built and in public use).

2.9 Improper Disposal Reduction Measures. Otay shall establish a 24-hour hotline number which individuals may call to report suspected improper disposal of Solid Wastes in the City. Information obtained from such callers shall be communicated to City for appropriate City action on the following business day. Otay shall post a sign at least thirty (30) days prior to making any reduction in the hours or days of operation of the Landfill. The sign shall fully inform the public of such change. When an Uncontrollable Circumstance has caused the change in operation, Otay will make a good faith effort to post the sign by the end of the next business day. They will also make a good faith effort to notify the previous month's regular customers by telephone or fax within five (5) working days if the interruption in service is likely to last more than ten (10) working days.

2.10 Dust. Otay shall (i) pave on-site roads where practicable (e.g., frequently used roads with an anticipated life of at least 5 years in its current location), (ii) sweep on-site streets (at least weekly), (iii) apply water daily to all on-site roads (except those used infrequently, which shall be watered prior to use) and apply other dust control agents and (iv) re-vegetate disturbed areas that are not in the path of planned disturbance in the near future in a manner similar to the manner described in the Landscaping Plan (as hereinafter defined) for vegetation of stock slopes.

2.11 Berms. Otay shall construct Landfill screening berms designed to enclose Landfill operations; provided, however, that nothing contained herein shall be construed as an obligation by Otay to ensure that no collection vehicle traffic may ever be viewed above such berms. Whenever possible, ingress and egress pathways through the berms shall be located away from any surrounding residential areas.

2.12 Birds. Otay shall continue to implement bird control activities for birds that may be attracted to the Landfill, Such control activities may include the use of pyrotechnic or other means as may be necessary to control birds.

2.13 Vernal Pools. Otay shall provide chain link fencing at the boundaries of the watersheds to the vernal pools located along the northeastern portion of the Landfill.

2.14 Gate Check Procedure. Otay shall implement and maintain a gate check procedure at the Landfill for the purpose of accurately allocating Solid Waste not generated in the City to the jurisdiction of origin.

2.15 Collection Vehicle Traffic. None of the Otay Affiliates shall oppose any action by City to restrict collection vehicle traffic on Brandywine Avenue, north of Auto Parkway, except such collection vehicle traffic as is necessary to provide services to persons located within such area. The Otay Affiliates agrees to abide by City directives regarding traffic control before, during and after amphitheater or other special events in the Otay Valley Road area.

2.16 Landscaping Plan. Otay shall implement a phased landscaping plan which is in

Exhibit D attached hereto ("Landscaping Plan"), with such modifications as may mutually be agreed upon from time to time by the Parties specifically. Notwithstanding the timing for implementation described in the attached Landscaping Plan, Otay agrees to phase in landscaping as the Landfill expands and height increases. The Landscaping Plan will be implemented in a manner that respects and compliments existing vegetation adjacent to Wolf Canyon. The Landscaping Plan, and any approved modifications thereto, shall be subject to San Diego County approval. The Parties agree to cooperate in presenting and advocating the Landscaping Plan before all applicable County agencies with approval authority. At such time as will allow for the implementation of phased landscaping as described above, Otay also agrees to develop a final closure plan in accordance with state and federal regulations for the Landfill which includes a protective cap and vegetative layer. To the extent allowed by law, the final protective cap shall be designed to use monolithic soils capable of sustaining and promoting re-vegetation of finished slopes with native plant species. At a minimum, the final vegetative layer shall be two (2) feet thick and shall be designed with undulations to accommodate greater thicknesses' of up to six (6) feet where engineeringly feasible and allowed by law.

2.17 Contouring. Otay shall incorporate "landform" contouring into the Landscaping Plan, provided implementation of such contouring does not result in the generation of additional significant impacts that require additional studies or analysis, or recirculation of the EIR that would significantly delay the CEQA process. The parties agree to meet and confer to develop contouring plan specifics not addressed in the Landscaping Plan and to evaluate alternative contouring for the finished expanded Landfill. Such alternative contouring shall include possible undulation of the side slopes and potential regrading of upper contours to soften the slope angle more gradually where engineeringly feasible and allowed by law. City agrees to work with Otay to minimize any loss of airspace proposed in the Landfill Expansion as a result of contouring.

2.18 Soil Stockpiles. During construction for the expansion of the Landfill, should the need arise to stockpile soil, such stockpile(s) shall at no time exceed the final allowable height of the Landfill under the expansion permits of 725' msl. Otay shall vegetate stockpile slopes in accordance with the Landscaping Plan.

2.19 Gas Recovery. Otay shall exercise good faith efforts to increase its existing gas recovery system or develop a new gas recovery system with respect to methane production in an effort to reduce or eliminate the need for a flare system, subject to the requirements of the DEIR, the Landfill permits, current contracts (without extensions) and Applicable Law. Otay's obligations under this Section 2.19 shall include (i) meeting and conferring with City to take advantage of all state and federal credits and preferences and (ii) as deemed necessary by Otay, the solicitation and acceptance of bids which reduce or eliminate the need for a flare system provided the additional costs of such gas recovery system do not exceed one percent (1%) of the costs set forth in bid(s) received to provide such gas recovery without the reduction or elimination of a flare system.

2.20 Clean Fuel Source. Otay shall implement a program regarding the purchase of new clean fuel source (e.g., E-rated electricity, propane, natural gas, liquid natural gas, hydrogen fuel cell, CNG, etc.) support vehicles upon the replacement of such support vehicles whenever

an appropriate clean fuel source vehicle is reasonably available. Otay shall exercise good faith efforts to solicit bids for clean fuel source grinding equipment and services used in Green Waste with respect to the expiration of its existing contract therefor (excluding extensions).

2.21 Categorization of Waste Materials. In order to fully assist City in meeting its AB 939 obligations, to the extent City diverts inert materials, non-compostable Green Waste and similar waste materials, Otay will identify these materials as recyclables or alternative daily cover to the extent the same qualifies as such under Applicable Law.

2.22 General Operational Measures. Otay shall provide top quality Landfill operations by industry standards. The Parties agree to meet and confer to address City concerns relating to Landfill operational issues and to develop measures to address such concerns.

2.23 Limitation on Taxes Fees and Assessments. Except for the Donated Parcel and Community Facilities Improvement Payment provided herein, and any generally City imposed taxes, fees or charges assessed on all businesses for goods or services in the City, City shall not impose any other or further fees or assessments on the Otay Affiliates or any valid successor or assign in connection with the current operations of the Landfill (including the Landfill Expansion as contemplated by and described in the DEIR) except to the extent that Otay Affiliates may immediately pass-through such tax, fee, charge or assessment to City ratepayers (and for which such party shall cooperate with City in collecting). Further, in the event that such taxes, fees, charges or assessments are imposed on any of the Otay Affiliates related to the Landfill by any Governmental Body other than City, and the legislative action or actions imposing the same further requires that the same are diverted, earmarked or otherwise paid over to the benefit of City, in whole or in part, and such action or actions (i) are not offset by a related legislative action or actions which reduce City revenues under this Agreement, (ii) do not compensate City for additional regulatory duties, (iii) do not reimburse City for new, direct out-of-pocket costs or (iv) are related to hazardous materials collection or remediation at the Landfill by City due to the failure of the Otay Affiliates to comply with its obligations to City under Section 3.14 hereunder, such sums, if any, shall be promptly rebated to Otay's accounts or paid over to Otay.

2.24 City Benefits Contingent On City's Continued Acceptance Continuation of ADC Program. In consideration for City's continued acceptance of the Green Waste ADC program, throughout the term of the Collection Franchise Agreement, Otay agrees to provide the benefits set forth in this Section, below. These benefits shall continue, without abatement or adjustment, if the ADC Program is discontinued as a result of a Change in Law or action imposed by a non-City Governmental Body. These benefits may be discontinued by Otay at any time during the Term, if City requests, urges or petitions the State, the County, or other Governmental Body to discontinue or limit the use of ADC at the Otay Landfill, or adopts itself a local law prohibiting or limiting the use of ADC.

- a. Tree Trimming Exemption. Otay will cause the acceptance at the Otay Landfill of Green Waste, including, without limitation, palm fronds and clean lumber, delivered by City crews and City contractors working on City projects, free of charge. This Green Waste will not be counted as part of the City's free disposal tonnage at the Otay Landfill under section 4.3 of Republic's Collection Franchise

Agreement.

- b. Clean Dirt/Fill Exemption. Otay will cause the acceptance at the Otay Landfill of clean dirt and fill delivered by City crews generated as a result of maintenance of City property or installation of City infrastructure, free of charge. This clean dirt and fill will not be counted as part of the City's free disposal tonnage at the Otay Landfill under section 4.3 of Republic's Collection Franchise Agreement. For purposes of this section "clean" dirt or fill shall be dirt or fill that is free of asphalt, concrete, trash, pipe, petroleum and chemicals that are typically not found in excavation of undisturbed ground; provided, however that processed rock products such as aggregate base, aggregate sub-base, decomposed granite, and similar materials, shall be allowed.
- c. Free Compost Material For Chula Vista Residents. In the first calendar year of the Franchise, Otay will arrange for three (3) compost events per calendar year whereby Otay will deliver up to 150 cubic yards of compost per event as directed by the City, to be made available for free to Chula Vista resident and (non-landscaping) business Ratepayers. The parties shall meet and confer to discuss changes in this initial quantity of 150 cubic yards of compost per event due to lack of or increased demand, and shall reasonably agree on such adjustments. Thereafter, based upon factors such as consumer demand, event costs, materials availability, and other reasonable factors, the parties will meet and confer to determine appropriate adjustments to the program, for each calendar year of the Term thereafter. The first year's event will be the minimum requirement.
- d. Cooperation with Green Waste ADC Program Alternatives. Otay agrees to meet and confer with the City from time to time, as the City may reasonably request, to explore alternatives to the Green Waste ADC program that would maximize Green Waste diversion during and beyond the operation of the Otay Landfill and would result in the creation of a value added product (e.g., compost).
- e. Resource Recovery Park at Otay Landfill. Otay shall develop a Resource Recovery Park (the "RRP") at the Otay Landfill on the terms set forth in this Section. An RRP is a facility that, among other things co-locates reuse, recycling, compost processing, and related businesses in a central location. The purpose of an RRP is to provide a place for reducing the amount of waste that is disposed of through recovery of some materials for reuse, recycling and composting. The RRP shall be located on at least 20, and up to 30 acres, on an area of the Landfill property to be designated by Otay (the "RRP Property"). The Parties agree to work together in good faith to negotiate terms and condition for the development of the RRP on the RRP Property. In order to implement its obligations hereunder, Otay, at a minimum, agrees to (1) fully investigate, and exercise their best efforts to implement an RRP including the post-closure uses identified in Sections 4.1.1 through 4.1.5 of that certain report entitled "Otay Landfill Post-Closure Uses Evaluation," prepared by A-Mehr, Inc., dated April 2014, or such other similar uses as the City may reasonably approve; (2) meet and confer quarterly with the City regarding RRP design and implementation

status; (3) by no later than June 30, 2020, develop and implement components of RRP operations as necessary to comply with Applicable Law, including, without limitation, pending laws expected to limit or ban the Disposal of organics at the Landfill; and (4) by no later than June 30, 2020, designate the RRP Property and develop and obtain City approval of a final plan for post-closure RRP operations thereon, which approval shall not be unreasonably withheld. Otay ultimately reserves the right to reasonably determine the practical feasibility and economic viability of each of the proposed components of the RRP. Otay Affiliates acknowledge and agree that Otay's good faith negotiation and/or agreement with the City on the terms and conditions for a future RRP, at the discretion of the City, may also be a consideration to any future extension of the Collection Franchise Agreement. If Otay fails to fulfill its obligations under this Section, in addition to any and all other remedies available to City at law or in equity, Otay agrees that it shall be obligated to make available to the City, in perpetuity, the RRP Property, at a location reasonably approved by City, for use as an RRP. The parties shall meet and confer to determine the specific nature of the City's interest in such property, the type of RRP operations to be allowed, and the RRP operator, all of which shall be subject to Otay's reasonable approval. Otay shall also have the right to impose reasonable best management practices and operating conditions on the City's RRP, with provisions that protect Otay from RRP related liabilities.

- f. Green Waste Landfill Passes. Republic shall give Small Quantity Generators within the City two (2) free Green Waste disposal passes per calendar year for use at the Otay Landfill for a single vehicle no greater than one ton in capacity each. Each vehicle load of Green Waste brought to the Otay landfill by a Small Quantity Generator shall be used as part of the ADC, composting or other program eligible for diversion credit under then applicable Diversion Laws.
- g. Construction and Demolition Recycling. Otay agrees to take any and all actions reasonably necessary to timely obtain all permits necessary to expand its existing Construction and demolition recycling operation at the Landfill to keep up with current and projected demand therefor, and to comply with Applicable Laws.

3.0 General Provisions.

3.1 Term; Covenants Running with the Land. This Agreement shall be effective for so long as the Landfill is being operated as a landfill, a transfer station, an RRP, or an equivalent operation, and the Otay Affiliates' obligations hereunder shall be covenants running with the land. City is deemed the beneficiary of such covenants for and in its own right and for the purposes of protecting the interest of the community and other parties public or private, in whose favor and for whose benefit of such covenants running with the land have been provided without regard to whether City has been, remained or are owners of any particular land or interest therein. In order to implement this Section, City reserves the right to prepare a memorandum of this agreement in recordable format and to record same with respect to the Landfill property. The Otay Affiliates agree to execute same in a form reasonably approved thereby. Notwithstanding the foregoing, the Otay Affiliates obligations under Section 3.14 hereof shall

survive the termination of this Agreement.

3.2 Administrative Review of Disputes. Prior to commencing litigation, a party shall first give the other party written notice of any dispute with respect to this Agreement. Such notice shall specify a date and location for a meeting of the parties hereto at which such parties shall attempt to resolve such dispute, and the name of a mediator selected by such party to mediate the meeting. City shall keep a record of the proceedings conducted and information presented during such meeting. The cost of such resolution shall be divided and paid equally by the parties. In the event that such dispute cannot be resolved by the parties hereto within thirty (30) days, the matter may be referred by mutual agreement of the parties to non-binding arbitration, or by either party to legal proceedings. Neither party may act to terminate this Agreement for cause except at the conclusion of the meeting of the parties held pursuant to this Section 3.2, or in the event the parties have referred the dispute to arbitration, at the conclusion of the arbitration.

3.3 Authority. Each party represents that it has full right, power and authority to execute this Agreement and to perform its obligations hereunder, without the need for any further action under its governing instruments, and that the parties executing this Agreement on behalf of such party are duly authorized agents with authority to do so.

3.4 Assignment. Except as expressly provided herein, neither this Agreement, nor any rights or interest herein, shall be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, except that City is deemed to have consented to any transfer this Agreement by Otay to any Affiliate, provided such Affiliate covenants and agrees in writing to perform and be bound by each and all of the terms and conditions hereunder. Any attempted assignment in violation of this section shall be void and shall constitute a material default entitling the other party to terminate this Agreement. In addition, both parties agree to comply with any and all provision contained in the Municipal Code governing the change of ownership of Otay or the transfer of this Agreement.

3.5 Counterparts. This Agreement may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one agreement after each party has signed such a counterpart.

3.6 Entire Agreement. This Agreement, together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, between the Parties are superseded, except for the Collection Franchise Agreement entered into by the City and Republic contemporaneously herewith.

3.7 Other Governmental Bodies. In the event any value paid to City under this Agreement is required by law to be shared with or otherwise paid over to any other Governmental Body, City shall be solely responsible for transferring such value to such Governmental Body, without any indemnification or any other reimbursement from the Otay,

Affiliate under this Agreement. Notwithstanding the foregoing, any such requirement shall be considered a Change in Law pursuant to the terms of this Agreement and this Section shall not relieve the Otay Affiliates of their obligations under Section 3.12 hereof.

3.8 Exhibits. All exhibits referred to herein are attached hereto and incorporated herein by this reference.

3.9 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

3.10 Notice. Any notice that may be given to either party under or with respect to this Agreement shall be deemed to have been given when delivered personally or when sent by registered or certified mail, postage prepaid, addressed as follows:

Otay Affiliates:

Otay Landfill, Inc.
8364 Clairemont Mesa Boulevard
San Diego, CA 92111
Attn. Neil Mohr, General Manager

with a copy to:

General Counsel's Office
Attn. Tim Benter, Deputy General Counsel
Republic Services, Inc.
8500 North Allied Way
Phoenix, Arizona 85054

CITY:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: City Manager

with a copy to:

City Attorney

3.11 Successors. Subject to the restrictions on assignment and change of ownership contained herein, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.

3.12 Uncontrollable Circumstances. Except as otherwise specifically provided in

this Agreement, neither the Otay Affiliates, on the one hand, or City, on the other hand, shall be in breach of this Agreement for any temporary failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance; provided, however, the party experiencing an Uncontrollable Circumstance shall not be in breach only if such party complies with the requirements in this Section 3.12. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing ("Notice"), immediately after the party experiencing such Uncontrollable Circumstance first learns of the commencement thereof, followed within forty-eight hours by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known) and (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. A party's obligations hereunder shall be delayed commencing at the date of Notice time for only so long as the Uncontrollable Circumstance continues and prevents full compliance with the obligations under this Agreement. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby (a) shall use its best efforts to eliminate the cause therefor, (b) minimize the adverse impacts caused thereby, and (c) shall take all necessary and appropriate actions, including, if necessary, bringing in labor and equipment from unaffected areas to resume full performance under this Agreement as quickly as possible.

3.13 Compliance with Laws and Directives. Each of the Otay Affiliates shall comply with all Applicable Law (or such higher standards as may be required under this Agreement) regarding the manner in which it conducts its trade and business. The Parties agree to cooperate with each other in reaching a modification to this Agreement to the extent required by law at any time it should be deemed necessary in the future. In the event of any Change in Law, or a successful third-party challenge to all or any material provision of this Agreement that in either case materially affects City's consideration or the Otay Affiliates' obligations hereunder, the parties agree to meet and confer in order to develop reasonable modifications to this Agreement, if any can be developed, which would allow this Agreement to continue in substantial conformance with its terms as they existed prior to such Change in Law.

3.14 Hold Harmless.

(a) In General. To the maximum extent allowed by law, the Otay Affiliates, shall indemnify, protect, save and hold harmless, City and any elected representatives, officers, employees, agents and volunteers thereof (each a "City Indemnified Part", and collectively, the "City Indemnified Parties") against and from all damages, including bodily injury and property damages, losses, liabilities, demands, claims, remediation or investigation obligations related to government regulated materials, judgments, decrees, costs (including court costs and reasonable attorneys' fees) and expenditures (collectively, "Losses") which such City Indemnified Party may suffer, or which may be sought or recovered from, or obtainable against such City Indemnified Party for, or by reason of, or growing out of or resulting from, directly or indirectly, City's grant or the exercising by the Otay Affiliates of any or all of the rights or privileges granted hereby, or by reason of any act(s) or omissions of the Otay Affiliates, or of any of their respective officers,

employees, agents or contractors, in operating the Landfill, or exercising any or all of the rights or privileges granted hereby (collectively, the “Losses Causing Activities”).

(b) **Duty of Defense.** Otay Affiliates obligations under this Section 13.14 shall include the duty of defense with counsel chosen by the Otay Affiliates and reasonably acceptable to City with respect to any suit or claim that may be instituted against any City Indemnified Party by reason of or growing out of or resulting from any Losses Causing Activity.

(c) **Hazardous Materials.** Without limiting the generality of the foregoing, the Otay Affiliates shall protect, defend, indemnify, save and hold harmless any City Indemnified Parties from and against all Losses which such City Indemnified Parties may suffer, including Losses which may be recovered from, or obtainable against such City Indemnified Parties, resulting from any investigation, repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan or replacement or restoration of natural resources (regardless of whether undertaken due to governmental action) for, or by reason of, or growing out of or resulting from, directly or indirectly, the disposed of Solid Waste collected from City generators, or activities of the Otay Affiliates (including predecessors interest and successors in interest), or other activities thereof with respect to Lanfill operations which result in a release or threatened release of hazardous materials into the environment in or around the City or at any landfill. The foregoing obligation is intended to be an agreement allowed by Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC, Section 9607(e), and California Health and Safety Code 25364 for the allocation of liability thereunder as between the City, Otay and its Affiliates ,

(d) **Miscellaneous.** The Otay Affiliates’ obligations under this Section 13.14 shall not be restricted to insurance proceeds, if any, received by City Indemnified Parties. The Otay Affiliates’ obligations under this Section 13.14 shall not be limited by any prior or subsequent declaration thereby. The Otay Affiliates further agree to pay any and all costs City incurs enforcing its rights under this Section 13.14. Nothing in this Section is intended to supersede any other of the parties obligations under this Agreement, including, without limitation, the obligation to meet and confer in the event of a Change in Law as provided in Section 3.13 hereof. In the event City seeks indemnification after an assignment of this Agreement by Otay Affiliates, City must first seek indemnification from Otay's successor-in-interest prior to seeking indemnification from the Otay Affiliates.

(e) **Survival.** The provisions of this Section 13.14 shall survive the end of the term or termination of this Agreement.

3.15 **Guaranty of Performance.** Allied and Republic unconditionally guaranty the performance of Otay’s obligations under this Agreement.

3.16 **Remedies Upon Default.** Upon the occurrence of any event of default by any party, the non-defaulting party shall have any and all remedies available to such party at law or in equity. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this Agreement shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure

outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

3.17 No Waiver. The failure of either party at any time to require performance by the other of a provision hereof, shall in no way affect the right of such party entitled to performance to enforce the same thereafter. Nor shall the waiver of either party of any breach of any provisions hereof be construed to be a waiver of such provisions or of any succeeding breach thereof.

[Next Page Is Signature Page]

[SIGNATURE PAGE TO OTAY LANDFILL EXPANSION AGREEMENT BETWEEN CITY OF CHULA VISTA AND OTAY LANDFILL, INC.]

IN WITNESS WHEREOF, Otay and City have entered into this Otay Landfill Expansion Agreement effective as of the date first written above.

CITY: _____ OTAY: _____

City of Chula Vista,
a municipal corporation

Otay Landfill, Inc.,
a California Corporation

By: _____

By: _____

Attest: _____

By: _____

Approved as to form by

REPUBLIC:

ALLIED:

Allied Waste Systems, Inc.,
a Delaware corporation

Allied Waste North America, Inc.,
a Delaware corporation

By: _____

By: _____

By: _____

By: _____