

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Environmental Resources

BOARD AGENDA # \*B-6

Urgent

Routine

AGENDA DATE April 28, 2009

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval to Award Contract in the Amount of \$4,020,322 for the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project to DeSilva Gates Construction, LP., and Approval of all Necessary Activities Associated with this Item

STAFF RECOMMENDATIONS:

1. Determine that the bid received from C. S. & W. Contractors, Inc., is non-responsive and to reject their bid for the Fink Road Landfill, Landfill 2, Cell No. 5 Construction Project on that basis.
2. Award contract in the amount of \$4,020,322 to DeSilva Gates Construction, LP., of Dublin, California, for the construction of the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project.
3. Authorize the Director of the Department of Environmental Resources, or her designee, to execute a contract with DeSilva Gates Construction, LP., in the amount of \$4,020,322 and to sign necessary documents.

(Continued on Page 2)

FISCAL IMPACT:

The Fink Road Landfill is an enterprise fund that is fully funded through the collection of tipping fees. Capital improvement costs are incorporated into the tipping fee calculations and funds for this purpose are accounted for in the existing Department of Environmental Resources Fink Road Landfill Fiscal Year 2008-2009 budget. The engineer's estimate for this improvement project was \$5,200,000.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2009-267

On motion of Supervisor Monteith, Seconded by Supervisor Grover  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Grover, Monteith, and Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

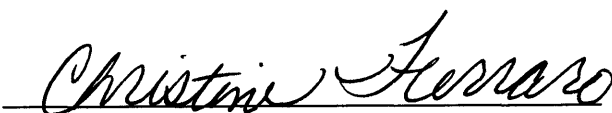
1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Award Contract in the Amount of \$4,020,322 for the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project to DeSilva Gates Construction, LP., and Approval of all Necessary Activities Associated with this Item

Page 2

STAFF RECOMMENDATIONS: (Continued)

4. Authorize the Director of the Department of Environmental Resources, or her designee, to execute change orders in accordance with Public Contract Code, Section 20142.
5. Upon project completion, authorize the Director of the Department of Environmental Resources, or her designee, to accept the completed improvements and perform all necessary closeout activities.

FISCAL IMPACT: (Continued)

Costs associated to assure the delivery of this project are \$5,022,052 (\$4,020,322 for the construction contract; \$319,698 for design, environmental study/mitigation, construction quality assurance, material testing and project oversight; \$402,032 for contract change orders and contingencies; and \$280,000 project budget contingency costs). There will be no impact to the Stanislaus County General Fund.

DISCUSSION:

The Fink Road Landfill site is located in western Stanislaus County, approximately 20 miles southwest of the City of Modesto. The site is 3.5 miles west of Crows Landing, near the intersection of Fink Road and Interstate 5. The 219-acre site is owned and operated by Stanislaus County. The facility has been active since 1973 and operates under Waste Discharge Requirements No. R5-2004-0158, issued by the California Regional Water Quality Control Board, Central Valley Region.

On October 17, 2006, the Board of Supervisors approved the Initial Study/Negative Declaration for the Fink Road Landfill Soils Relocation Project (Phase 2). Phase 2 was a continuation of Phase 1, which was written specifically to create a designated off-site excess soils stockpile area for future cell development. The soil relocation for Phase 1 expired at the end of 2004. New environmental documentation was prepared in May 2006 and was approved by the Board in October 2006.

Consistent with the California Environmental Quality Act, staff recommended that a Mitigated Negative Declaration was the appropriate level of analysis for this project. As a result thereof, the preparation of an Environmental Impact Report pursuant to the California Environmental Quality Act (Division 13 of the Public Resources Code of the State of California) was not required.

The next waste management unit to be filled is Landfill 2, (LF-2), Cell 5, which now needs to be constructed. Landfilling is currently occurring in LF-2, Cell No. 4, which has an estimated remaining capacity through 2009. The development of this new cell includes the mass grading of approximately 1.3 million cubic yards of soil to establish

Approval to Award Contract in the Amount of \$4,020,322 for the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project to DeSilva Gates Construction, LP., and Approval of all Necessary Activities Associated with this Item

Page 3

base grades for the installation of a composite base liner system. The base liner system is composed of soil and geosynthetic components, a gravel drainage layer on the base of the cell, and a soil operations layer over the base and side slopes of the cell will be installed on top of the base liner. Additionally, modifications to the existing landfill gas collection piping system and other ancillary items not mentioned herein will also be necessary.

On March 18, 2008, the Board authorized the Director of Environmental Resources to enter into a contract with Shaw Environmental, Inc., to provide both phases of the professional engineering design services and related work necessary to conceptualize, design, and permit the construction of a base liner system for LF-2, Cell No. 5, including ancillary components, and to administer its construction.

On October 21, 2008, the Board of Supervisors approved and adopted the plans and specifications for Phase One of the project, the Fink Road Landfill, LF-2, Cell No. 5, Excavation Project, and directed the Clerk to publish the notice inviting bids. On November 26, 2008, twenty-five sealed bids were received, publicly opened and read. Subsequent to the bid opening, the Department of Environmental Resources, working together with the Department of Public Works, encountered numerous delays during the review of the bids due to a mathematical error from the lowest bidder, rejection of the next lowest bidder after an extensive review of their bid, and multiple objections to the award of the contract to the apparent low bidder.

Under the advisement of County Counsel, the Board rejected all bids on February 10, 2009, and re-bid the project as a single, combined phase project; the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project. On April 1, 2009, eleven (11) sealed bids were received, publicly opened and read. A summary of the bids is as follows:

<b>CONTRACTOR</b>	<b>BID</b>
C.S. & W. Contractors, Inc.	\$3,960,447.46
DeSilva Gates Construction, LP.	\$4,020,322.00
Papich Construction, Inc.	\$4,113,094.05
Wood Bros., Inc.	\$4,245,770.50
Independent Construction Co.	\$4,267,751.88
Sukut Construction, Inc.	\$4,279,879.00
Teichert Construction	\$4,415,984.00
Raminha Construction, Inc.	\$4,845,385.00
Whitaker Contractor, Inc.	\$4,868,960.00
Sierra Equipment Rental, Inc.	\$5,036,624.00
Granite Construction, Inc.	\$5,426,629.00

Approval to Award Contract in the Amount of \$4,020,322 for the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project to DeSilva Gates Construction, LP., and Approval of all Necessary Activities Associated with this Item

Page 4

As part of the bid proposal, the contractors were required to provide the County with examples of very specific prior experience. Specifically, the bid required the following: a) Work in a similar capacity on at least five (5) projects similar in complexity to the project described in the Request for Proposals; b) Of those, the contractor shall have been the prime contractor on at least three (3) completed landfill liner system construction projects within the last seven (7) years in California; c) The examples cited required a minimum liner area of three (3) acres, and must involve soil excavation, installation of a low permeability soil layer and/or geosynthetic clay liner, installation of a geomembrane liner, installation of leachate collection gravel material, and placement of operations soil layer material for each project; d) The remaining two (2) example projects may include other types of geosynthetic installations and earthwork construction projects completed within the last seven (7) years in California; and e) The proposed Site Supervisor/Foreman shall have been the Site Supervisor/Foreman for a prime contractor on at least two (2) landfill liner system construction projects as described for the prime contractor.

During the review of the experience of C. S. & W. Contractors, Inc., staff found that only two (2) of the example projects listed met these requirements. The remaining three (3) example projects listed were from out-of-state. In addition, under the Site Supervisor/Foreman names submitted, the projects listed were also from out-of-state (please see Exhibit "A," Contractor's Experience form, submitted by C. S. & W. Contractors, Inc.). For clarification, on Exhibit "A," both the Sahuarita and Butterfield Landfills are in Arizona and the NW Regional Landfill is in Utah.

It should be noted that C. S. & W. Contractors, Inc., submitted a letter of clarification to the County regarding their experience, dated April 8, 2009. Staff reviewed the letter and found that, even if the two additional projects listed in their letter were allowed, they would still be one project short of meeting the requirements (see Exhibit "B").

County staff sent follow-up correspondence on April 13, 2009, to C. S. & W. Contractors, Inc., notifying them of the results of the additional reference checking (Exhibit "C"). The letter explained that after careful consideration of their submitted information and the conditions set forth in the proposal requirements, staff, under the advisement of County Counsel, found the proposal to be non-responsive as stated above. Given this, staff recommends that their bid be rejected and instead, make the award to the next lowest responsive and responsible bidder, DeSilva Gates Construction, LP.

Further delays on this project could compromise the County's ability to provide adequate disposal capacity at the Fink Road Landfill before the current Cell, Cell No.4, reaches maximum capacity by the end of 2009. Representatives from C.S. & W. Contractors, Inc., have indicated that they may attend the Board meeting, as well as

Approval to Award Contract in the Amount of \$4,020,322 for the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project to DeSilva Gates Construction, LP., and Approval of all Necessary Activities Associated with this Item

Page 5

representatives from DeSilva Gates Construction, LP. Work for this project is scheduled to commence in late May 2009. On April 20, 2009, the Board of Supervisors received a letter from C. S. & W. Construction, Inc., regarding their disagreement with staff's recommendation being brought forward for consideration (Exhibit "D"). Subsequent correspondence was also received on April 21, 2009 (Exhibit "E"). DeSilva Gates Construction, LP, also submitted a letter to the Board on April 23, 2009 stating their support of staff's recommendation (Exhibit "F").

#### POLICY ISSUES:

The Board of Supervisors should determine if awarding the contract for the Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project, to DeSilva Gates Construction, LP., is consistent with its priorities of providing a safe community, a healthy community, a well-planned infrastructure system, and the efficient delivery of public services. The Board should also determine whether it should authorize the Director of Environmental Resources, or her designee, to issue change orders in accordance with Public Contract Code, Section 20142.

#### STAFFING IMPACTS:

There are no staffing impacts associated with this item.

EXHIBIT A

**Contractors Experience  
Fink Road Landfill  
Landfill 2, Cell No. 5 Construction Project**

Contractor Name: C. S. & W. Contractors, Inc.

	Project Name and Scope	Project Materials and Quantities	Reference Name, Address and Phone Number
1	EL SOBRANTE LANDFILL Four-phase project included the construction of phase 91, partial closure of units 1-6, install waterline, perform asphalt paving, etc.	Soil Excavation, CY <u>2,800,000</u> Low-Perm Soil, CY <u>200,000</u> , and/or GCL, SF _____ Geomembrane, SF <u>857,000</u> Leachate Gravel, CY <u>36,000</u> Operations Soil, SF <u>857,000</u>	Waste Management, Inc. Mr. Damon DeFrates, Dist. Manager Box 77908, 10910 Dawson Canyon Rd Corona, CA 92883 951-277-5103
2	SAHUARITA LANDFILL EXPANSION - CM@ RISK - New Cell 2 East, placement of engineered fill, preparation of the liner subgrade, installation of liner, placement of operations layer soil, salvage and transplant of 300 native plants, scale and monitor well relocation	Soil Excavation, CY <u>358,000</u> Low-Perm Soil, CY _____, and/or GCL, SF _____ Geomembrane, SF <u>500,000</u> Leachate Gravel, CY <u>800</u> Operations Soil, SF <u>200,000</u>	Pima County Mr. Colby Fryar 130 W. Congress St. Tucson, AZ 85701
3	NW REGIONAL LANDFILL, PHASE 2, MOD 1 New cell construction requiring 2.1 million CY of earthwork	Soil Excavation, CY <u>2,100,000</u> Low-Perm Soil, CY <u>12,000</u> , and/or GCL, SF _____ Geomembrane, SF <u>906,000</u> Leachate Gravel, CY <u>800</u> Operations Soil, SF <u>906,000</u>	Waste Management of Arizona Mr. Mark Franc 3683 S. 4975 W. West Haven, UT 84401 801-731-1406
4	BUTTERFIELD STATION LANDFILL Perform multiple cell construction projects including cell excavation with haul distance & traffic challenges, vertical haul route, landfill site roads, subgrade preparation, operation layer and asphalt paving	Soil Excavation, CY <u>1,500,000</u> Low-Perm Soil, CY _____, and/or GCL, SF _____ Geomembrane, SF <u>1,126,000</u> Leachate Gravel, CY <u>4,000</u> Operations Soil, SF <u>1,126,000</u>	Waste Management, Inc. Mr. Glen Roycroft 8950 Redwood Highway, Box 793 Novato, CA 94948 415-892-2851
5	ANDERSON LANDFILL UNIT 4A EARTHWORK 14 acre new cell excavation, placement of engineered fill, prep of the liner subgrade, placement of operations layer soil, and other specified components	Soil Excavation, CY <u>750,000</u> Low-Perm Soil, CY <u>15,300</u> , and/or GCL, SF _____ Geomembrane, SF <u>414,000</u> Leachate Gravel, CY <u>7,500</u> Operations Soil, SF <u>414,000</u>	Waste Management, Inc. Mr. Paul Burns 4100 Throwita Way Placerville, CA 95667 530-626-5218

Proposed Site Supervisor/Foreman Name: MARK MADDEN

	Project Name and Scope	Project Materials and Quantities	Reference Name, Address and Phone Number
1	NW REGIONAL LANDFILL, PHASE 2, MODULE 1 (See scope above)	Soil Excavation, CY <u>2,100,000</u> Low-Perm Soil, CY <u>12,000</u> , and/or GCL, SF _____ Geomembrane, SF <u>906,000</u> Leachate Gravel, CY <u>800</u> Operations Soil, SF <u>906,000</u>	Waste Management of Arizona Mr. Mark Franc 3683 S. 4975 W. West Haven, UT 84401 801-731-1406
2	BUTTERFIELD STATION LANDFILL (See scope above)	Soil Excavation, CY <u>1,500,000</u> Low-Perm Soil, CY _____, and/or GCL, SF _____ Geomembrane, SF <u>1,126,000</u> Leachate Gravel, CY <u>4,000</u> Operations Soil, SF <u>1,126,000</u>	Waste Management, Inc. Mr. Glen Roycroft 8950 Redwood Highway, Box 793 Novato, CA 94948 415-892-2851

C. S. & W. Contractors, Inc.

Signed: 

Robert Meyers, Vice President

Date: March 31, 2009

**Note: This sheet must be completed and submitted with your bid  
for your bid to be accepted as complete.**



EXHIBIT B

County of Stanislaus  
Attn: Charles Vasquez  
010 10<sup>th</sup> Street, Suite 6500  
Modesto, California 95354

April 8, 2009

Dear Charles:

As the apparent low bidder for the Fink Road Landfill project, we understand that our proposal is under review. We would like to take this opportunity to clarify our experience, as submitted, and also make you aware of all our recent California landfill experiences.

The El Sobrante Landfill project (2006) that was submitted was actually three (3) separate contracts consecutively executed. The first contract was the cell construction of Phase 9A. It involved:

- 2.8 million CY of mass excavation
- 63,000 CY low perm soil
- 857,000 SF of geomembrane
- 36,000 CY leachate gravel
- 857,000 SF of operations soil

The second contract (2007) involved the closure and capping of twenty-six (26) acres at the same landfill. This involved:

- 200,000 CY of low perm soil and vegetative layer placement
- 1,800 feet of HDPE piping
- 10 concrete structures
- Several thousand tons of drainage rock

The third project (2007) involved the installation of a 6" water line as well as asphalt pavement.

Also submitted was the Anderson Landfill Unit 4A project (2005). It required:

- 750,000 CY of mass excavation
- 15,000 CY of low perm soil
- 414,000 SF of geomembrane
- 414,000 SF of operations layer
- 36,000 CY of leachate gravel

We also have completed two (2) additional projects in California at the Imperial Landfill owned by Allied Waste.

**Imperial Phase IV (2004) involved:**

- 30,292 CY of excavation
- 30,000 CY of engineered fill
- 22,000 CY of low perm soil
- 265,000 SF of geomembrane
- 24,000 CY of operations layer

**Imperial Phase V-A (2006) involved:**

- 21,000 CY of mass excavation
- 16,000 CY of engineered fill
- 14,900 CY of low perm soil placement
- 182,000 SF of geomembrane
- 15,000 CY of operations layer
- 200 CY of leachate gravel

**Contact: Scott Purdy Vector Engineering (530) 272-2448**

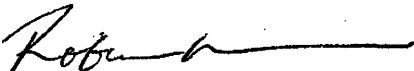
The remainder of the projects submitted are in Arizona but are similar in complexity to the Fink Road project. The Superintendent named for this project, Mark Madden, was the site Superintendent for both Imperial projects and the Anderson project. Furthermore, the complete list of over thirty (30) landfills constructed by C. S. & W. Contractors in the last ten (10) years alone is available upon request.

C. S. & W. Contractors, Inc. enjoys a hard earned reputation for quality workmanship and competitive pricing. We are recognized as one of the premier landfill contractors in the west, building projects from Texas to California. We look forward to working closely with Stanislaus County on this important project. We hope this letter resolves any confusion with regard to our experience.

In summary, you can see that we have fulfilled the RFP requirement for at least three (3) landfill projects in California plus at least two (2) other geosynthetic and earthwork projects in California within the last seven (7) years.

If you desire additional information or need further clarification, please do not hesitate to contact me directly at (602) 768-4862 or Eric Sharp, our Landfill Segment Manager, at (602) 721-3629.

Sincerely,



**Robert Meyers  
Vice President**

ES/slh





**DEPARTMENT OF PUBLIC WORKS**

**Matt Machado, PE**  
Director

**Laurie Barton, PE**  
Deputy Director, Engineering/Operations

**Diane Haugh**  
Assistant Director, Business/Finance

1010 10th Street, Suite 3500, Modesto, CA 95354  
Phone: 209.525.6550/email: publicworks@stancounty.com

**EXHIBIT C**

April 10, 2009

Sent via Fax: (602) 266-7070  
Certified mail to follow

Mr. Robert Meyers, Vice President  
CSW Contractors, Inc.  
6135 North 7<sup>th</sup> Street  
Phoenix, AZ 85014

**SUBJECT:** Fink Road Landfill, Landfill 2, Cell No. 5, Construction Project  
Contractor's Experience, Reference Check Results.

Dear Mr. Meyers:

Our review of your bid documents specifically, the Contractor's Experience page submitted with your bid, did not meet the proposal's requirement in identifying the five required California projects.

We found that your company only identified two landfill projects within California and listed three projects within other states. In Addition, CSW Contractors did not identify the two required California projects as required for the proposed site Supervisor/Forman named, by referencing the out-of-state projects. We also found that the Butterfield Station Landfill is located in Arizona and the reference person's address shown for this project, was identified as being in California in your bid.

We also review your letter dated April 8, 2009 sent via email to my attention which also had an attachment of your company's SOQ. The later is additional new information and it can not be taken into consideration after the opening of the bids. We did review your letter of clarification for your experience and we found that the information provided, even if we accepted this as additional projects, still will not satisfy the Proposal's requirement.

Specifically, the requirements indicated and made part of Addendum No.2, page 1 of the Invitation to Bidder and Special provision, whereas:

**INVITATION TO BID AND SPECIAL PROVISIONS, PAGE I-5, PROPOSAL REQUIREMENTS AND CONDITIONS, SIXTH (6<sup>TH</sup>) PARAGRAPH, ADDITIONAL INFORMATION RE "CONTRACTOR EXPERIENCE":**

Company work in a similar capacity on at least five (5) projects similar in complexity to the project described in Part V, Construction Details is more specifically defined:

- The Contractor shall have been the prime contractor on at least three (3) completed landfill liner system construction projects within the last seven (7) years in California.

- The reference projects liner area shall be a minimum of three (3) acres, and involve soil excavation, installation of a low permeability soil layer and/or geosynthetic clay liner (GCL), installation of a geomembrane liner, installation of leachate collection gravel material, and placement of operations soil layer material for each project.
- The remaining two (2) reference projects may include other types of geosynthetic installations and earthwork construction projects completed within the last 7 years in California.
- The proposed Site Supervisor/Foreman shall have been the Site Supervisor/Foreman for a prime contractor on at least two (2) landfill liner system construction projects as described above for the prime contractor.

After careful consideration of your submitted information, additional clarification letter and the condition set forth within the Proposal requirements, we find your proposal to be Non-Responsive and will recommend to the Board of Supervisor to be rejected your bid under our findings.

Sincerely,

Charles T. Vasquez  
Transportation Project Coordinator  
Project Manager

Cc: Thomas Boze, County Counsel  
Fred Cope, Project Manager, Shaw environmental  
Jami Aggers, Deputy Director DER  
Michael Franck, Landfill Manager  
David Leamon, P.E., PW, Senior Civil Engineer Supervisor



EXHIBIT D

April 20, 2009

BOARD OF SUPERVISORS  
APR 22 A 10:28

Stanislaus County  
Board of Supervisors  
1010 10<sup>th</sup> Street, Suite 6500  
Modesto, CA 95354  
Messrs: William O'Brien  
Vito Chiesa  
Jeff Grover  
Dick Monteith  
Jim DeMartini, Chairman  
Richard W. Robinson, CEO  
Ms. Sonya Harrigfeld, Director

Dear Supervisors:

We are in receipt of the letter from Mr. Charles Vasquez dated April 13, 2009 in which he states he will recommend that our proposal for the Fink Road Landfill project be deemed non-responsive and therefore rejected. We strongly disagree with his position and wish to offer an explanation.

While we acknowledge that an irregularity exists within our paperwork, it did not have a monetary effect on our proposal. The numbers put forth for the construction of this landfill project remain as the lowest bid submitted. It also does not alter the fact that we are one of the most experienced landfill contractors in California and in the western United States with a reputation for professionalism and quality workmanship.

Due to your omission of desired requirements in the original bid documents, an addendum was issued to reflect your modified requirements. A minor clerical oversight by an administrative assistant occurred during our assembling of your modified documents. The original bid documents required five (5) projects of similar complexity and the naming of a proposed superintendent that had experience on two (2) of those projects. We complied with that requirement. When the due date for proposals was delayed, addendum number 2 amended that requirement to three (3) landfill liner system construction projects and two (2) additional projects requiring geosynthetic installation and earthwork in California within the last seven (7) years. The requirements for the Superintendent stayed essentially the same.

Again, C. S. & W. Contractors, Inc. met or exceeded the requirements as amended although a clerical oversight occurred during document preparation. Two words in the addendum were overlooked. They were "in California". Basically, you are now being asked to spend an additional \$59,849.07 of taxpayer money because of 2 words, "in California". Had our team member noticed those words, we would still have been able to demonstrate our experience as amended. Within the last seven (7) years in California we have completed the following projects – we wish for you to note they all exceed your requirements as well:

C.S. & W. Contractors, Inc.  
Contractor Lic. 071370-007 Class A  
6135 North 7th Street, Suite 105, Phoenix, AZ 85014, (602) 266-7000 Fax (602) 266-7070

The El Sobrante Landfill Cell 9A project (2006) in Corona, CA involved:

- 2.8 million CY of mass excavation
- 63,000 CY low perm soil
- 857,000 SF of geomembrane 19.67 Acres
- 36,000 CY leachate gravel
- 857,000 SF of operations soil

The Anderson Landfill Unit 4A project (2005) in Anderson, CA required:

- 750,000 CY of mass excavation
- 15,000 CY of low perm soil
- 414,000 SF of geomembrane 9.5 Acres
- 414,000 SF of operations layer
- 36,000 CY of leachate gravel

The Imperial Landfill Phase IV & V (2004) in Imperial, CA involved:

- 30,292 CY of excavation
- 30,000 CY of engineered fill
- 22,000 CY of low perm soil 6.08 Acres
- 265,000 SF of geomembrane
- 24,000 CY of operations layer

The Imperial Phase IV & V Segment A "Extension" (2006) in Imperial, CA involved:

- 21,000 CY of mass excavation
- 16,000 CY of engineered fill
- 14,900 CY of low perm soils placement 4.18 Acres
- 182,000 SF of geomembrane
- 15,000 CY of operations layer
- 200 CY of leachate gravel

The El Sobrante Landfill (2007) in Corona, CA involved the closure and capping of twenty-six (26) acres of the landfill which involved:

- 200,000 CY of low perm soil and vegetative layer placement
- 1,800 feet of HDPE piping
- 10 concrete structures
- Several thousand tons of drainage rock

With regard to the superintendent, we named Mark Madden who was the Site Superintendent at Anderson Landfill, both Imperial Landfill projects as well as for many of our other non "in California" projects. This meets and continues to exceed your outlined requirements.

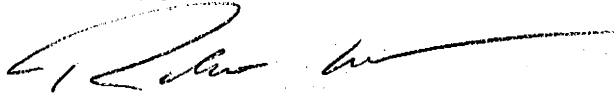
As you can see, our "in California" experiences more than exceed the amended requirements. In addition, the total number of landfill projects constructed by C. S. & W. contractors, Inc. in the last seven (7) years in California and elsewhere is twenty-three (23). The enclosed statement of qualifications describes these projects in greater detail. It also contains testimonials from several customers from both the public and private sectors who can attest to our professionalism and technical expertise. Furthermore, we are serious enough about the solid waste industry that Eric Sharp, our Landfill Segment Manager has successfully completed the coursework and testing for the "Manager of Landfill Operations" certification as sanctioned by the Solid Waste Association of North America (SWANA).

In making your decision today, we ask that you consider your own documentation with regard to proposal irregularities. As evidenced by the following excerpt from your own documents, from time to time, minor irregularities occur in bid documents. Your proposal language provides you with an opportunity and the authority to waive minor irregularities when it is in the best interest of the public, such as saving \$59,849.67.

*The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the COUNTY OF STANISLAUS, and that discretion will be exercised in the manner deemed by the COUNTY OF STANISLAUS to best protect the public interest in the prompt and economical completion of the work. The decision of the COUNTY OF STANISLAUS respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.*

In closing, we appreciate your time today and trust you will carefully consider the information we have presented. We firmly believe that selecting C. S. & W. Contractors, Inc. for this environmentally sensitive project with potentially serious implications is more prudent than selecting a contractor with much less landfill experience and is also in the best interest of Stanislaus County and its tax paying public.

Respectfully yours,



Robert Meyers  
Vice President

ES/slh



EXHIBIT E

April 21st, 2009

Mr. Jim DeMartini  
Stanislaus County, Board of Supervisors  
1010 10th St., Ste. 6500  
Modesto, CA 95354

Dear Mr. DeMartini,

Thank you for your time and the opportunity to present our statement of qualifications as a general contractor and / or subcontractor for the heavy civil construction required on your upcoming projects. Since 1982 C.S. & W. Contractors, Inc. has completed over 750 public and private projects of varying complexity and scope for a wide variety of owners. With a philosophy rooted in project partnership our team provides a turnkey site work solution offering pre-construction services, mass excavation, underground utility installation, concrete construction, asphalt paving, mine construction, treatment plant construction, native/recycled crushing and screening and subcontractor management.

C.S. & W. Contractors, Inc. offers a unique combination of industry-specific expertise and self-performance to give your projects a single solution and ensure that they are completed within budget and schedule to the highest standards of quality. We always perform a thorough due diligence and constructability review to understand the factors impacting your project, identify pertinent challenges and implement the solutions required for the success for your project. Our value engineering solutions consistently save project owners time and money, and we would be happy to provide design consultation on your plans at any time should you wish.

Our teams have worked successfully on a wide range of projects throughout Arizona, California, New Mexico, Texas, Utah and Nevada, requiring a wide range of services. We are accustomed to working in tight confines and highly complex and secure environments and have the pre-construction expertise necessary to collaborate on planning and scheduling for these projects. Our teams are OSHA and MSHA Part 48, certified with a current E-mod of 0.71 - among the industry's best and testament to our company commitment to "Constant Safe Work."

We have the management, equipment and manpower to dedicate to ensure efficient and thorough conduct of all necessary pre-construction and construction phases of work required of your projects and we look forward to the opportunity to show you what we can do.

Thank you for your time and consideration, please let me know if you would like any additional information. I look forward to meeting with you regarding the possibility of forming a project partnership for future work.

Sincerely,

Eric Sharp  
Landfill & Mining Segment Leader  
erics@cswcontractors.com / 602-266-7000

### TEAM STRENGTHS

- Turnkey site work solution
- Experience solving a variety of construction challenges and technical requirements
- Adept and thorough pre-construction review provides value engineering solutions
- Award-winning, experienced project partner
- Extensive applicable project experience
- History of self-performed projects completed ahead of schedule and under budget



EXHIBIT F

**DESILVA GATES**  
CONSTRUCTION11555 Dublin Boulevard  
P.O. Box 2909  
Dublin, California 94568-2909  
925/829 9220

CONTRACTORS LICENSE NO 704195 A

BOARD OF SUPERVISORS

2009 APR 23 A 11:47

April 23, 2009

VIA FACSIMILE TRANSMISSION and U.S. MAIL

Honorable Members of the Board of Supervisors  
County of Stanislaus  
1010 – 10<sup>th</sup> Street, Suite 6500  
Modesto, CA 95354

Charles T. Vasquez  
Transportation Project Coordinator  
Project Manager  
Department of Public Works  
County of Stanislaus  
1010 – 10<sup>th</sup> Street, Suite 3500  
Modesto, CA 95354

**Re: Fink Road Landfill, Landfill 2, Cell No. 5**

Gentlemen:

In a letter from the County of Stanislaus, Department of Public Works to CSW Contractors, Inc. ("CSW") dated April 10, 2009 (a copy of which is enclosed), the Department of Public Works stated that it had found CSW's bid for the above-referenced project to be non-responsive and stated that it will recommend that the Board of Supervisors reject CSW's non-responsive bid.

We are writing to express our support for the Department of Public Work's decision and recommendation.

The County's bid solicitation documents clearly provided that each bidder was required to submit a completed Contractor's Experience form with its bid, or its bid would be rejected. Thus, for example, on Page II-6, "BID DOCUMENTS REQUIRED AT BID OPENING" the County stated that a completed Contractor's Experience form must be submitted with the bid, and then went on to state:

County of Stanislaus  
April 23, 2009  
Page 2

The above forms and documents must be completed and submitted with your bid for your bid to be accepted as complete at the bid opening. Failure to complete or provide any of the required documents will be deemed an incomplete and rejected bid.

Likewise, on the Contractor's Experience form itself, the County stated: "This sheet must be completed and submitted with your bid for your bid to be accepted as complete."

CSW has admitted that it failed to properly complete the Contractor's Experience form, and that the information on that form failed to show that CSW had the experience which Addendum No. 2 required be set forth on this form. For example, even though bidders were required to show on the form that they had completed at least five projects meeting certain specified criteria "within the last seven years in California," CSW listed only two California projects on the form.

After bid opening, CSW attempted to change its bid by adding California projects which had not been identified in its bid, claiming it had made a mistake in failing to identify these projects in its bid. CSW cannot change its non-responsive bid.

As discussed above, the County's bid solicitation documents clearly provide that a completed Contractor's Experience form must be submitted with the bid, or otherwise the bid will be deemed incomplete and rejected. The County must of course abide by the rules that it has set.

Moreover, if CSW were allowed to change its bid, after bid opening, this would give CSW an illegal and improper competitive advantage over other bidders who complied with the County's bid requirements. CSW would be placed in the unfair and advantageous position of being able to decide, after seeing the bids of the other bidders, whether or not to accept the contract. If CSW decided, after seeing the other bids, that it wanted the contract, it could provide the information it left out of its bid. If, instead, CSW decided, after seeing the other bids, that it did not want the contract (for example, because its bid was far below the other bids), CSW could simply fail to provide the information it omitted from its bid, and its bid would be rejected. Such an ability to decide whether or not to walk away from its bid, after seeing the other bids, would



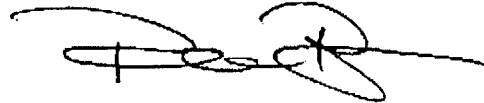
County of Stanislaus  
April 23, 2009  
Page 3

confer an obvious unfair competitive advantage on CSW because it would allow CSW to have "two bites at the apple." (Such bids are also sometimes called bids "on a string."). As the County's Public Works Department has determined, the County cannot give CSW such an unfair competitive advantage, by allowing CSW to change its bid after bid opening.

Accordingly, DeSilva Gates Construction, LP respectfully requests that the Board of Supervisors follow the decision and recommendation of the County's Department of Public Works, and reject CSW's non-responsive bid, and award the contract to DeSilva Gates Construction, LP, the low responsive, responsible bidder.

Very truly yours,

DESILVA GATES CONSTRUCTION

A handwritten signature in black ink, appearing to read "Richard B. Gates", with a stylized flourish at the end.

Richard B. Gates  
President

RBG:mas

**PROPOSAL**

**STANISLAUS COUNTY BOARD OF SUPERVISORS**

**FOR THE CONSTRUCTION OF THE**

**FINK ROAD LANDFILL, LANDFILL 2, CELL NO. 5, CONSTRUCTION PROJECT**

**NAME OF BIDDER** DESILVA GATES CONSTRUCTION, LP

**BUSINESS P.O. BOX** PO BOX 2909

**CITY, STATE, ZIP** DUBLIN, CA 94568

**BUSINESS STREET ADDRESS** 11555 DUBLIN BLVD.  
*(Please include even if P.O. Box used)*

**CITY, STATE, ZIP** DUBLIN, CA 94568

**TELEPHONE NO: AREA CODE ( )** (925) 829-9220

**FAX NO: AREA CODE ( )** (925) 803-4260

**CONTRACTOR LICENSE NO.** 704195A

The work for which this proposal is submitted is for construction in conformance with the special provisions (including the payment of not less than the State general prevailing wage rates or Federal minimum wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in conformance with the California Department of Transportation Standard Plans, dated May 2006, the Standard Specifications, dated May 2006, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

The plans and specifications for the work to be done were adopted by the Board of Supervisors on February 10, 2009, and are entitled:

**COUNTY OF STANISLAUS, DEPARTMENT OF ENVIRONMENTAL RESOURCES  
INVITATION TO BIDDERS AND SPECIAL PROVISIONS; PLANS FOR THE CONSTRUCTION  
OF THE  
FINK ROAD LANDFILL, LANDFILL 2, CELL NO. 5, CONSTRUCTION PROJECT**

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items. The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount as the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
- (b) Decimal Errors. If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage wise the unit price or item total in the COUNTY OF STANISLAUS' Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cent symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the item total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the COUNTY OF STANISLAUS, and that discretion will be exercised in the manner deemed by the COUNTY OF STANISLAUS to best protect the public interest in the prompt and economical completion of the work. The decision of the COUNTY OF STANISLAUS respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

Accompanying this proposal shall be a bidder's bond issued by a California admitted surety, or certified or cashier's check, or cash in the amount of ten percent (10%) of the proposal as a form of bidder's security.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the 2 bonds in the sums required by the State Contract Act, with surety satisfactory to the COUNTY OF STANISLAUS, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the COUNTY OF STANISLAUS that the contract has been awarded, the COUNTY OF STANISLAUS may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the COUNTY OF STANISLAUS.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal is accepted, that he will contract with the COUNTY OF STANISLAUS, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefor the following prices, to wit:

## **BID DOCUMENTS REQUIRED AT BID OPENING**

**It is required that the following documents must be completed, signed, and submitted with the Proposal at bid opening.**

Contractor's Bid Sheet  
Addendum Sheet  
Subcontractor List  
Equal Employment Opportunity Certification  
Public Contract Code  
Noncollusion Affidavit  
Non-Discrimination of the Handicapped  
Debarment and Suspension Certification  
Proposal Signature Sheet  
Bidder's Bond  
Contractor's Experience

**It is recommended that the following document be submitted at bid opening.**

W-9 Form

**Note: The above forms and documents must be completed and submitted with your bid for your bid to be accepted as complete at the bid opening. Failure to complete or provide any of the required documents will be deemed an incomplete and rejected bid.**

## INSURANCE REQUIREMENTS

Your insurance agent must thoroughly review the contract specifications before he issues the Certificate of Insurance.

### Insurance Requirements.

1. At or before the date specified in the Instructions to Bidders, Contractor shall furnish to County satisfactory proof that Contractor has in force continuously for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below:
  - a. Comprehensive or Commercial General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a standard Commercial General Liability Insurance policy ("Occurrence Form"). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion of the last Phase to be completed and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse and underground hazards. The limits of such insurance shall not be less than **[\$3,000,000]** each occurrence, **[\$3,000,000]** general aggregate limit, and **[\$3,000,000]** aggregate for products and completed operations. The policies shall be endorsed to provide Broad Form Property Damage Coverage.
  - b. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **[\$1,000,000]** each person Bodily Injury, **[\$1,000,000]** each occurrence Bodily Injury and **[\$1,000,000]** each occurrence Property Damage (or **[\$1,000,000]** combined single limit, each accident).
  - c. Workers' Compensation and Employer's Liability Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount.
2. All policies of insurance shall be placed with insurers acceptable to County. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of **[A,VII]** or better. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of County, warrant such increase. Contractor shall increase required insurance amounts upon direction by County.
3. Deductibles: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either:

7. Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, County may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
8. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from County under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation of any kind is claimed from County, County may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If County is compelled to pay compensation, County may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse County.
9. Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
10. Except that Subcontractors need obtain only \$1,000,000 of Comprehensive General Liability insurance, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work, and Contractor shall cause the Subcontractors to furnish proof thereof to County within ten Days of County's request.
11. The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work ("Professional").
  - a. Each Professional shall maintain the following insurance at its sole cost and expense:
    - i. Provided such insurance is customarily required by County when professionals engaged in the profession practiced by Professional directly contract with County, Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's work on the Project, in an amount not less than \$1,000,000 combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.
    - ii. All insurance required to be held by Contractor as described above. Professional shall satisfy all provisions herein relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) and declarations pages before commencing work on the Project.

**Contractor's Bid Sheet  
Fink Road Landfill  
Landfill 2, Cell No. 5, Construction Project**

Item No.	Item	Unit of Measure	Estimated Quantity	Item Price (Figures)	Total (Figures)
1	Mobilization and Demobilization	LS	1	200,000.00	200,000.00
2	Layout of Work and Surveys	LS	1	32,000.00	32,000.00
3	Earthfill	CY	1,700	2.00	3,400.00
4	Excavation	CY	1,327,300	1.45	1,924,585
5	Low Permeability Soil Layer	CY	20,600	4.00	82,400.00
6	Subgrade Preparation	SF	785,500	0.05	39,250.00
7	(S) Geosynthetic Clay Liner	SF	824,700	0.61	503,067.00
8	(S) 60 mil HDPE Geomembrane	SF	833,000	0.48	399,840.00
9	(S) Geocomposite Drainage Layer (S)	SF	16,100	0.60	9,660.00
10	(S) Geotextile Filter (S)	SF	480,000	0.10	48,000.00
11	LCRS Drainage Gravel	CY	8,770	30.00	263,100.00
12	Sump Gravel	CY	85	60.00	5,100.00
13	Base Operations Layer	CY	35,700	2.80	99,960.00
14A	Side Slope Operations Layer Stockpiling	CY	23,600	1.40	33,040.00
14B	Side Slope Operations Layer Placement	CY	10,100	6.00	60,600.00
15	6-inch Diameter SDR 15.5 HPDE Pipe	LF	1,670	13.00	21,710.00
16	8-inch Diameter SDR 17.0 HDPE Pipe	LF	925	16.00	14,800.00
17	12-inch Diameter SDR 15.5 HPDE Pipe	LF	350	40.00	14,000.00
18	18-inch Diameter SDR 15.5 HPDE Pipe	LF	180	90.00	16,200.00
19	24-inch Diameter CMP	LF	350	60.00	21,000.00
20	3-foot Diameter SDR 17.0 HDPE Manhole	EA	1	10,000.00	10,000.00
21	Expose and Prepare Existing Geomembrane Liner	LF	2,550	5.00	12,750.00
22	Perimeter and Side Slope Anchor Trenches	LF	3,350	6.00	20,100.00
23	(S) Underground Electrical Conduit and Wiring	LS	1	7,000.00	7,000.00
24	(S) Electrical Connections and Pumps	LS	1	20,000.00	20,000.00
25	Concrete Spill Prevention Pads	EA	1	8,000.00	8,000.00
26	(S) Leak Location Survey	EA	1	20,000.00	20,000.00
27	Revegetation/Hydroseeding	AC	68	1,250.00	85,000.00
28	Silt Fence	LF	7,100	1.00	7,100.00
29	Class 2 Road Base	CY	200	40.00	8,000.00
30	Selective Demolition	LS	1	5,000.00	5,000.00
31	Ditch Excavation	LF	4,500	2.00	9,000.00
32	Rip Rap	LS	1	3,000.00	3,000.00
33	Stormwater Pollution Prevention Plan	LS	1	2,000.00	2,000.00
34	Abandonment of Existing Groundwater Monitoring Wells 10 and 11	LS	1	5,000.00	5,000.00
35	Installation of Groundwater Monitoring Wells 25 and 26	LF	130	50.00	6,500.00
36	Transport of Water	1,000 gal units	13,500 units	0.01	135.00
				<b>Total=</b>	<b>4,020,297.00</b>

(SIGNED)

**J. SCOTT ARCHIBALD**  
VICE PRESIDENT

Date: APRIL 1, 2009

**Note: All line items must have an entry placed in its appropriate box, and this form must be signed for the bid to be accepted as complete.**

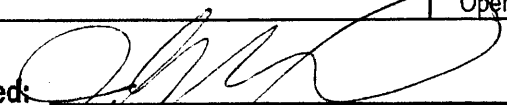
**Contractors Experience**  
**Fink Road Landfill**  
**Landfill 2, Cell No. 5 Construction Project**

Contractor Name: DeSilva Gates Construction, LP

	Project Name and Scope	Project Materials and Quantities	Reference Name, Address and Phone Number
1	KIEFER LANDFILL MODULE 3, PH. 1 & 2 CELL CONSTRUCTION	Soil Excavation, CY <u>2.5 MILLION</u> Low-Perm Soil, CY <u>N/A</u> , and/or GCL, SF <u>1.7 MIL</u> Geomembrane, SF <u>1.7 MILLION</u> Leachate Gravel, CY <u>33,775</u> Operations Soil, SF <u>825,000</u>	KEVIN ARTERO 3030 EXPLORER SACRAMENTO, CA 95827 (916) 875-2778
2	OX MOUNTAIN LANDFILL PH. 15 & 16 BASE LINER CELL AND TOEBERRY CONSTRUCTION	Soil Excavation, CY <u>563,000</u> Low-Perm Soil, CY <u>30,560</u> , and/or GCL, SF <u>53,000</u> Geomembrane, SF <u>345,000</u> Leachate Gravel, CY <u>N/A</u> Operations Soil, SF <u>1,175,000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800
3	POTRERO HILLS LANDFILL CELL 19 CONSTRUCTION CELL CONSTRUCTION	Soil Excavation, CY <u>480,000</u> Low-Perm Soil, CY <u>16,600</u> , and/or GCL, SF _____ Geomembrane, SF <u>425,000</u> Leachate Gravel, CY <u>7,600</u> Operations Soil, SF <u>360,000</u>	RICHARD COVINGTON 3675 POTRERO HILLS LN SUISUN, CA 94585 (707) 432-1903
4	KELLER CANYON LANDFILL PHASE 3A3 CELL CELL CONSTRUCTION	Soil Excavation, CY <u>167,000</u> Low-Perm Soil, CY <u>19,000</u> , and/or GCL, SF _____ Geomembrane, SF <u>254,000</u> Leachate Gravel, CY <u>6,200</u> Operations Soil, SF <u>265,300</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800
5	OX MOUNTAIN LANDFILL PHASE 14 BASE LINER CELL CONSTRUCTION	Soil Excavation, CY <u>475,000</u> Low-Perm Soil, CY <u>4,500</u> , and/or GCL, SF _____ Geomembrane, SF <u>174,240</u> Leachate Gravel, CY <u>N/A</u> Operations Soil, SF <u>192,000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800

Proposed Site Supervisor/Foreman Name: GLENN MADRID / DENNIS MCKAIG

	Project Name and Scope	Project Materials and Quantities	Reference Name, Address and Phone Number
1	OX MOUNTAIN LANDFILL PH. 15 & 16 BASE LINER CELL AND TOE BERRY CONSTRUCTION	Soil Excavation, CY <u>563,000</u> Low-Perm Soil, CY <u>30,500</u> , and/or GCL, SF <u>53000</u> Geomembrane, SF <u>345,000</u> Leachate Gravel, CY <u>N/A</u> Operations Soil, SF <u>1,750,000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800
2	KELLER CANYON LANDFILL PHASE 3A3 CELL CELL CONSTRUCTION	Soil Excavation, CY <u>167,000</u> Low-Perm Soil, CY <u>19000</u> , and/or GCL, SF _____ Geomembrane, SF <u>254000</u> Leachate Gravel, CY <u>6200</u> Operations Soil, SF <u>265000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800

Signed:   
 J. SCOTT ARCHIBALD, VICE PRESIDENT

Date: APRIL 1, 2009

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**



**ADDENDUM SHEET  
FOR  
FINK ROAD LANDFILL, LANDFILL 2, CELL NO. 5  
CONSTRUCTION PROJECT**

ADDENDUM NO. <u>1</u>	DATED <sup>MAR. 12</sup> <u>2009</u>	DATE RECEIVED <sup>MAR. 12</sup> <u>2009</u>	INITIALS <u>[Signature]</u>
ADDENDUM NO. <u>2</u>	DATED <sup>MAR. 17</sup> <u>2009</u>	DATE RECEIVED <sup>MAR. 19</sup> <u>2009</u>	INITIALS <u>[Signature]</u>
ADDENDUM NO. <u>3</u>	DATED <sup>MAR. 27</sup> <u>2009</u>	DATE RECEIVED <sup>MAR. 27</sup> <u>2009</u>	INITIALS <u>[Signature]</u>
ADDENDUM NO. <u>    </u>	DATED <u>    </u>	DATE RECEIVED <u>    </u>	INITIALS <u>    </u>
ADDENDUM NO. <u>    </u>	DATED <u>    </u>	DATE RECEIVED <u>    </u>	INITIALS <u>    </u>

CONTRACTOR NAME DESILVA GATES CONSTRUCTION, LP

ADDRESS 11555 DUBLIN BLVD.  
DUBLIN, CA 94568

PHONE ( 925 ) 829-9220 FAX ( 925 ) 803-4260

(SIGNED) [Signature] Date: APRIL 1, 2009  
J. SCOTT ARCHIBALD, VICE PRESIDENT

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

## SUBCONTRACTORS LIST

The Bidder shall list the name and address of each subcontractor to whom the Bidder proposes to subcontract portions of the work, as required by the provisions in Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications and Section 2-1.01, "General," of the special provisions.

	Subcontractor	Business Address	Description of Portion of Work Subcontracted
1	Vickroy Environmental	571 Tinto Mesa Dr. Diamond Bar CA 91765	Geosynthetic Liners
2	East Bay Construction	6336 Patterson Pass Rd Ste.H, Livermore, CA 94550	Hydroseed
3	LFG Control Corp.	4120 Spaulding St. Antioch, CA 94531	HDPE Pipe/Electric
4	Premier Eng. and Surveying Inc.	136 S. Center St. Turlock, CA 95380	Site Survey
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

(SIGNED)  J. SCOTT ARCHIBALD, VICE PRESIDENT Date: APRIL 1, 2009

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

## DEBARMENT AND SUSPENSION CERTIFICATION

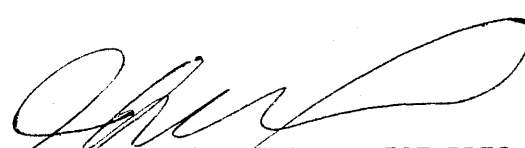
### TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

  
(SIGNED) J. SCOTT ARCHIBALD, VICE PRES. Date: APRIL 1, 2009

**Providing false information may result in criminal prosecution or administrative sanctions.**

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

## PROPOSAL SIGNATURE SHEET

ACCOMPANING THIS PROPOSAL IS "BIDDER'S BOND" (INSERT THE WORDS "CASH (\$ \_\_\_\_\_)," "CASHIER'S CHECK," "CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE) IN AMOUNT EQUAL TO AT LEAST TEN PERCENT OF THE TOTAL OF THE BID.

THE NAMES OF ALL PERSONS INTERESTED IN THE FOREGOING PROPOSAL AS PRINCIPALS ARE AS FOLLOWS: DESILVA GATES CONSTRUCTION, LP; RICHARD B. GATES, PRESIDENT & GEN. PTR; EDWIN O. DESILVA, CEO AND THE 1995 DESILVA FAMILY TRUST

### IMPORTANT NOTICE

*If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.*

LICENSED IN CONFORMANCE WITH AN ACT PROVIDING FOR THE REGISTRATION OF CONTRACTORS,

License No. 704195 Classification(s) A, C12, C31

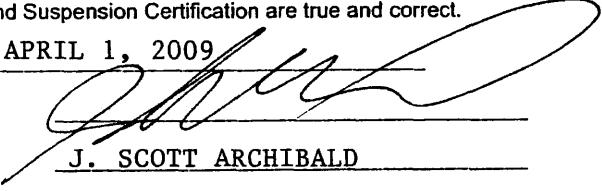
Expiration Date 3/31/11

**ADDENDA** — THIS PROPOSAL IS SUBMITTED WITH RESPECT TO THE CHANGES TO THE CONTRACT INCLUDED IN ADDEND NUMBER/S 1, 2 AND 3

*(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)*

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: APRIL 1, 2009

  
J. SCOTT ARCHIBALD

VICE PRESIDENT

Signature and Title of Bidder

Business Address 11555 DUBLIN BLVD.

Place of Business DUBLIN, CA 94568

Place of Residence DANVILLE, CA

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

**UNANIMOUS WRITTEN CONSENT OF EXECUTIVE BOARD  
OF  
DESILVA GATES CONSTRUCTION L.P.**

The undersigned, being all of the members of the Executive Board of DeSilva Gates Construction, L.P., a California limited partnership (the "Partnership"), pursuant to Sections 4.4 and 4.5 of the DeSilva Gates Construction L.P. Limited Partnership Agreement dated as of March 31, 1995, do hereby consent to the adoption of the following resolutions:

I

**Election of Officers**

RESOLVED, that the following persons are elected as officers of the Partnership until such time as their respective successors shall be duly elected:

Edwin O. DeSilva	Chairman and Chief Executive Officer
Richard B. Gates	President
David E. DeSilva	Executive Vice President
Ernest D. Lampkin	Vice President and Chief Financial Officer

Each of the foregoing officers of the Partnership, during the time that each is an officer, shall have full authority to execute and deliver on behalf of the Partnership any contracts, agreements or other instruments, including checks or other drafts on any Partnership checking or other account, and third parties shall be entitled to rely on such execution and delivery of same in the same manner as if executed and delivered by a General Partner of the Partnership.

II

**Authorization of Other Signatories**

WHEREAS, it is convenient and appropriate for certain other employees of the Partnership to be granted the authority to execute and deliver on behalf of the Partnership certain contracts and other instruments from time to time;


RESOLVED, that the each of the following employees of the Partnership shall be and is hereby authorized, until such time as this authority is expressly revoked by the Partnership or its Executive Board or any officer of the Partnership, to execute and deliver on behalf of the Partnership the types of contracts and other instruments (and no others) specified below opposite his or her name:

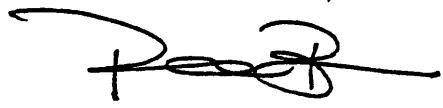
<u>Name</u>	<u>Title</u>	<u>Description of Instrument</u>
David B. Bast	Chief Estimator	Construction contracts and related documents
Mick Stangrover	Chief Estimator	Construction contracts and related documents
Michael A. Kloos	Vice President Public Works Manager	Construction contracts and related documents
William C. Kuchulis	General Manager of Accounting	Construction contracts and related documents
J. Scott Archibald	Vice President Operations Manager	Construction contracts and related documents

Other parties to any such contracts or other instruments shall be entitled to rely on the execution and delivery of same by the above-named employees in the same manner as if executed and delivered by a General Partner of the Partnership.

The foregoing resolutions are hereby approved and adopted by written consent of the undersigned, without a meeting, but with the same force and effect as if adopted at a meeting duly held.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of June 29, 2006.

  
 Edwin O. DeSilva, Chairman and CEO

  
 Richard B. Gates, President

  
 David E. DeSilva, Executive Vice President

**UNANIMOUS WRITTEN CONSENT OF EXECUTIVE BOARD  
OF  
DESILVA GATES CONSTRUCTION L.P.**

The undersigned, being all of the members of the Executive Board of DeSilva Gates Construction, L.P., a California limited partnership (the "Partnership"), pursuant to Sections 4.4 and 4.5 of the DeSilva Gates Construction L.P. Limited Partnership Agreement dated as of March 31, 1995, do hereby consent to the adoption of the following resolutions:

I


**Affirmation of Prior Resolution**

RESOLVED, that the Unanimous Written Consent of Executive Board of DeSilva Gates Construction, L.P., adopted on June 29, 2006 (copy attached) has not been amended or revoked and is currently in full force and effect as of the date hereof.

The foregoing resolution is hereby approved and adopted by written consent of the undersigned, without a meeting, but with the same force and effect as if adopted at a meeting duly held.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of April 17, 2008.

  
\_\_\_\_\_  
Edwin O. DeSilva, Chairman and CEO

  
\_\_\_\_\_  
Richard B. Gates, President

  
\_\_\_\_\_  
David E. DeSilva, Executive Vice President

**COUNTY OF STANISLAUS  
DEPARTMENT OF PUBLIC WORKS  
BIDDER'S BOND**

We, DeSilva Gates Construction, L.P. as Principal,  
and Travelers Casualty and Surety Company of America as Surety  
are bound unto the County of Stanislaus, State of California, hereafter referred to as "Obligee", in  
the penal sum of ten percent (10%) of the total amount of the bid of the Principal submitted to the  
Obligee for the work described below, for the payment of which sum we bind ourselves, jointly  
and severally,

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:

WHEREAS, the Principal is submitted to the Obligee, for Fink Road Landfill, Landfill 2, Cell No.5,  
Construction Project, for which bids are to be opened at Stanislaus County Board of Supervisors  
Office, Tenth Street Place, 1010 10th Street, Ste. 6500, Modesto, CA, ~~February 18, 2009~~ April 1, 2009

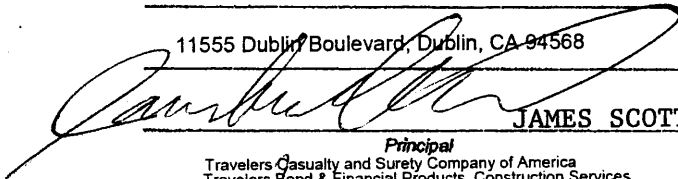
NOW, THEREFORE, if the Principal is awarded the contract and, within the time and manner  
required under the specifications, after the prescribed forms are presented to him for signature,  
enters into a written contract, in the prescribed form, in conformance with the bid, and files two  
bonds with the Obligee, one to guarantee faithful performance of the contract and the other to  
guarantee payment for labor and materials as provided by law, then this obligation shall be null  
and void; otherwise, it shall remain in full force.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety  
shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be  
fixed by the court.

Dated: April 1, 2009

DeSilva Gates Construction, L.P.

11555 Dublin Boulevard, Dublin, CA 94568



JAMES SCOTT ARCHIBALD, VICE PRESIDENT

*Principal*

Travelers Casualty and Surety Company of America  
Travelers Bond & Financial Products, Construction Services  
One Tower Square, Hartford, CT 06183

*Surety*

By Susan Lupski

Susan Lupski, *Attorney-in-fact*

NOTE: Signatures of those executing for the surety must be properly acknowledged.

**CERTIFICATE OF ACKNOWLEDGEMENT**

ATTACH APPROPRIATE NOTARY CERTIFICATE AND SEAL

**Note: A Bidder's Bond must be completed and submitted with your bid for  
your bid to be accepted as complete.**



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Alameda

On Apr. 1 2009

Date

before me,

Laura Ness, Notary Public  
Here Insert Name and Title of the Officer

personally appeared James Scott Archibald

Name(s) of Signer(s)

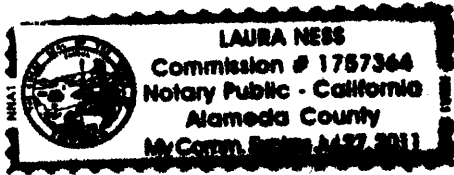
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature Laura Ness

Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: \_\_\_\_\_

**STANISLAUS COUNTY PUBLIC WORKS  
ENGINEERING DIVISION  
1716 MORGAN ROAD  
MODESTO, CA 95358**

**TRANSMITTAL**

Date: April 9 2009  
To: Suzi Seibert, Assistant Clerk of the Board  
Re: Attachments for Item \*B-6, April 28, 2009  
From: Linda Allsop, Morgan Road  
209-525-4157

Hi Suzi:

Enclosed is the attachment for Item \*B-6, April 28, 2009

Approval to award contract in the amount of \$4,020,322 for the Fink Road Landfill, Landfill 2, Cell No. 5, construction project to DeSilva Gates Construction, LP, and approval of all necessary activities associated with this item.

- Agreement with DeSilva Gates
- Bid Results
- Bids

Have a good day!

**AGREEMENT**

BOARD OF SUPERVISORS

2009 JUN -9 P 2:40

THIS AGREEMENT, dated this 28th day of April, 2009 by and between DeSilva Gates Construction, LP whose place of business is located at 11555 Dublin Blvd, Dublin, California, 94568 ("Contractor"), and the COUNTY OF STANISLAUS ("County"), acting under and by virtue of the authority vested in the County by the laws of the State of California.

WHEREAS, County, by its Resolution No. 2009-267 adopted on the 28th day of April, 2009 awarded to Contractor the following Contract:

**Fink Road Landfill, LF-2, Cell No. 5  
Construction Project**

**Contract Number: A050509**

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and County agree as follows:

**Article 1. Work**

- 1.1 Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents.

**Article 2. Architect/Engineer and Project Manager**

- 2.1 Randall Wall designed the Project and furnished the Plans and Specifications. Randall Wall shall have the rights assigned to Architect/Engineer in the Contract Documents.
- 2.2 County has designated Chris Brady as its Project Manager to act as County's Representative in all matters relating to the Contract Documents.
- 2.3 The County may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager.

### **Article 3. Contract Time and Liquidated Damages**

#### **3.1 Contract Time**

Contractor shall commence Work on the date established in the Notice to Proceed. County reserves the right to modify or alter the Commencement Date of the Work.

Contractor shall achieve Final Completion of the entire Work and be ready for Final Payment in accordance with Contract Closeout 75 Working Days from the date when the Contract Time commences to run as provided in General Conditions.

#### **3.2 Liquidated Damages**

County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss in the form of Contract administration expenses (such as Project management and consultant expenses), if all or any part of the Work is not completed within the times specified above, plus any extensions thereof allowed in accordance with the Contract Documents. Contractor and County agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of actual damages incurred by County because of a delay in completion of all or any part of the Work. Accordingly, County and Contractor agree that as liquidated damages for delay Contractor shall pay County:

- 3.2.1 Five hundred dollars (\$500.00) for each Calendar Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

Liquidated damages shall apply cumulatively and except as provided below, shall be presumed to be the damages suffered by County resulting from delay in completion of the Work.

- 3.3 Liquidated damages for delay shall only cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by County as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from County (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof.

### **Article 4. Contract Sum**

- 4.1 County shall pay Contractor the Contract Sum for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid.

## **Article 5. Contractor's Representations**

In order to induce County to enter into this Agreement, Contractor makes the following representations and warranties:

- 5.1 Contractor has visited the Site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 5.2 Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, products specifications or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, which have been made available for Bidders or which may appear in the Drawings. Contractor accepts the determination set forth in these Documents of the limited extent of the information contained in such materials upon which Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.
- 5.3 Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Section 5.2 of this Document that pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the Site or otherwise that may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 5.4 Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

## Article 6. Contract Documents

6.1 Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Notice of Award  
Agreement  
Notice to Proceed  
Special Provisions  
Construction Performance Bond  
Construction Labor and Material Payment Bond  
General Conditions  
Supplementary General Conditions  
Addenda  
Construction Details  
Drawings  
Encroachment Permit **[If applicable]**

6.2 There are no Contract Documents other than those listed in this Document, Article 6. The Contract Documents may only be amended, modified or supplemented as provided in General Conditions.

## Article 7. Indemnity

7.1 County and each of its officers, employees, consultants and agents including, but not limited to the Board, Architect/Engineer and each County Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.

7.2 To the furthest extent permitted by law (including without limitation California Civil Code Section 2782), Contractor shall assume defense of, and indemnify and hold harmless, County and each of its officers, employees, consultants and agents, including but not limited to the Board, Architect/Engineer and each County representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of

them may be liable, regardless of whether it is caused in part by the negligence of County or by any person or entity required to be indemnified hereunder.

- 7.3 With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against County and each of its officers, employees, consultants and agents including, but not limited to County, the Board, Architect/Engineer and each County representative.
- 7.4 Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 7.5 To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout the Contract Documents shall apply even in the event of breach of contract, negligence (active or passive), fault or strict liability of the party(is) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, County may in its discretion back charge Contractor for County's costs and damages resulting therefrom and withhold such sums from progress payments or other contract moneys which may become due.
- 7.6 The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to County or other indemnified party to the extent of its active negligence.

#### **Article 8. Miscellaneous**

- 8.1 Terms and abbreviations used in this Agreement are defined in Special Provisions, Section 1: SPECIFICATIONS AND PLANS and will have the meaning indicated therein.
- 8.2 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of County or acting as an employee, agent, or representative of County, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of the County is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 8.3 Contractor shall not assign any portion of the Contract Documents, and may subcontract portions of the Contract Documents only in compliance with the Subcontractor Listing Law, California Public Contract Code §4100 *et seq.*
- 8.4 The Contract Sum includes all allowances (if any).

- 8.5 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time County tenders final payment to Contractor, without further acknowledgment by the parties.
- 8.6 Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at County's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §1861, Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 8.7 Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- 8.8 This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Stanislaus, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in Stanislaus County Superior Court. Contractor accepts the Claims Procedure in General Conditions, as a claims procedure by agreement under the California Government Code, Title 1, Division 3.6, Part 3, Chapter 5.




IN WITNESS WHEREOF the parties have executed this Agreement in quadruplicate the day and year first above written.

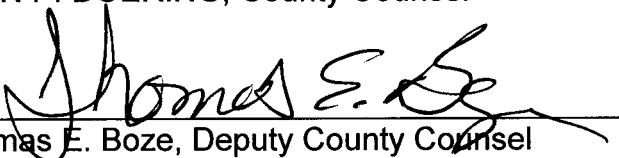
**COUNTY OF STANISLAUS**

**DESILVA GATES CONSTRUCTION, LP**

By:   
Sonya Harrigfeld, Director  
Department of Environmental Resources

By:   
Its: JAMES SCOTT ARCHIBALD  
VICE PRESIDENT  
Title (If Corporation: Chairman, President  
or Vice President)

APPROVED AS TO FORM  
JOHN P. DOERING, County Counsel

By:   
Thomas E. Boze, Deputy County Counsel

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Title (If Corporation: Secretary, Assistant  
Secretary, Chief Financial Officer or  
Assistant Treasurer)

COUNTY RESOLUTION NO. 2009-267

END OF DOCUMENT

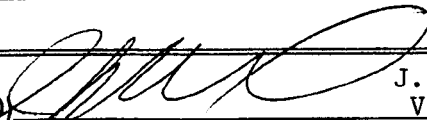
**DeSilva Gates, Summary Bid Opened April 01, 2009 at 2:30 P.M.  
Stanislaus County, Fink Road Landfill  
Landfill 2, Cell No. 5, Construction Project**

Item No.	Item			DeSilva Gates Construction	
		Unit of Measure	Estimated Quantity	Item Price (Figures)	Total (Figures)
1	Mobilization and Demobilization	LS	1	\$200,000.00	\$200,000.00
2	Layout of Work and Surveys	LS	1	\$32,000.00	\$32,000.00
3	Earthfill	CY	1,700	\$2.00	\$3,400.00
4	Excavation	CY	1,327,300	\$1.45	\$1,924,585.00
5	Low Permeability Soil Layer	CY	20,600	\$4.00	\$82,400.00
6	Subgrade Preparation	SF	785,500	\$0.05	\$39,275.00
7	(S) Geosynthetic Clay Liner	SF	824,700	\$0.61	\$503,067.00
8	(S) 60 mil HDPE Geomembrane	SF	833,000	\$0.48	\$399,840.00
9	(S) Geocomposite Drainage Layer (S)	SF	16,100	\$0.60	\$9,660.00
10	(S) Geotextile Filter (S)	SF	480,000	\$0.10	\$48,000.00
11	LCRS Drainage Gravel	CY	8,770	\$30.00	\$263,100.00
12	Sump Gravel	CY	85	\$60.00	\$5,100.00
13	Base Operations Layer	CY	35,700	\$2.80	\$99,960.00
14A	Side Slope Operations Layer Stockpiling	CY	23,600	\$1.40	\$33,040.00
14B	Side Slope Operations Layer Placement	CY	10,100	\$6.00	\$60,600.00
15	6-inch Diameter SDR 15.5 HPDE Pipe	LF	1,670	\$13.00	\$21,710.00
16	8-inch Diameter SDR 17.0 HPDE Pipe	LF	925	\$16.00	\$14,800.00
17	12-inch Diameter SDR 15.5 HPDE Pipe	LF	350	\$40.00	\$14,000.00
18	18-inch Diameter SDR 15.5 HPDE Pipe	LF	180	\$90.00	\$16,200.00
19	24-inch Diameter CMP	LF	350	\$60.00	\$21,000.00
20	3-foot Diameter SDR 17.0 HPDE Manhole	EA	1	\$10,000.00	\$10,000.00
21	Expose and Prepare Existing Geomembrane Liner	LF	2,550	\$5.00	\$12,750.00
22	Perimeter and Side Slope Anchor Trenches	LF	3,350	\$6.00	\$20,100.00
23	(S) Underground Electrical Conduit and Wiring	LS	1	\$7,000.00	\$7,000.00
24	(S) Electrical Connections and Pumps	LS	1	\$20,000.00	\$20,000.00
25	Concrete Spill Prevention Pads	EA	1	\$8,000.00	\$8,000.00
26	(S) Leak Location Survey	EA	1	\$20,000.00	\$20,000.00
27	Revegetation/Hydroseeding	AC	68	\$1,250.00	\$85,000.00
28	Silt Fence	LF	7,100	\$1.00	\$7,100.00
29	Class 2 Road Base	CY	200	\$40.00	\$8,000.00
30	Selective Demolition	LS	1	\$5,000.00	\$5,000.00
31	Ditch Excavation	LF	4,500	\$2.00	\$9,000.00
32	Rip Rap	LS	1	\$3,000.00	\$3,000.00
33	Stormwater Pollution Prevention Plan	LS	1	\$2,000.00	\$2,000.00
34	Abandonment of Existing Groundwater Monitoring Wells 10 and 11	LS	1	\$5,000.00	\$5,000.00
35	Installation of Groundwater Monitoring Wells 25 and 26	LF	130	\$50.00	\$6,500.00
36	Transport of Water	1,000 gal units	13,500 units	\$0.01	\$135.00
					<b>\$4,020,322.00</b>

math error

**Contractor's Bid Sheet  
Fink Road Landfill  
Landfill 2, Cell No. 5, Construction Project**

Item No.	Item	Unit of Measure	Estimated Quantity	Item Price (Figures)	Total (Figures)
1	Mobilization and Demobilization	LS	1	200,000.00	200,000.00
2	Layout of Work and Surveys	LS	1	32,000.00	32,000.00
3	Earthfill	CY	1,700	2.00	3,400.00
4	Excavation	CY	1,327,300	1.45	1,924,585
5	Low Permeability Soil Layer	CY	20,600	4.00	82,400.00
6	Subgrade Preparation	SF	785,500	0.05	39,250.00
7	(S) Geosynthetic Clay Liner	SF	824,700	0.61	503,067.00
8	(S) 60 mil HDPE Geomembrane	SF	833,000	0.48	399,840.00
9	(S) Geocomposite Drainage Layer (S)	SF	16,100	0.60	9,660.00
10	(S) Geotextile Filter (S)	SF	480,000	0.10	48,000.00
11	LCRS Drainage Gravel	CY	8,770	30.00	263,100.00
12	Sump Gravel	CY	85	60.00	5,100.00
13	Base Operations Layer	CY	35,700	2.80	99,960.00
14A	Side Slope Operations Layer Stockpiling	CY	23,600	1.40	33,040.00
14B	Side Slope Operations Layer Placement	CY	10,100	6.00	60,600.00
15	6-inch Diameter SDR 15.5 HPDE Pipe	LF	1,670	13.00	21,710.00
16	8-inch Diameter SDR 17.0 HPDE Pipe	LF	925	16.00	14,800.00
17	12-inch Diameter SDR 15.5 HPDE Pipe	LF	350	40.00	14,000.00
18	18-inch Diameter SDR 15.5 HPDE Pipe	LF	180	90.00	16,200.00
19	24-inch Diameter CMP	LF	350	60.00	21,000.00
20	3-foot Diameter SDR 17.0 HPDE Manhole	EA	1	10,000.00	10,000.00
21	Expose and Prepare Existing Geomembrane Liner	LF	2,550	5.00	12,750.00
22	Perimeter and Side Slope Anchor Trenches	LF	3,350	6.00	20,100.00
23	(S) Underground Electrical Conduit and Wiring	LS	1	7,000.00	7,000.00
24	(S) Electrical Connections and Pumps	LS	1	20,000.00	20,000.00
25	Concrete Spill Prevention Pads	EA	1	8,000.00	8,000.00
26	(S) Leak Location Survey	EA	1	20,000.00	20,000.00
27	Revegetation/Hydroseeding	AC	68	1,250.00	85,000.00
28	Silt Fence	LF	7,100	1.00	7,100.00
29	Class 2 Road Base	CY	200	40.00	8,000.00
30	Selective Demolition	LS	1	5,000.00	5,000.00
31	Ditch Excavation	LF	4,500	2.00	9,000.00
32	Rip Rap	LS	1	3,000.00	3,000.00
33	Stormwater Pollution Prevention Plan	LS	1	2,000.00	2,000.00
34	Abandonment of Existing Groundwater Monitoring Wells 10 and 11	LS	1	5,000.00	5,000.00
35	Installation of Groundwater Monitoring Wells 25 and 26	LF	130	50.00	6,500.00
36	Transport of Water	1,000 gal units	13,500 units	0.01	135.00
				<b>Total=</b>	<b>4,020,297.00</b>

(SIGNED)  J. SCOTT ARCHIBALD  
VICE PRESIDENT Date: APRIL 1, 2009

**Note: All line items must have an entry placed in its appropriate box, and this form must be signed for the bid to be accepted as complete.**

## **CONSTRUCTION WATER AGREEMENT**

This Agreement is entered into as of May 6, 2009 ("effective date"), between DeSilva Gates Construction ("DGC") and Western Hills Water District, a California water district ("Western"), hereafter referred to collectively as "parties" or individually as "party," with reference to the following:

### **Recitals**

A. DGC has been awarded a contract by the County of Stanislaus ("County") for the Fink Road Landfill #2 Cell #5 construction project ("Project") and is in need of water for dust control for that Project ("construction water"); and

B. Western has a contract for a water supply from the California Aqueduct, which water may be accessed by DGC at Western's Pump Station #1 located on Oak Flat Road off of Ward Avenue, Patterson, Stanislaus County, California, and Western is willing to provide temporary construction water to DGC for the Project on the terms and conditions set forth in this Agreement.

Now, therefore, the parties agree as follows:

1. From the effective date of this Agreement to September 30, 2009, Western hereby agrees to allow DGC to use water from the Pump Station and to use up to Fifty (50) acre feet (approximately 16 million gallons) of water for construction water use on the Project site.

2. DGC agrees that it is purchasing the construction water AS-IS and without any warranties whatsoever. DGC has determined that the water is suitable for its intended purpose and agrees that none of the water will be used for human consumption. DGC understands and agrees that the water being provided by Western is water from the California Aqueduct and the availability of the water to DGC is subject to operation interruptions of the aqueduct.

3. DGC agrees that delivery of water to Western's water customers take priority over DGC use of water from the Pump Station. The parties agree to coordinate their use of water from the Pump Station so as to accommodate on a commercially reasonable basis both parties use of such water.

4. DGC agrees to provide a siphon pump, water tower, flow meter, pipes, and all other necessary equipment at its own expense. Western shall not be responsible for the security or for safeguarding DGC's equipment. The configuration of DGC's equipment to be situated on Western real property shall be subject to Western's prior approval. DGC will not need to access any electricity at the Pump Station.


5. DGC shall have full responsibility and liability for transporting the water taken from the Pump Station to the Project site.

6. DGC shall pay Western at the rate of Five Hundred Dollars (\$500.00) per acre-foot for each acre-foot of water taken from the Pump Station.

8. Water Meter. DGC shall provide proof of the reliability and accuracy of the flow meter to be installed by DGC. The flow meter shall be read at least weekly by Western and the reading emailed or otherwise provided to DGC. The last scheduled weekly reading for each month shall be a joint reading by both Western and DGC representatives.

9. Invoicing and Payment. Western shall invoice DGC by the 10<sup>th</sup> of each month for the water taken by DGC during approximately the preceding calendar month. Payment shall be due by the 10<sup>th</sup> of the month following receipt of the invoice.

10. Indemnity. To the fullest extent permitted by law, DGC shall indemnify, hold harmless, and defend Western, its directors, officers, employees and agents, from and against all claims, demands, or liability arising out of or resulting from this Agreement, whether such claims, demands, or liability are caused by DGC, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or by equipment installed by DGC or any subcontractor, ~~and regardless of whether the entity or person indemnified hereunder was actively or passively negligent.~~



11. Insurance.

11.1. DGC shall take out and maintain during the life of this Agreement Comprehensive Automobile Insurance and General Liability Insurance that provide protection for claims which may arise out of or result from operations or performance under this Agreement, whether such operations or performance be by DGC or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

11.2. The amount of insurance shall be not less than the following:

Single Limit Coverage applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000 each occurrence; \$2,000,000 annual.

11.3. Coverage must include the following provisions and must be indicated on the certificate of insurance or by endorsement to the policy to be provided Western prior to commencement of any work by DGC at the Pumping Station:

11.3.1. Western, its directors, officers, employees, and agents are named as Additional Insureds in the policy with respect to the Agreement;

11.3.2. The coverage is PRIMARY and no other insurance carried by Western will be called upon to contribute to a loss under this coverage;

11.3.3. The policy covers Blanket Contractual Liability;

11.3.4. The policy limits of liability are provided on an Occurrence basis;

11.3.5. The policy covers Broad Form Property Damage Liability;

11.3.6. The policy covers Personal Injury as well as Bodily Injury Liability;

11.3.7. The policy covers Explosion, Collapse and Underground hazards;

11.3.8. The coverage shall not be canceled nor materially altered unless 30 days written notice is given to Western;

11.3.9. An insurer's waiver of subrogation in favor of all insureds and additional insureds under the policies of insurance provided.

## 12. General Provisions.

12.1 Notices. Any notice to be given hereunder shall be in writing and shall be delivered (a) by hand (including, without limitation, (b) by express mail against written receipt), (c) sent by certified prepaid first class mail, or (d) by facsimile copy to the persons or addresses specified below (or such other person or address as a party may previously have notified all other parties in writing for that purpose). A notice shall be deemed to have been served when delivered by hand at that address or received by facsimile copy, or, if sent by certified prepaid first class mail as aforesaid, on the date delivered. The names and addresses for the service of notices referred to in this Section are:

If to DGC: DeSilva Gates Construction, 11555 Dublin Boulevard, Dublin, CA 94568, Attn: Bill Kuchulis or Sonia Arias; Facsimile (925) 643-1855.

If to Western: General Manager, Western Hills Water District, 9501 Morton Davis Drive, Patterson, CA 95363; Facsimile (209) 892-4469.

12.2. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties and their respective successors and permitted assigns and this Agreement shall not otherwise be deemed to confer upon or give to any other third party any right, claim, cause of action, or other interest herein.

12.3. Amendment and Waiver. Neither this Agreement nor any term hereof may be changed, amended or terminated orally, but only by written act of the parties (or, in respect of a waiver, the waiving party or parties). No failure or delay on the part of a party hereto in the exercise of any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or of any other right.

12.4. Binding Nature; Assignment. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and legal representatives and permitted assigns. No party shall assign its rights and obligations under this Agreement, without the prior written consent of the other parties hereto, and any such assignment contrary to the terms hereof shall be null and void and of no force and effect.

12.5. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but each of which, when taken together, shall constitute one and the same instrument.

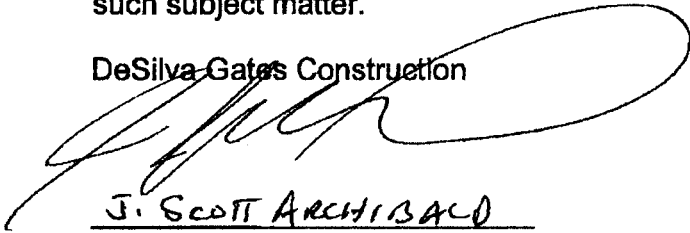
12.6. Headings and Titles. The section headings and titles contained in this Agreement and the title of this document are for reference purposes only and shall not affect in any way the meaning and interpretation of this Agreement.

12.7. Ambiguities. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

12.8. Further Assurances. Each party hereto covenants and agrees promptly to execute, deliver, file, or record such agreements, instruments, certificates and other documents and to do and perform such other and further acts and things as any other party hereto may reasonably request or as may be otherwise be necessary or proper to carry out the provisions of this Agreement.

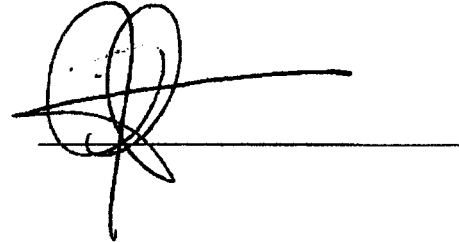
12.9. Entire Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior statements or Agreements, whether oral or written, among the Parties with respect to such subject matter.

DeSilva Gates Construction



J. SCOTT ARCHIBALD  
Print Name:  
Title: VICE PRESIDENT

Western Hills Water District





**DEPARTMENT OF PUBLIC WORKS**

**Matt Machado, PE**  
Director

**Laurie Barton, PE**  
Deputy Director, Engineering/Operations

**Diane Haugh**  
Assistant Director, Business/Finance

Engineering & Operations Division  
1716 Morgan Road, Modesto, CA 95358  
Phone: 209-525-4130; Fax: 209-525-4140

**BID RESULTS AS READ**  
**Fink Road Landfill – LF-2, Cell No. 5**  
**April 1, 2009**

C.S. & W. Contractors	\$3,960,477.33
DeSilva Gates	\$4,020,297
Papich Construction, Inc.	\$4,113,094.05
Wood Brothers	\$4,245,770.50
Independent Construction	\$4,268,927.52
Sukut Construction Inc.	\$4,282,879
Teichert Construction	\$4,415,984
Raminha Construction	\$4,845,385
Whitaker Contractors	\$4,868,960
Sierra Equipment Rental	\$5,036,624
Granite Construction	\$5,426,629



# PROPOSAL

## STANISLAUS COUNTY BOARD OF SUPERVISORS

### FOR THE CONSTRUCTION OF THE

### FINK ROAD LANDFILL, LANDFILL 2, CELL NO. 5, CONSTRUCTION PROJECT

NAME OF BIDDER DESILVA GATES CONSTRUCTION, LP

BUSINESS P.O. BOX PO BOX 2909

CITY, STATE, ZIP DUBLIN, CA 94568

BUSINESS STREET ADDRESS 11555 DUBLIN BLVD.  
*(Please include even if P.O. Box used)*

CITY, STATE, ZIP DUBLIN, CA 94568

TELEPHONE NO: AREA CODE ( ) (925) 829-9220

FAX NO: AREA CODE ( ) (925) 803-4260

CONTRACTOR LICENSE NO. 704195A

The work for which this proposal is submitted is for construction in conformance with the special provisions (including the payment of not less than the State general prevailing wage rates or Federal minimum wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in conformance with the California Department of Transportation Standard Plans, dated May 2006, the Standard Specifications, dated May 2006, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

The plans and specifications for the work to be done were adopted by the Board of Supervisors on February 10, 2009, and are entitled:

**COUNTY OF STANISLAUS, DEPARTMENT OF ENVIRONMENTAL RESOURCES  
INVITATION TO BIDDERS AND SPECIAL PROVISIONS; PLANS FOR THE CONSTRUCTION  
OF THE  
FINK ROAD LANDFILL, LANDFILL 2, CELL NO. 5, CONSTRUCTION PROJECT**

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items. The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

- (a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount as the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;
- (b) Decimal Errors. If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage wise the unit price or item total in the COUNTY OF STANISLAUS' Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cent symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the items total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the COUNTY OF STANISLAUS, and that discretion will be exercised in the manner deemed by the COUNTY OF STANISLAUS to best protect the public interest in the prompt and economical completion of the work. The decision of the COUNTY OF STANISLAUS respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

Accompanying this proposal shall be a bidder's bond issued by a California admitted surety, or certified or cashier's check, or cash in the amount of ten percent (10%) of the proposal as a form of bidder's security.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the 2 bonds in the sums required by the State Contract Act, with surety satisfactory to the COUNTY OF STANISLAUS, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the COUNTY OF STANISLAUS that the contract has been awarded, the COUNTY OF STANISLAUS may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the COUNTY OF STANISLAUS.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal is accepted, that he will contract with the COUNTY OF STANISLAUS, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefor the following prices, to wit:

## **BID DOCUMENTS REQUIRED AT BID OPENING**

**It is required that the following documents must be completed, signed, and submitted with the Proposal at bid opening.**

Contractor's Bid Sheet  
Addendum Sheet  
Subcontractor List  
Equal Employment Opportunity Certification  
Public Contract Code  
Noncollusion Affidavit  
Non-Discrimination of the Handicapped  
Debarment and Suspension Certification  
Proposal Signature Sheet  
Bidder's Bond  
Contractor's Experience

**It is recommended that the following document be submitted at bid opening.**

W-9 Form

**Note: The above forms and documents must be completed and submitted with your bid for your bid to be accepted as complete at the bid opening. Failure to complete or provide any of the required documents will be deemed an incomplete and rejected bid.**

## INSURANCE REQUIREMENTS

Your insurance agent must thoroughly review the contract specifications before he issues the Certificate of Insurance.

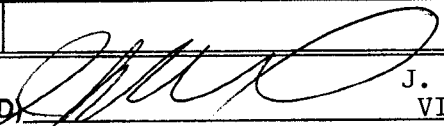
### Insurance Requirements.

1. At or before the date specified in the Instructions to Bidders, Contractor shall furnish to County satisfactory proof that Contractor has in force continuously for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below:
  - a. Comprehensive or Commercial General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a standard Commercial General Liability Insurance policy ("Occurrence Form"). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion of the last Phase to be completed and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse and underground hazards. The limits of such insurance shall not be less than **[\$3,000,000]** each occurrence, **[\$3,000,000]** general aggregate limit, and **[\$3,000,000]** aggregate for products and completed operations. The policies shall be endorsed to provide Broad Form Property Damage Coverage.
  - b. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **[\$1,000,000]** each person Bodily Injury, **[\$1,000,000]** each occurrence Bodily Injury and **[\$1,000,000]** each occurrence Property Damage (or **[\$1,000,000]** combined single limit, each accident).
  - c. Workers' Compensation and Employer's Liability Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount.
2. All policies of insurance shall be placed with insurers acceptable to County. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of **[A,VII]** or better. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of County, warrant such increase. Contractor shall increase required insurance amounts upon direction by County.
3. Deductibles: Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either:

7. Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, County may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
8. If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from County under provisions of the *Workers' Compensation Insurance and Safety Act*, as amended, or for which compensation of any kind is claimed from County, County may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If County is compelled to pay compensation, County may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse County.
9. Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
10. Except that Subcontractors need obtain only \$1,000,000 of Comprehensive General Liability insurance, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work, and Contractor shall cause the Subcontractors to furnish proof thereof to County within ten Days of County's request.
11. The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work ("Professional").
  - a. Each Professional shall maintain the following insurance at its sole cost and expense:
    - i. Provided such insurance is customarily required by County when professionals engaged in the profession practiced by Professional directly contract with County, Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's work on the Project, in an amount not less than \$1,000,000 combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than three years following Final Completion of the Project.
    - ii. All insurance required to be held by Contractor as described above. Professional shall satisfy all provisions herein relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) and declarations pages before commencing work on the Project.

**Contractor's Bid Sheet**  
**Fink Road Landfill**  
**Landfill 2, Cell No. 5, Construction Project**

Item No.	Item	Unit of Measure	Estimated Quantity	Item Price (Figures)	Total (Figures)
1	Mobilization and Demobilization	LS	1	200,000.00	200,000.00
2	Layout of Work and Surveys	LS	1	32,000.00	32,000.00
3	Earthfill	CY	1,700	2.00	3,400.00
4	Excavation	CY	1,327,300	1.45	1,924,585
5	Low Permeability Soil Layer	CY	20,600	4.00	82,400.00
6	Subgrade Preparation	SF	785,500	0.05	39,250.00
7	(S) Geosynthetic Clay Liner	SF	824,700	0.61	503,067.00
8	(S) 60 mil HDPE Geomembrane	SF	833,000	0.48	399,840.00
9	(S) Geocomposite Drainage Layer (S)	SF	16,100	0.60	9,660.00
10	(S) Geotextile Filter (S)	SF	480,000	0.10	48,000.00
11	LCRS Drainage Gravel	CY	8,770	30.00	263,100.00
12	Sump Gravel	CY	85	60.00	5,100.00
13	Base Operations Layer	CY	35,700	2.80	99,960.00
14A	Side Slope Operations Layer Stockpiling	CY	23,600	1.40	33,040.00
14B	Side Slope Operations Layer Placement	CY	10,100	6.00	60,600.00
15	6-inch Diameter SDR 15.5 HPDE Pipe	LF	1,670	13.00	21,710.00
16	8-inch Diameter SDR 17.0 HDPE Pipe	LF	925	16.00	14,800.00
17	12-inch Diameter SDR 15.5 HPDE Pipe	LF	350	40.00	14,000.00
18	18-inch Diameter SDR 15.5 HPDE Pipe	LF	180	90.00	16,200.00
19	24-inch Diameter CMP	LF	350	60.00	21,000.00
20	3-foot Diameter SDR 17.0 HDPE Manhole	EA	1	10,000.00	10,000.00
21	Expose and Prepare Existing Geomembrane Liner	LF	2,550	5.00	12,750.00
22	Perimeter and Side Slope Anchor Trenches	LF	3,350	6.00	20,100.00
23	(S) Underground Electrical Conduit and Wiring	LS	1	7,000.00	7,000.00
24	(S) Electrical Connections and Pumps	LS	1	20,000.00	20,000.00
25	Concrete Spill Prevention Pads	EA	1	8,000.00	8,000.00
26	(S) Leak Location Survey	EA	1	20,000.00	20,000.00
27	Revegetation/Hydroseeding	AC	68	1,250.00	85,000.00
28	Silt Fence	LF	7,100	1.00	7,100.00
29	Class 2 Road Base	CY	200	40.00	8,000.00
30	Selective Demolition	LS	1	5,000.00	5,000.00
31	Ditch Excavation	LF	4,500	2.00	9,000.00
32	Rip Rap	LS	1	3,000.00	3,000.00
33	Stormwater Pollution Prevention Plan	LS	1	2,000.00	2,000.00
34	Abandonment of Existing Groundwater Monitoring Wells 10 and 11	LS	1	5,000.00	5,000.00
35	Installation of Groundwater Monitoring Wells 25 and 26	LF	130	50.00	6,500.00
36	Transport of Water	1,000 gal units	13,500 units	0.01	135.00
				<b>Total=</b>	<b>4,020,297.00</b>

(SIGNED)  J. SCOTT ARCHIBALD  
 VICE PRESIDENT Date: APRIL 1, 2009

**Note: All line items must have an entry placed in its appropriate box, and this form must be signed for the bid to be accepted as complete.**

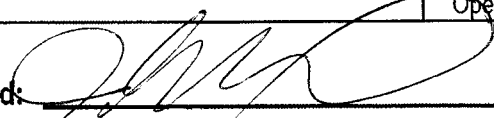
**Contractors Experience**  
**Fink Road Landfill**  
**Landfill 2, Cell No. 5 Construction Project**

Contractor Name: DeSilva Gates Construction, LP

	Project Name and Scope	Project Materials and Quantities	Reference Name, Address and Phone Number
1	KIEFER LANDFILL MODULE 3, PH. 1 & 2 CELL CONSTRUCTION	Soil Excavation, CY <u>2.5 MILLION</u> Low-Perm Soil, CY <u>N/A</u> , and/or GCL, SF <u>1.7 MIL</u> Geomembrane, SF <u>1.7 MILLION</u> Leachate Gravel, CY <u>33,775</u> Operations Soil, SF <u>825,000</u>	KEVIN ARTERO 3030 EXPLORER SACRAMENTO, CA 95827 (916) 875-2778
2	OX MOUNTAIN LANDFILL PH. 15 & 16 BASE LINER CELL AND TOEBERRY CONSTRUCTION	Soil Excavation, CY <u>563,000</u> Low-Perm Soil, CY <u>30,560</u> , and/or GCL, SF <u>53,000</u> Geomembrane, SF <u>345,000</u> Leachate Gravel, CY <u>N/A</u> Operations Soil, SF <u>1,175,000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800
3	POTRERO HILLS LANDFILL CELL 19 CONSTRUCTION CELL CONSTRUCTION	Soil Excavation, CY <u>480,000</u> Low-Perm Soil, CY <u>16,600</u> , and/or GCL, SF _____ Geomembrane, SF <u>425,000</u> Leachate Gravel, CY <u>7,600</u> Operations Soil, SF <u>360,000</u>	RICHARD COVINGTON 3675 POTRERO HILLS LN SUISUN, CA 94585 (707) 432-1903
4	KELLER CANYON LANDFILL PHASE 3A3 CELL CELL CONSTRUCTION	Soil Excavation, CY <u>167,000</u> Low-Perm Soil, CY <u>19,000</u> , and/or GCL, SF _____ Geomembrane, SF <u>254,000</u> Leachate Gravel, CY <u>6,200</u> Operations Soil, SF <u>265,300</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800
5	OX MOUNTAIN LANDFILL PHASE 14 BASE LINER CELL CONSTRUCTION	Soil Excavation, CY <u>475,000</u> Low-Perm Soil, CY <u>4,500</u> , and/or GCL, SF _____ Geomembrane, SF <u>174,240</u> Leachate Gravel, CY <u>N/A</u> Operations Soil, SF <u>192,000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800

Proposed Site Supervisor/Foreman Name: GLENN MADRID / DENNIS MCKAIG

	Project Name and Scope	Project Materials and Quantities	Reference Name, Address and Phone Number
1	OX MOUNTAIN LANDFILL PH. 15 & 16 BASE LINER CELL AND TOE BERRY CONSTRUCTION	Soil Excavation, CY <u>563,000</u> Low-Perm Soil, CY <u>30,500</u> , and/or GCL, SF <u>53000</u> Geomembrane, SF <u>345,000</u> Leachate Gravel, CY <u>N/A</u> Operations Soil, SF <u>1,750,000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800
2	KELLER CANYON LANDFILL PHASE 3A3 CELL CELL CONSTRUCTION	Soil Excavation, CY <u>167,000</u> Low-Perm Soil, CY <u>19000</u> , and/or GCL, SF _____ Geomembrane, SF <u>254000</u> Leachate Gravel, CY <u>6200</u> Operations Soil, SF <u>265000</u>	LOCHLIN CAFFEY 6800 KOLL CTR PKWY PLEASANTON, CA 94566 (925) 201-5800

Signed:   
 J. SCOTT ARCHIBALD, VICE PRESIDENT

Date: APRIL 1, 2009

**Note: This sheet must be completed and submitted with your bid  
 for your bid to be accepted as complete.**

**ADDENDUM SHEET  
FOR  
FINK ROAD LANDFILL, LANDFILL 2, CELL NO. 5  
CONSTRUCTION PROJECT**

ADDENDUM NO. <u>1</u>	DATED <sup>MAR. 12</sup> <u>2009</u>	DATE RECEIVED <sup>MAR. 12</sup> <u>2009</u>	INITIALS <u>[Signature]</u>
ADDENDUM NO. <u>2</u>	DATED <sup>MAR. 17</sup> <u>2009</u>	DATE RECEIVED <sup>MAR. 19</sup> <u>2009</u>	INITIALS <u>[Signature]</u>
ADDENDUM NO. <u>3</u>	DATED <sup>MAR. 27</sup> <u>2009</u>	DATE RECEIVED <sup>MAR. 27</sup> <u>2009</u>	INITIALS <u>[Signature]</u>
ADDENDUM NO. <u>    </u>	DATED <u>    </u>	DATE RECEIVED <u>    </u>	INITIALS <u>    </u>
ADDENDUM NO. <u>    </u>	DATED <u>    </u>	DATE RECEIVED <u>    </u>	INITIALS <u>    </u>

CONTRACTOR NAME DESILVA GATES CONSTRUCTION, LP

ADDRESS 11555 DUBLIN BLVD.

DUBLIN, CA 94568

PHONE ( 925 ) 829-9220 FAX ( 925 ) 803-4260

(SIGNED) [Signature] Date: APRIL 1, 2009  
J. SCOTT ARCHIBALD, VICE PRESIDENT

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**



## SUBCONTRACTORS LIST

The Bidder shall list the name and address of each subcontractor to whom the Bidder proposes to subcontract portions of the work, as required by the provisions in Section 2-1.054, "Required Listing of Proposed Subcontractors," of the Standard Specifications and Section 2-1.01, "General," of the special provisions.

	Subcontractor	Business Address	Description of Portion of Work Subcontracted
1	Vickroy Environmental	571 Tinto Mesa Dr. Diamond Bar CA 91765	Geosynthetic Liners
2	East Bay Construction	6336 Patterson Pass Rd Ste.H, Livermore, CA 94550	Hydroseed
3	LFG Control Corp.	4120 Spaulding St. Antioch, CA 94531	HDPE Pipe/Electric
4	Premier Eng. and Surveying Inc.	136 S. Center St. Turlock, CA 95380	Site Survey
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

(SIGNED)  J. SCOTT ARCHIBALD, VICE PRESIDENT Date: APRIL 1, 2009

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder DESILVA GATES CONSTRUCTION, LP, proposed subcontractor \_\_\_\_\_, hereby certifies that he has XX, has not \_\_\_\_\_, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(SIGNED) \_\_\_\_\_

Date: APRIL 1, 2009

J. SCOTT ARCHIBALD, VICE PRESIDENT

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

**PUBLIC CONTRACT CODE**  
**Public Contract Code Section 10285.1 Statement**

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has \_\_\_\_\_, has not X been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

**Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.**

---

**Public Contract Code Section 10162 Questionnaire**

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes \_\_\_\_\_ No X

If the answer is yes, explain the circumstances in the following space.

---

**Public Contract Code 10232 Statement**

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

(SIGNED) \_\_\_\_\_ Date: APRIL 1, 2009

J. SCOTT ARCHIBALD, VICE PRESIDENT

**Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.**

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

**NONCOLLUSION AFFIDAVIT**  
(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

TO THE COUNTY OF STANISLAUS  
DEPARTMENT OF PUBLIC WORKS

JAMES SCOTT ARCHIBALD, being duly sworn, deposes and says that he or she is  
VICE PRESIDENT, of <sup>DESILVA GATES</sup>CONSTRUCTION, L the party making the foregoing bid that

the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract, that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

  
(SIGNED) J. SCOTT ARCHIBALD, Date: APRIL 1, 2009

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

STANISLAUS COUNTY

NON-DISCRIMINATION OF THE HANDICAPPED

Policy Statement

In compliance with Section 51.55, Office of Revenue Sharing, Department of the Treasury, it is the policy of Stanislaus County that it will not aid or perpetuate discrimination against a qualified handicapped individual by funding an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the program or activity.

The County is committed to provide access to all County services, programs and meetings open to the public to people with disabilities.

In this regard, County and all of its Contractors and Subcontractors will take all reasonable steps in accordance with GRS Section 51.55 to ensure that handicapped individuals have the maximum opportunity for the same level of aid, benefit or service as any other individual.

Certification

Each agency, organization, or person seeking a bid, contract or agreement with Stanislaus County shall sign a certification of compliance with Section 504 of the Rehabilitation Act of 1973 as incorporated in the Revenue Sharing Act.

CERTIFICATION OF BIDDER REGARDING NON-DISCRIMINATION OF THE HANDICAPPED

The bidder hereby certifies that he/she is in compliance with Section 504 of the Rehabilitation Act of 1973 as incorporated in the Revenue Sharing Act, the applicable administrative requirements promulgated in response thereto, and any other applicable Federal laws and regulations relating to handicap discrimination and participation.

NAME OF BIDDER DESILVA GATES CONSTRUCTION, LP

BUSINESS ADDRESS 11555 DUBLIN BLVD. TEL. (925) 829-9220

CITY, STATE, ZIP CODE DUBLIN, CA 94568

BY (Signature) J. SCOTT ARCHIBALD TITLE VICE PRESIDENT

DATED APRIL 1, 2009

Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.

## DEBARMENT AND SUSPENSION CERTIFICATION

### TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

  
(SIGNED) J. SCOTT ARCHIBALD, VICE PRES. Date: APRIL 1, 2009

**Providing false information may result in criminal prosecution or administrative sanctions.**

**Note: This sheet must be completed and submitted with your bid for your bid to be accepted as complete.**

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between the County of Stanislaus (the "County") and DeSilva Gates Construction, LP ("DGC"). The County and DGC are collectively sometimes referred to hereinafter as the "Parties."

### **RECITALS**

WHEREAS, as of April 28, 2009, the County, as owner, and DGC, as prime contractor, entered into a written construction contract (the "Contract") for the construction of a project known as Fink Road Landfill, LF-2, Cell No. 5 Construction Project (Contract Number A050509) (the "Project").

WHEREAS, the Project was substantially complete on August 2, 2010 and was accepted by the County on November 15, 2010.

WHEREAS, on August 30, 2011, the County notified DGC of a potential Warranty Defect in the Geomembrane Liner ("Liner Defect Claim"), work that was performed by DGC's subcontractor, Viking Environmental Corporation ("Viking").

WHEREAS, several leak detection tests have been conducted (including a more stringent leak detection test than the leak detection test required pursuant to the Contract Specifications) and none of these tests has located a defect in the Geomembrane Liner.

WHEREAS, DGC and Viking dispute the County's Liner Defect Claim.

WHEREAS, notwithstanding that the Liner Defect Claim is disputed by DGC and Viking, DGC has agreed to cause Viking to perform certain repair work on the Geomembrane Liner on the condition that DGC and Viking receive a full and complete

release from the County, effective as of the date of completion of the Repair Work (as defined herein) and the completion of a successful leak detection test.

WHEREAS, by way of this Agreement, the County and DGC seek to resolve all disputes and claims arising from or relating to the Contract or the Project, except as otherwise provided in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, for value received and in consideration of the covenants and conditions set forth below, the Parties hereby agree as follows:

**1. Performance of the Repair Work in Accordance with the Contract (which includes Current Insurance Certificates Provided by DGC).**

All work will be done in accordance with the terms and conditions of the Contract. The County will be responsible for preparing a detailed repair plan, which is subject to the reasonable approval of DGC (the "Repair Plan"). The work to be performed pursuant to the Repair Plan is referred to herein as the "Repair Work". Portions of the Repair Work will be performed by a contractor retained by the County and portions will be performed by DGC- and DGC's subcontractor, Viking. The Work to be performed by Viking will be the replacement of the Primary Geosynthetic clay liner (GCL), the Pan Lysimeter 60 Mil HDPE Geomembrane, the Geocomposite Drainage Liner, and the Primary 60 Mil HDPE Geomembrane in the portion of the Project generally referred to as the Pan Lysimeter ("Lysimeter Repair Work"). The work to be performed by DGC will be the placement of the Drainage Gravel Layer, the 8oz Nonwoven Geotextile and the 24" Base Operations Layer. All deconstruction, i.e., preparation work, including the removal of all soil and other material installed above the



Pan Lysimeter, the furnishing of HDPE plastic and pipe, gravel and/or sand materials, and the re-installation of the 6" perforated HDPE pipe will be the responsibility of the County. If necessary, the County will secure a fusion-certified pipe welder to restore the HDPE pipe to Contract specifications. After completion of the Lysimeter Repair Work and the placement of the Drainage Gravel Layer, an electrical leak location survey will be conducted by a contractor retained by the County using a more sensitive leak location survey than required by the Contract specifications which has been approved by the Regional Water Quality Control Board. If the electrical leak location survey finds one or more leaks, the leak(s) will be repaired by Viking and another electrical leak location survey will be conducted by a contractor retained by the County. The same process of repairs and surveys shall continue until the electrical leak location survey results in no leaks being found. Once electrical leak location survey results in no leaks being found, the 8oz Nonwoven Geotextile and the 24" Base Operations Layer installation will begin. After the completion of the Repair Work, the County will diligently complete all reports required by the Water Board and pursue approval of the Cell No. 5 by the Water Board. Once the Water Board approves the Cell No. 5 the Mutual Release set forth in Section 2 below shall become effective at that time. The date on which the Mutual Release becomes effective is defined as the Effective Date.

**2. Mutual Release.**

As of the Effective Date, the Parties hereby fully and finally release and discharge each other, and each other's respective past, present and future officials, consultants, principals, directors, officers, partners (and each of the directors, officers, employees, stockholders, representatives, agents, attorneys, predecessors, successors

and assigns of each partner), employees, stockholders, sureties, subcontractors (and each of the directors, officers, employees, stockholders, representatives, agents, consultants, attorneys, predecessors, successors and assigns of each subcontractor), affiliates, insurers, representatives, agents, attorneys, predecessors, successors and assigns, from any and all claims, demands, actions, causes of action, rights, remedies, obligations, indemnities, penalties, costs, expenses, damages, attorneys' fees, experts' and consultants' fees, losses and liabilities, of any kind or nature, whether based in contract, tort, statute or any other legal or equitable theory, whenever or however derived, known or unknown, foreseen or unforeseen, suspected or unsuspected, past, present or future ("Claims"), arising out of or in connection with, or relating to, the Geomembrane Liner, the Liner Defect Claim, the Contract or the Project; EXCEPT, HOWEVER, this release provision does not extend to, encompass, release, discharge, impair or otherwise adversely affect any Claims arising out of or relating to any breach of any of the terms, covenants, representations, warranties or provisions of this Agreement. It is understood and agreed that the foregoing release provision includes, but is not limited to, a release and discharge of any and all Claims by either of the Parties arising out of or relating to any delay in the performance or completion of any work on the Project, all warranties for the Project including any related to the performance of the Repair Work, any County claim for liquidated damages, and any and all Claims under or pursuant to Government Code section 12650, et. seq.

**3. Waiver of Civil Code Section 1542.**

Except as otherwise provided in this Agreement, and with respect to the Claims released herein, the Parties, and each of them, agree that they collectively and

singularly waive all rights and benefits which either of them now has or in the future may have with respect to said claims under California Civil Code section 1542, which provides:

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

**4. Covenant Not to Sue.**

Each of the Parties covenants and agrees not to make, assert, maintain or in any way cause to be made, asserted or maintained, any claim, demand, action, cause of action, suit or proceeding against any person or entity released herein for anything released herein. Each of the Parties further warrants and represents that it is the sole legal, equitable and rightful owner of all right, title and interest to all claims, rights, causes of action or other things which it is releasing herein, and that it has not assigned, conveyed, granted or otherwise transferred any of the claims, rights, causes of action, actions or other things which are the subject of the release provisions in Section 2 of this Agreement. In the event that either of the Parties breaches the covenant set forth in the first sentence of this paragraph, or any warranty or representation of either of the Parties set forth in the immediately preceding sentence of this paragraph is untrue, such Party shall indemnify, defend and hold harmless the other Party against any resulting claim, demand, damage, debt, liability, action, cause of action, cost, expense or attorneys' fees. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted or prosecuted in breach of this Agreement.

**5. Release of Workmanship and Warranty of Work.**

Without limiting the scope of the Mutual Releases set forth in Section 2 of this Agreement, the Parties hereby agree that any and all Claims related to any contractual or other warranties for the Project including any related to the Repair Work will be released by the County as of the Effective Date.

**6 No Reliance Upon Any Statement or Representation/Assumption of Risk of Different Facts.**

This Agreement is executed by the Parties without reliance upon any statement, warranty or representation (whether express or implied) by either of the Parties, or any of their attorneys or representatives, other than those expressly set forth in this Agreement. Each of the Parties understands that the facts with respect to which this Agreement is entered may be different from the facts known or believed to be true. Each of the Parties hereby accepts and assumes the risk of the facts being different and agrees that this Agreement shall be and remain in all respects effective and not subject to termination, rescission or reformation by virtue of any such difference in facts.

**7. No Admission of Liability.**

This Agreement pertains to disputed claims and does not constitute an admission of liability by either of the Parties.

**8. Enforceable Agreement.**

This Agreement is fully enforceable, binding and subject to disclosure. All prior understandings and agreements in connection with or relating to this settlement are merged into this Agreement, which supersedes all such prior understandings and agreements. Each of the Parties agrees, represents, and warrants that, in entering into

this Agreement, it is not relying upon any representation, promise, understanding, statement or inducement not expressly set forth in this Agreement.

**9. Successors and Assigns.**

This Agreement governs the rights of, binds and inures to the benefit of the Parties and each of their respective heirs, legatees, devisees, executors, successors, administrators and assigns.

**10. Terms Contractual.**

The terms of this Agreement are contractual in nature. The headings are for convenience only and do not limit or alter the described paragraphs in any manner.

**11. Representation by Counsel.**

Each of the Parties affirms and acknowledges that it has read and fully appreciates and understands the words, terms, conditions and provisions of this Agreement, is fully and entirely satisfied with the same, has been represented by legal counsel of its choice in the negotiation, preparation and execution of this Agreement, has conferred with its counsel prior to the execution of this Agreement and has executed this Agreement voluntarily and of its own free will and act. The Parties hereby acknowledge that they have both participated in the drafting of this Agreement and specifically agree that any rule of construction, to the effect that ambiguities are to be resolved against the drafting party, shall not apply to the interpretation of this Agreement.

**12. Authority to Execute and Bind.**

Each of the Parties represents and warrants that the person executing this Agreement on its behalf has full and complete legal authority to do so and thereby bind

the Party on behalf of which this Agreement is executed by him/her.

**13. Representation And Warranty of Persons. Signing The Agreement.**

Each person whose signature is affixed below hereby warrants and represents that he/she is legally authorized and empowered to execute this Agreement on behalf of the designated entity, and thereby bind the designated entity.

**14. Necessary Acts.**

The Parties agree to perform any further acts and execute and deliver any further documents that may reasonably be necessary to carry out the provisions of this Agreement.

**15. Severability.**

In case any part, term, portion or provision of this Agreement is or shall be invalid, illegal or unenforceable, the remaining parts, terms, portions and provisions shall be deemed severable and the validity, legality and enforceability of the remaining parts, terms, portions and provisions shall not be affected or impaired.

**16. Amendment of Agreement.**

This Agreement may only be amended by written agreement, executed by both of the Parties, which expressly amends this Agreement.

**17. Attorneys' Fees.**

The Parties shall bear their own costs and fees of suit, including, without limitation, attorneys' and experts' fees and costs in connection with the Project, the Contract, and this Agreement. If any legal action or proceeding is necessary and initiated to enforce this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable attorneys' fees, costs and expenses.

**18. California Law.**

This Agreement shall be construed in accordance with the law of the State of California, notwithstanding the operation of any conflict or choice of law statutes or decisional law to the contrary.

**19. County Board of Supervisors' Approval.**

As a condition precedent to the effectiveness of this Agreement, the County's Board of Supervisors shall approve the terms of the settlement. The County's staff and counsel will recommend that the County's Board approve the settlement terms and conditions as reflected in this Agreement.


**20. Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed signatures shall be deemed to be original signatures.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the date and year set forth below.

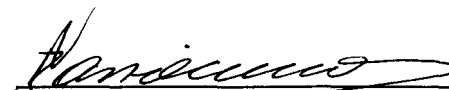
**COUNTY OF STANISLAUS**

Dated: November 19, 2012

By:   
Name: Jami Aggers  
Its: Interim Director of Env. Resources

**DESILVA GATES CONSTRUCTION, LP**

Dated: November 21, 2012

By:   
Name: Ziad Nassouh  
Its: Construction Manager