

EXHIBIT R

ARBITRATION OF DISPUTES ARISING UNDER SECTIONS 3.04 OR 10.20

1. Demand for Arbitration

If Contractor is dissatisfied with a decision of the City under Section 3.04 or Section 10.20, it shall serve a Demand for Arbitration on the City within sixty (60) days of that decision. The Demand for Arbitration shall describe the issues to be arbitrated and Contractor's contentions relating to those issues. The Demand shall be served on the City Manager with a copy delivered to the City Attorney.

2. Number and Qualifications of Arbitrators

The arbitration shall be conducted by a panel of three (3) arbitrators. One arbitrator shall be appointed by Contractor, one arbitrator shall be appointed by the City, and the third arbitrator shall be appointed by the other two arbitrators. The third arbitrator of the arbitration panel shall be an attorney licensed to practice within the courts of the State of California and shall be the "neutral arbitrator" referred to in California Code of Civil Procedure Section 1280(d). No member of the panel shall be an officer, employee, agent, or attorney of Contractor or the City, or an affiliate of Contractor. Alternatively, the parties may agree on a single arbitrator, in which case that arbitrator shall be the "neutral arbitrator".

3. Appointment

Within thirty (30) days after a Demand for Arbitration has been served, each party shall personally serve the other with notice of the names of the arbitrators they have selected.

The two arbitrators named by the parties shall select the third arbitrator within thirty (30) days. If they are unable to agree upon a third arbitrator, either party may request the Presiding Judge of the Superior Court in Santa Clara County to make the appointment.

4. Powers of Arbitrators; Conduct of Proceedings

- (a) Except as hereinafter provided, arbitrations shall be conducted under and be governed by the provisions of California Code of Civil Procedure, Sections 1282.2 through 1284.2 (hereinafter, collectively, "Code sections"), and arbitrators appointed hereunder shall have the powers and duties specified by the Code sections.
- (b) Unless waived in writing by the parties, the notice of hearing served by the neutral arbitrator shall not be less than 90 days.

- (c) The lists of witnesses (including expert witnesses), and the lists of documents (including the reports of expert witnesses) referred to in Code of Civil Procedure Section 1282.2 shall be mutually exchanged, without necessity of demand therefor, no later than sixty (60) days prior to the date of the hearing, unless otherwise agreed in writing by the parties.
- (d) The time for making the award shall be no later than twelve (12) months after service of the initial Demand for Arbitration, provided that such time may be waived or extended as provided in Code of Civil Procedure Section 1283.8.
- (e) The arbitrators shall not base their award on information not obtained at the hearing.
- (f) The provisions for discovery set forth in Code of Civil Procedure Section 1283.05 are incorporated into and made part of this contract, except that (1) leave of the arbitration panel need not be obtained for the taking of depositions, including the depositions of expert witnesses; (2) the provisions of Code of Civil Procedure Section 2037 *et seq.*, relating to discovery of expert witnesses, shall also be applicable to arbitration proceedings arising under this contract, except that the time period set forth in Section 2037(a) shall be deemed to be not later than sixty (60) days prior to the date for the hearing; and (3) all reports, documents, and other materials prepared or reviewed by any expert designated to testify at the arbitration shall be discoverable.
- (g) The arbitration award shall be in writing and determined by a majority of the members of the arbitration panel.
- (h) The arbitration panel jurisdiction and authority are limited to a determination of the Minimum Recycling Level (in the case of a dispute arising under Section 3.04) or the amount of compensation due to Contractor under this contract (in the case of a dispute arising under Section 10.20). The arbitration panel is not authorized, and does not have jurisdiction, to determine or award money damages against City, its officers, employees or agents.

5. Costs.

Each party shall pay the compensation and expense of the arbitrator which it appoints, as well as its own costs and attorneys' fees, expert and witness fees, and other expenses incurred in preparing and presenting its case. The compensation and expenses of the neutral arbitrator, rental of the hearing room, costs of a stenographic reporter, and other costs of the arbitration shall be divided equally between and paid equally by Contractor and City.