

- Use of Leachate to solidify waste received at the Landfill or the Guaranteed Amount will be reduced to ninety-five percent (95%) of such average amount or to such other amount mutually agreed upon by the City and TCL.
- (c) In the event of any change in governmental laws, ordinances, or regulations or the application of such regulations or any increase in assessments, fees, or taxes other than any changes in City laws, ordinances or regulations or the application thereof by the City or an increase in City assessments, fee or regulations that become effective after the date hereof that require the City to incur additional costs in the performance of services pursuant to this Agreement, including changes in treatment, disposal, or transportation, the City shall notify TCL of the change and the estimated amount of such additional costs and the parties shall review the change and mutually negotiate an agreeable adjustment to the Transportation and Disposal Rate, as applicable. The City agrees to continue leachate hauling and processing services until the City and TCL agree to the adjusted Transportation and Disposal Rates to be charged. If the City and TCL cannot agree upon an appropriate adjustment to the Transportation and Disposal Rate at TCL's option, TCL may terminate this Agreement upon at least thirty (30) days written notice to the City.
3. Term. The term of this Agreement is ten (10) years (the "Initial Term") beginning on the Effective Date. For the avoidance of doubt, the first year of the Term begins on the Effective Date and ends on the day prior to the one-year anniversary of the Effective Date. Each subsequent year of the Term will begin on the anniversary of the Effective Date.
4. Leachate Properties.
- (a) The City will accept at the City Facilities each year during the Term all Leachate generated and available for disposal from the Landfill during such year provided that (i) the Leachate complies with the limits established by the Consent Order or upon issuance of TCL's pre-treatment permit for the Leachate, the limits in such permit and (ii) the City shall not be obligated to accept Leachate at any time that the Leachate in the storage bunkers at the DRIP exceeds 840,000 gallons. The City shall use its best efforts to regularly discharge Leachate from the storage bunkers at the DRIP to the SCWRF so that the City can accept all Leachate delivered to the City Facilities.
- (b) In the event that the SCWRF is not operating in compliance with the ammonia limits in its NPDES permit, the City will give TCL notice of SCWRF's non-compliance. Within 15 days of that notice, the City and TCL will work together to determine if SCWRF's noncompliance is attributable to the Leachate. If the no-compliance is determined to be attributable to the Leachate, within 30 days of that determination, the City and TCL Will coordinate to produce an evaluation of the noncompliance, including an investigation into the cause, short term corrective actions implemented to immediately address the non

compliance, including the Facility adjusting the level or type of pretreatment of the Leachate, and long-term corrective actions to minimize the risk that the non-compliance recurring. During this 30-day period, TCL may continue to discharge Leachate while coordinating with the City, as appropriate, to implement corrective actions. If at the end of such 30-day period the SCWRF is not in compliance with its ammonia effluent limits and that non-compliance has been identified in the evaluation as attributable to the Leachate, TCL shall discharge such portion of the Leachate at another location that will allow the SCWRF to operate in compliance with the applicable effluent limits in its NPDES Permit until such time as TCL can reasonably demonstrate that the Leachate properties do not cause the SCWRF to operate out of compliance with such limits. The City and TCL shall continue to coordinate on identifying and implementing corrective actions so that the Leachate does not cause the SCWRF to operate out of compliance with the ammonia limits in its NPDES permit following TCL's discharge of Leachate at another location. TCL shall be excused from any Leachate delivery obligations and the City shall be excused from any transportation and disposal obligations hereunder (but this Agreement shall otherwise remain in effect) for any Leachate discharge at another location until the date that TCL demonstrates the Leachate will not cause the SCWRF to be out of compliance with the ammonia effluent limits in its NPDES permit.

(c) At the request of TCL the City shall enter into a lease with TCL for the DRIP in the form attached hereto as Exhibit C for \$1 per year to allow TCL to discharge and pre-treat the Leachate at the DRIP first before being discharged to the SCWRF. In addition at TCL's request and expense the City shall pre-treat the Leachate at the DRIP in a manner requested by TCL so that any Leachate discharged from the DRIP will be in compliance with the Consent Order or the effluent limits in any pre-treatment permit for the Leachate. TCL shall reimburse the City within forty-five (45) days after receipt of an invoice together with supporting documentation for any costs the City incurs in pre-treating the Leachate at the DRIP.

(d) If following the relocation of the discharge location of the SCWRF as described herein the EPD requires additional testing, or treatment processes that are directly attributed to the Leachate properties then TCL will be responsible for all costs related thereto in order to meet the requirements set forth by the EPD; provided, that TCL will not be responsible for such costs as a result of changes in applicable regulations or the application of those regulations except as otherwise provided herein. TCL may terminate this Agreement upon at least 30 days advance written notice to the City in the event of such increased costs to TCL provided such increased costs remain in effect for at least thirty (30) days and thereafter do not return to prior levels.

4. Leachate Source. No Leachate generated outside of TCL will be transported to City Facilities, without an express written agreement with the City.

5. Capital Upgrades to Discharge Location at the City Facilities - The City intends to relocate the discharge location at the SCWRF as more particularly described on Exhibit B hereto (the "Capital Upgrades"). The parties shall jointly manage the design and construction of the Capital Upgrades and share in the cost thereof as

provided on Exhibit C attached hereto.

6. Additional Agreements. The parties covenant and agree to do the following during the Term:

(a) The City Facilities must obtain and maintain all permits and approvals from the EPD and any other governmental or regulatory bodies to accept the Leachate of the type and in the amounts contemplated hereby.

(b) TCL will agree to accept at the Landfill non-hazardous, non-liquid, treatment plant residuals (Biosolids) for a disposal fee of \$20.00 per ton (the "Biosolids Disposal Fee"), subject to the following:

i. The acceptance of biosolids is contingent upon the acceptability of the material for Subtitle D landfill disposal in accordance with current and future local, state and federal regulations and permits and the TCL waste acceptance program. The City is responsible for all expenses related to the waste characterization sampling and testing required for the Biosolids consistent with any permits issued to TCL.

(c) The City will pay a management company that will oversee the overall implementation of this Agreement. The management company will communicate to TCL and the City any problems or concerns that may arise. This position will look after the best interests of both parties. The company providing this management service at the time of contract signing is Water Reclamation Solutions, LLC.

(d) The City will also pay an engineering firm to monitor and assure that the City adheres to all EPD requirements and to address any concerns with the compliant processing of leachate. The engineering firm providing this service at time of contract signing is Stillwater Engineering, LLC

7. Invoicing and Payment. The City will send TCL a monthly invoice for all Leachate transported by the City from the Landfill to City Facilities and accepted by the City at the City Facilities and any other amounts due by TCL during such month hereunder within ten (10) days after the end of the month. TCL will send the City a monthly invoice for all Biosolids accepted at the Landfill during such month. Any payments due to either party to the other party hereunder shall be made within forty-five (45) days of receipt of an invoice.

8. Termination and Remedies.

(a) Events of Default of a Party. Each of the following will be an event of default by a party under this Agreement:

i. A Party fails to pay an amount due within fifteen (15) days after written notice

that such amount is due.

- ii. A party fails to observe and perform any other material term, covenant or agreement contained in the Agreement on its part to be performed and the continuance of such failure for a period of 30 days after written notice to that party specifying the nature of such failure and requesting that it be remedied; provided, however, that if the cure for such failure to perform reasonably requires more than 30 days, then that party shall not be deemed in default so long as the party promptly commences such cure and diligently pursues such cure to its completion and in any event cures such failure of performance within 60 days; or
- iii. A party makes a general assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodial, receiver or trustee for in or any substantial part of its property, commences any proceeding relating to it under bankruptcy, reorganization, arrangement readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereinafter in effect, or if there shall have been filed any such proceeding in which an order for relief or the appointment of any custodian, receiver of or any trustee for it or any substantial part of its property or suffers such custodianship, receivership or trusteeship to continue un-dismissed for a period of 60 days or more.

(b) Remedies on Default. Whenever any event of default has occurred and in continuing, the non-defaulting party shall have the following rights and remedies:

- i. Upon expiration of the periods set forth in Sections 8(a)(i) or (iii) above the non-defaulting party shall have the option to terminate this Agreement in its entirety upon written notice to the other party.
- ii. Upon expiration of the 30-day period referred to in Section 8(a)(ii) above (or, if the cure for such failure to perform reasonably requires more than 30 days, upon such time as the defaulting party ceases to diligently pursue such cure to its completion (but in any event within 60 days), if the defaulting party has not cured such default, the non-defaulting party shall have the option to terminate this Agreement in its entirety; and
- iii. In addition to the foregoing remedies, each party shall retain and may seek any and all remedies for damages or equitable relief that would be available to that party under this Agreement or pursuant to statute or common law.

9. Indemnification.

- (a) Indemnification by TCL. TCL agrees to indemnify, defend and hold harmless the City (and its successors and assigns) from and against any and all liabilities, losses, damages, costs, expenses and disbursements, including reasonable legal fees and expenses, arising out of any third party claim or loss of or damage to

property and injuries to or death of any persons (collectively "Losses") to the extent caused (i) by the breach of any term, covenant, agreement, or undertaking herein of TCL (other than a breach caused by the City's breach of its obligations hereunder) or (ii) by the negligence or willful misconduct of TCL or its agents, employees, contractors, subcontractors or representatives in connection with this Agreement. This obligation shall survive termination of this Agreement.

(b) Indemnification by the City. The City agrees to indemnify, defend and hold harmless TCL (and its successors and assigns) from and against any and all Losses to the extent caused (i) by the breach of any term, covenant, agreement or undertaking herein of the City (other than a breach caused by TCL's breach of its obligations hereunder) or (ii) by the negligence or willful misconduct of the City or its agents, employees, contractors, subcontractors or representative in connection with this Agreement. This obligation shall survive termination of this Agreement.

10. Force Majeure. Neither party will be liable for failure to perform any obligation (other than payment obligations) under this Agreement if that failure arises out of causes beyond the reasonable control and without the fault or negligence of such party. Such causes may include but not be limited to acts of the government in its sovereign or contracted capacity, fires, floods, strikes, epidemics, quarantine restriction, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the reasonable control and without fault or negligence of the party claiming force majeure.

11. Miscellaneous.

(a) In the event that TCL or its parent company sells or transfers the Landfill or the underlying land lease, TCL will require that this Agreement be assumed by the successor to TCL.

(b) In the event that the City sells or transfers the City Facilities, the City will require that this Agreement be assumed by the successor.

(c) All notices required hereunder will be given by personal delivery, US Mail or overnight express courier service to the address set forth on the signature page hereto. This Agreement constitutes the entire understanding between the parties, and cancels and supersedes all prior negotiations, understandings, and agreements, oral or written, relating to the provision of the services described herein. No party may assign the Agreement, or the rights contained herein (except as provided in this Agreement) without the consent of the other party, except in the event of an assignment to an affiliate. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. If any one or more of the provisions contained in the Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and all other provisions shall remain in full force and effect. The

parties agree and acknowledge that they have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any of the provision of this Agreement.

This Amended and Restated Leachate Transportation, Treatment and Disposal Agreement is executed and delivered by the undersigned on and as of the Effective Date.

Signature page follows:

City of Montezuma, GA

By: _____

Name: _____

Title: Mayor

WI Taylor County Landfill, LLC

By: _____

Name: Michael O’Friel

Title: Senior Vice President

Attest: _____

Address:
WI Taylor County Landfill, LLC
33 Stewart Rd.
Mauk, GA 31058

Address:
408 South Dooly St.
PO Box 388
Montezuma, GA 31063

EXHIBIT A INSURANCE REQUIREMENTS

During the term of this Agreement, the City shall keep in force the following minimum insurance coverages on an occurrence basis with insurance companies rated "A-" or better by A.M. Best rating service:

<u>Coverages</u>	<u>Limits of Liability</u>
General Liability	Per Occurrence \$1,000,000
Insurance, including contractual and products/completed operations	General Aggregate \$2,000,000
	Products/Completed/Operations Aggregate \$2,000,000
Business Automobile Liability	Each Accident \$1,000,000
Insurance, including non-owned and hired vehicle coverage	
Umbrella or Excess Liability	Per Occurrence \$4,000,000
Workers Compensation Insurance	General Aggregate \$4,000,000
Employers' Liability Insurance	Statutory Limit \$1,000,000

The general liability insurance shall not contain an exclusion for Contractual Liability and shall be endorsed to provide an Aggregate limit per project or location.

Prior to commencing performance of under this Agreement, City shall furnish TCL certificates of insurance on standard ACORD forms to TCL to the effect that such insurance has been procured and is in force. At least ten (10) days prior to the expiration of any of the insurance policies required herein, City shall furnish TCL certificates of insurance on standard ACORD forms, in accordance with the terms hereof, evidencing the renewal of such insurance for a period equal to at least the earlier of (a) the expiration of the term of this Agreement and (b) one year from the date of expiration of the then current insurance policies.

The insurance policies required herein shall be endorsed with, and the certificates of insurance shall contain, the following language:

“WI Taylor County Disposal, LLC and its affiliates are named as an additional insured with respect to all coverage listed above except for Workers Compensation. A waiver of subrogation applies in favor of WI Taylor County Disposal, LLC and its affiliates as their interest may appear with respect to all policies described herein.”

EXHIBIT B

Capital Upgrades

The City shall permit, design, engineer, construct, commission and operate and maintain the following capital upgrades to the City Facilities (the “Capital Upgrades”):

At a minimum, the Capital Upgrades includes the relocation of the Spring Creek WRF Discharge to the Flint River, which includes furnishing and installing:

- Approximately 2,216 linear feet of 21-inch SCR 26 PVC sewer main pipe;
- Approximately 1,167 linear feet of 20-inch class 250 DI sewer main pipe;
- Approximately 40 linear feet of 20-inch class 250 ID sewer main aboveground on piers;
- Approximately 98 vertical feet of manhole construction
- Approximately 13 manhole rings and covers; and,
- All associated property transactions, appurtenances, and related work for complete installation of the items listed above.

The project is detailed in the documents entitled Contract Documents & Specification, Spring Creek WRF Discharge Relocation to the Flint River” dated March 2023 and the plans entitled “Spring Creek WRF Discharge Relocation to the Flint River for the City of Montezuma, Macon County, Georgia” dated March 2023 prepared for the City of Montezuma by Still Waters Engineers of Leesburg, Georgia. The approval for the project has not been granted by GA EPD as of the Effective Date of this agreement.

Additional Agreements per this Exhibit. The parties covenant and agree to do the following during the Term:

1. City shall permit, design, engineer, and construct the Capital Upgrades as follows:
 - a. Within forty-five (45) days after the date of this Agreement the City must submit to EPD any remaining documents required for the permitting for the Capital Upgrades. Within thirty (30) days of receipt from EPD, the City must respond to any deficiency notice issued to EPD on the submitted documents.
 - b. Within thirty (30) days of receiving all permits and approvals to proceed with the Capital Upgrades the City will advertise the project and begin the procurement process of a qualified, licensed contractor to design, engineer and construct the Capital Upgrades. TCL shall have the right to approve the contractor selected by the City and the City’s contract with such contractor including the amount to be paid to such contractor. Within sixty (60) days of receiving the bids and approval of TCL of the contractor the City shall enter

into a contract in the form approved by TCL with the contractor approved by TCL (the "Construction Contract") and issue a notice to proceed with the Capital Upgrades

- c. The City shall submit to TCL for review and approval drawings and specifications describing the design for the Capital Upgrades. The City shall submit to TCL construction documents setting forth the detail drawings and specifications describing the requirements for construction of the Capital Upgrade for TCL's approval. The City shall proceed with construction in accordance with the construction documents approved by TCL. Neither TCL's review nor approval of any design or construction documents shall be deemed to transfer any liability from the City to TCL.
 - d. The City and TCL shall meet on a regular basis to discuss the progress of construction of the Capital Upgrades and TCL shall have the right to inspect the progress of the construction of the Capital Upgrades during normal business hours.
 - e. TCL shall have the right to approve any change orders under the Construction Contract or any amendment or termination of the Construction Contract. The work to complete the Capital Upgrades shall be performed with the care and skill ordinarily used by members of the construction profession and in compliance with all applicable laws and regulations.
 - f. The City shall complete construction of the Capital Upgrades within nine (9) months of issuing the notice to proceed under the Construction Contract (the "Scheduled Completion Date"). Within sixty (60) days of construction completion of the Capital Upgrades the City shall submit the documentation required by EPD for the Capital Upgrades and an application to modify the NPDES permit to reflect the Capital Upgrades to EPD
2. TCL shall be responsible for paying one hundred percent (100%) of the reasonable costs for designing and constructing the Capital Upgrades in accordance with the Construction Contract. The City shall submit monthly invoices to TCL for payment for any design, engineering or construction work completed on the Capital Upgrades in the prior month with appropriate documentation demonstrating the costs for which payment is requested have been incurred. The TCL Payment shall be due within sixty (60) days after the TCL's receipt of an invoice except for any amounts that TCL disputes are due. The City and TCL shall use reasonable efforts to resolve all disputed amounts as expeditiously as possible. TCL shall have the right to review and approve all applications requesting payment for design and construction work performed, including final applications for payment and the City shall keep TCL informed of any communications with EPD regarding the Capital Upgrades. The total design and construction costs shall not exceed \$1,525,000 without TCL's prior written consent.

- a. Upon the earlier of (a) the Scheduled Completion Date and (b) the completion of construction of the Capital Upgrades (the “Credit Commencement Date”), the City will reimburse TCL for fifty percent of the costs paid by TCL for the Capital Upgrades by crediting against the Transportation and Disposal Rate one cent (\$0.01) per gallon of Leachate accepted by the City at the City Facilities until the credited amount reaches 50% of the total Capital Upgrades cost paid by TCL. The credit will begin in the month after the Credit Commencement Date and credited against the Transportation and Disposal Rate in each month thereafter until 50% of total project cost has been credited, at which time credit will be removed from the bill.

EXHIBIT C
FORM OF LEASE

MINUTES
SPECIAL CALLED MEETING OF THE MONTEZUMA
CITY COUNCIL
September 7, 2023

CALL TO ORDER: Mayor Pro-Tem, Cleveland Hobbs called the meeting to order at 5:20 PM.

INVOCATION: Mayor Pro-Tem, Cleveland Hobbs led in prayer.

PRESENT: Mayor Nealie Johnson (via phone); Council Members: Mayor Pro Tempore Cleveland Hobbs; Walter Felton, Howard Brown, and Charles Ivey; City Manager, Mel Fulghom; City Clerk, Jennifer McCarthy; City Attorney, Jon Coogle; Police Chief, Eric Finch; Economic Development/Tourism Coordinator, Angie Mathews

ABSENT: Council Member Daniel Porter, W & S Line Maintenance Chief, Lonnie Shaw; Fire Chief, Roy Yoder; Public Works Chief, Tim Goodman; W/WW Plants Chief, Terry Cross

CITIZEN COMMENTS

None

CONSENT AGENDA

MOTION # 1 To accept all issues on the consent agenda, as follows:

Adopt the Pre-treatment lease between the City of Montezuma and WI Taylor County Disposal LLC to allow WI Taylor County to Pre-treat the leachate before the leachate enters the Spring Creek Water Reclamation Facility. A copy of this contract is attached to and made part of these minutes. Attachment #1.

Award the Spring Creek Pipeline Project to the lowest bidder, RDJE, Inc. in the amount of \$1,693,039.52. Funding

Source: 50 % from WI Taylor County Disposal LLC. (\$846,519.76) and 50% from the City of Montezuma financed via a loan from WI Taylor County Disposal LLC (\$846,519.76)

Approve the AMENDED AND RESTATED LEACHATE TRANSPORTATION, TREATMENT AND DISPOSAL AGREEMENT. A 10-year contract with WI Taylor County Disposal, LLC to accept and treat leachate. A copy of this contract is attached to and made part of these minutes. Attachment #2.

MOTION BY: Mr. Brown

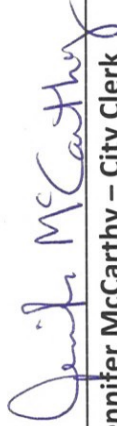
SECOND BY: Mr. Ivey

VOTE: UNANIMOUS, IN FAVOR OF

ADJOURN:

With no further business, the meeting adjourned.

Cleveland Hobbs – Mayor Pro Tempore



Jennifer McCarthy – City Clerk

**AMENDED AND RESTATED LEACHATE TRANSPORTATION, TREATMENT
AND DISPOSAL AGREEMENT**

THIS AMENDED AND RESTATED LEACHATE TRANSPORTATION, TREATMENT AND DISPOSAL AGREEMENT (this "Agreement") is made this day of , 2023 (the "Effective Date"), by and between WI Taylor County Disposal, LLC ("TCL"), and the City of Montezuma, Georgia (the "City"). TCL and the City are each sometimes referred to herein as a "party" and collectively referred to as the "parties."

RECITALS

- A. TCL operates a municipal solid waste landfill located in Mauk, Georgia known as the Taylor County landfill (the "Landfill"); and
- B. TCL desire to establish an agreement for transportation and disposal of leachate generated at the Landfill ("Leachate"); and
- C. The City owns and operates a wastewater treatment plant known as the Spring Creek Water Reclamation Facility ("SCWRF") and the Drayton Road Industrial Pretreatment Facility ("DRIP" and collectively with the SCWRF, the "City Facilities") which currently has the capacity, equipment and ability to receive and properly process, treat, and dispose of Leachate;
- D. TCL and the City are parties to an Amended and Restated Leachate Transportation, Treatment and Disposal Agreement dated October 1, 2019 (the "Original Agreement");
- E. TCL has agreed with the Georgia Environmental Protection Division ("EPD") to enter into a consent order that would allow TCL to continue to discharge Leachate under certain conditions at the SCWRF prior to and after receipt of a pretreatment permit from EPD for the discharge of the Leachate (the "Consent Order");
- F. The City is in the process of relocating the discharge point for the SCWRF as described in Section 6 hereto in order to facilitate a revision to its National Pollution Discharge Elimination System Permit No. GA 00204486 dated December 21, 2022 as amended from time to time (the "NPDES Permit") that will allow the SCWRF to better meet future treatment objectives anticipated to be issued;
- G. TCL and the City wish to further amend and restate the Original Agreement to set forth the terms and conditions upon which TCL will provide and the City will transport, process, and dispose of Leachate generated at the Landfill in accordance with applicable laws, ordinances, rules, and regulations, all as further set forth herein.

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Leachate Transportation and Acceptance. At a point of delivery identified by TCL at the Landfill (the "Delivery Point"), the City will receive Leachate in its contracted trucking equipment for delivery to City Facilities seven days a week, from 6 a.m. to 5 p.m., and the City will transport to and accept at the City Facilities the Leachate for treatment, as follows:

- (a) The City will ensure that TCL has priority over any other waste services providers or haulers, such that the entire volume of Leachate provided by TCL will be accepted, subject to the requirements hereof.
- (b) So long as this Agreement is in effect and except as otherwise provided herein, at any time that TCL is in need of Leachate transportation and disposal, the City Facilities will be the exclusive recipient of TCL's Leachate.
- (c) The City will contract for the transportation of the Leachate from the Delivery Point to City Facilities. The City represents and warrants that the City and the contractor will have sufficient liability insurance, equipment, capacity, and expertise necessary to transport, process and dispose of Leachate generated at the Landfill in accordance with this Agreement and applicable laws, ordinances, rules, and regulations. The City shall maintain or cause its contractor to maintain the insurance set forth on Exhibit A, attached hereto and comply or cause its contractor to comply with the conditions thereof.
- (d) The City will take ownership of the Leachate once it is transferred to the City at the Delivery Point or such other location as mutually agreed upon by the parties.

2. Rates.

(a) Transportation and Disposal Rate.

- i. The transportation, treatment, and disposal rate payable to the City for transportation of Leachate from the Landfill to the City Facilities shall be thirteen and one-half cents (\$.135) per gallon (the "Transportation and Disposal Rate"). The Transportation and Disposal Rate (Per Gallon) shall be adjusted to offset the cost of Capital Upgrades as described in Exhibit B.

(b) Treatment and Disposal.

- i. TCL will make available to the City for transportation all Leachate available for disposal at the Landfill but no less than 13,000,000 gallons of Leachate per year during the Term (the "Guaranteed Amount"). Notwithstanding the foregoing if TCL notifies the City that the average amount of Leachate available for disposal at the Landfill in the two (2) years prior to the date of such notice is less than the "Guaranteed Amount" other than due to:
 - The use by TCL of leachate evaporation equipment at the Landfill,
 - Recirculation of Leachate within the Landfill, or