

Order Authorizing Agreement

The State of Texas }
 } Know All Men By These
Presents:
County of Williamson }

That on this, the 3rd day of March, A. D. 2009, the Commissioners Court of Williamson County, Texas, met in duly called and convened lawful Session at the County Courthouse in Georgetown, Texas, with the following members present:

Dan A. Gattis, County Judge, Presiding,
Lisa Birkman, Commissioner Precinct One,
Cynthia Long, Commissioner Precinct Two,
Valerie Covey, Commissioner Precinct Three, and
Ron Morrison, Commissioner Precinct Four

where, among other matters, came up for consideration and adoption the following Order:

Whereas, the Williamson County Commissioners Court, sitting as a legislative, executive, and judicial finder of fact pursuant to its exclusive original jurisdiction under Article V, Section 18(b) of the Texas Constitution, has made the following

Findings of Fact

1. The following findings of fact (which may include mixed questions of fact and law) are based on information provided to the members of this Court by both proponents and opponents of the attached agreement at an extensive series of public meetings and hearings and in numerous written and oral communications with the Court and its individual members over a period of more than two years. The Court sought, carefully considered, and relied upon the legal advice of numerous attorneys. The opportunity for public

comment and participation was unprecedented for any contract ever considered by this Court.

2. The Court gave due consideration to all the advice and comments and each was given appropriate weight in the decisions of the Court. There is substantial evidence for each of the findings contained in this Order.
3. This Order and the attached Agreement are being adopted at a properly convened public session of the Court after all the notices and formalities required by the Texas Open Meetings Act. All prior acts and deliberations of the Court concerning the contract and related issues have also been in compliance with that Act. Specifically, all deliberations on this matter by a quorum of the Court have been held either in a public session or in a closed session required for consultation with attorneys as authorized by that Act. No decisions have been made by the Court, either formally or informally, except in its properly-held public sessions.
4. Williamson County, Texas, (County) has been an Organized County since 1848, with the authority to carry out governmental (though not proprietary) functions, including but not limited to the operation of sanitary landfills. Among other provisions of law not cited here, general authority for County to manage solid waste and expend public funds for that purpose is granted by § 361.153, Texas Health and Safety Code; specific authority to operate a landfill is granted by § 364.013; § 363.113 requires that County “assure that [solid waste management] services are provided to all persons in its jurisdiction.”
5. County owns the Williamson County Landfill (Landfill), the real property described in the attached “2009 Williamson County Landfill Operation Agreement” (the Agreement) between County and Waste Management of Texas, Inc. (Contractor). The Agreement, with any exhibits, is set out in this Order by reference as fully and completely as if set out verbatim in the body of the Order.
6. County exclusively holds and retains all right, title, and interest in and to the real property, improvements, fixtures, and appurtenances, to any current or pending state permits, and to all water, mining, mineral, and other rights

appurtenant to the Landfill, permits, or Agreement. Apart from short-term farming leases with third parties, none of these rights are currently subject to a lease, reversionary interest, partnership, or joint venture. Under the terms of the Agreement, County's ownership has been agreed by Contractor to be or become indefeasible fee simple absolute title, and the Court finds this to be the case.

7. Beginning in the early 1980s, County acquired this property for the operation of a sanitary landfill and obtained appropriate permits from the State of Texas to operate the Landfill. Since May 6, 1985, Contractor or its corporate predecessors have continuously operated the Landfill on behalf of County. The original operation agreement was amended in 1990 and 2003.
8. Under the Agreement and all prior operation agreements, Contractor is, at most, a contract operator of the Landfill. Contractor is not the "site operator," as that term is defined by Texas Commission on Environmental Quality regulations and policy. Contractor has and claims none of the rights or privileges of a site operator.
9. Contractor and its predecessors are not the legal or beneficial owners of either the Landfill or its permits, whether in whole or in part. It is the intent of the Agreement that Contractor will not acquire any ownership or substantive rights in either the Landfill or its permits.
10. Apart from the rights expressly granted by the Agreement and prior contracts between County and Contractor or its predecessors, Contractor has no right, title, or interest in the landfill property, permits, or operations. Specifically and without limitation, it has no interest as a lessee, remainderman, partner, or joint venturer. It is the understanding of the Court that Contractor has consistently and publicly disclaimed any other interest beyond its express contractual rights.
11. The Agreement explicitly supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments, and representations, whether oral or written, and will constitute the sole agreement between the parties. Upon execution of the Agreement,

Contractor will have no continuing rights under the 1985, 1990, or 2003 contracts. The Court finds that this will be in County's best interest.

12. County has the authority to enter into and perform the obligations set out in the Agreement. County's authority to enter into such contracts is set out, among other places, in § 363.116, § 364.013, and § 364.031, Texas Health and Safety Code.
13. The Agreement contains termination conditions that prevent it from being a contract in perpetuity.
14. The proper operation of any public or private landfill located in Williamson County is critical to public health, safety, and welfare. Without a proper facility in an accessible location charging affordable rates, garbage, trash, and other waste materials will be disposed of in a manner that supports unacceptable levels of air, land, and water pollution, as well as vermin, insects, noxious odors, and disease vectors. These risks mandate that the criteria for awarding landfill contracts are not readily susceptible to traditional competitive bidding in which price is the controlling consideration.
15. The State of Texas has recognized the unique issues affecting waste disposal by the legislative findings in Section 363.003 of the Health and Safety Code. In addition, § 363.002 states, "It is this state's policy to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of this chapter, will further that policy."
16. For these reasons, it is long established in Texas that contracts related to solid waste disposal need not be subject to competitive bidding, as public health, safety, and welfare are to be the primary criteria; see, for example, *Browning-Ferris, Inc. v. City of Leon Valley*, 590 S.W.2d 729 (San Antonio 1979, *no writ*). The Texas County Purchasing Act, §262.024 (a) (2), Texas Local Govt. Code, exempts from competitive bidding contracts "necessary

to preserve or protect the public health or safety.” The Williamson County Commissioners Court specifically finds that the Agreement is necessary to preserve or protect the public health and grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply.

17. The 1985 contract between County and Contractor was previously renegotiated in 1990 and 2003. At the time of each of the prior renegotiations, County and Contractor had apparently valid, subsisting contracts in place that were not subject to cancellation. Since County at that time believed that it could deal with only the existing contract holder, neither of the prior renegotiated contracts were the result of a competitive process.
18. Today, as in 1990 and 2003, County and Contractor have an agreement that has not been cancelled by either party; nor has it been declared void or voidable by any other appropriate authority. In response to the concerns of citizens and court members, County recently contested the validity of the 2003 contract in the 368th District Court (Cause No. 07-748-C368, *County of Williamson v. Waste Management of Texas, Inc.*). In a judgment that addressed procedural issues including competitive bidding, but not the substance of the contract, the District Court declared on July 18, 2008, that the 2003 contract “is not void or voidable but, rather, remains in full force and effect.” County and Contractor were parties to that lawsuit and are bound by the judgment as res judicata. The Commissioners Court has agreed to comply.
19. Since execution of the Agreement will terminate the 2003 contract, it will also render the dispute litigated in Cause No. 07-748-C368 moot and enable County to significantly reduce the risks and costs of further litigation in that matter. The Commissioners Court finds that final settlement of this dispute is additional grounds for entering into the Agreement at this time.
20. If the Agreement is not approved by both parties, the 2003 contract will continue in effect unless and until it is cancelled according to its own terms or in some other lawful manner. The terms of the 2009 Agreement are plainly more favorable to the County than the terms of the 2003 contract. The Court finds that breach of the 2003 contract without legal cause would

carry costs and liabilities greater than the possible benefits. The Court has determined that none of Contractor's competitors would likely agree to indemnify the County against these probable costs. This makes the Agreement the best alternative among all those available to the Court at this time.

21. The 2003 contract provides Contractor with an exclusive right to manage a landfill on the present site, including any expansion within the contiguous County property. Without cancellation of that contract, it is impossible to offer a Landfill operations agreement at this location to any other party, whether by competitive bidding or by any other means. The County Purchasing Act, §262.024 (a) (7), exempts from competitive bidding contracts for "an item that can be obtained from only one source." The Court finds that Contractor is the sole source currently available to the County for providing these services and grants an exemption from competitive bidding, insofar as any competitive bidding statute might apply.
22. Because Contractor is paying County, rather than the reverse, the Court finds that the County Purchasing Act does not apply to the Agreement or require that it be offered competitively.
23. Since any possession of Landfill real or personal property by Contractor is in its capacity as a landfill contractor for County and is purely incidental to operations, the District Court found that the Agreement is not a lease to Contractor for its own use of the site. The Texas laws relating to the granting of a lease by public auction, sealed bids, or sealed proposals are not applicable to these circumstances. The Court finds that these bidding procedures, even if available, would not serve the public interest in this case, as Chapters 361–364 of the Health and Safety Code provide that public health and safety, not price, are the paramount concerns that are to govern solid waste contracts.
24. The Agreement does not contemplate the construction of county facilities by Contractor that are unrelated to the ongoing operation of the Landfill and does not create County financial obligations for any construction. Any possible construction by Contractor under this Agreement will be incidental to its duty, as County's landfill contractor, to provide the services promised

in the Agreement. The Court finds that this transaction is therefore not subject to competitive bidding as a facilities construction contract or on any other basis. Any future construction by County at the Landfill for other purposes will be in accordance with applicable bidding statutes in effect at that time.

25. The Agreement includes special fund fees which benefit designated purposes and designated areas of the County. The Court finds that these provisions are in the best interest of the County to require in the Agreement.
26. The Agreement represents a substantial improvement for the people of Williamson County over the 2003 contract. Its provisions are fair to all concerned. Replacing the old contract by the new will produce major benefits for the public health, safety, and welfare. Protection of those interests mandates the execution of this Agreement even though no additional competitive process has occurred. Adoption of the Agreement is thus in the best interest of Williamson County, its residents, and its taxpayers.


Therefore be it

Ordered, that the Williamson County Commissioners Court, having hereby adopted the foregoing Findings of Fact (which may include mixed questions of fact and law), by this Order commits Williamson County, Texas, to enter into the attached "2009 Williamson County Landfill Operation Agreement" with Waste Management of Texas, Inc., and does hereby by order grant any lawful exceptions to competitive bidding necessary to enter into the Agreement;

Further Ordered, that County Judge Dan A. Gattis be, and is hereby, authorized to sign this Order as the act and deed of the Commissioners Court and of Williamson County; and


Further Ordered, that the County Judge be, and is hereby, authorized to sign the Agreement itself on behalf of Williamson County following its execution by Waste Management of Texas, Inc., and the Judge is further authorized to execute any necessary incidental closing documents in connection therewith.

The foregoing Order was lawfully moved by Judge Dan Gattis, duly seconded by Comm. C. Long, and duly adopted by the Commissioners Court on a vote of 5 members for the motion and 0 opposed.

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Dan A. Gattis, Williamson County Judge

Attest:

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2009 Williamson County Landfill Operation Agreement

**WILLIAMSON COUNTY LANDFILL
OPERATION AGREEMENT**

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**WILLIAMSON COUNTY LANDFILL
OPERATION AGREEMENT**

This Operation Agreement is made and entered into this 3 day of March 2009, by and between Williamson County, a political subdivision of the state of Texas ("County") and Waste Management of Texas, Inc., a Texas corporation ("Contractor").

WITNESSETH:

WHEREAS, Williamson County entered into an agreement on May 6, 1985, with R.E. Wolfe Enterprises, Inc., 3001 E. 83rd Street, Kansas City, MO 64132, to operate the County's Landfill in a manner that served and protected the health and safety of the public, R.E. Wolfe Enterprises, Inc. since acquired and merged into Texas Waste Systems, Inc., and subsequently merged into Waste Management of Texas, Inc., a Texas corporation located at 9708 Giles Road, Austin, Texas 78754 ("Original Agreement"); and

WHEREAS, the Original Agreement was amended by the "Amended and Restated Williamson County Landfill Operation Agreement," dated November 5, 1990 ("1st A&R Agreement"); and

WHEREAS, the Original Agreement and 1st A&R Agreement was amended and restated by the "Amended and Restated Williamson County Landfill Operation Agreement" dated October 28, 2003 (2nd A&R Agreement); and

WHEREAS, issues have been raised by the public regarding Williamson County's ownership and operation of the Williamson County Landfill; and

WHEREAS, Williamson County and Waste Management of Texas, Inc. wish to enter into this new Landfill Operation Agreement" ("Agreement") for operation of the Williamson County Landfill; and

WHEREAS, County has specific statutory authority under Section 363.116 and Section 363.117 of the Texas Health and Safety Code to enter into this Agreement; and

WHEREAS, the Williamson County Commissioners' Court has invoked the Discretionary Exemption pursuant to Texas Local Government Code §262.024, because the proper operation of the Williamson County Landfill is necessary to preserve and/or protect the public health and safety of the residents of Williamson County;

WHEREAS, County and Contractor are entering into this Agreement, which shall be construed as an operating agreement pursuant to Texas Health & Safety Code §364.013; and

WHEREAS, this Agreement is a stand alone agreement that supersedes and replaces any and all existing agreements between the parties that relate directly or indirectly to the Williamson County Landfill; and

WHEREAS, County and Contractor have agreed on additional mutually beneficial terms and conditions described herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual conditions and covenants contained herein, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE I DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below unless another meaning is expressly indicated elsewhere herein:

"Acceptable Waste" means Solid Waste that may be disposed of in a Type I landfill unit under 30 Tex. Admin. Code Chapter 330 and any other Applicable Law.

"Affiliate" means a Person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified Person.

"Agreement" means this Landfill Operating Agreement and the bond, letters of credit or other financial guarantees required hereunder, together with any and all addenda, appendices, attachments, exhibits, amendments, change orders or modifications of the foregoing documents agreed to by the parties in writing unless otherwise designated for informational purposes only.

"Agreement Year" means the period commencing on the Effective Date and ending 12 months thereafter until the termination of this Agreement.

"Alternative Disposal Site" means the Disposal Site that the Contractor will use in the event the Landfill becomes unavailable.

"Alternate Daily Cover" means any ICEQ-approved cover for landfill cells other than clean soil.

"Applicable Law" means all federal, State or local statutes, rules, codes, orders, permits, regulations, and ordinances that apply to the Landfill or any of Contractor's operations or obligations under this Agreement. The terms defined in 30 Tex. Admin. Code Chapter 330 or any successor of this code provision thereto shall have the same meaning in this Agreement, except as specifically modified herein. In the event that 30 Tex. Admin Code Chapter 330 is repealed in its entirety, the terms of this Agreement shall be construed in accordance with 30 Tex. Admin Code Chapter 330 immediately prior to its repeal.

"Change in Law" means any of the following that occurs after the Effective Date of this Agreement:

(a) the enactment, adoption, promulgation, modification, repeal, or change in interpretation of any federal, state, county or other local law, ordinance, code, rule,

requirement, regulation or similar measure;

(b) the issuance of an order, decree or judgment by any federal or state court, administrative agency, or governmental officer or body, if such order, decree or judgment is not also the result of negligent or willful action or failure to act of the party relying thereon, provided that the contesting in good faith of any order, decree or judgment shall not constitute or be construed as a willful or negligent action of that party; or

(c) Notwithstanding the foregoing, a non-material amendment of Texas Administrative Code, Title 30, Chapter 330 shall not be considered a "Change in Law":

"Citizen" means a natural person who resides in County.

"Confidential Business Records" means all trade secrets, proprietary plans, financial data and the ideas and information contained therein, that Contractor makes available to County for purposes of this Agreement.

"Contractor" in this Agreement means Waste Management of Texas, Inc. and its subsidiaries, affiliates, successors and, to the extent permitted by this Agreement or otherwise required by Applicable Law, its assigns. Contractor is a contract operator of the Landfill. Contractor is not the "site operator" as that term is presently defined in 30 Texas Administrative Code, Section 330.2(132).

"Contractor Environmental Fee" means a fee that is contained in an existing contract between Contractor and Landfill user to cover environmental related costs and expenses of operation. Such Contractor Environmental Fee shall be a Pass Through Charge only for the term of existing contracts as of the Effective Date of this Agreement.

"County" means Williamson County, a political subdivision of the State of Texas, its successors and, to the extent expressly permitted by this Agreement or otherwise required by law (whether now existing or hereafter enacted), its assigns.

"Current Footprint" shall mean the footprint of the Landfill on the Effective Date of this Agreement. A description of the Current Footprint by metes and bounds and by diagram is attached to this Agreement as Exhibit A.

"Day" means the 24-hour period beginning on a calendar day and ending the same time on the following calendar day.

"Default" means an act or omission or the occurrence of an event, condition or circumstances that impair or prevent the performance of an obligation under this Agreement.

"Dispose" or "Disposal" means all work, services or operations performed by Contractor under this Agreement after Acceptable Waste enters the Landfill or an Alternative Disposal Site.

"Dispute" means any controversy or difference between the Parties hereto arising out of or in connection with or concerning the meaning, application, performance, or breach of this

Agreement.

"Diverted Material" means Acceptable Waste that is accepted at the Landfill but diverted from disposal under Applicable Law.

"Effective Date" means the date indicated in the first paragraph on page one (1) of this Agreement.

"Expanded Area" means an area contiguous to the Current Footprint, including the area designated for expansion under the pending ICEQ Permit Application No. 1405B. A description of the Expanded Area by metes and bounds and by diagram is attached to this Agreement as Exhibit B.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or Disposal of Solid Waste, as set forth in 30 Texas Administrative Code Chapter 330.3(52), or as that definition may be amended from time to time.

"Fees" shall mean any federal, state, county or local governmental agency or utility approved and/or required charges.

"Fuel Surcharge" means a charge to Landfill users that has been agreed to in a contract between the Contractor and a Landfill user, or is a charge to Landfill users that is tied to the Energy Information Administration of the U.S. Department of Energy (EIA/DOE) Weekly Retail on Highway Diesel Prices for the Gulf Coast ("EIA/DOE Index") and will be calculated as follows: for every \$0.10 increase in diesel fuel prices per the EIA/DOE Index above \$0.95 per gallon, Contractor's Fuel Surcharge will increase by 0.22%, and increases less than \$0.10 per gallon will be prorated accordingly. The maximum fuel surcharge using the above EIA/DOE Index and methodology that Contractor can charge to said customers is eight percent (8%) of the Tip Fee. Contractor cannot charge more than eight percent (8%) without getting prior County approval. A report of Fuel Surcharge collected shall be provided to County annually, and is subject to review and adjustment by the County and Contractor every two (2) years. If a Fuel Surcharge is imposed, it shall be a Pass Through Charge.

"Gross Receipts" means all monies received, including non-monetary discounted rate differentials, by Contractor for any activities related to or conducted at the Landfill. Examples shall include, but not be limited to fees charged by Contractor for recycling or disposal, special handling, and the sale of any soils and/or rock originating from the Landfill. It is the intent of the parties that the term "Gross Receipts" includes the full amount to be charged prior to the deduction of any rate discount such as a discounted Tip Fee. "Pass Through Charges" are excluded from "Gross Receipts" for surcharge and special funds calculations.

"Hauler" means any Person (a) authorized to collect and transport Acceptable Waste within the jurisdictional limits of County under Applicable Laws or (b) lawfully collecting, transporting and delivering Acceptable Waste generated by such Person on their own property.

"Landfill" means certain real property owned by County, which is legally described in Exhibits A and B attached hereto, together with all appurtenances and Permanent Improvements and Fixtures and any expansions thereto.

"Owner" means Williamson County, Texas.

"Pandemic Disease" means any regional or statewide epidemic disease which is easily transmittable and poses a direct threat to the safety and health of humans and/or animals.

"Pass Through Charge" or "Pass Through Charges" means taxes, TCEQ fees, and special fund fees, including but not limited to the Future Environmental Liability Fund, Master Site Development Fund, Community Recreational Facility Fund, and the Host Fee Fund for the benefit of the City of Hutto and Hutto ISD. Pass Through Charges are added to the Tip Fee and charged to Landfill users.

"Permanent Improvements or Fixtures" means any article of personal property or improvement so attached to the Landfill that it is regarded as being part of the Landfill.

"Permit" means TCEQ-issued MSW Permit 1405, and any modifications of or amendments thereto.

"Person" means any natural person, partnership, joint venture, corporation or other entity or organization, public or private, and any unit of government or agency thereof.

"Recyclable Material" means a material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material as set forth in 30 Texas Administrative Code Chapter 330.3(122) or as that definition may be amended from time to time.

"Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use, as set forth in 30 Texas Administrative Code Chapter 330.3(123) or as that definition may be amended from time to time.

"Regulatory Agency" means any federal, state, or local governmental agency which has regulatory authority over the permitting of or operations at the Landfill.

"Self-Hauled Waste" means Acceptable Waste hauled directly to the Landfill by the Person who generated such waste.

"Site" means the same as Facility, as set forth in 30 Texas Administrative Code Chapter 330.3(139), or as that definition may be amended from time to time.

"Solid Waste" means garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include: untreated solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26; soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, § 91 101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§ 6901 et seq.) as set forth in 30 Texas Administrative Code Chapter 330.3(145), or as that definition may be amended from time to time. For purposes of this Agreement Solid Waste excludes Recyclable Material and Diverted Material as defined in this Agreement.

"Special Waste" means any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

- (A) hazardous waste from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Materials Which Could Be Classified as Hazardous Wastes);
- (B) Class 1 industrial nonhazardous waste;
- (C) untreated medical waste;
- (D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;
- (E) septic tank pumpings;
- (F) grease and grit trap wastes;
- (G) wastes from commercial or industrial wastewater treatment plants; air pollution control

facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

(K) pesticide (insecticide, herbicide, fungicide, or rodenticide) containers;

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);

(O) used oil;

(P) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;

(Q) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(R) lead acid storage batteries; and

(S) used-oil filters from internal combustion engines, as found in 30 Texas Administrative Code Chapter 330.3(148), or as that definition may be amended from time to time.

“Site Operating Plan” means a document, prepared by the Contractor’s design engineer in collaboration with the County and Contractor, that provides general instruction to facility management and operating personnel throughout the operating life of the Facility in a manner consistent with the engineer’s design and the TCEQ’s regulations to protect human health and the environment and prevent nuisances as found in 30 Texas Administrative Code Chapter

330.3(141), or as that definition may be amended from time to time.

"Small Capacity Vehicles" shall mean any automobile, car, pick-up truck or other vehicle which has a cargo and/or towing capacity of one ton or less and/or any bumper or hitch pulled trailer towed by any of the above which is sixteen (16) feet or less in length.

"Subcontractor" means any Person with whom Contractor contracts or otherwise engages for the purpose of having that Person provide labor, materials, or services for the performance of any of Contractor's obligations under this Agreement.

"TCEQ" means Texas Commission on Environmental Quality or any successor agency which possesses regulatory and/or permitting authority over solid waste disposal.

"Tip Fee" or "Tipping Fee" means the posted gate rate or rates charged to customers at the Landfill, and does not include any discounted rate.

"Unacceptable Waste" means: (i) Hazardous waste, which is any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§ 6901 et seq., as amended; (ii) Radioactive waste, which is Waste that requires specific licensing under 25 TAC Chapter 289 (relating to Radiation Control), and the rules adopted by the commission under the Texas Health and Safety Code; (iii) All wastes requiring special handling to comply with applicable federal, state or local law regarding (A) pathological, infectious (other than properly treated Medical Waste), or explosive materials; (B) oil sludge; (C) human waste; (iv) Any item of waste either smoldering or on fire or at its kindling point or in the process of initiating combustion; (v) Untreated sewage sludge, septic tank and cesspool pumping/s, or other sludge from air or water pollution control facilities or water supply treatment facilities; (vi) Tires in quantities in excess of those normally collected from residential units; (vii) Any item posing a reasonable likelihood of damaging the Landfill, its Permanent Improvements or Fixtures, or the processing of which would be likely to impose a threat to health or safety in violation of any judicial decision, order, or action of any federal, state or local government or any agency thereof, or any other regulatory authority or Applicable Law; (viii) any other waste or material prohibited from acceptance at a Type I municipal solid waste landfill in Texas; and (ix) any other waste, substance or material that County and Contractor agree in writing to designate as "Unacceptable Waste".

"Uncontrollable Circumstance" means any act, event or condition that has had, or may reasonably be expected to have, a material adverse effect on the rights or obligations of either party to this Agreement, or a material adverse effect on the Landfill if such act, event or condition is (a) beyond the reasonable control of the party relying thereon as justification for not performing ("Non-Performing Party") an obligation or complying with any condition required of that party under this Agreement and (b) not the result of a willful or negligent act or omission of the Non-Performing Party. Such acts, events or conditions shall include, but are not limited to, the following: (i) An act or expected act of God (except normal weather conditions for the geographic area of County), epidemic, lightning, earthquake, nuclear radiation, fire or explosion, flood or similar occurrence, any restraint of government and people, civil

disturbance or similar occurrence, that directly affects the operation of the Landfill (but not including any labor shortage caused by those events); (ii) failure of any appropriate federal, state or local agency or public or private utility having operational jurisdiction in the Landfill area to provide and maintain and assure the maintenance of any necessary utility. It is expressly understood and agreed that, notwithstanding any other provision of this definition, the following events or conditions, in and of themselves, shall not constitute an Uncontrollable Circumstance: (i) adverse changes in the financial ability of any party to this Agreement to perform its obligations under this Agreement; (ii) the consequences of errors or omissions in operation or maintenance on the part of Contractor or any of its employees, agents, Subcontractors or Affiliates; (iii) except as the result of an independent condition caused by an Uncontrollable Circumstance, the failure or delay of a Subcontractor or supplier to furnish labor, services, goods, materials or equipment; (iv) the lack of fitness for use, or the failure to comply with the specifications or the design of any materials, equipment or parts constituting any part of the Permanent Improvements of Fixtures; (v) the failure of any technology or process to perform; (vi) with respect to Contractor, any act or event the occurrence against which Contractor is obligated to carry insurance under this Agreement to the extent Contractor is so obligated; and (vii) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of the Landfill, which is caused by any improper action or inaction or failure of compliance by Contractor with the terms or conditions of any permit, license, consent, authorization or approval relating to the operation of the Landfill.

ARTICLE II

RESPONSIBILITIES, REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of Contractor

Contractor hereby makes the following representations and warranties to, and for the benefit of, County:

(a) Contractor is duly organized, and validly existing as a corporation in good standing under the laws of the state of Texas, and it is duly qualified to do business in the state of Texas.

(b) Contractor has full legal right, power, and authority to execute and deliver, and perform its obligations under this Agreement, and has duly authorized the execution and delivery of this Agreement by proper action of its governing body. This Agreement has been duly executed and delivered by Contractor, and constitutes a legal, valid, and binding obligation that is enforceable against Contractor according to its terms.

(c) Contractor has obtained or made, as the case may be, all approvals, authorizations, licenses, permits, orders, or consents of, or declarations, registrations or filings with, any governmental or administrative authority, commission, board, agency or instrumentality required for the valid execution and delivery of this Agreement by Contractor, or Contractor has given County adequate assurance that all such approvals and declarations will be obtained or made before the Effective Date. However, County's acceptance of such assurance shall in no

way relieve Contractor from its responsibility to obtain all the approvals, permits and other actions required hereunder. Contractor shall maintain all such approvals, permits, and licenses as are needed, throughout the term of this Agreement.

(d) To the best of Contractor's knowledge, information, investigation, or belief, no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality is pending or threatened against Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the obligations, undertakings and transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Contractor in connection with the obligations, undertakings, transactions contemplated hereby.

(e) Contractor, its officers, employees, agents, and Subcontractors shall comply with all Applicable Laws in performing its obligations under this Agreement. County shall have the right to inspect and timely receive from Contractor copies of all correspondence or any other documents sent to or received from Contractor or its Subcontractors related to Contractor's compliance with any Applicable Law under this Agreement.

(f) Contractor agrees to accept, handle and Dispose of Acceptable Waste delivered to the Landfill.

(g) Contractor agrees to furnish, procure, operate, supervise, and maintain all labor, equipment, supplies, materials, and services necessary or appropriate to perform its obligations, fully and on a timely basis, under this Agreement.

(h) Contractor shall have the right to use all soils on the Landfill for purposes of operating the Landfill in compliance with the Permit.

(i) Contractor shall cooperate with County in obtaining any mutually agreeable modifications or amendments to the Permit. All proposed Permit modifications shall be approved in writing by County in advance of any application for modification or amendment being filed with any State or Federal Agency.

(j) Contractor acknowledges that it does not, at the time of executing this Agreement, possess any legal interest in any real property described by Exhibits A or B. County shall draft for Contractor's review and execution a special warranty deed conveying fee simple interest to County of property previously deeded to County for the Landfill. This subsection shall survive the termination or expiration of this Agreement.

(k) Contractor shall not cause a lien of any type to be placed upon the Landfill.

(l) Neither the execution or delivery of this Agreement by Contractor, the performance by Contractor of its obligations hereunder, nor the fulfillment by Contractor of the terms and conditions hereof: (i) conflicts with, violates, or results in a breach of any Applicable Law; (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, order or

decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor except as expressly provided herein or except as expressly approved by County in writing.

Section 2.2 Representations and Warranties of County

County hereby makes the following representations and warranties to, and for the benefit of, Contractor:

(a) County is a political subdivision of the State of Texas duly organized and validly existing under the Constitution and laws of the State of Texas, with full legal right, power, and authority to enter into and perform its obligations under this Agreement.

(b) County holds, or will hold following execution of this Agreement, fee simple title to the real property described in Exhibit A and Exhibit B attached hereto, and exclusively holds and retains all rights and interests in the Permit and in all water, mining and mineral rights.

(c) County has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by it, and constitutes a legal, valid, and binding obligation of County that is enforceable against County according to its terms.

(d) To the best of County's knowledge, information, investigation or belief, no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality is pending or threatened against County wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the obligations, undertakings and transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by County in connection with the obligations, undertakings, transactions contemplated hereby.

(e) County shall transport to the Landfill all Acceptable Waste it collects or contracts to haul during the term of this Agreement.

(f) County will use reasonable efforts to cooperate with Contractor and to respond to Contractor's reasonable requests for information and assistance, consistent with the provisions of this Agreement. However, County's failure to respond to such requests shall not relieve Contractor of any liability, responsibility or consequence for negligence, carelessness, substandard or defective work, or for the use of substandard or defective materials or equipment, by Contractor its officers, employees, Subcontractors or agents except to the extent caused by the County's failure to respond.

(g) Except for the occurrence of an Uncontrollable Circumstance that requires the closure of

the Landfill, Contractor shall have access to the Landfill on such days and at such hours as Contractor deems necessary and appropriate to carry out its obligations hereunder.

(h) County shall cooperate with Contractor, at all times, in obtaining any mutually agreeable modifications or amendments to the Permit or modifications or amendments required by a change in Applicable Law. County recognizes that Contractor will incur costs in reliance on the County's authorization, and agrees that Contractor is entitled to recover the costs it has incurred in seeking the Permit modification or amendment should the County later decide (i) not to continue seeking such modification or amendment, or (ii) instruct the Contractor not to utilize the amendment or modification sought or approved. The parties agree that Contractor will be allowed to recover the actual costs and expenses it incurred by deducting those costs and expenses from the Surcharge owed to the County under this Agreement.

(i) Except as provided herein, after termination or expiration of this Agreement, County shall not allow any activities or construction on the Landfill that are not in strict compliance with Applicable Law. County's obligation to preserve the integrity of the Landfill shall run to any successor in interest of County.

(j) Neither the execution and delivery by County of this Agreement, County's performance of its obligations hereunder nor its fulfillment of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any Applicable Law, (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which County is a party or by which County or any of its properties or assets are bound, or constitutes a default thereunder.

(k) County shall not dispose of or authorize for disposal at the Landfill dead animals whose death results from an outbreak of any Pandemic Disease or were euthanized based upon a reasonable belief that said animals were a carrier or infected by Pandemic Disease, unless prior written notification is given to Contractor of an order to County requiring such disposal, and acceptance of the dead animals does not violate the Permit.

Section 2.3 Commencement of Service

Contractor shall accept, handle, unload, transport and Dispose of all Acceptable Waste delivered to Contractor at the Landfill in accordance with this Agreement upon the Effective Date in order to preserve and protect the public's health and safety.

Section 2.4 Facilities Maintenance

(a) Generally, Contractor shall furnish, procure, operate, supervise, and maintain all labor, equipment, supplies, materials, and services necessary or appropriate to perform its obligations under this Agreement.

(b) Replacement or Repair. Contractor, at its sole expense, shall keep all Facilities in good working order and repair. Contractor shall be liable for all costs reasonably incurred by

County to repair or replace the Facilities operated and/or used by Contractor under this Agreement. Contractor may request reimbursement from County for the cost of repair and replacement if and only if (i) the repair or replacement is necessary to remedy damage caused by the negligence of County or its employees or agents; (ii) Contractor assigns to County any and all subrogation rights it has against any other Person who may be liable for the damage; (iii) the costs incurred to repair or replace the Facilities are the least costly means available under the circumstances for such repair or replacement; and (iv) Contractor fully documents the costs it incurred to County's reasonable satisfaction. Any such reimbursement shall be at County's sole option.

(c) Water Service. County may construct and maintain a water well on or adjacent to the Landfill, but no provision of this Agreement shall require County to do so. If, however, County constructs such a well, Contractor shall purchase from County water for irrigation and other non-potable uses on the Landfill at a competitive rate.

Section 2.5 Financial Guarantee of Performance

(a) Contractor shall furnish County (in care of the Williamson County Attorney's Office) with a corporate surety bond (the "Performance Bond") in an amount equal to three million dollars (\$3,000,000), such amount to be adjusted annually based on one hundred percent (100%) of the annual Gross Receipts from the immediately preceding calendar year. The surety for the Performance Bond shall be approved in writing by County, at County's sole discretion, prior to issuance. The surety shall not be an entity which is owned, affiliated with, or controlled by Contractor. Contractor shall pay the costs associated with procuring the Performance Bond.

(b) Qualifications of Surety. The surety must be licensed to conduct business in the state of Texas. A surety that provides a letter of credit must be a financial institution whose long-term debt is rated in one of the three highest categories by a nationally recognized rating agency (e.g. Standard & Poor's rating of AAA, AA or A). A surety that provides a bond or other alternate form of performance guarantee in lieu of an irrevocable standby letter of credit must conform with all applicable Texas and federal statutory requirements for sureties.

(c) In lieu of a Performance Bond, Contractor may provide and maintain in force for the term of this Agreement an irrevocable standby letter or letters of credit. The letter of credit shall provide that County may draw upon it upon a County determination of a Default under this Agreement. Failure to replace the letter of credit with another letter of credit or acceptable performance guarantee (or provide evidence satisfactory to County of renewability of the existing letter of credit) at least 90 days prior to the expiration of an existing letter of credit shall, among other Defaults, constitute a Default for which County may draw upon that existing letter of credit. Upon such a draw for non-replacement or upon receipt of amounts from a surety resulting from Contractor's failure to procure, maintain, and/or replace the letter of credit or other performance guarantee, County shall place the proceeds of that draw or payment in a separate fund. That fund shall constitute a performance guarantee fund, the amounts in which may be used by County to compensate itself for any damages (including liquidated damages) and other losses, costs or expenses resulting from any other Default under this Agreement.

(d) For purposes of this subsection, the term "performance guarantee" shall mean any bond, letter of credit or other financial guarantee referred to in this Section and provided to guarantee or provide the funds to guarantee the performance of Contractor's obligations under this Agreement.

(e) Duration of Performance Guarantees. A performance guarantee and any subsequent performance guarantee shall be issued for a term of not less than one year.

(f) Contractor shall provide a new performance guarantee or evidence satisfactory to County of the renewability of a current performance guarantee, at least 90 days before the expiration date of a performance guarantee then in effect. Any letter of credit shall provide that notwithstanding the termination or expiration of this Agreement, at any time within two years of the date a performance guarantee terminates or expires, County may make a claim against a performance guarantee for Contractor's failure to perform its obligations under this Agreement. However, Contractor shall be liable for its obligations under this Agreement notwithstanding the termination of the surety's obligations under a performance guarantee.

(g) Authority of Agent. All performance guarantees given under this Agreement that are signed by the surety's agent must be accompanied by a certified copy of such agent's authority to act for the surety at the time the bond is signed. County must approve in writing the designated surety and the form and substance of all performance guarantees. Contractor may satisfy its obligations under this Agreement by providing performance guarantees from one or more sureties meeting the qualifications set forth in this Agreement.

Section 2.6 Alternative Disposal Site

If, due to Contractor's negligence, gross negligence, or willful misconduct, (1) the operations and services required under this Agreement cannot be provided at the Landfill for a period of five (5) consecutive days, or (2) the Landfill becomes inadequate or unavailable to provide the services required under this Agreement for a period of five (5) consecutive days, Contractor shall provide an Alternative Disposal Site for Williamson County and appropriate users of the Landfill; provided, however, that this provision is not intended to, and does not, extend the term of this Agreement. Except as otherwise expressly provided under this Agreement, Contractor shall provide an Alternative Disposal Site at no additional cost to County, Williamson County citizens, or existing contract users of the Landfill. If required by its disposal or hauling contracts, Contractor will be responsible for all reasonable disposal and transportation costs related to use of the Alternative Disposal Site by the hauler above and beyond the costs associated with using the Landfill. For individuals, Contractor will provide containers at the Landfill for Acceptance and Disposal of Acceptable Waste.

Section 2.7 Permits and Licenses

(a) Contractor shall obtain, maintain, and pay for, at Contractor's sole expense, all permits, modifications, or amendments to the Permit, licenses, certificates, and approvals required under or by any Applicable Law for the management and operation of the Landfill and all other permits necessary to fulfill all its obligations under this Agreement. Contractor shall provide to County a list of all permits necessary under Applicable Law for the performance

of its obligations under this Agreement designating the issuing agency and the dates of issuance and expiration of such permits, a copy of all current permits, and Contractor's schedule for obtaining or renewing all permits required during the term of this Agreement. Contractor shall construct all facilities, and acquire and maintain all equipment necessary to operate the Landfill in compliance with the terms of the Permit, permits or any changes thereto. To the extent permitted by Applicable Law, County shall provide Contractor with any information or documents in its control that Contractor reasonably requests in order to obtain or maintain all permits required for operation of the Landfill. Contractor shall list County as the sole Owner and Site Operator of the Landfill on any permit application, form, or other required document. County and Contractor agree that County is the holder of any such permits and that Contractor may be listed as the operator on any such permits only if required by the agency from which the permit is obtained or by Applicable Law. County may require Contractor to obtain mutually agreeable modifications or amendments to the Permit.

(b) Contractor shall be liable for all fines or civil penalties that may be imposed by any Regulatory Agency for Contractor-caused violations of permits, regulations or any other Applicable Laws related to the Landfill, including the disposal of any Unacceptable Waste. County shall not be liable for, and shall not reimburse Contractor for payment of any such fines or civil penalties, except that County shall reimburse Contractor for all fines and penalties imposed and paid as a result of the delivery by County of Unacceptable Waste, so long as Contractor was not negligent in the acceptance of Unacceptable Waste by County. If any Regulatory Agency or court seeks to impose a fine against Contractor for alleged Contractor caused violations of permits, regulations or any other Applicable Laws related to Contractor's operation of the Landfill, Contractor has the right to contest, seek modification of, respond, or appeal in good faith any such fine prior to its payment, so long as Contractor provides prior written notice to County of its decision to contest, modify, respond or appeal, which notice shall include the Contractor's bases for its response. Contractor shall provide notice to County of any notice of violation within forty-eight (48) hours of receipt of such notice of violation by Contractor.

(c) Nothing in this Agreement shall create in favor of Contractor any equitable or legal interest in the Permit, or amendments or modifications thereto.

(d) In the event any judgment or ruling is issued by a court of competent jurisdiction or Regulatory Agency that Contractor has a legal or equitable interest in the Permit, Contractor shall, within ten (10) days of any such final and unappealable judgment or ruling, execute any and all necessary documents to transfer its legal and/or equitable interest in the Permit to County. Section 2.7 shall survive the termination or expiration of this Agreement.

Section 2.8 Taxes, Fees and Contributions

Contractor shall be responsible for timely payment of all federal, state and local taxes and Fees, and surcharges of every form, that apply to Contractor or any of its affiliates, including its property, income, equipment, materials, supplies, structures or activities that are involved in the performance of this Agreement, including but not limited to, any income taxes, excise, sales and use taxes, and utility Fees and charges that arise in connection with this Agreement; provided, however, Contractor shall not be responsible or liable for payment of any tax or fee for which County is ordinarily responsible without regard to the services provided by Contractor.

under this Agreement.

Section 2.9 Closure and Post-Closure Liability Funds

(a) Except as otherwise provided in this Agreement, Contractor shall be responsible for all closure and post-closure activities and costs relating to the Landfill and any expansions areas that are used by Contractor for Disposal during the Term. Contractor shall establish and maintain at its sole expense any closure and post-closure trust fund now or hereafter required under any Applicable Law.

(b) Contractor shall use the money in any closure and post-closure trust fund required by any Applicable Law, including interest earnings thereon, to perform proper closure and post-closure care of the Landfill and any expansion areas that are used by Contractor for Disposal during the Term. Contractor shall be solely responsible for any closure or post-closure expenses or costs which exceed the balance of the trust fund.

(c) In addition to any closure and post-closure trust fund required by any Applicable Law, Contractor shall fund a special fund called the Future Environmental Liability Fund ("FELF") to be established by County to pay for any environmental liability related to the Landfill beyond those costs covered by closure and post-closure trust funds. Contractor shall pay into the FELF Two percent (2%) of the Tip Fee, which is currently equivalent to a fee of \$0.62/per ton, for Acceptable Waste accepted at the Landfill. This special fund fee shall be adjusted incrementally by the same percentages as any change in the Tip Fee. The FELF special fund fee will not be charged to Landfill users delivering Recyclable Material or Diverted Material. Contractor shall make payments into the FELF on January 31 of each year. The total amount collected shall be capped at Ten Million Dollars (\$10,000,000.00) such amount to be adjusted at each ten-year anniversary of this Agreement to reflect an increase value, if any, based upon the United States All Items Consumer Price Index for All Urban Consumers ("CPI-U). County shall have sole control of disbursements from the FELF and accumulated interest. If no disbursements or further disbursements are anticipated from the FELF at the expiration of ten (10) years following final closure of the Landfill, County may transfer the principal and accumulated interest from the FELF to the Williamson County General County Revenue Fund. It is the intent of the parties that the FELF cover future environmental liability, such as possible State or federal Superfund determinations, that would not otherwise be covered by the closure and post-closure trust funds. County and Contractor may change the amount of the FELF Pass Through Charge or suspend the FELF Pass Through Charge by written agreement.

Section 2.10 Compliance With Law; Documentation; Confidential Business Records

(a) Contractor, its officers, employees, agents, and Subcontractors shall comply with all Applicable Laws and the requirements of this Agreement in performing its obligations under this Agreement. County shall have access to and receive from the Contractor copies of all correspondence or any other documents sent to or received from Contractor, its officers, employees, agents and Subcontractors related to Contractor's compliance with any Applicable Law or the requirements of this Agreement within three (3) business days. Contractor shall have no obligation to send County any documents which have been sent directly to the County or in which the County has been copied by the sender. County, as owner of the

Landfill, shall comply with all Applicable Laws and requirements of this Agreement in performing its obligations under this Agreement. Contractor shall receive from the County copies of all correspondence or any other documents sent to or received by the County Judge relating to Contractor's operation of the Landfill, the County's compliance with any Applicable Law, or the requirements of this Agreement within three business days. Neither party shall have any obligation to send the other party documents which have been sent directly to other party or in which the other party has been copied by the sender.

(b) Confidential Business Records.

(1) Contractor may designate documents as Confidential Business Records. Documents reasonably so designated shall remain the exclusive property of Contractor.

(2) If documents are so designated, but have been requested by County for review, the documents shall be inspected by an independent accountant or other third party designated by County and approved by Contractor. Such approval shall not be unreasonably withheld. The third party shall determine whether the documents are relevant to Contractor's compliance with Applicable Law. If so, then County may inspect the documents, but shall maintain the confidentiality of the documents. For documents that contain both relevant and irrelevant information, the third party may redact any irrelevant information.

(3) County will not disclose information designated by Contractor as Confidential Business Records unless County, on advice of legal counsel, reasonably determines that the information concerned or any portion thereof is subject to disclosure under Applicable Law. Contractor recognizes and agrees that even if County determines that certain information is properly withheld from public disclosure, a court or the Texas Attorney General may order the disclosure of such information whereupon County shall have no liability to Contractor for any loss or damages resulting from such disclosure. Notwithstanding the foregoing, County may disclose all information, including Confidential Business Records, to employees, consultants, attorneys or other agents of County who are examining documents for purposes set out in this Agreement. If required by law or a court order to disclose documents designated as Confidential Business Records, County shall, to the extent possible, notify Contractor before such disclosure occurs.

(c) The requirements of this section shall survive the termination or expiration of this Agreement. All unresolved disputes arising under this Section shall be resolved in accordance with the dispute resolution terms of this Agreement.

Section 2.11 Records and Reports by Contractor

(a) Reports

(1) Contractor shall provide County with a monthly report, in a form acceptable to County, showing the total tonnage received at the Landfill for disposal, recycling, and diversion, the total revenue received by Contractor from user fees or other revenue sources at the Landfill, the Tip Fee charged to all users of the Landfill, all special handling charges assessed to Landfill users, all Pass Through Charges, and such other information regarding the operations

of the Landfill as County may require from time to time. When Contractor provides this monthly report, Contractor may at the same time, request a modification or waiver of the Tonnage Limit from County by submitting a written request along with supporting documentation demonstrating the need for such modification or waiver. The County shall respond to this request within fourteen (14) days.

(2) Each Agreement Year, Contractor shall provide County with audited financial reports prepared by a qualified certified public accountant, without a conflict of interest, selected by County in consultation with Contractor, which provide a monthly breakdown of the information required in Section 2.11 of this Agreement. Contractor shall conform to any changes in policies related to accounting, finances, recordkeeping, and record retention recommended or required by either the above selected certified public accountant and/or by the Williamson County Auditor.

(3) Contractor shall forward to County copies of all non-attorney/client privileged correspondence or documents received by Contractor that relate to regulatory compliance at the Landfill within three (3) business days of receipt of the same. Contractor shall also copy County on all correspondence or documents sent by Contractor to or received by Contractor from any governmental department or Regulatory Agency related to the Landfill. Contractor may retain documents that are attorney-client privileged. Contractor shall have no obligation to send County any documents which have been sent directly to the County or in which the County has been copied by the sender.

(4) Contractor shall provide County with an annual schedule of amortized and unamortized capital expenditures of the Landfill. Said schedule shall be due not later than the first day of May of each year.

(b) Recordkeeping

(1) Contractor shall record all weights and charges made to users of the Landfill on sequentially numbered tickets. Any ticket which contains an error or that is not used prior to the use of the subsequently numbered ticket shall be clearly marked "Void" and be retained by Contractor in accordance with this subsection. Contractor shall retain all records, data, and/or tickets that represent or document each and every transaction at the Landfill for a period of seven years from the date the transaction occurred. County and/or its designees shall have unrestricted access to such material, which shall be produced for inspection at reasonable hours upon request by County.

(2) Contractor shall maintain records of all operations at the Landfill for the period of time required by the applicable Regulatory Agencies. Contractor shall maintain records of all operations at the Landfill following the expiration or termination of this Agreement in compliance with then existing TCEQ rules, the TCEQ permit applicable to the Landfill, and/or Contractor's internal records management policies. County shall have access at reasonable hours to all of Contractor's on-site records, and all the papers and documents relating to Contractor's Landfill operations within Williamson County. County, at its sole discretion and expense, may employ internal or outside consultants to audit or verify the financial records and reports of the Contractor, and to ensure compliance with the Permit and Applicable

Laws. Contractor shall cooperate with County, its officers, employees, agents, or consultants, by making its employees and records available for the purpose of this section.

(i) Contractor shall keep accurate records of all transactions related to or connected with this Agreement including, but not limited to, all correspondence and invoices, copies of weigh tickets or receipts issued at the Landfill. Contractor shall at all times maintain an accounting system that uses generally accepted accounting principles consistently applied for all services rendered and materials supplied, including additional and deleted work, in connection with this Agreement. Except as otherwise provided in this Agreement, each of the records kept under this section shall remain the exclusive property of County; however, should this Agreement be terminated, Contractor has the right to retain one (1) copy of all Landfill records for insurance and archival purposes.

(ii) Contractor shall provide to County a quarterly report based upon calendar year summarizing routine and extraordinary activities during the prior period and plans and schedules for all new or revised future activities. The quarterly report shall be submitted to County no later than 15 days following the end of each quarter. The quarterly report shall include, but not be limited to: (1) The condition of the Landfill; (2) Changes in the status and readiness of the Alternative Disposal Site and emergency facilities; (3) Any complaints submitted to Contractor and Contractor's response, if any; (4) Any extraordinary occurrences affecting Contractor's performance, including but not limited to occurrences affecting the Landfill; and (5) Documentation regarding Unacceptable Waste, if any, gathered, produced and/or retained.

(c) Operational Review

(1) Upon the request of County, but not more often than every five (5) years, Contractor shall provide County with an independent operational audit of the Landfill performed by a qualified and independent auditor, without conflict of interest, selected by County, in consultation with Contractor. Fees charged by said auditor shall be paid by Contractor up to \$15,000.00, adjusted for CPI-U. The independent operational audit shall include a comparison of tipping fees and other user charges with all other Type I landfills within a 100 mile radius of the Landfill.

(2) County or its agents will review records of performance over each Agreement Year. The purpose of this annual review will be to verify that Contractor is maintaining proper, responsive, efficient, and safe operations in accordance with County solid waste management objectives and the requirements of this Agreement. County's failure to object to the Contractor's failure to maintain proper, responsive, efficient and safe operations shall not diminish or eliminate Contractor's obligations to provide the same.

(3) Within 45 days following County's annual performance review and inspection, County shall issue to Contractor a summary of all findings and recommendations, if any, for changes to Landfill management, operation, and maintenance. Contractor shall be fully responsible for implementing directions and recommendations resulting from the annual performance review and inspection, so long as those directions and recommendations are reasonable, and consistent

with the Permit requirements and Applicable Law.

(4) County may, at its sole option, hire a qualified and independent Oversight Inspector, who has no conflict of interest, to represent County in monitoring Landfill operations. The Oversight Inspector shall be selected by the County, in consultation with Contractor. Contractor shall pay, as invoiced by County, all initial and annual costs associated with County's Oversight Inspector, such costs not to exceed \$50,000.00, adjusted per CPI-U. Contractor shall furnish an office location at the Landfill for County's Oversight Inspector.

Section 2.12 Accidents; Complaints

(a) Contractor shall report to County, within twenty-four (24) hours of discovery, all injuries and accidents associated with its operations, and shall include in its report the known facts and circumstances surrounding such accidents. For purposes of this Section, "accident" or "injury" shall mean the death of any person, any personal injury resulting in hospitalization or outpatient treatment by a physician, or damage to any property exceeding \$2,500. Contractor and County agree that this \$2,500.00 amount may be adjusted annually and this Agreement shall reflect such adjustment.

(b) Contractor shall respond to all complaints, charges and allegations related to its operation of the Landfill under this Agreement within seventy two (72) hours after it receives such complaint, charge or allegation, including, but not limited to, complaints made or actions brought by individual citizens, citizen groups and public agencies. Contractor shall report to County in the quarterly report the details of all complaints received, including, but not be limited to, the name and address of the complainant (if available), the substance of the complaint including the activity or service at issue, the action, if any, Contractor has taken to investigate or remedy the problem or an explanation of why no action has been taken. Newsletters, articles, blogs, and similar public forms of communication made by citizens, citizen groups, and public agencies do not constitute a complaint, charge, or allegation for purposes of this paragraph.

Section 2.13 Maintenance of Records by County

County will maintain all books, records, and accounts necessary to record all matters affecting the operations under this Agreement. Such books, records, and accounts shall accurately, fairly, and in reasonable detail reflect County's dealings and transactions under this Agreement.

Section 2.14 Scheduling; Management; Quality of Performance

Contractor shall coordinate, schedule in an orderly manner, and manage all work done by Contractor's managers, supervisors, employees, Subcontractors and agents. Each of them shall perform every act or service under this Agreement in a timely and professional manner in accordance with the level of care and skill ordinarily exercised by members of the profession who are experienced, knowledgeable, and skilled in performing such services. All personnel shall be certified, licensed, or otherwise qualified as required by Applicable Law. Contractor shall at all times enforce strict discipline and good order among its employees, agents and

Subcontractors. Contractor shall periodically conduct appropriate safety and training programs for all personnel.

Section 2.15 Emergency Operations Plan

(a) Contractor shall provide to County a comprehensive Emergency Operations Plan designed to mitigate and correct hazardous conditions that may arise due to accidents or disruption of Solid Waste and Recyclable Material management services under this Agreement, including but not limited to: damage to property, the interruption of traffic along transportation routes, release of hazardous or dangerous materials, and release of any Acceptable Waste. The Plan shall be updated and submitted for County approval on an annual basis, and shall include:

(1) Procedures and a schedule for notifying County and the appropriate federal, State or local authorities of emergency conditions;

(2) The name, address and phone number of Contractor's emergency response coordinator and other means by which such individual may be reached any time of day or night;

(3) A description of the actions that Contractor's operating personnel shall take in response to the emergency conditions; and

(4) Evidence acceptable to County of the existence of arrangements for the services that will be rendered by each local emergency response agency in the event of an emergency.

(b) If no changes have occurred since the last Emergency Operations Plan was approved by County, a report stating that fact and signed by Contractor is sufficient to satisfy the annual Emergency Operations Plan update required under this Section. The Emergency Operations Plan does not diminish or eliminate Contractor's responsibility to comply with all Applicable Laws for all solid waste and recyclable material management in the event of an emergency.

(c) Contractor shall test the Emergency Operations Plan on an annual basis and immediately correct any problems identified.

(d) In the event that the County Judge has declared a disaster in Williamson County, County shall have the right to extend the hours of Landfill operation, or instruct the Contractor to take other actions to benefit County during the disaster period so long as all such actions comply with Applicable Law.

Section 2.16 Master Site Development Fund

Within one (1) year of the Effective Date, Contractor shall develop a Master Site Development Plan for the Landfill. Within twelve (12) months of the date of County's approval of the Master Site Development Plan, Contractor shall begin implementation of the Master Site Development Plan for the Landfill in accordance with the agreed upon timelines set forth in the Plan. County's

approval of the Master Site Development Plan shall not be unreasonably withheld. Contractor shall update the Master Site Development Plan every five (5) years.

(a) Contractor shall charge Landfill users and pay into a special fund called the Master Site Development Fund ("MSDF") one percent (1%) of the Tip Fee, which is currently equivalent to \$0.31/per ton, for Acceptable Waste accepted and disposed at the Landfill. This special fund shall be adjusted incrementally by the same percentage as any change in the Tip Fee. Contractor shall make payments into the MSDF on January 31 of each calendar year.

(b) Contractor shall be reimbursed from MSDF funds for expenses related to site development activities mutually agreed to by County and Contractor.

(c) As part of the master site development, Contractor agrees not to use the 1,000 foot buffer zone area that includes the regulatory buffer zone along FM 1660, and where possible on Chandler Road. The 1,000-foot buffer zone is not intended to reduce the waste capacity of Landfill.

(d) The MSDF may be used to fund, at a minimum, the following items:

- (1) Landscaping, landfill screening, and other uses of the 1,000-foot buffer zone, including the regulatory buffer zone.
- (2) Commercial development on the Landfill Site.
- (3) Educational facilities on the Landfill Site
- (4) Community facilities on the Landfill Site
- (5) Recreational facilities on the Landfill Site.

ARTICLE III COMPENSATION

Section 3.1 Fees Payable

(a) Contractor shall charge all users of the Landfill a Tip Fee for each ton or portion thereof of Acceptable Waste, Recyclable Material, or Diverted Material that is delivered to Contractor as weighed by the certified scales at the Landfill. The amount of the Tip Fee shall not exceed Forty Dollars (\$40.00) per ton, as adjusted per CPI-U. Pass Through Charges, and any required local, state, and federal taxes, Fees, which shall be individually identified and itemized, will be in addition to the Tip Fee. Except as provided in Section 3.2, Contractor may not increase the above-stated Tip Fee without prior written consent of the Williamson County Commissioners' Court, which shall not be unreasonably withheld. Contractor may not charge itself or another entity partially or wholly owned by Contractor, or under common ownership of Contractor, a discounted Tip Fee less than the lowest discounted Tip Fee that Contractor has charged to any commercial Solid Waste hauler that delivers similar volumes of Solid Waste to the Landfill in an Agreement Year. Contractor shall convert its contracts with commercial haulers to tonnage within one (1) year from the Effective Date.

(b) County shall not pay a Tip Fee on the first 750 tons of Acceptable Waste, inclusive of dead

animals, it delivers to the Landfill per Agreement Year. Any amount of waste in excess of that number shall be charged at a base charge which is One Dollar (\$1.00) less per ton than the lowest rate which Contractor has charged its commercial haulers using the Landfill during that Agreement Year. Contractor shall exclude the first 750 tons of the County's free Acceptable Waste from the surcharge calculation. County shall not pay any special fund fees.

(c) The Tip Fee shall be conspicuously posted at the entrance of the Landfill. Contractor shall notify the Williamson County Commissioners' Court in writing thirty (30) days before making any adjustments to the Tip Fee. The Tip Fee shall not exceed the maximum rate as set forth in Section 3.1(a), except as set forth in Section 3.2.

(d) Contractor may charge a no-tarp fee, pull-off fees, solidification fees, special handling fees, or seek adjustments to such fees, for Special Waste, or other waste which requires special handling as determined by Contractor, subject to County's prior written consent which shall not be unreasonably withheld. Contractor shall notify County of any proposed special handling fees, or adjustment thereof, not less than sixty (60) days prior to the proposed effective date for such fee or adjustment and not more often than annually.

(e) Contractor shall include in its monthly report under Section 2.11(a)(1) all monies received, including non-monetary discounted rate differentials, by Contractor for any activities related to the Landfill including, but not limited to, tonnage delivered for recycling or disposal, tipping fees, special handling fees, environmental fees, sales of recyclables, and the sale of soil and/or rocks originating from the Landfill.

Section 3.2 Base Charge Increases

After one year following the Effective Date, Contractor may increase the Tip Fee up to the maximum rate identified in Section 3.1(a) so that Contractor may adjust to market conditions. However, Contractor must notify County in writing in advance of any increase to the Tip Fee. Contractor agrees that if it intends to increase the Tip Fee above forty dollars (\$40.00), as designated in Section 3.1(a) above, and any additional increases thereafter, Contractor must provide information to the County supporting such increase and obtain prior written approval from the Williamson County Commissioners' Court before implementing each additional increase above \$40.00, which approval shall not be unreasonably withheld. Contractor may increase the Tip Fee due to an Uncontrollable Circumstance by providing prior written notice to County.

Section 3.3 Surcharge Payable

(a) Beginning on the Effective Date of this Agreement, Contractor shall pay County a monthly surcharge equal to ten percent (10%) of the Gross Receipts for all Solid Waste accepted at the Landfill for disposal for the month immediately preceding the payment. One (1) year after the ICEQ Commissioners issuance of the final permit for Permit Application No. 1405B, this surcharge shall be increased to fourteen and one half percent (14.5%) of the Gross Receipts for all Solid Waste Accepted at the Landfill for disposal. However, the surcharge payable hereunder shall be not be less than Two Hundred Fifty Thousand (\$250,000.00) per Agreement Year so long as the Landfill continues to operate and accept waste.

(b) Contractor shall pay County a monthly surcharge equal to six and one-half percent (6.5%) of the Gross Receipts for Recyclables and Diverted Material accepted at the Landfill for processing, storage, or sale for the month immediately preceding the payment.

(c) Unless a lower surcharge is approved by County, the portion of the Gross Receipts based on Tipping Fees shall be calculated by multiplying the published gate rate by the number of tons brought into the Landfill for disposal or recycling by the surcharge rates set in Sections 3.3(a) and (b). Small Capacity Vehicles shall be excluded from this calculation; however, fees collected for Small Capacity Vehicles shall be included in the calculation of Gross Receipts. It is the intent of this provision to exclude any discount which Contractor may provide its customers from the surcharge calculation. The surcharges shall be based on all Solid Waste and Recyclable and Diverted Material brought to the Landfill regardless of whether or not Contractor has actually received payment.

(d) The surcharge payments are due and payable on or before the 30th day of the month following any month in which Solid Waste is accepted for disposal at the Landfill or at the Alternate Disposal Site and Recyclable Materials accepted for processing at the Landfill.

(e) A surcharge payment is late if not paid in full and received by County by the due date. If a payment or portion thereof remains unpaid for more than 30 days, a late fee of one percent per month of the balance due calculated on a daily basis shall be added to the payment by Contractor for each month that such amount is unpaid.

Section 3.4 Surcharge Adjustments

The surcharge may be adjusted from time to time by mutual agreement as documented by separate written instrument executed by County and Contractor.

Section 3.5 Additional Fees

(a) Contractor shall charge Landfill users and pay annually one percent (1%) of the Tip Fee, which is currently equivalent to \$0.31/per ton, for Acceptable Waste accepted and disposed at the Landfill, to County for a special fund called the Community Recreational Facility Fund ("CRFF"), for use within Williamson County. Contractor shall make the CRFF payment to County on January 31 of each calendar year for the prior calendar year. This special fund shall be adjusted incrementally by the same percentage as any change in the Tip Fee.

(b) Contractor shall pay County on January 31 of each calendar year five percent (5%) of Contractor's gross receipts for compost and mulch sales for the previous calendar year.

(c) Contractor shall pay County on January 31 of each calendar year a percentage of Contractor's gross receipts for recyclable material sales for the previous calendar year. For the first ten (10) years after the Effective Date of this Agreement, Contractor shall pay County two and one half percent (2.5%) of gross receipts for recyclable material sales on the first two hundred thousand dollars (\$200,000.00). In the event gross receipts for recyclable material sales exceeds two hundred thousand dollars (\$200,000.00) in any one year during the first ten (10) years of this Agreement, Contractor shall pay County five percent (5%) of the gross receipts for

recyclable material sales in excess of two hundred thousand dollars in that year. In the eleventh year of this Agreement and thereafter, Contractor shall pay County five percent (5%) of gross receipts for recyclable material sales for the previous calendar year.

(d) Contractor shall charge Landfill users and pay annually a host fee in the amount of two percent (2%) of the Tip Fee, which is currently equivalent to \$0.62/per ton, for Acceptable Waste accepted and disposed at the Landfill, to the County to be expended for the benefit of the City of Hutto and Hutto ISD with any such expenditures being at County's sole option. Contractor shall make payments to County on January 31 of each calendar year for the prior calendar year. This special fund shall be adjusted incrementally by the same percentage as any change in the Tip Fee.

Section 3.6 Notice and Implementation of Pass Through Charges

Within sixty (60) days of the Effective Date of this Agreement, Contractor and County will send notice to customers of the Landfill of implementation of Pass Through Charges under this Agreement. Contractor will begin collecting Pass Through Charges pursuant to this Agreement sixty-one (61) days after the Effective Date.

ARTICLE IV OPERATING REQUIREMENTS

Section 4.1 Hours of Operation

Contractor may accept Solid Waste, Recyclable Materials, or Diverted Material at the Landfill from 5:00 a.m. to 7:00 p.m., Monday through Friday. Contractor may accept these items at the Landfill from 6:00 a.m. to 4:00 p.m. on Saturday. Contractor may close the Landfill in observance of the following holidays: New Year's Day; July 4; Thanksgiving Day; and Christmas Day. The hours of operation at the Landfill may be changed only upon written request by Contractor and approval by the Williamson County Commissioners' Court, which shall not be unreasonably withheld. In emergency situations, County may order Contractor to open or keep open the Landfill during such other hours, as County shall determine, so long as those hours comply with the TCEQ Permit for the Landfill.

Section 4.2 Ingress and Egress; Tipping Areas

(a) Contractor shall provide on-site queuing and traffic management for all incoming and outgoing vehicles so as to assure there is no unreasonable obstruction of public road traffic due to Landfill operations.

(b) Contractor shall provide off-loading areas for private self-haul vehicles separate from areas used by County and commercial vehicles.

Section 4.3 Weights and Measures

(a) Contractor shall weigh all Solid Waste received at the Landfill, except that Contractor may designate a set tonnage amount and charge a flat rate disposal for Small Capacity

Vehicles. Contractor may adjust this flat rate and set tonnage amount for Small Capacity Vehicles on an annual basis and upon written notice to County. Contractor shall maintain scales of sufficient size and quality to accurately weigh Solid Waste entering the Landfill and empty vehicles exiting the Landfill. Contractor may establish a specific tare weight for commercial haulers which use common vehicles, so that Contractor only needs to weigh such vehicles upon entry to the Landfill. Contractor shall update these tare weights annually. Contractor shall have the scales checked and certified by a certified and qualified person not less than every six months during the term of this Agreement by a company acceptable to County. Contractor shall provide County with advance written notice of the date and time that the scales will be tested and allow a representative from County to be present, if the County so chooses. Contractor shall require the testing company to mail a copy of the test results directly to County. County reserves the right to review and approve the type, size, and quality of scale equipment used by Contractor.

(b) Contractor shall maintain during the term of this Agreement a second set of scales at the entrance to the Landfill. Contractor, at its own cost and expense, shall construct additional sets of scales in the future depending upon the occurrence of any continuous increase in volume where the existing in/out scales become inadequate as mutually determined by County and Contractor.

Section 4.4 Waste Volume and Origination Limits

(a) County and Contractor hereby agree and acknowledge that the Landfill exists for the use and benefit of the residents of Williamson County. However, the parties acknowledge that as of this Agreement's Effective Date, the majority of waste generated in Williamson County is not being disposed at the Landfill. All waste received shall be charged based on weight, except as otherwise provided in this Agreement. Subject to the quantity limits set forth below and recognizing the difficulty in determining the origin and movement of waste, Contractor shall accept for Disposal only Solid Waste generated within Williamson County, Bastrop County, Bell County, Burnet County, Lee County, Milam County, and Travis County; provided, however, that all such waste shall have characteristics acceptable for handling and Disposal in a Type I landfill Unit. Contractor may only accept Solid Waste originating outside of Williamson County and the other above listed counties with the prior written consent of the Williamson County Commissioners' Court. Contractor cannot sign an agreement with any municipal entity, the majority of whose population is outside of Williamson County unless the Contractor obtains the County's prior written consent, which will not be unreasonable withheld. To the extent allowed by law, Contractor agrees to implement measures for the Landfill that are reasonably calculated to prevent the acceptance and Disposal of Solid Waste that originated outside of Williamson County and the other above listed counties. Accordingly, Contractor agrees that within 60 days after the annual report is made to the TCEQ, written and oral reports shall be delivered in a regular or special session of the Williamson County Commissioners' Court. These reports shall include the total amount of tonnage accepted at the Landfill for disposal and recycling during the prior year and the practice and procedures employed by Contractor in complying with this section of the Agreement.

(b) The amount of Acceptable Waste accepted for Disposal on an annual basis shall not exceed the per- person/per-year waste generation rate, as determined herein, times the most recent U.S. Census Bureau's estimate of population for Williamson County ("Tonnage Limit"). The per-person/per-year waste generation rate shall be the Texas Commission on Environmental Quality, or successor agency, average per-capita landfill disposal rate as reflected in the TCEQ annual landfill capacity report. In no event shall the Tonnage Limit be less than 590,000 tons annually. In the event that the U.S. Census Bureau's population estimates or TCEQ information ceases to be published or becomes an unreliable indicator, the parties agree to substitute another equally authoritative measure or index as may then be available, so as to carry out the intent of this provision. Contractor shall calculate the Tonnage Limit annually, and submit it to County for approval. Treatment plant sludge and construction and demolition debris shall not be counted towards the tonnage limit calculation if it is recycled or diverted rather than disposed at the Landfill. Solid Waste accepted as a direct result of an emergency declared by County will not be included in the annual amount of waste for purposes of determining a Tonnage Limit Default.

Section 4.5 Household Hazardous Waste

(a) Contractor shall conduct, at a cost not to exceed \$50,000.00 per calendar year, adjusted per CPI-U, two (2) special household hazardous waste ("HHW") events per year in the County at specific times and places scheduled by prior agreement of County and Contractor. Each event shall be one or more days, by prior agreement of County and Contractor. Multi-day events shall be scheduled if prior events indicated the need for additional days to meet public needs. Each event shall include a Saturday and Contractor shall be responsible for notifying Williamson County residents of each such event. Such notification shall include publication in all local and county newspapers at least twice prior to each such event. Contractor shall work with County's Public Information Officer to coordinate delivery and content of the notice. County shall seek grants to assist in funding such events or provide matching funds, and Contractor's agreement to pay up to \$50,000.00 per calendar year is contingent upon the County pursuing and timely submitting application(s) for such grant(s) or providing matching funds.

Section 4.6 Recycling and Composting

(a) The County and Contractor desire to work together to pursue sustainable Recycling opportunities and projects at the Facility. This commitment to pursue sustainable Recycling opportunities and projects includes, but is not limited to, diverting more material received at the Landfill for recycling or reuse, educating citizens and communities within Williamson County on recycling opportunities, promoting and sponsoring household hazardous waste events. Contractor further agrees that County may establish recycling programs and other solid waste reduction programs including, but not limited to, composting programs. Nothing contained in this Agreement shall be construed to prevent County from establishing such recycling programs or diverting all or a portion of the waste stream in compliance with the Permit to purchasers of recycled materials or businesses that offer other recycling alternatives not offered by Contractor.

(b) Within ninety (90) days after the Effective Date, Contractor, at its own cost and expense,

shall assume management of the existing recycling facility at the Landfill, and all County owned equipment associated with the existing recycling facility shall be made available to Contractor at no charge for Contractor's continued use. Contractor shall be responsible for the maintenance and repair of this equipment. Upon Contractor's assumption of managing the existing recycling facility, the hours of operation of the recycling center shall coincide with the hours of the Landfill set forth in this Agreement. Within ninety (90) days after assuming management of the existing recycling facility at the Landfill, Contractor shall expand the items that citizens can drop-off at the facility to include those items that are allowed under the Permit and Applicable Law. Such items will include light bulbs, motor oil, car batteries, oil filters, all other types of batteries, and latex and oil based paint. Contractor has the right to charge customers for items dropped off at the recycling facility, with County's prior approval, that will not be unreasonably withheld.

(c) Within one (1) year of the Effective Date, Contractor and County shall work cooperatively to develop a Master Recycling Plan for the Landfill. The parties acknowledge that, due to the uncertainty of the recycling market, the Master Recycling Plan may include reasonable costs for certain recycling activities, including storage, permit modifications, or disposal, due to market conditions. The Master Recycling Plan shall address, at a minimum, the following potential recycling activities at the Landfill, and Contractor shall include timelines within the Plan for implementation of those activities set forth herein:

- (1) Citizens collection center for recyclable materials.
- (2) Compost and mulch recycling.
- (3) Aluminum and steel can recycling.
- (4) Plastic container recycling.
- (5) Clear and colored glass recycling.
- (6) Newsprint recycling.
- (7) Cardboard recycling.
- (8) Tire recycling.
- (9) HHW collection Center.

(d) Within twelve (12) months of the date of County's approval of the jointly developed Master Recycling Plan, Contractor shall begin implementation of the Master Recycling Plan for the Landfill in accordance with the agreed upon timelines set forth in the Plan. County's approval of the jointly developed Master Recycling Plan shall not be unreasonably withheld.

(e) The Master Recycling Plan shall be reviewed by County and Contractor every twenty-four (24) months for changes to accommodate new technology and market changes.

(f) All recycling facilities constructed at the Landfill shall be at Contractor's sole cost, unless otherwise agreed to in writing by County.

(g) County and Contractor shall cooperate in seeking any recycling grant monies which may become available. If any language in this Section of the Agreement is interpreted or applied in a manner that jeopardizes the County's or negatively impacts the County's ability to seek or

obtain grant monies for recycling or composting programs, the parties agree to meet to discuss how to proceed, and such discussions could culminate in amending this Section.

Section 4.7 Alternate Daily Cover

Contractor shall be allowed to use Alternate Daily Cover ("ADC") if allowed by the Permit or an amendment thereof and in accordance with ICEQ rules with the following conditions:

(a) County must approve the use of each specific type of ADC in writing, both initially and each year thereafter; and

(b) No ADC may be used when the Landfill is closed for disposal operations for periods longer than twenty-four (24) hours.

Section 4.8 Methane Recovery

County by virtue of its ownership of the Landfill has a real property interest in the methane gas produced from the Landfill, as to be further defined by future agreement between County and Contractor. Contractor currently contemplates permitting and constructing, at its sole costs and expense, a methane recovery facility. Within two (2) years from the date of execution of this Agreement, Contractor shall present a timetable to the County of its intention to pursue methane recovery operations. After the methane recovery timetable is presented to the County, County and Contractor will execute a separate written agreement which will set forth the compensation rights and responsibilities of the County and Contractor including, but not limited to, carbon offsets, tax credits, or other types of commercial or governmental credit associated with methane gas recovery. After the two year period has elapsed and in the event that Contractor has not committed to constructing a methane recovery operation or in the event that a mutual agreement cannot be reached between County and Contractor, County may give ninety (90) days written notice that it intends to contract with a third party to conduct methane recovery operations. Contractor shall have thirty (30) days from receipt of the notice to exercise a first right of refusal to conduct methane recovery operations. In the event that Contractor does not exercise its first right of refusal, Contractor shall transfer any title or beneficial interest it has or may have in the methane or other gases underneath the Landfill to County, or its designee. In that event, Contractor shall not be required to incur any expenditure in connection with the delivery of Landfill gas to any third party or to County. If County authorizes a third party to construct and operate a methane recovery system at the Landfill, County, Contractor, and third party will execute a separate written agreement that sets forth the compliance and other operational responsibilities associated therewith.

Section 4.9 Maintenance and Repair of Facilities and Equipment

(a) Contractor shall maintain, at its sole cost and expense, all personal property and permanent improvements at the Landfill in good working order. In the event a permanent improvement or utility is damaged by fire or any other casualty, regardless of the extent of such damage or destruction, Contractor shall within a reasonable time, but in no event more than three (3) months from the date of such damage or destruction, commence the work to repair, reconstruct or replace the damaged or destroyed improvement or utility, and prosecute the

same with reasonable diligence so that the improvement or utility shall be restored to substantially the condition it was in prior to the happening of the casualty within one (1) year of the date of such damage or destruction. However, County and Contractor have the right to mutually agree not to reconstruct such permanent improvement or utility so long as that decision does not interfere with the proper operation of the Landfill. Any payment of insurance proceeds shall be paid jointly to Contractor and County, and used solely for the reconstruction, repair, or replacement of the damaged or destroyed improvement, if applicable. County shall purchase and maintain insurance from a recognized financially responsible insurers that are licensed in the State of Texas and whose claims paying ability is rated not less than "A" or "A-" by A.M. Best Company, Inc., or its equivalent on all permanent improvements, appurtenances, and fixtures at the Landfill. Contractor is responsible for maintaining insurance for its equipment and other Contractor owned or leased equipment used or located on the Landfill in accordance with the insurance requirements in this Agreement.

(b) If this Agreement expires or is terminated:

(1) Contractor shall restore all buildings and other permanent improvements to the same condition and good order as that existing on the Effective Date, ordinary wear and tear excepted. Title to all Permanent Improvements or Fixtures at the Landfill shall vest in County without necessity of any compensation by County; and

(2) Contractor shall remove any and all removable personal property placed thereon by it. Any and all property not so removed shall, at County's option, become the property of County, or County may cause the property to be removed at Contractor's expense.

(c) Except as required by Applicable Law, Contractor shall not make alterations or additions at the Landfill, unless the plans and specifications for same have been submitted to and approved by County.

(d) Contractor shall keep the Landfill in a neat, safe and sanitary condition at all times. County shall designate authorized individuals who will have unrestricted access to the Landfill at all times.

(e) Contractor shall maintain a local office or other facility within Williamson County, not necessarily at the Landfill, where inquiries and complaints about service may be made. Such office or facility shall be equipped with adequate telephone communications, and shall have at least one responsible person in charge and present during all hours of operation of the Landfill. Contractor shall provide an answering machine for use by the public during hours when the office is closed.

Section 4.10 Closure and Post-Closure

(a) At such time as this Agreement expires or is terminated, Contractor shall, at County's sole option, close the Landfill and any Expanded Area in accordance with Applicable Law for landfill closure and post-closure care. Upon such termination or expiration, and prior to final closure, Contractor shall post a performance bond or letter of credit with County in the amount of

Three Million Dollars (\$3,000,000) to guarantee the performance of all post-closure monitoring and Site maintenance requirements. County, at its sole option, may reduce or eliminate this performance guarantee if it determines that closure and post-closure trust funds are sufficient to cover all regulatory monitoring and maintenance requirements during the closure and post-closure period.

(b) Except as provided herein, after expiration or termination of this Agreement, County shall not allow any activities or construction on the Landfill that do not comply with Applicable Law. County's obligation to preserve the integrity of the Landfill shall run to any successor in interest of County.

(c) If County terminates this Agreement for any reason, or this Agreement expires and is not renewed by County, and County intends to continue operating the Landfill on its own or by using a different contractor or County sells or conveys the Landfill and the new owner uses the Landfill to manage, handle, recycle or dispose Solid Waste, Recyclable Material or any other waste, and after such change in contractor has occurred, Contractor's responsibilities to: (i) provide financial assurance, in the form of bonds or otherwise, for closure and post-closure care **going forward** cease, (ii) conduct closure and post-closure activities cease, (iii) maintain any performance bonds related to operating the Landfill pursuant to this Agreement cease, and (iv) maintain any bonds or other financial assurance required by TCEQ cease. However, this section does not prevent County from making any claim against such sureties or under such insurance policies arising from Contractor's actions prior to expiration or termination of this Agreement even if such claim is made after expiration or termination of this Agreement. Any and all funds paid into closure and post-closure accounts by Contractor prior to expiration or termination shall remain with County for closure and post-closure activities.

If County terminates this Agreement for any reason before expiration of the Term, or the term of this Agreement expires and the Agreement is not renewed by the County, and County intends to continue operating the Landfill on its own or by using a different contractor, or County sells or conveys the Landfill and the new owner uses the Landfill to manage, handle, dispose Solid Waste or any other waste, and after such change in contractor has occurred, County will reimburse Contractor for all unamortized capital expenditures for Permanent Improvements and Fixtures at the Landfill made by Contractor during the Term of this Agreement.

Section 4.11 Operations in Expanded Area

County and Contractor agree that it is the intent of the parties for Contractor to fully utilize the Current Footprint prior to any disposal related operations being commenced under Permit 1405B in any Expanded Area. Contractor shall give County thirty (30) days written notice of its intent to begin disposal related operations in any Expanded Area along with supporting documentation demonstrating that the Current Footprint has less than 10% useful life remaining. County shall have thirty (30) days from the receipt of the written notice to approve the commencement of disposal related operations in any Expanded Area. This approval by County shall not be unreasonably withheld. County may, at its sole option, waive the 10% requirement. Non-disposal related operations in the Expanded Area which are necessary to

achieve the maximum allowable height for the Current Footprint are specifically excluded from this requirement to obtain County approval.

ARTICLE V UNCONTROLLABLE CIRCUMSTANCES

Section 5.1 Contractor Reliance

Contractor warrants and represents that it has examined carefully and acquainted itself with the Landfill, and has made and shall make its own deductions and conclusions regarding difficulties and obstacles that may be encountered in performing under this Agreement, including, but not limited to, physical conditions at the Landfill. Contractor has previously operated and inspected the Landfill, and accepts it in its present as-is condition. **COUNTY SHALL NOT BE LIABLE TO CONTRACTOR, ITS AGENTS, SERVANTS, LICENSEES OR INVITEES, FOR ANY DAMAGE SUSTAINED TO PERSON OR PROPERTY BY REASON OF ANY DEFECTS IN OR RELATING TO THE LANDFILL OR ITS OPERATION.**

Section 5.2 Uncontrollable Circumstances (Force Majeure)

(a) Uncontrollable Circumstances Limited. Contractor's obligations under this Agreement are subject to Uncontrollable Circumstances that may necessarily and unavoidably delay or prevent performance under this Agreement. No other events shall excuse non-performance by Contractor. If Contractor is unable to perform its obligations under this Agreement as a result of such an event, the obligations of Contractor and County shall be temporarily suspended. Following such event, Contractor shall use its best efforts to resume performance as soon as possible; provided, however, if the Contractor is unable to perform for a period of thirty (30) days or longer, County, at its sole option, may terminate this Agreement without penalty against Contractor and without compensation to Contractor.

(b) Notification; Response. As soon as possible after the occurrence of an Uncontrollable Circumstance, but in no event later than twenty-four (24) hours after the knowledgeable party becomes aware of the Uncontrollable Circumstance, such party shall notify the other of the event. If the occurrence of the Uncontrollable Circumstance damages, destroys, or otherwise incapacitates any of the Facilities, Contractor shall provide the County with its plan for correcting, repairing, replacing, or reconstructing the affected Facilities and at the earliest practical time, activate the alternate operation plan prepared in accordance with the Agreement for correcting, repairing, or reconstructing the affected Facilities. If the Uncontrollable Circumstance or the damage to the Facilities is not provided for in that plan, Contractor shall submit to County as soon as practicable a plan for correcting, repairing, replacing, or reconstructing the affected Facilities. In either event, County, at its sole discretion, may reasonably require Contractor to replace, repair, or reconstruct the Facilities.

ARTICLE VI INSPECTION OF WASTE; UNACCEPTABLE WASTE

Section 6.1 Liability for Waste

Subject to the limitations and conditions of this Article, liability for all Solid Waste and Recyclable Materials transported to the Landfill shall pass to Contractor as soon as the Solid Waste or Recyclable Materials are accepted at the Landfill entrance.

Section 6.2 Waste Screening Program

Contractor shall follow and comply with the Site Operating Plan to implement screening and monitoring procedures to prevent the acceptance and disposal of Unacceptable Waste, and to identify potentially recyclable material for diversion from the landfill. Contractor shall also ask Landfill customers about the waste they intend to dispose to determine whether a load is suitable for recycling or diversion from disposal at the Landfill.

ARTICLE VII INSURANCE AND INDEMNIFICATION

Section 7.1 Insurance

(a) Contractor shall obtain, maintain and pay for the insurance coverage specified in this Article from recognized financially responsible insurers that are approved by County, and licensed in the state of Texas and whose claims paying ability is rated not less than "A" or "A-" by A.M. Best Company, Inc., or its equivalent, at all times during the term of the Agreement. Such insurance must fully protect County from any and all claims, risks, and losses in connection with any activity performed by Contractor under this Agreement, except Uncontrollable Circumstances, unless otherwise designated as insurable events hereunder. Each policy must provide for forty-five (45) days' prior written notice of any cancellation, reduction, modification, or change in coverage or deductibles by the insurer to County. Contractor shall also give County forty-five (45) days' prior written notice of any cancellation, reduction, modification, or change in coverage or deductibles required under this Article.

(b) All of Contractor's insurance policies that can be so issued shall name County as an "additional insured", and provide a waiver of subrogation in favor of County and, before commencement of work hereunder, Contractor agrees to furnish County (c/o County Attorney's Office) with certificates of insurance or other evidence satisfactory to County Attorney to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

This is to certify that the policies of insurance described herein have been issued to [Contractor] and are in force during the term of this Agreement. In the event of cancellation or material change in a policy, forty-five (45) calendar days prior written notice shall be given to Williamson County.

(c) Contractor shall carry the following types of insurance in at least the limits specified below:

COVERAGE LIMITS OF LIABILITY

Workman's Compensation with waiver of statutory subrogation on behalf of County Employer's Liability	\$500,000.00 or statutory limit whichever is greater
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Bodily Injury Liability, Each Occurrence (except automobile)	\$1,000,000.00
Aggregate	\$2,000,000.00

Property Damage Liability, Each Occurrence (except automobile)	\$1,000,000.00
Aggregate	\$2,000,000.00

Automobile Bodily Injury, Each Person Liability	\$1,000,000.00
Each Occurrence	\$2,000,000.00

Automobile Property Damage, Each Occurrence Liability	\$ 500,000.00
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Environmental Impairment, Each Occurrence	\$10,000,000.00
Aggregate	\$20,000,000.00

Comprehensive General Liability, Two Million dollars (\$2,000,000.00) per occurrence with an aggregate of Ten Million dollars (\$10,000,000.00)

Excess Commercial General Liability, Ten Million dollars (\$10,000,000.00)

(d) In the event Contractor fails to provide and maintain the required insurance coverage, said failure shall constitute a Default of this Agreement. County may, at its sole option, procure and maintain, at Contractor's sole expense, insurance to the extent County deems proper in lieu of declaring a Default. Contractor shall reimburse County for the cost of that insurance within 15 days of receiving written notice from County.

(e) Contractor and County agree that the coverage limits identified in Subsection (c) shall be reviewed annually and shall be adjusted as required to satisfy the Williamson County Auditor's determination of acceptable insurance limits for County contracts.

Section 7.2 Indemnification

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR SHALL AND DOES AGREE TO DEFEND WITH COUNSEL APPROVED BY COUNTY WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD, THE COUNTY, REPRESENTATIVES OF THE COUNTY AND ITS COMMISSIONERS' COURT OF WILLIAMSON COUNTY, ITS VARIOUS DEPARTMENTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (COLLECTIVELY REFERRED TO AS

"INDEMNITEES" UNDER SECTION 7.2 OF THIS AGREEMENT) FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION OF ANY PERSON OR ENTITY WHOMSOEVER ARISING OUT OF, CAUSED BY, OR RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT, AND THE SERVICES RELATED THERETO, OR ANY PART THEREOF TO THE EXTENT RESULTING FROM ALLEGATIONS OF A NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES IN THE PERFORMANCE OF THIS AGREEMENT. THE CONTRACTOR AGREES TO INDEMNIFY, PROTECT, AND HOLD HARMLESS THE INDEMNITEES FROM SUCH CLAIMS AND DAMAGES HEREINABOVE STATED ONLY TO THE EXTENT RESULTING FROM A NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF CONTRACTOR, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES IN THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR SHALL NOT, HOWEVER, BE OBLIGATED TO INDEMNIFY OR DEFEND INDEMNITEES FOR ANY SUIT, ACTION, LEGAL PROCEEDING, CLAIM, DEMAND, DAMAGE, COST, OR EXPENSE ARISING FROM A NEGLIGENT ACT OR OMISSION OR WILLFUL MISCONDUCT OF INDEMNITEE, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES.

(b) CONTRACTOR SHALL AND DOES AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY COUNTY WHICH APPROVAL SHALL NOT BE UNREASONABLY WITHHELD, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, AND EXPENSES, INCLUDING ATTORNEY FEES, OF ANY NATURE, KIND, OR DESCRIPTION, FINES, PENALTIES, AND ASSESSMENTS BROUGHT BY LOCAL, STATE OR FEDERAL ENVIRONMENTAL AGENCIES OR PRIVATE CONCERNS ARISING OUT OF THE OPERATION OR CLOSURE OF THE LANDFILL, TRANSFER STATIONS OR OTHER SOLID WASTE FACILITIES OWNED, FRANCHISED OR UTILIZED BY CONTRACTOR, IF ANY, THAT ARISE PURSUANT TO THIS AGREEMENT AND INDEMNITOR'S PERFORMANCE OF THIS AGREEMENT, OR ANY CLEANUP COSTS ASSOCIATED WITH ENVIRONMENTAL CONTAMINATION AS A RESULT OF LANDFILL OR LANDFILL OPERATIONS BY CONTRACTOR UNDER THIS AGREEMENT WHETHER SUCH CLEANUP IS OF AIR, SOIL, GROUND WATER OR SURFACE WATER CONTAMINATION AS DETERMINED BY THE GOVERNING ENVIRONMENTAL AGENCY OR AGENCIES.

(c) INDEMNITY UNDER ARTICLE VII OF THIS AGREEMENT SHALL SURVIVE THE TERM OF THIS AGREEMENT AND SHALL APPLY PROSPECTIVELY SO LONG AS ANY LIABILITY (INCLUDING BUT NOT LIMITED TO LIABILITY FOR CLOSURE AND POST-CLOSURE COSTS) COULD BE OR IS ASSERTED IN REGARD TO ANY NEGLIGENT ACTS OR OMISSIONS OR

WILLFUL MISCONDUCT OF CONTRACTOR IN PERFORMING UNDER THIS AGREEMENT.

(d) INDEMNITY UNDER ARTICLE VII OF THIS AGREEMENT EXTENDS TO CLAIMS AND ASSESSMENTS OCCURRING DURING THE TIME CONTRACTOR OPERATES THE LANDFILL AND ALSO RETROACTIVELY TO CLAIMS AND ASSESSMENTS WITH REGARD TO THE LANDFILL DURING THE TIME THAT COUNTY OWNED AND/OR OPERATED THE LANDFILL.

(e) INDEMNITY UNDER ARTICLE VII OF THIS AGREEMENT EXTENDS TO CLAIMS AND ASSESSMENTS RELATING NOT ONLY TO THE LANDFILL PROPERTY (WHETHER USED BY CONTRACTOR OR PREVIOUSLY BY COUNTY) BUT ALSO TO CLAIMS OR ASSESSMENTS ARISING OUT OF THE SURROUNDING AREA CAUSED BY RUNOFF, LEACHATE OR OTHER INFILTRATION THAT OCCURRED AS A RESULT OF LANDFILL OPERATIONS PERFORMED BY CONTRACTOR.

(f) INDEMNITY UNDER ARTICLE VII OR ANY OTHER SECTION OF THIS AGREEMENT SHALL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

**ARTICLE VIII
CONTRACTOR AND COUNTY REPRESENTATIVES**

Section 8.1 Representatives

Contractor and County have designated an authorized agent to serve as its representative for the term of this Agreement (See Section 13.11(c) herein below). County and Contractor, respectively, shall keep each other informed of the identity of their representative and shall provide each other with a telephone number and other means by which that representative may be reached at all times of the day and night. Either party may change its respective representative on five days' written notice to the other party.

Section 8.2 Contractor Representative

Contractor's representative shall be Contractor's agent and shall represent Contractor for all purposes of this Agreement. All written or oral directions, instructions, or notices given by County to such representative and related to the subject matter of this Agreement shall bind Contractor as if delivered to Contractor personally. Contractor's representative shall be located within a reasonable proximity of Williamson County and be accessible at all times during the term of this Agreement.

Section 8.3 Williamson County Representative

Unless County notifies Contractor otherwise in writing, the Williamson County Judge shall be County's authorized agent and representative for all purposes of this Agreement. All written or oral directions, instructions, or notices given by Contractor to the County Judge and

related to the subject matter of the Agreement shall be deemed given to County.

ARTICLE IX DISPUTE RESOLUTION

Section 9.1 Mediation

The parties to this Agreement will work together in good faith to resolve any controversy, dispute or claim between them which arises out of or relates to this Agreement, whether stated in tort, contract, statute, claim for benefits, bad faith, professional liability or otherwise ("Claim"). If the parties are unable to resolve the dispute within thirty (30) days following the date in which one party sent written notice of the dispute to the other party or a mutually agreed upon time period, and if a party wishes to pursue the Claim, such Claim shall be addressed through non-binding mediation under the Commercial Mediation Rules of the American Arbitration Association ("AAA"). A single mediator engaged in the practice of law, who is knowledgeable about subject matter of this Agreement, will conduct the mediation under the then current rules of the AAA. Any mediation under this Agreement shall be conducted in Williamson County, Texas. All costs involved in the mediation shall be borne equally between the parties, except that each party shall bear its own attorneys fees. Nothing herein is intended to prevent either party from seeking any other remedy available at law including seeking redress in a court of competent jurisdiction. This provision shall survive the termination of this Agreement.

Section 9.2 Attorney's Fees

In the event mediation is unsuccessful, and redress is sought in a court of competent jurisdiction or by binding arbitration, the prevailing party may be entitled to its reasonable attorney's fees and costs.

ARTICLE X DEFAULT AND TERMINATION

Section 10.1 Generally

Contractor shall be deemed to be in Default under this Agreement if it commits the acts or omissions described in Section 10.2 or elsewhere in this Agreement. County shall, as soon as practical, give Contractor written notice of Contractor's default and County's intent to terminate this Agreement if the Default is not cured within sixty (60) calendar days of Contractor's receipt of such notice. Because of the sensitivity of items 10.2(s) and (t), Contractor shall be required to cure within ten (10) calendar days of receipt of such notice of default. The failure of County to give such notice shall not constitute a waiver of such Default. County may not terminate this Agreement without providing written notice to Contractor as required herein. Events of Default shall be subject to Liquidated Damages under Section 10.4.

(a) If County exercises its discretion to terminate this Agreement for Contractor's Default and failure to cure the Default within the required time limit, County may, at its sole option,

take over and operate the Landfill (Step-In Provision). If Contractor does not cure a Default within the required time period, County shall have the right to terminate this Agreement and immediately implement the Step-In Provision upon immediate notice to the Contractor.

(b) Upon Contractor's Default and failure to cure the Default within the required time limit, County, at its sole option and without limiting any other remedy, may proceed against the surety or the issuer of other approved financial instrument furnished by Contractor as a financial guarantee or bond under this Agreement.

(c) The Step-In Provision allows County the option to operate the Landfill itself or procure the services of a third party as a contract operator. County shall collect all Gross Receipts at the Landfill during such time period and deduct any and all operating expenses incurred by County. Such operating expenses shall be charged to Contractor's Performance Bond or other approved financial instrument.

Section 10.2 Events of Default

The following acts or omissions, among others described in this Agreement, by Contractor shall constitute an event of Default, subject to cure in accordance with the terms herein, in Contractor's performance under this Agreement:

- (a) Failing to operate the Landfill in accordance with Applicable Law.
- (b) Failing to timely pay any and all fees, surcharges, or payments required by this Agreement, or late charges thereon.
- (c) Failing to accept Solid Waste meeting the requirements of this Agreement, subject to the Annual Tonnage Limit.
- (d) Failing to maintain or provide County with timely evidence of any bond or other financial assurance mechanism in the amounts and form required herein.
- (e) Failing to indemnify County as required herein.
- (f) Failing to provide and/or falsifying records or reports, required by any governmental office or agency, or as required by Applicable Law, and/or this Agreement;
- (g) Failing to provide County with reports as required herein or to retain records as required herein.
- (h) Failing to maintain and monitor the Landfill, specifically including any Expanded Area, during and after closure as required by Applicable Law and this Agreement.
- (i) Failing to maintain and provide County with timely evidence of insurance required herein.
- (j) Failing to obtain consent of County for any direct or indirect change in control or the

transfer of a direct or indirect controlling interest in the beneficial ownership of Contractor.

(k) Failing to dispose of Solid Waste for five (5) consecutive working days as a result of Contractor's negligent, willful, or wrongful act.

(l) Failing to seek a mutually agreeable permit modification or amendment as may be required by County.

(m) Failing to implement the Master Recycling Plan as required herein.

(n) Failing to pay County liquidated damages as required herein.

(o) Failing to obtain County approval of ADC as required herein.

(p) Failing to execute documents necessary to transfer legal and/or equitable interest in the Permit as required by Section 2.7(e).

(q) Failing to carry out County directions resulting from an annual performance review and inspection as required by Section 2.11(c) herein.

(r) Protesting or opposing the sale or transfer of the County's interest in the Landfill.

(s) Claiming any legal or ownership interest in any permit now existing, or issued in the future, which relates to the Landfill.

(t) Claiming any legal or ownership interest in any real property in the Current Footprint or Expanded Area of the Landfill and failing to deed or convey any such alleged interest to County.

(u) Failing to obtain County's written consent for any merged entity of Contractor to assume operation of Landfill, as required in Section 12.3 herein.

Section 10.3 Events of Exceptional Default

Certain actions by Contractor could have such severe impacts on the residents of Williamson County that they constitute an Exceptional Default that may be subject to immediate termination of this Agreement, at County's sole option, upon written notice to Contractor by County. The following acts or omissions, among others described in this Agreement, by Contractor shall constitute an Exceptional Default in Contractor's performance under this Agreement:

(a) Exceeding the Annual Tonnage Limit in two years during any three-year period and/or exceeding the Annual Tonnage Limit in four years during any ten-year period, provided, however, County may, at its sole discretion, modify or waive the annual Tonnage Limit for the purpose of determining a Default.

(b) Ten (10) or more events of Default in one (1) calendar year or Twenty (20) or

more events of Default in three (3) calendar years.

(c) Three (3) or more events of claiming any legal or ownership interest in any permit now existing, or issued in the future, which relates to the Landfill in one (1) calendar year.

(d) Three (3) or more events of claiming any legal or ownership interest in any real property in the Current Permit or Expanded Area of the Landfill and failing to deed or convey any such alleged interest to County in one (1) calendar year.

Section 10.4 Liquidated Damages

The parties agree that the actual damages that might be sustained by County by reason of a Default by Contractor are uncertain and would be difficult to ascertain beforehand, and, therefore, the sum of Five Thousand Dollars (\$5,000) per day is reasonable compensation to County for such Default under this Agreement as Liquidated Damages. County may, at its sole option, waive the Liquidated Damages. Contractor shall pay the above described sums as Liquidated Damages, and not as a penalty, for an event of Default by Contractor. Liquidated Damages for an event of Default cease accruing upon termination of this Agreement by County.

Section 10.5 Appeal of Liquidated Damages by Contractor

Contractor may dispute the assessment of Liquidated Damages assessed by County under the Dispute Resolution clause of this Agreement.

Section 10.6 Remedies Cumulative

The rights and remedies granted to County for a Default are cumulative. Accordingly, the exercise of any such rights or remedies shall not prevent County from taking action or seeking relief, at law or in equity, and otherwise as authorized by Applicable Law or this Agreement. No waiver of any violation, breach, default, act, or omission shall be deemed or construed by a court of law to constitute a waiver of any other violation, breach, default, act, or omission.

Section 10.7 Insolvency, Bankruptcy and Receivership

(a) The parties acknowledge that the services provided by Contractor under this Agreement are vital and critical to County. Accordingly, the failure of Contractor to provide the services may create substantial public health risks. Therefore, if Contractor becomes insolvent, makes a general assignment for the benefit of creditors, or has a receiver appointed for the benefit of creditors, County may request a written statement from Contractor or its surety describing in reasonable detail the arrangements that have or will be made to continue operations under the terms and conditions of this Agreement. If Contractor or its surety does not provide such statement within ten (10) calendar days after County's request, County may declare Contractor in Default and terminate this Agreement.

(b) If Contractor files a petition under any bankruptcy statute or is the debtor in any

involuntary bankruptcy case that is not dismissed within sixty (60) calendar days after the petition commencing the case has been filed, Contractor and County agree, if permitted by Applicable Law, to the entry of a stipulated order in Contractor's bankruptcy case granting Contractor ten calendar days from the date of the order to assume or reject this Agreement.

ARTICLE XI CONDEMNATION

Section 11.1 Complete Taking

If during the term of this Agreement, all of the Landfill and all Expanded Area is taken for a public purpose by condemnation or is sold to a condemning authority under threat of condemnation, this Agreement shall terminate subject to the continuing obligation on Contractor to provide final cover and closure of all portions of the Landfill and any Expanded Area and to maintain and monitor the Landfill after closure for any period required by Applicable Law or this Agreement. In the event of a condemnation or taking of all the Landfill and all Expanded Area, Contractor's obligation to indemnify County in accordance with Article VII shall survive any such condemnation or taking.

Section 11.2 Partial Taking

If less than all, but more than ten percent (10%) of the Landfill's permitted area or an area that is included within a pending permit application is taken for a public purpose by condemnation, or sold to a condemning authority under threat of condemnation, Contractor may terminate this Agreement by giving County ninety (90) days' notice of the same, subject to the continuing obligation, if required by law, on Contractor to provide final cover and closure of all portions of the Landfill and any Expanded Area and to maintain and monitor the Landfill and any Expanded Area after closure for any period required by Applicable Law or this Agreement.

Section 11.3 Obligations of New Owner(s)

To the extent that condemnation law, statute, or legal precedent requires the new owner who gained ownership of the Landfill Expanded Area or an area that is included within a pending permit application through condemnation to take responsibility for all obligations of the property, which would include closure and post-closure obligations, those obligations pass immediately upon condemnation to the new owner.

Section 11.4 Disclaimer on County Taking

IN ANY CONDEMNATION PROCEEDING IN WHICH COUNTY IS THE CONDEMNING AUTHORITY OR IN WHICH COUNTY IS REQUIRED TO PAY ALL OR A PORTION OF THE COST OF ACQUIRING THE PROPERTY TO BE TAKEN, CONTRACTOR DISCLAIMS, RELEASES AND WAIVES ANY INTEREST IN ANY CONDEMNATION AWARD IN EXCESS OF ANY AMOUNT EQUAL TO CONTRACTOR'S ACTUAL OR ACCRUED EXPENSES UNDER THIS AGREEMENT UP TO THE TIME OF THE TAKING. The parties intend that in allocating any

condemnation award between County, as Owner and Operator of the Landfill, and Contractor, as the contract operator of the Landfill, that Contractor's portion of such award never exceed an amount equal to Contractor's actual and accrued expenses up to the date of the taking. Contractor's accrued expenses shall include the cost of closing and monitoring the Landfill as required under this Agreement if the condemnation requires immediate closure of the Landfill. County does not represent to Contractor that the Contractor's interest in or rights held under this Agreement has any particular value in a condemnation proceeding.

Section 11.5 Avoidance and Mitigation

County agrees to use its best efforts to find alternative routes or sites for street, water or wastewater right-of-way or facilities when such routes or sites are controlled or determined by the County so as not to require condemnation of any portion of the Landfill.

Section 11.6 Notice

County agrees to use its best efforts to provide Contractor with prompt written notification if County becomes aware of any attempts or plans by anyone to take actions that could result in condemnation of some or all of the Landfill or the Expanded Area.

ARTICLE XII SUCCESSORS; ASSIGNMENT

Section 12.1 Contractor Delegation

County executes this Agreement with Contractor as a qualified entity to operate the Landfill for County. Contractor's delegation of any duties hereunder shall require the prior written consent of County. Any delegation of duties shall not relieve Contractor or its surety of any liability and/or obligation to perform hereunder.

Section 12.2 Assignment

(a) Contractor shall not assign any rights or obligations under or arising from this Agreement without the prior written consent of County, which shall not be unreasonably withheld.

(b) County may assign its rights and privileges under this Agreement by giving Contractor ninety (90) days' notice of such assignment.

(c) County may sell all or part of its interest in the Landfill without restriction under this Agreement. This Agreement shall survive any sale, partial sale, or conveyance of the County's interest in the Landfill if such sale or conveyance occurs during the Term. This Agreement remains binding on the purchaser, owner, or successor in interest of all or a portion of the Landfill.

Section 12.3 Change in Control or Ownership

(a) Any direct or indirect change in control or the transfer of a direct or indirect controlling interest in the beneficial ownership of Contractor shall constitute a Default under this Agreement unless County consents in writing to such transfer, which consent shall not be unreasonably withheld. Such change or transfer shall include, but is not limited to, the transfer or assignment of 25 percent or more of the beneficial ownership of Contractor to or from a single entity.

(b) Any entity merged or consolidated with Contractor shall receive prior written consent from the County before assuming operation of the Landfill.

(c) Notwithstanding the foregoing, County may, at its sole discretion and at Contractor's sole expense (including but not limited to County's attorneys fees, if any), determine that new ownership of Contractor can adequately and faithfully render the service called for in this Agreement for the remaining term of this Agreement. Thereupon, County may elect to execute a novation, allowing new ownership of Contractor to assume the rights and duties of this Agreement and releasing the previous ownership of all obligations and liability. The new ownership shall then be solely liable for any work and/or claims related to this Agreement.

ARTICLE XIII GENERAL PROVISIONS

Section 13.1 Agreement Interpretation; Venue

(a) This Agreement shall be governed and construed by, under and in accordance with the laws of the state of Texas. Both parties acknowledge that their respective legal counsel has reviewed this Agreement and that no presumption shall be made regarding the resolution of ambiguities against the drafting party.

(b) Unless otherwise specified herein, words describing material or work that have a meaning generally recognized by the Solid Waste industry shall be given such a meaning in accordance with the level of care and skill ordinarily exercised by members of the profession who are experienced, knowledgeable, and skilled in performing such services or work. Words of any gender shall be construed to include any other gender, and, unless the context otherwise requires, words in the singular shall include the plural. The headings and section numbers are for convenience only and shall not be considered in interpreting this Agreement.

(c) Venue for any legal action arising out of this Agreement shall lie in any court of competent jurisdiction in Williamson County, Texas.

Section 13.2 Law Incorporated by Reference

Applicable provisions of the Texas Health & Safety Code, as amended or superseded, including the latest additions and revisions and including regulations promulgated thereunder; applicable provisions of the Texas Water Code, as amended or superseded, including the latest additions and revisions and including regulations promulgated thereunder; and applicable provisions of the Texas

Administrative Code, as amended or superseded, and applicable provisions of the Texas Local Government Code, as amended or superseded, are incorporated by reference in this Agreement. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to County or Contractor, their past or current officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter the availability of the defense of governmental immunity under the laws of the State of Texas and federal law.

Section 13.3 Commitment to Nondiscrimination

During the term of this Agreement, the parties shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, or national origin. The parties agree to take affirmative action to ensure that applicants are employed and employees are treated during their employment without regard to race, color, religion, gender, or national origin. Such action shall include the following: employment, upgrading, demotion, transfer, termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship.

Section 13.4 Entire and Complete Agreement

This Agreement constitutes the entire and complete understanding and final expression of the parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous agreements, understandings, arrangements, commitments and representations, whether oral or written, including but not limited to: 1) the Original Agreement, 2) the 1st A&R Agreement, and the 2nd A&R Agreement. No provision of this Agreement may be changed, modified or waived except by written instrument signed by both parties. Contractor shall promptly bring to County's attention for decision and mutual revision any material omissions from this Agreement. Contractor shall obtain written instructions from County before proceeding with services affected by any such omissions in this Agreement.

Section 13.5 Severability

If any provision of this Agreement is for any reason determined to be invalid, illegal, or unenforceable under any Applicable Law, the remaining provisions of this Agreement shall remain in effect and bind the parties. However, the parties shall negotiate in good faith to amend this Agreement to effectuate the intent of any invalid, illegal, or unenforceable provision, if permissible under Applicable Law. If a court issues an order, opinion or ruling that this Agreement is, for any reason, invalid, illegal or unenforceable, the parties agree to meet immediately to ensure that proper operation of the Landfill and protection of the public's health and safety is continued and preserved.

Section 13.6 Time is of the Essence

Time is of the essence of this Agreement.

Section 13.7 No Third Party Beneficiaries

This Agreement is entered into by County in its governmental capacity, and is not intended to nor does it create any third party beneficiary or other rights or remedies in any Person.

Section 13.8 Personal Liability

This Agreement is not intended to create or result in any personal liability for any public official or County employee or agent, nor shall this Agreement be construed to create such liability.

Section 13.9 Comprehensive Agreement

All labor, equipment, materials and services that are necessary to complete and carry out this Agreement shall be considered part of this Agreement and Contractor shall furnish, perform or provide such labor, equipment, materials and services, as the case may be, without extra compensation.

Section 13.10 Subsidiary Contracts

No contract or arrangement between Contractor and its Subcontractors, officers, employees, vendors, suppliers, or agents, including all contracts relating to the use or operation of the Landfill, shall limit or prevent Contractor from performing its obligations under this Agreement.

Section 13.11 Notices

(a) Except as may otherwise be expressly provided, all approvals, requests, reports, notices, communications or other materials or information required or permitted to be made or given by a party to the other party hereunder shall be deemed to have been given or made only if the same is reduced to writing and delivered, either personally or by means of the United States Postal Service (certified mail, return receipt requested), to County or Contractor, as the case may be, at their respective addresses as set forth below.

(b) For all purposes of this Agreement, any such approval, request, report, notice, communication or other material or information which is delivered by means of the United States Postal Service as aforesaid shall be deemed to have been delivered as of the third business day next following the date of the postmark thereof.

(c) All notices, requests and other communications to either party hereunder shall be in writing and shall be given to such party at the following address, or such other address as such party may hereafter specify for the purpose by notice to the other party:

If to County: Williamson County Judge
710 Main Street
Suite 101
Georgetown, Texas 78626

And Williamson County Attorney
405 MLK – Box 7
Georgetown, TX 78626

If to Contractor: Waste Management of Texas
c/o CT Corporation System
1021 Main Street Suite 1150
Houston, TX 77002

And Central Texas Landfills Manager
Waste Management, Inc.
9708 Giles Lane
Austin, TX 78754

And Senior Legal Counsel
Waste Management of Texas, Inc.
9708 Giles Lane
Austin, Texas 78754

Section 13.12 Amendment or Waiver

No part of this Agreement may be changed, modified, amended, or waived except by written instrument signed by the parties.

Section 13.13 Contractor as Independent Landfill Contractor

Contractor shall perform all work under this Agreement as an independent contractor. Contractor is not and shall not be considered an employee, agent, subagent or servant of County for this Agreement or otherwise. Similarly, Contractor's Subcontractors, employees or agents are not and shall not be considered employees, agents, subagents or servants of County under this Agreement or otherwise. Nothing in this Agreement shall be construed to create a partnership, lease, or a joint venture relationship between County and Contractor. It is the parties express intention that this Agreement is a landfill operations agreement as specifically authorized by §364.013 and §364.031 (b)(5) of the Texas Health and Safety Code.

Section 13.14 Binding Effect

This Agreement shall bind and inure to the benefit of the parties to this Agreement, including future County Commissioners' Courts, and any successors thereto, whether by merger, consolidation, sale, conveyance, or transfer of the assets. Contractor shall have the exclusive right to control the services and work performed by Contractor under this Agreement, the safety precautions that may be necessary for the services and work performed under this Agreement, and the Persons performing those services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and Subcontractors.

Section 13.15 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

Section 13.16 Consents or Approvals

Except as otherwise expressly provided herein, in any event or situation where the consent or approval of County or Contractor is required hereunder or under any agreements in connection with any transaction contemplated hereby, such consent or approval shall not be unreasonably withheld.

Section 13.17 Limitation of Liability of County

Execution and delivery of this Agreement by County shall not impose any personal liability on the members, officers, employees, or agents of County. No recourse shall be had by Contractor for any claims based on this Agreement against any member, officer, employee, or other agent of County in his or her individual capacity. All such liability, if any, being expressly waived by Contractor by the execution of this Agreement.

Section 13.18 Nepotism

Contractor shall not knowingly employ any person whose employment with Contractor may create the appearance of impropriety. Contractor shall not employ any person who is currently or has been previously employed by County as an elected official, professional, or in any other managerial position, unless mutually agreed to by Contractor and the County in writing.

Section 13.19 Texas Public Information Act

To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 *et seq.*, as amended (the "Texas Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Texas Public Information Act to any

information or data furnished to County whether or not the same are available to the public. It is further understood that County, its officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to Contractor for the disclosure to the public, or to any person or persons, of any software or a part thereof, or other items or data furnished to County by Contractor in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

Section 13.20 Term

Unless otherwise terminated in accordance with the provisions herein, this Agreement shall have a term of forty (40) years from the Effective Date or the active life of the Landfill, whichever is shorter.

IN WITNESS WHEREOF, the parties, by their duly authorized officers, have executed this Agreement on the latest date written below.

Waste Management of Texas, Inc.

Williamson County, Texas

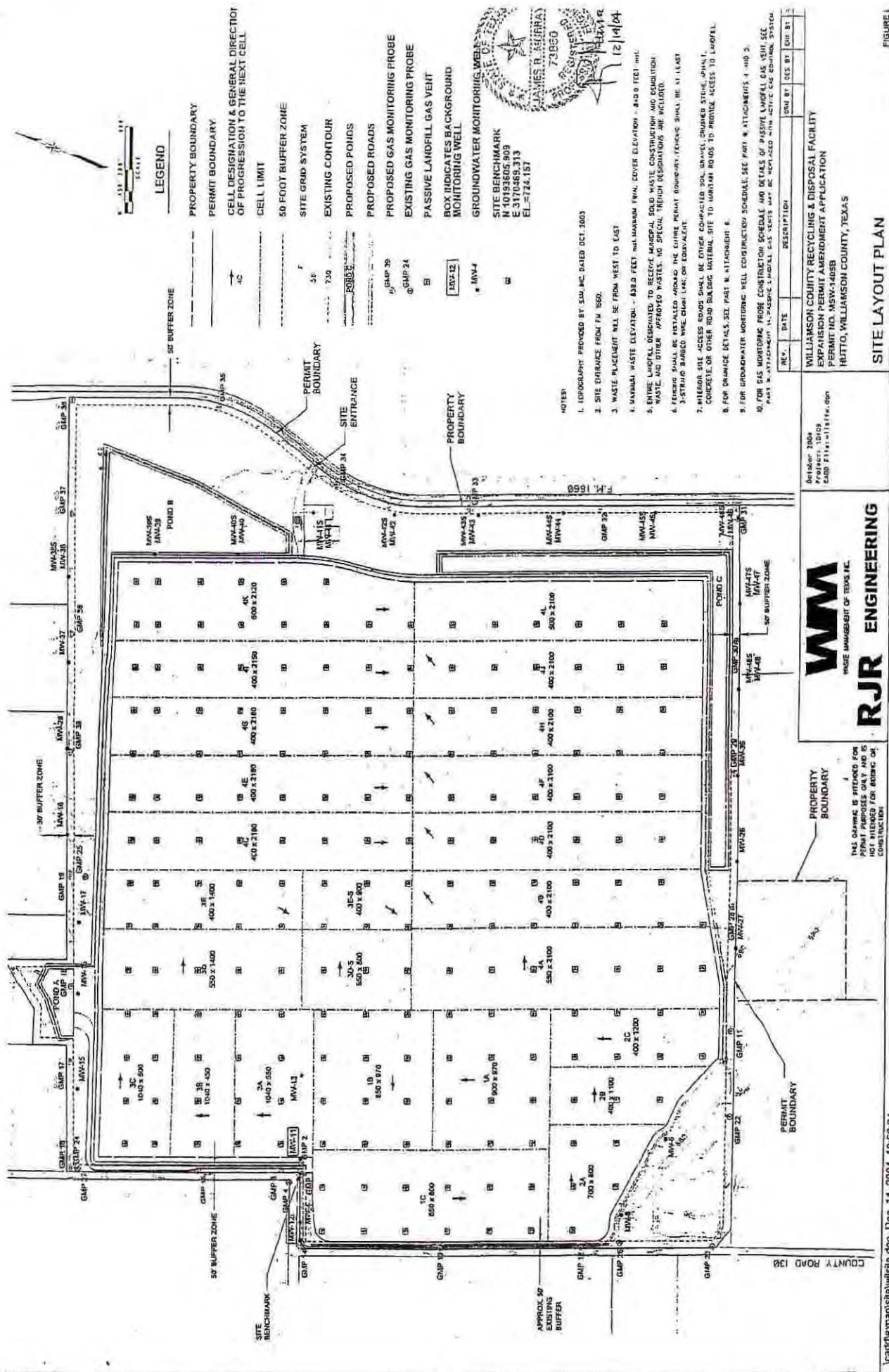
By: Donald J. Smith 2/27/09 By: Dan A. Gattis 3-3-09
Donald J. Smith Date Dan A. Gattis Date
Vice President, Waste Management of Texas, Inc. Williamson County Judge

Attest:

Nancy E. Rister
Nancy Rister Date
Williamson County Clerk

Approved as to Form:

By: Jana Duty 2/27/09 By: Jana Duty 3-3-09
Counsel for Waste Management Date
of Texas, Inc. Date
Williamson County Attorney



ATTACHMENT A

Exhibit B



Soils Map

PROJECT: Williamson County Landfill
Wetlands Analysis and Delineation Study

LOCATION: Hutto, Williamson County, Texas

SOURCE: Soil Survey of Williamson County, Texas, 1983

SCALE: 1: 20,000

TNRCC REVIEW: REVISED
5 JANUARY 1995

I/IIA-1-1-1

Exhibit A