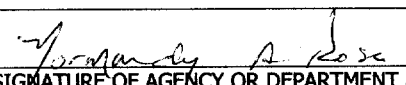
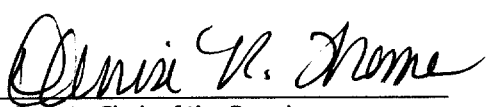


AGENDA ITEM TRANSMITTAL		Agenda Time Estimates: 15 Minutes or Consent	Leave Blank: 75.4	Date/Time Rec'd: 12/15/10
TO: BOARD OF SUPERVISORS		CONTACT FOR INFORMATION: Name: Mandy Rose Phone No: 636-4110		NUMBER OF CERTIFIED COPIES REQUIRED: 1
FROM: Mandy Rose Integrated Waste Management Department				
MEETING DATE: 12/21/2010	Subject: Approve Sixth Amendment and New Landfill Operating Agreement with Waste Connections, Inc. for John Smith Road Landfill and Adopt Resolution Defining Background and Purpose and Use of Closure/Post Closure Reserve Funds.			
Background: On September 14, 2010 the Board of Supervisors approved a proposal from Waste Connections Inc. (the current landfill operator) to enter into a new Operating Agreement at John Smith Road Landfill to increase revenue and therefore tonnage. Prior to considering final approval of this new agreement, the Board directed a third party (Intelliwaste, Inc.) review of the proposal to ensure the benefits to the County were as projected. Intelliwaste, Inc.'s report (attached) is complete and confirms earlier assumptions. Therefore, a Sixth Amendment and a New Landfill Operating Agreement are provided to implement the proposal, which will allow a tonnage increase from 500 to 1000 tons per day and anticipated new revenue at John Smith Road Landfill after specified conditions are met.				
(3) SUPPORTIVE DOCUMENTS RELATIVE TO THIS ITEM: Staff Report, Sixth Amendment, New Operating Agreement, Resolution, and Intelliwaste report		(4) PREVIOUS RELEVANT BOARD ACTIONS ON THIS SPECIFIC ITEM: 8/13,8/24,9/14,11/18		
(5) FUNDING SOURCE(S): 3010101	(6) CURRENT YEAR COST: N/A	(7) ANNUAL COST: N/A	(8) BUDGETED: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
9) WILL PROPOSAL REQUIRE ADDITIONAL PERSONNEL? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, STATE NUMBER: Perman <input type="checkbox"/> nt Limited Term				
(10) RECOMMENDED ACTION(S): It is recommended that the Board of Supervisors: <ol style="list-style-type: none"> (1) Approve the Sixth Amendment to the Operating Agreement with Waste connections Inc. for John Smith Road Landfill to revise term of Agreement; set increased tonnage limit and establish parameters for transitioning to the New Landfill Operating Agreement; (2) Approve the New Landfill Operating Agreement with Waste Connections Inc. for John Smith Road Landfill for setting term and new provisions, revising operational responsibilities; confirming new tonnage limits; and changing County revenue to a landfill depletion fee. (3) A Resolution of the Board of Supervisors outlining the purpose of the new agreement and designating the use of the Closure/Post-Closure reserve funds 				
 SIGNATURE OF AGENCY OR DEPARTMENT AUTHORIZED REPRESENTATIVE		December 13 2010 DATE		
(11) ADMINISTRATIVE REVIEW:				

CLERK'S USE ONLY

- | | | | |
|---|------------------------------------|--|--|
| <input type="checkbox"/> APPROVED | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> ADOPTED | <input type="checkbox"/> CONTINUED TO _____ |
| <input type="checkbox"/> ACKNOWLEDGED | <input type="checkbox"/> ACCEPTED | <input checked="" type="checkbox"/> RESOLUTION NO. 2010-171 | <input type="checkbox"/> OTHER _____ |
| <input type="checkbox"/> SET PUBLIC HEARING | <input type="checkbox"/> APPOINTED | <input type="checkbox"/> ORDINANCE NO. _____ | <input type="checkbox"/> NO ACTION TAKEN _____ |

BY:  Deputy Clerk of the Board DATE: 12/21/10	
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(16)



San Benito County Integrated Waste Management Department

3220 Southside Road • Hollister CA 95023 • (831) 636-4110 • Fax (831) 636-4176 • mrose@cosb.us

Normandy A. Rose, Director

December 12, 2010

TO: BOARD OF SUPERVISORS

FROM: Mandy Rose, Director
Integrated Waste Management

SUBJECT: Sixth Amendment and New Landfill Operating Agreement with Waste Connections, Inc. / John Smith Road Landfill-Resolution Defining Background and Purpose

Summary

On September 14, 2010 the Board of Supervisors approved a proposal from Waste Connections Inc. (the current landfill operator) to enter into a new Operating Agreement at John Smith Road Landfill to increase revenue and therefore tonnage. Prior to considering final approval of this new agreement, the Board directed a third party (Intelliwaste, Inc.) review of the proposal to ensure the benefits to the County were as projected. Intelliwaste, Inc.'s report (attached) is complete and confirms earlier assumptions. Therefore, a Sixth Amendment and a New Landfill Operating Agreement are provided to implement the proposal, which will allow a tonnage increase from 500 to 1000 tons per day and anticipated new revenue at John Smith Road Landfill after specified conditions are met.

Recommendation

It is recommended that the Board of Supervisors:

- (1) Approve the Sixth Amendment to the Operating Agreement with Waste connections Inc. for John Smith Road Landfill to revise term of Agreement; set increased tonnage limit and establish parameters for transitioning to the New Landfill Operating Agreement;
- (2) Approve the New Landfill Operating Agreement with Waste Connections Inc. for John Smith Road Landfill for setting term and new provisions, revising operational responsibilities; confirming new tonnage limits; and changing County revenue to a landfill depletion fee.
- (3) A Resolution of the Board of Supervisors outlining the purpose of the new agreement and designating the use of the Closure/Post-Closure reserve funds

Discussion

As the Board of Supervisors is aware, starting with direction at the August 13, 2010 Budget Hearings for FY 2010/2011, a Subcommittee of Supervisors Loe and Botelho were appointed to work with the current landfill operator, Waste Connections Inc., to consider proposals for increasing revenue, therefore tonnage at John Smith Road Landfill. On September 14, 2010 the full Board approved proposal "Option # 3." The benefits and costs to this Option are more fully described in the Intelliwaste, Inc. report; however in summary the County of San Benito will give Waste Connections Inc. the exclusive right to operate John Smith Road Landfill and the new landfill until all air space is consumed (life of site) in return for increasing tonnage from 500 to 1000 tons per day; County permitting of an additional 2,000,000 cubic yards of air space with costs to be reimbursed by Waste Connections Inc.; the assumption of over \$400,000 in annual operating costs including the funding of existing closure/post-

closure costs which releases over \$4.2 million to the County for discretionary purposes and a change/reduction in the franchise fee which will become a landfill depletion fee.

Ostensibly, as actual annual tonnage can only be estimated, the term of the New Operating Agreement ('Agreement') is fifty-nine (59) years and both parties agree that not all potential circumstances affecting revenue and costs can be known or projected at this time. Therefore, the Agreement calls for five (5) year review increments. The Board should also be aware that we are assuming the new landfill will be constructed on County owned property adjacent to John Smith Road Landfill; however, should other more suitable property become available, and the terms and conditions of its use are acceptable, such as a land exchange, the possibility exists for development of a different site. Another consideration for the County is staying abreast of the changing integrated waste management technologies as landfilling could become secondary to energy producing processes and land may be needed twenty to thirty years from now for landfill or possibly for a new technology.

The Agreement includes the protections for the County that exist in our current agreement with additional provisions due to the term and tonnage increase. Waste Connections Inc. is being asked to reserve landfill capacity for unexpected changes in the local waste stream; a guarantee of air space for local waste for the life of the Agreement; document and report on its Community Involvement; use local businesses to the degree possible; use non-profit job development services where appropriate for recycling activities; perform additional screening on the waste accepted for prevention of hazardous materials disposal; a landfill gas royalty should a project be developed; assumption of permitting responsibilities and costs; a guarantee of refuse density (1200 pounds per cubic yard) to ensure operating efficiencies; and finally the requirement that the tonnage be brought up to an annual average of 400 tons per day prior to moving to the New Landfill Operating Agreement to ensure adequate cash flow for the County.

A Sixth Amendment is proposed to provide guidance on the initial terms of the Agreement and set the parameters for transitioning to the New Landfill Operating Agreement. Staff estimates that the time needed to permit the additional 2,000,000 cubic yards of air space on the existing site could take up to eighteen months depending on the level of environmental review required. A recent contract approved by the Board with Environmental Stewardship & Planning, Inc. will guide the County in this regard. We are hopeful this timeframe can be shortened. Concurrent with our work on the permit revision to increase available air space will be Waste Connections Inc.'s development of additional tonnage to bring the annual average up to a minimum of 400 tons per day as stated above. To ensure that Waste Connections Inc. has the tools to bring the daily tonnage up to 400 tons per day, an interim step of increasing the allowable daily permitted tonnage by 100 tons (total 600 tons per day) will be needed due to the nature of tonnage flow. CalRecycle, the State permitting agency, has indicated that this process may be achievable within a shortened timeframe of approximately six to eight months.

Other Agency Involvement

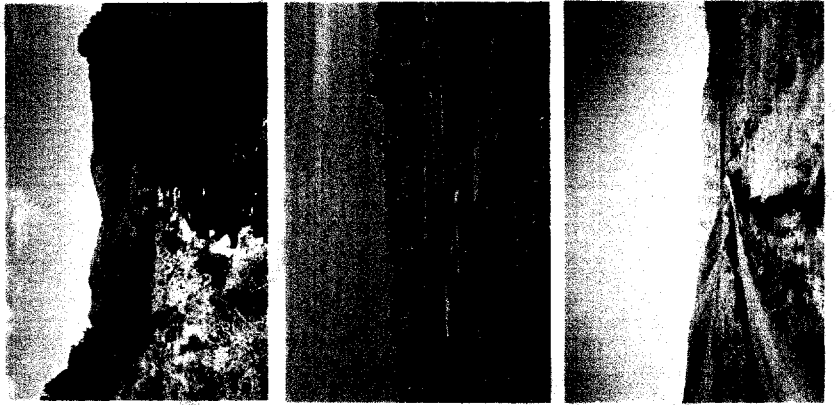
The Integrated Waste Management Department worked with the Subcommittee of Supervisors Loe and Botelho, the landfill operator, Waste Connections Inc., as well as Intelliwaste, Inc., the third party reviewer, on this proposal.

Financial Considerations

The description of financial considerations bears repeating, as it is the sole reason for entering into a New Landfill Operating Agreement. The County stands to gain the use of \$4.2 million in Closure/Post-closure reserves, which will be funded by the Operator; in addition, the County, will receive the benefit of reduced annual operating costs while recognizing a corresponding reduction in its landfill depletion fee (franchise fee). The financial benefits and costs are more clearly described in the Intelliwaste, Inc.'s Report. The Board will also have the discretion over the New Landfill Development and Diversion Reserve account (\$2.3 million) as the Agreement calls for the costs of the new site to be borne by Waste Connections Inc.

December 21, 2010

Analysis of the Waste Solutions Group of San Benito, LLC Option 3 Plan for the John Smith Landfill, San Benito County, for San Benito County Integrated Waste Management



Prepared by:

INTELLIWASTE, INC.
Solid Waste Management Consultants

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December 21, 2010

Ms. Mandy Rose, Director
San Benito County Integrated Waste Management Department
3220 Southside Road
Hollister, CA 95023

Subject: Analysis of the Waste Solutions Group of San Benito, LLC Option 3 Plan for the John Smith Road Landfill, San Benito County, for San Benito County Integrated Waste Management.

Dear Ms. Rose:

Per your request, IntelliWaste, Inc. (IntelliWaste) is pleased to present our report regarding an analysis of the Waste Solutions Group of San Benito, LLC, a wholly owned subsidiary of Waste Connections, Inc. (Company) Option 3 Plan to provide a Life of the expanded Current Site Operating Agreement at John Smith Road Landfill (Landfill) and the new landfill for San Benito County (County). On September 14, 2010, the County directed the revision of the current Operating Agreement with the Company including material changes in the scope of services to be provided by the Company, as well as significant revisions in Landfill ownership liability and responsibility of the County.

Subsequently, IntelliWaste was contacted and engaged by the County on November 18 to provide an independent, third-party, expert review and opinion of the merits of the Agreement between the parties. Specifically, IntelliWaste's scope of work and goal is to determine whether this is a "good deal" for the County on a long-term basis, both from a financial and operational perspective. To analyze and test the "good deal" assumption, we have developed both qualitative and quantitative approaches to the available data and information which allows us to opine on the issues and prepare findings and recommendations for the San Benito Board of Supervisors' (Board) consideration.

IntelliWaste has the prerequisite experience and eminence to support the County in analyzing the financial, and operational issues at hand, in addition to assisting in the review of a revised Operating Agreement with the Company to ensure the County maximum protection and leverage in establishing long-term Operator services at the Landfill.



BACKGROUND

In the fiscal year (FY) FY2010/2011 Budget, the County Board of Supervisors (Board) made a conservative estimate of how long the General Fund reserves could sustain the County operations given the economic forecasts at that time. The economic outlook continues to decline and the new estimate for the duration of this recession is longer than expected. The reality is that County operations are not sustainable at the current level for the period of time estimated without the influx of General Fund reserve dollars. The Board is now willing to consider funding alternatives that may not have been as attractive in the past. Increasing tonnage, therefore revenue at John Smith Road Landfill, has been only superficially discussed in the past, but has now become a viable opportunity given the economic outlook.

The Subcommittee met on August 26, 2010 and reviewed several options presented by the Company. The Subcommittee used the previously approved criteria as a guide in assessing these options:

- 1) Any action taken will not compromise landfill capacity for the community
- 2) Any action taken must address all environmental concerns
- 3) Any action taken must address all transportation impacts including road maintenance and litter
- 4) Any action taken must produce a net revenue increase to the General Fund (net of increase to the mandated Closure/Post-Closure Funds)

It is our understanding that the Company has proposed to the County various option plans including Option 3 for a Life of Site Operating Agreement. The Board has chosen Option 3 for review which involves expanding the current Landfill future area (North Expansion Area), and constructing a new landfill (South Area) in addition to modifying the operating permit from a maximum of 500 tons per day (tpd) to allow up to 800-1,000 tpd to be disposed. The proposed North Landfill area will create an additional 2,000,000 cubic yards (~1,200,000 tons) of capacity. Currently, the Landfill has approximately 1,500,000 tons of airspace and approximately 17 years of site life at 250 tpd. The new landfill will have approximately 12,500,000 cubic yards (7,500,000 tons) or 41 years of site life at 500 tpd.

The costs for re-permitting the Landfill for the additional daily tonnage, in addition to all capital requirements for construction of new landfill cells and other annual operating costs will be borne by the Company on the condition that the Company is awarded a revised Operating Agreement to operate the Landfill through the full life of the site. Total life of site is defined as the current permitted landfill capacity, future landfill expansion areas to the North, and a New Landfill site to the South, yet to be named.



As a result of adopting the Company's Option 3, the County could stand to gain one-time and long-term financial benefits which include:

- Access to the approximately \$4.2 million Closure and Post-Closure fund monies accrued to date;
- Additional alternative access to the approximately \$2.3 million New Landfill Development and Diversion Reserve Fund (once the North Expansion area is permitted);
- County portion of annual landfill operating costs (approximately \$448,000) would be assumed by the Company (e.g., reduced County cost obligations);
- Landfill permitting and related costs borne by the County for a 2,000,000 cubic yard expansion would be reimbursed back to the County by the Company;
- County would receive from the Company a Landfill Depletion Fee per ton compensation of \$2.50/ton for depletion of the Landfill capacity asset; and
- Potential enhanced revenue could be expected in the future by the County as the permitted daily Landfill tonnage approaches 800-1,000 tpd.

Other potential benefits the County could achieve include:

- Guaranteed in-County disposal capacity reserved throughout the life of the site;
- Free disposal for all County Departments;
- Closure and Post-Closure care of the Landfill will be the responsibility of the Company (at least 30 years after facility is closed);
- County maintains control over in-County landfill tipping fee charges and future Company rate increases; and
- Any real property purchased by the Company will be transferred unencumbered without debt to the County.



The primary goal for the County is to ensure that at a minimum, if the Option 3 Plan is implemented, sufficient monies are available for the County to continue funding the Integrated Waste Management Department and to provide potential contributions to the General Fund. Our review and analysis of these key issues follow.

EXECUTIVE SUMMARY

- The Company has proposed a plan (Option 3) using the Landfill to increase surplus revenues for the County including freeing up the \$4.2 million Closure and Post-Closure for General Fund use.
- Recent Board approval to allow the Company to dispose of up to 500 tpd or the daily tonnage allowed in the Solid Waste Facility Permit could increase revenues for both the Company and County.
- Over the life of the Landfill (59 years), the Company will be investing over \$42,000,000 in capital improvements and over \$10,000,000 in direct closure costs. The Company would also fund Post-Closure maintenance of the Landfill at a minimum of 30 years after closure.
- The net present value of the contract Agreement to the Company over a 59 year period is estimated at \$29,500,000. This value is based on an industry standard profit of 11.1% per-tax net on annual costs to operate the Landfill of \$4,500,000 at present tonnage and revenue.
- The 20 percent of gross revenues the Landfill Department receives each year has been adequate to cover annual operating expenses with reserves to cover capital needs. The change in the revenue relationship (20 percent of gross revenue to \$2.50/per ton Depletion Fee) will be adequate to cover Department costs once an average of 400 tpd or 144,400 tpy is reached. It is therefore recommended that the revised Landfill Operating Agreement not become effective until this tonnage has been reached.
- Once the County obtains a Solid Waste Facility Permit revision for up to 1,000 tons per day, the Company will have further financial incentive to procure eligible waste to increase mutual revenue sharing.
- For purposes of this Operating Agreement, site life has been determined to be 59 years. Based on this extended period of time over which the Company is amortizing all of its capital costs, the County may wish to ensure that there are agreed upon intervals of revenue review to ensure that adequate revenue is being received. We recommend that this Landfill revenue review take place every 5 years or more often if warranted.



- In our opinion, the proposed Option 3 plan has many overriding, positive financial benefits for the County while maintaining guaranteed County disposal capacity and reducing short- and long-term financial and environmental liabilities.

FINANCIAL REVIEW AND ANALYSIS, COMPANY OPTION 3

Integrated Waste Management Budget Analysis

IntelliWaste analyzed and tested several of the key financial and economic impacts the new Operating Agreement would have on the County's Integrated Waste Management Department (Department) operating budget both in the short- and long-term.

Table 1 below illustrates the Department budget for fiscal year FY2010-11. The Department budget for FY2010-11 includes a comparison of current conditions with future contractual conditions under the Option 3 Life of Site Operating Agreement.

Our review and analysis of the Department's budget for FY2010-11 under the current contractual conditions include the following observations:

- The major source of the Department's revenue generation (88 percent) consists of 20 percent of the scheduled tipping fee from John Smith Road Landfill. The value of the 20 percent of the tipping fee going to support the Department was based on historical precedence from the original Operating Agreement in 1985, and was originally 15 percent of the gross landfill revenues. IntelliWaste could not document how the 20 percent value was determined. We assumed that this split of the tipping fees between the Operator and County resulted in a fair and equitable share of revenue at that time and was enough to cover ordinary Department expenses from year to year. Furthermore, we understand that the County supplemented required capital costs (liner design and construction, etc.) out of the County's General Fund.
- In addition to payment of salaries and benefits, and other office administrative costs, the Department is responsible for payment of various Landfill related operating charges under the line item professional services such as groundwater monitoring and reporting, annual landfill capacity determination, and well installation. Other non-direct charges for the planning of the future resource recovery facility are placed within this line item.
- The Department is also responsible as the Owner for payment of Landfill permit related fees (Publication and Legal Notices) line item. These annual costs average \$16,000 per year.



The largest line item expenditures, resides in special departmental expenses. These charges include a hardship assistance program for qualified residents; illegal dumping program maintenance; closure and post-closure costs for both the Class I and Class III Landfills; Pollution Liability Insurance; costs to support the Regional Agency, and other minor charges.

FINANCIAL COMPARISON OF THE COMPANY'S PROPOSED \$2.50/TON DEPLETION FEE ON THE DEPARTMENT'S BUDGET

- The Option 3 proposal from the Company involves paying the County \$2.50/ton for every ton of waste disposed at the Landfill. The Company would also pay for approximately \$448,620 per year of County operating costs as shown in Table 1 below.

Table 1: Summary of Department Expenditure Reductions based on Company \$2.50/ton Depletion Fee

Term Year	FY2010-2011 (Approved)	FY2010-2011 (Forecasted)
Agreement Remittance Terms	20% Gross Landfill Revenues	Depletion Fee \$2.50/ton of all Gate Tons
Annual Tonnage	90,250	90,250
Summary Key Expenditure Objects and Accounts ¹	(\$)	(\$)
Salaries	113,713	113,713
Maintenance, Office Expense, Supplies, Publication & Notices, Travel & Education	53,933	28,225
Professional Services		
Legal	5,000	5,000
Ground water (Monitoring, Reporting, Lab, & General Services)	130,000	10,000
Fly Over	5,000	0
Module 1 Clay Installation	10,000	0
Well Installation	15,000	0
<i>Professional Services Subtotal</i>	<i>165,000</i>	<i>15,000</i>
Special Departmental Expense		
Hardship Assistance Program	3,500	3,500
Illegal Dumping Program	4,000	4,000

¹ Source data: Integrated Waste Management, Budget Unit No. 101, Fund No: 3010, FY10/11.



Term Year	FY2010-2011 (Approved)	FY2010-2011 (Forecasted)
Agreement Remittance Terms	20% Gross Landfill Revenues	Depletion Fee \$2.50/ton of all Gate Tons
Annual Tonnage	90,250	90,250
Summary Key Expenditure Objects and Accounts ¹	(\$)	(\$)
Post-Closure Funding, Class I	5,000	5,000
Closure Funding Class III	107,798	0
Post Closure Class III	160,822	0
Environmental/Pollution Liability	20,000	0
Transfers out to Regional Agency	122,761	122,761
GIS	6,456	6,456
<i>Special Department Expense Subtotal</i>	<i>430,337</i>	<i>141,717</i>
Utilities	10,000	10,000
Other Charges	15,216	15,216
Total Expenditures	788,199	323,871
Revenues	800,000	250,625²
Net County Cost	11,801	(\$98,246)

- As shown in Table 1 above, the County would be released from expenditure obligations for such professional services items as ground water monitoring and reporting; annual site capacity report (fly-over); one-time expenses for clay importing and well construction. In addition, The Company would fund all future closure and post-closure liabilities through the tipping fee.
- Comparing FY2010-11 with the current 20 percent revenues from the Landfill and the new proposed Landfill Operating Agreement \$2.50/ton Depletion Fee proposed from the Company, under the current Operating Agreement, the Department would experience an estimated surplus of \$1,801, at 250 tpd per day and a loss of \$98,246 under the \$2.50/per ton scenario of the proposed new Operating Agreement.
- Based on discussions with the Company, this situation (net loss at 250 tpd and \$2.50/ton) should be a short-term condition since the Company is motivated to increase the daily tonnage up to the new Board approved level of 500 tpd.

² Revenue based on 250 tpd; other revenues (Transportation Fees) projected from FY2010/11 budget.



However, the County has stated criteria for entering into any new tonnage arrangement which do not allow for a deviation from the status quo. Therefore, the Company and the County have agreed that the new Landfill Operating Agreement would not become effective until County revenues create a surplus: at approximately 400 tpd.

- The effects of increasing the daily tonnage above 250 tpd in 50 ton increments at the \$2.50/ton Depletion Fee (plus \$2.50/ton for diverted items) compared to the 20 percent revenue share are illustrated in Table 2 below.
- For the column shown in Table 2 [(Deficit)/Surplus Net Revenues (\$) at \$2.50 Depletion Fee including an amortized \$400,000 Closure Fund Rebate], we add the positive revenue effect of the County receiving back the accrued \$4.2 million Closure and Post-Closure Fund monies in the net revenue calculation on a 10-year basis.
- Once the effect of the Closure and Post-Closure Fund Rebate is fully amortized at year 10, a review of the Landfill revenue and income will be discussed with the Company for replacing the annual \$400,000 with other revenue share possibilities. A formal review of the Landfill revenue and income will occur every 5 years to shore-up any County deficits.
- Projected Department expenditures under the 20 percent revenue share may be higher than assumed for subsequent years as contributions for Closure and Post-Closure and other County expenses are accelerated (greater than 500 tpd). The potential exists that the Company would have to accrue large amounts of capital in a relatively short period of time, say 7-10 years or less. In such a situation, a case could be made (by the Company) that a portion of the surplus County revenues are needed to pay for accelerated capital requirements.



Table 2: Comparison of Future County Landfill Revenues with Increases in Daily Tonnage

Average Daily Tonnage (tpd)	Tonnage Increase over Current Average Daily Tonnage (tpd)	County Revenue at \$2.50/ton Depletion Fee (\$)	FY2010-11 Integrated Waste Management Budget (\$)	(Deficit)/ Surplus Net Revenues (\$ at \$2.50 Depletion Fee)	(Deficit)/ Surplus Net Revenues (\$ at \$2.50 Depletion Fee including \$400,000 Closure and Post-Closure Fund Rebate)	FY2010-11 Integrated Waste Management Budget (\$ at 20% Revenue Share ³)	County Revenue at 20% Revenue Share (\$) ⁴	(Deficit)/ Surplus Net Revenues (\$ at 20% Revenue Share)
250	0	225,625	323,871	(98,246)	301,754	788,199	800,000	11,801
300	50	270,750	323,871	(53,121)	346,879	788,199	852,200	64,000
350	100	315,875	323,871	(7,996)	392,004	788,199	924,400	136,201
400	150	361,000	323,871	37,129	437,129	788,199	996,600	208,401
450	200	406,125	323,871	82,254	482,254	788,199	1,068,800	280,601
500	250	451,250	323,871	127,379	527,379	788,199	1,141,000	352,801
550	300	496,375	323,871	172,504	572,504	788,199	1,213,200	242,640
600	350	541,500	323,871	217,629	617,629	788,199	1,285,400	497,201
650	400	586,625	323,871	262,754	662,754	788,199	1,357,600	569,401
700	450	631,750	323,871	307,879	707,879	788,199	1,429,800	641,601
750	500	676,875	323,871	353,004	753,004	788,199	1,502,000	713,801
800	550	722,000	323,871	398,129	798,129	788,199	1,574,200	786,001
850	600	767,125	323,871	443,254	843,254	788,199	1,646,400	858,201
900	650	812,250	323,871	488,379	888,379	788,199	1,718,600	930,401
950	700	857,375	323,871	533,504	933,504	788,199	1,790,800	1,002,601
1,000	750	902,500	323,871	578,629	978,629	788,199	1,863,000	1,074,801

³ From Table 1.

⁴ New revenue from Out of County calculated at \$20.00/ton tipping fee at \$3.9 million gross annual revenue projected for FY2010-11.



AVOIDED COUNTY CAPITAL COSTS

- In accordance with the revised Operating Agreement, the Company will pay for all future construction and other capital requirements to ensure the continued operation of the Landfill. Table 3 below shows the future development costs that would have to be incurred to maintain required future capacity and to adequately fulfill revenue projections for both the County and the Company.
- In addition to the avoided capital cost, the County would avoid directly funding the Closure and Post-closure Fund. The current Closure and Post-closure Fund balance of approximately \$4.2 million would be released back to the County for General Fund purposes. All the projected capital costs of Landfill development in addition to Closure and Post-Closure Cost for the current Landfill, North expansion and new Landfill (South Area) is also shown in Table 3.

Table 3: Projected Landfill Development Costs

Expansion Area/New Landfill	Development Area (Acres)	Remaining Site Life at 500 tpd	Present Value County Avoided Landfill Development Costs (\$)	Present Value County Avoided Closure and Post-Closure Costs (\$)
Current Landfill Development Modular 3b through 6 and North Expansion	10 acres (existing) + 12 (North Area) = 22	17.1 years	32,915,131	\$5,339,590
New Landfill (South Area)	54	~42.6 years	\$8,760,722	4,765,856
Total	76	~59.7 years	\$41,675,953	10,105,446



LANDFILL REVENUES AND OPERATING COSTS

- At our request, the Company provided IntelliWaste with a 5-year (FY2006-FY2010) Landfill income statement showing annual revenues, primary expenses, and net income. The purpose of this request was to examine the Company's operating income statement to determine how the cost to operate the Landfill compared with those of its peers, and specifically, to distinguish how the Company's cost and profit to operate the Landfill compared to those in the industry. Our examination also focused on determining if the Company is collecting adequate revenues for both the Company and County, and excess income which could be shared with the County.
- IntelliWaste requested additional information and back up on specific line item cost categories such as sales, and general administration (SG&A); depletion, depreciation, and amortization. It should be noted that our review was a high-level review at the Landfill income statement using our expertise in landfill rate review studies, and was not intended to be a detailed examination of the allowability of the Company's operating cost structure.
- Our review of the Landfill income statement indicates that the Company's cost to operate the facility is within benchmark examples known to IntelliWaste. Major categories such as labor, equipment repair, facility maintenance, insurance, and SG&A are considered reasonable. When compared to other known Landfill operations of similar size and daily tonnage, the Company's costs are considered economical with the Company charging lower than industry benchmarks in labor as one example.
- Overall, the Company's net income for the 5-years examined, expressed as a percentage of revenues, are considered low, ranging from -1.22 percent to 7.8 percent after taxes and interest. Typically, net income for landfills in California averages in the 8-12 percent range after tax for facilities operated by companies on behalf of a municipality (City or County).
- The net present value of the contract Agreement to the Company over a 59 year period is estimated at \$29,500,000. This value is based on an industry standard profit of 11.11% per-tax net on annual costs to operate the Landfill of \$4,500,000 at present tonnage and revenue.



FINDINGS AND RECOMMENDATIONS

- The recent Board approval to allow the Company to dispose of up to 500 tpd or the daily tonnage allowed in the Solid Waste Facility Permit, should give the Company additional flexibility in increasing revenues.
- Over the life of the Landfill, the Company will be investing over \$42,000,000 in capital improvements and over \$10,000,000 in direct closure costs.
- The 20 percent of revenues the Department receives each year has been adequate to cover annual Department operating expenses with reserves to cover capital needs. The change in the revenue relationship (20 percent of gross revenue to \$2.50/per ton) will be adequate to cover Department costs once an average of 400 tpd or 144,400 tpy is reached. It is therefore recommended that the revised Landfill Operating Agreement not become effective until this tonnage is reached.
- Once the County obtains a Solid Waste Facility Permit revision for up to 1,000 tons per day, the Company will have further incentive to procure eligible waste to increase mutual revenue.
- For purposes of this Operating Agreement, site life has been determined to be 59 years. Based on this extended period of time over which the Company is amortizing all of its capital costs as previously outlined, the County may wish to ensure that there are stated intervals of revenue review to make certain that adequate revenue is being received. We recommend that this Landfill revenue rate review take place every 5 years or more often if warranted.

* * * * *

IntelliWaste appreciates the opportunity to assist the County with these value-added consulting services for this engagement. If you have any questions, please feel free to contact me at 415-898-6121, or by email at intelliwaste@yahoo.com.

Very truly yours,

IntelliWaste, Inc.

Bruce J. Murphy

Bruce J. Murphy

Principal

BEFORE THE BOARD OF SUPERVISORS, COUNTY OF SAN BENITO

**A RESOLUTION OF THE BOARD OF SUPERVISORS)
COUNTY OF SAN BENITO, APPROVING THE SIXTH)
AMENDMENT TO THE OPERATING AGREEMENT)
AND A NEW OPERATING AGREEMENT AT JOHN)
SMITH ROAD LANDFILL, WHICH WILL ASSIST IN)
PROVIDING FISCAL VIABILITY FOR COUNTY)
SERVICES.)**

RESOLUTION NO.

2010- 171

WHEREAS, the ‘GREAT RECESSION’ began in 2008 and is currently projected to continue through 2013; and

WHEREAS, the economic repercussions to local government in general and San Benito County specifically, have resulted in a dramatic decrease in revenues and correspondingly services to the public; and

WHEREAS, on August 13, 2010, the San Benito County Board of Supervisors, at the conclusion of Budget Hearings for FY 2010/2011 faced a deficit of \$4 million in its’ General Fund; and

WHEREAS, to balance the FY 2010/2011 Budget the Board of Supervisors after much deliberation directed meetings with targeted County Departments to further reduce spending; and

WHEREAS, after further deliberation, the Board of Supervisors directed, as a proactive action to develop new revenue sources, that the County consider increasing tonnage, therefore revenue, at John Smith Road Landfill and the Chair appointed a Subcommittee of Supervisors Loe and Botelho to research this option; and

WHEREAS, with optimistic consideration towards receiving new landfill revenues, on August 13, 2010, the Board of Supervisors voted to use existing General Fund Reserves of approximately \$3.7 million to fund and therefore balance the FY 2010/2011 budget; and

WHEREAS, on August 26, 2010 the Subcommittee met with the landfill operator, waste Connections Inc., to review revenue enhancement options; and

WHEREAS, on September 14, 2010, the Board of Supervisors approved revising the John Smith Road Landfill Solid Waste Facility Permit from 500 tons per day to 1,000 tons per day, expanding the existing landfill by a minimum of 2 million cubic yards and initiating the development of the new landfill; and

WHEREAS, the additional capacity at John Smith Road Landfill is part of the Sixth Amendment and the new landfill operating agreement with Waste Connections Inc

which upon its effective date will yield the County the ability to access \$4.2 million in landfill reserve funds (Closure and Post-closure reserves); and

WHEREAS, the Sixth Amendment and the new landfill operating agreement meet the previously Board of Supervisors approved criteria for assessing viability of revenue enhancement options:

- Any action taken will not compromise landfill capacity of the community
- Any action taken must address all environmental concerns
- Any action taken must address all transportation impacts including road maintenance and litter
- Any action taken must produce a net revenue increase to the General Fund;

THEREFORE BE IT RESOLVED, that the San Benito County Board of Supervisors directs that upon the specified contractual date, the funds derived from the release of the \$4.2 million (with any additions at time of transfer) of the Closure/Post-closure funds be reserved for a minimum of five years beginning in FY 2011/2012 as established by a Budget Policy so directed herein.

PASSED AND ADOPTED, by the San Benito County Board of Supervisors at a regular meeting of said Board held on the 21st day of December 2010, by the following vote:

AYES: SUPERVISORS BOTELHO, LOE, BARRIOS, DE LA CRUZ, MONACO

NOES: SUPERVISORS *none*

ABSTAIN: SUPERVISORS *none*

By: *Reb Monaco* Date: *12/21/10*
Reb Monaco, Chair
San Benito County Board of Supervisors

ATTEST:

By: *Denise R. Thome* Date: *12/21/10*
Denise R. Thome, Clerk of the Board

APPROVED AS TO LEGAL FORM:

By: *Terra L. Chaffee* Date: *12/16/10*
Terra L. Chaffee, Deputy County Counsel

NEW LANDFILL OPERATING AGREEMENT

FOR THE

JOHN SMITH ROAD LANDFILL AND (TO BE NAMED) LANDFILL

BETWEEN

COUNTY OF SAN BENITO

AND

WASTE SOLUTIONS GROUP of SAN BENITO, LLC.

December 21, 2010

This New Landfill Operating Agreement (the "Agreement") is made and entered into this 21st day of December 2010 (the "Effective Date"), by and between the County of San Benito (the "County") and Waste Solutions Group of San Benito, LLC, a Delaware limited liability company (the "Company"). The County and the Company may be referred to individually as a "Party" and jointly as the "Parties."

R E C I T A L S

WHEREAS, the Parties are parties to an operating agreement whereby Company was granted the exclusive right to operate the John Smith Road Landfill as more completely detailed in the Operating Agreement, dated May 25, 1993 (the "Prior Agreement");

WHEREAS, the Prior Agreement has been amended from time to time and the Parties now desire to enter into a New Landfill Agreement; granting Company the exclusive right to continue to operate the John Smith Road Landfill (as may be expanded from time to time) and a new landfill within County owned property located at 2733 John Smith Road, Hollister, CA 95023, or a mutually agreed upon alternative location. This new site shall be known as (to be named) Landfill. This Agreement shall govern the operation of both the John Smith Road Landfill (SWFP# 35-AA-0001) and the (to be named) Landfill.

NOW, THEREFORE, in consideration of the mutual promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

Whenever any term used in this Agreement has been defined by Division 30, Part 1, Chapter 2 of the California Public Resources Code (the "Code"), and the definitions in the Code shall apply unless the term is otherwise defined in this Agreement.

1.1 "Acceptable Waste" means solid waste (as defined in Division 30, Part 1, Chapter 2, § 40191 of the Code and regulations promulgated thereunder) and includes: household residential waste, commercial waste, non-recycled construction & demolition waste, material recovery facility residuals, and any other combination of these wastes, and all other Waste accepted in accordance with the Landfill's permits. Acceptable Waste does not include any Unacceptable Waste.

1.2 "Acceptable Industry Practices" means the commonly accepted usual and customary practices of the solid waste industry in the State of California.

1.3 "Alternative Technology" means any form of waste transformation including but not limited to waste to energy, anaerobic digestion, gasification, pyrolysis, plasma arc, and biomass.

1.4 "Applicable Law" means all applicable federal, state and local laws, rules, regulations,

permits and orders of any governmental entity having jurisdiction over the operation of the Landfill and activities related thereto. It includes changes in federal, state or local laws, ordinances, rules or regulations, which changes were not in existence on the Date of this Agreement which changes include additional expenditures of capital and physical improvements which must be performed to the Landfill and/or to the Landfill site.

1.5 “Approval” and “Consent” means a Party’s “consent” or “approval” which shall not be unreasonably withheld, conditioned, delayed or denied

1.6 “Board” means the elected County Board of Supervisors for San Benito County.

1.7 “Change in Law” means any of the following events or conditions which occur after the Commencement Date and have a material adverse effect on the performance of Company’s obligations under this Agreement, Company’s management, operation or maintenance of the Landfill or ancillary facility on Company’s compliance with Applicable Law:

A. The enactment, interpretation, adoption, promulgation issuance, modification or change in administrative or judicial interpretation of any Applicable Law; or

B. The order or judgment of any governmental body, to the extent such order or judgment (or interpretation thereof) is not the result of Company’s negligent or intentional act, error or omission to act when there was a duty to act.

1.8 “City” means any incorporated municipality located within the County, such as the Cities of Hollister and San Juan Bautista.

1.9 “County” means the County of San Benito.

1.10 “Designated Hauler” means any private waste collection or transportation company contracted by a City or the County to provide Waste collection or Waste transportation services within the County and where the contract requires the private waste collection or transportation company to transport collected Waste to the Landfill.

1.11 “Designated Waste” means Waste as defined by State of California under § 13173 of Division 7 of the California Water Code.

1.12 “Disposal” means the final disposition of Waste by burial in the Landfill.

1.13 “Diversion”, “Divert” or “Diverted” means recycling, reuse or other beneficial use of Waste.

1.14 “Diversion Material” means a waste-derived material that is Diverted.

1.15 “Fees and Taxes” means any current or future federal, state, local or other taxes, assessments, fees, host charges, surcharges or similar charges (as same may be increased from time to time) directly or indirectly related to the acceptance, processing, storage, or Disposal of Waste which is imposed or relates in any way to the acceptance of Waste at the Landfill or the Company by law, ordinance, rule or regulation an/or agreement with a governmental authority, whether imposed retroactively or prospectively. As of the Effective Date, the Fees and Taxes imposed on or at Landfill include Possessory Interest Tax of Fifty Nine Thousand dollars (\$59,000) charged by the San Benito County Assessor; and an annual permit fee of Seven Thousand Three Hundred and Seven dollars (\$ 7,307) from the Environmental Health Division

of the Health and Human Services Agency; and One Dollar and forty cents (\$1.40) per Disposal ton tax assessed by the California State Board of Equalization.

1.16 “Force Majeure” means the occurrence of any uncontrollable circumstance that materially and adversely affects Company’s ability to perform its obligations under this Agreement including the following events but only to the extent, that such events (or the effects of such events) could not have been avoided by the exercise of due diligence or reasonable efforts by Company and subject to notice requirements and the duty to mitigate: (a) any act of terrorism or sabotage; (b) biological contamination, nuclear explosion or nuclear contamination; (c) fire, explosion, flood, earthquake that causes direct physical damage to a Facility or to any of the transportation routes to and from a Facility; (d) labor troubles; (e) a criminal act that causes direct physical damage to a Facility; (f) the failure to issue, or the suspension, termination, denial, failure of renewal of any permit, license, consent, authorization or approval essential to the operation of the Landfill if such failure, suspension, interruption or denial does not arise in connection with or be related to the negligent or willful action or inaction of the Company; and (g) Change in Law provided, however, that a provision of local law, other than County or State law, shall not be a change in law during any period the County chooses to exercise legally available challenges to the applicability of such law at its sole cost and expense and indemnifies the Company for any and all fines, penalties or other costs of non-compliance with such provision.

1.17 “Hazardous Waste” or “Hazardous Substance” means any waste materials which is or becomes defined or regulated at any time as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under applicable law including: (a) the Resource Conservation and Recovery Act and the regulations contained in 40 CFR Parts 260-281, inclusive; (b) the Toxic Substance Control Act 15 U.S.C. § 2601, et seq.; (c) the regulations contained in 40 CFR Parts 761-766 inclusive; (d) California Health and Safety Code § 25117; (e) the California Public Resources Code, § 40141; or (e) successor laws and regulations as may be amended or enacted from time to time.

1.18 “In-County Waste” means any Acceptable Waste generated within the political boundaries of the County, including the unincorporated County and the incorporated Cities of Hollister and San Juan Bautista.

1.19 “Landfill” means the John Smith Road Landfill as described in Exhibit A and any expansion of the John Smith Road Landfill onto adjacent or nearby property and any future landfill permitted on the property described in Exhibit B and any expansion of the future landfill onto adjacent or nearby property.

1.20 “Landfill Depletion Fee” means the unit fee the Company pays the County for every ton of Waste accepted at the Landfill for which the Company receives Tipping Fee revenue.

1.21 “Out-of-County Waste” means any Acceptable Waste generated outside the political boundaries of the County.

1.22 “Regulated Wastes” means waste subject to approval based on analytical analysis; non-hazardous waste manifest form must accompany load, and material must be handled according to the approved Waste Screening Policy.

1.23 “Self-Haul” means the delivery of In-County Waste by persons other than the County, a City or a Designated Hauler.

1.24 “Special Waste” means Waste that requires special handing procedures at the Landfill either during unloading or burial.

1.25 "Tipping Fee" means the fee charged, as described in Section 6 herein, for the acceptance, handling and disposal of Waste at the Landfill.

1.26 "Unacceptable Waste" means waste material that:

- A. The Disposal of which at the Landfill would, in Company's judgment, violate Applicable Law or Landfill permits or would increase the risk of damage to the environment or harm to Company personnel; or,
- B. Is Hazardous Waste; or,
- C. Is Special or Regulated Waste that has not been approved in accordance with Company's Waste approval program or process; or,
- D. Has or may have constituents or components not specifically identified in a waste material profile or similar document and which, in Company's judgment, increases the nature or extent of the hazard and risk of handling or disposing of the waste materials; or
- E. Is determined to be Unacceptable Waste as a result of visual inspections or chemical analysis or,
- F. Is determined to be unacceptable Waste by the LEA or RWQCB.

1.27 "Uncontrollable Circumstance" means any Force Majeure event including acts of God, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, blockades, riots, or other industrial disturbances; sudden and dramatic increase in the costs of a necessary fuel or supply; eminent domain, condemnation or other taking, or other events of a similar nature, not caused or maintained by the Company, which events are not reasonably within the control of the party claiming the excuse from its obligations due to such event, to the extent such event has a material adverse effect on the ability of the Company to perform its obligations thereunder. Events which could have been prevented by reasonable precautions, including compliance with agreements and Applicable Law, shall not be considered an Uncontrollable Circumstance. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Company's employees or directed at the Company, or a subcontractor, are not considered Uncontrollable Circumstances.

1.28 "Waste" means any material that is "solid waste" as that term is defined in California Public Resources Code, Division 30, Part 1, Chapter 2, § 40191 and regulations promulgated thereunder.

SECTION 2. TERM OF AGREEMENT

2.1 Commencement Date. This Agreement shall commence on the date the Company receives a copy of the final permit necessary to construct and operate a minimum of two million (2,000,000) cubic yard increase in permitted disposal capacity established by the Solid Waste Facility Permit # 35-AA-0001 ("2 Million Cubic Yard Expansion") and the Landfill is receiving an annual average of four hundred (400) tons per day of buried Waste, hereafter known as the "Commencement Date". Company may waive the requirement to receive any final permit to construct and operate the Landfill at any time after the County has obtained compliance with the California Environmental Quality Act ("CEQA") approving the 2 Million Cubic Yard (1,200,000 tons) Expansion and the four hundred

(400) tons per day average of buried Waste is achieved. If the Company unilaterally elects to waive this requirement, then the Company shall notify the County of that election and the Commencement Date shall be the date that the County received such notification.

2.2 Term. The term of this Agreement (the "Term") shall commence on the Commencement Date and expire on the latest date (the "Expiration Date") to occur of: (a) thirty (30) years or later to comply with any statutory change as defined by post-closure maintenance law, from the date on which the (to be named) Landfill is closed ("Final Closure") in accordance with approved final closure plans; or (b) the date on which operations of the Landfill gas project (or other waste-to-energy project, if any) cease; or (c) the date when all Waste handling and diversion activities on the Landfill cease. Company shall have such access to the Landfill from and after the Expiration Date for the limited purpose and for such period of time as is necessary for it to perform and comply with its post closure maintenance and monitoring obligations.

SECTION 3. DISPOSAL CAPACITY & LANDFILL PERMITS

3.1 Reservation of Disposal Capacity The Parties acknowledge that as of the Commencement Date, the Landfill has in excess of 15 years of available Waste Disposal capacity to accommodate the In-County Waste Disposal needs. On or before each anniversary of the Commencement Date, the Company shall obtain an analysis of remaining Waste Disposal capacity (the "Annual Waste Disposal Capacity Report") prepared by a third party engineer in the Landfill and shall provide said analysis to the County. For the purposes of this analysis, the Company shall utilize the greater of the previous years' annual In-County Waste Disposal or the average annual Waste Disposal of the previous three years as reported to the State for purposes of establishing an annual rate of In-County Waste Disposal. COMPANY agrees to reserve no less than fifteen (15) years of Waste Disposal capacity for the In-County Waste. If at any time the quantity of remaining Waste Disposal Capacity falls below the quantity needed to accommodate 15 years of In-County Waste Disposal, Company shall suspend the acceptance of Out-of-County Waste or work with the County to permit additional Disposal capacity or both. An example of the determination of this reservation of Disposal Capacity is shown in Exhibit C

3.2 Company Requirement to Dispose of In-County waste. If, for any reason during the period when the Landfill is open and available to accept In-County Waste, the Company is unable to provide disposal capacity for In-County Acceptable Waste, then the Company shall at its sole cost make provisions to dispose of the In-County Waste at an alternative permitted solid waste disposal facility.

3.3 Company Right to Develop and Expand Landfill. County hereby grants Company the exclusive right to develop and expand the Landfill Waste Disposal Capacity of the Landfill and to seek and obtain such permits, consents and approvals as are necessary for the construction of the Landfill and to conduct Waste Disposal and Diversion operations on the Landfill.

3.4 Permits. Company shall obtain all permits, consents and approvals required by Applicable Law from governmental agencies for construction of the Landfill. County, upon request of Company, shall assist Company in obtaining the required permits and related consents and approvals by executing documents, furnishing information and attending meetings and hearings and such other reasonable ways as Company may request. Company shall submit a draft of all applications for every required permit to the County's Representative as "Landfill Owner" for County's review and approval and shall keep County fully informed of the status of required permit

applications and proceedings, including meetings with agency staff and hearings on permit applications. Further, Company shall provide County with copies of all written communications within 21 business days by and between Company and each governmental agency from whom a required permit is sought. Company shall apply for all permits in its own name as "Operator of Record" and in the name of the County as the "Owner" as required by Applicable Law. Company shall meet and confer with County proactively (and seek Board of Supervisors' approval as necessary) prior to agreeing to permit terms and conditions for any required permit. The Parties agree that copies of all required permits received by either Party shall be delivered to the other Party within 21 business days of receipt. The County shall retain the originals of all required permits as the "Owner" of the Landfill.

3.5 Reporting. Company shall provide all reports required by the following regulatory agencies on the dates specified in the permit documents:

- i. CalRecycle
- ii. Regional Water Quality Control Board
- iii. Monterey Bay Air Pollution Control District

If no date is specified, the report shall be deemed to be due on the 10th of the month following the reporting period, unless another date is provided to Company in writing from County, and is mutually agreed to by Company. If the 10th of the month falls on a weekend or holiday, the report shall be due on the first business day after the 10th of the month.

Failure to provide said monthly reports by the agreed upon date will result in a penalty of \$500 for the first late report in any calendar year and \$1,000 for each subsequent report that is late in any calendar year. Said penalty shall be invoiced by the County and shall be paid by Company with submittal of quarterly fees for the quarter following receipt of the invoice.

3.6 Improvements. Company may, at its sole cost and expense, make such improvements, alterations and additions to the premises including real property as it shall deem advisable or necessary for the use of said premises as a Class III solid waste disposal site. Title to any real property improvements shall transfer to the County unencumbered by any debt upon the expiration or earlier termination date of this Agreement; however, Company may remove any movable real property improvements prior to termination of the Agreement.

SECTION 4. LANDFILL OPERATIONS

4.1 Services. Commencing on the Commencement Date, Company shall: provide without limitation all capital, management, labor, supervision, equipment, materials, supplies necessary to permit and operate the Landfill; construct Disposal capacity at the Landfill; construct other facilities on the Landfill; operate Waste Disposal and Waste Diversion activities on the Landfill; operate environmental control facilities to contain and or treat leachate and landfill gases; perform environmental monitoring and analysis of the Landfill including landfill gas and groundwater monitoring; perform regulatory liaison and reporting for the Landfill; operate the Landfill in a safe and efficient manner; cap the portions of the Landfill once they have reached final grade at closure; maintain the Landfill during the post-closure care period; operate landfill gas recovery facilities and provide financial assurance for closure, post-closure

and corrective actions as required by the State of California, (hereafter referred to as the “Services”). Company shall provide the Services in a manner consistent with Acceptable Industry Practices and otherwise in an efficient, reliable and high-quality manner. Company shall operate the Landfill in compliance with Applicable Law and close the Landfill in accordance with approved closure and post-closure plans. In addition, Company shall comply with the provisions, conditions and requirements of all current and future permit applications, rules and regulations adopted by the County or other regulatory or governmental agencies.

A. Within 60 days of the Commencement Date, the Company shall provide an acceptable financial assurance mechanism for closure, post-closure and corrective action for the Landfill.

4.2 Compliance. Company shall operate and maintain the Landfill in accordance with the terms and conditions of this Agreement, Acceptable Industry Practices and Applicable Law and shall pay all fees imposed by Applicable Law, including fees required to be paid by owners and operators of disposal facilities in accordance with § 48000 of the Public Resources Code.

4.3 Quarterly Meetings. Company’s Site Superintendent and the County Representative along with any relevant staff, shall meet at County’s offices, on a quarterly basis on a pre-scheduled date, to discuss Company’s Landfill operations, the Landfill expansion, operational updates, regulatory changes, inspections, plan reviews and other operational issues. The meeting location shall be at the discretion of the Integrated Waste Management Department (the “Department”) which shall provide Company with not less than 6 business days’ notice in advance of the scheduled meeting date if the Department determines to meet at a location other than County offices.

4.4 Proactive Actions. Company shall at all times operate the Landfill in a proactive manner. To this end, Company shall call for annual meetings, to include the County Representative, with each Federal, State or local agency with regulatory permitting oversight to discuss operational improvements. Company shall discuss how to incorporate such improvements into their operations with the County. Said discussions shall include methodology for compensating the Company if said improvements require additional capital or operating expenses.

4.5 Effective Disposal Capacity Management. Company shall operate the Landfill utilizing Acceptable Industry Practices to maximize the ‘effective refuse density’ while Disposing of the Waste. The Company shall employ practices to average or exceed 1,200 pounds per cubic yard of Waste Disposal capacity. The average effective refuse density shall be determined using the immediately preceding 3 year to allow for placing fluff layers and sliver fills of other similar type events. Effective refuse density shall be calculated by dividing the Acceptable Waste disposed by the airspace consumed by the Acceptable Waste disposed and the daily and intermediate soil or approved intermediate cover materials used to cover the Acceptable Waste disposed.

4.6 Community Involvement. In partial consideration for the exclusive right to operate the Landfill, Company shall commit to actively participating in and financially supporting community activities and functions of its choice. In addition, Company shall make good faith efforts to buy goods and services from vendors within San Benito County. A report shall be made annually to the Board of Supervisors regarding these activities.

4.7 **Days and Hours of Operation.** Company shall operate the Landfill and be open for receipt of Waste during the following hours:

A. **Minimum Hours of Operation** – at minimum, during the following hours:

Monday through Friday 8:00 a.m. – 4:00 p.m.

Saturday-Sunday 9:00 a.m. – 3:00 p.m.

B. **Holidays** – Company shall close the Landfill on the holidays as specified in the Solid Waste Facilities Permit.

C. **Change of Hours** – Company may request to change the Minimum Hours of Operation as allowed within the Solid Waste Facility Permit from time to time with the approval of the Board of Supervisors. Approval to change Minimum Hours of Operation is at the sole discretion of the Board.

D. **Permit Hours** – Company may operate the Landfill and be open to accept Waste during any hours allowed by the Permits.

4.8 **Priority Waste Acceptance.** Commencing on the Commencement Date and continuing throughout the Term, Company shall receive and accept all Acceptable Waste delivered to the Landfill up to the date of Final Closure; up to the permitted daily capacity and shall either Dispose of the Waste, Divert it, or use it on site. Company shall prioritize the acceptance of Waste delivered to the Landfill in the following order:

A. All Waste generated within the unincorporated area of County and the incorporated Cities of Hollister and San Juan Bautista by either a Designated Hauler or Self -Haul;

B. Any Waste generated Out-of County.

i. Nothing contained in this Agreement shall prohibit or limit Company's acceptance of Out-Of-County Waste coming from out-of-county sources, or contracting to receive Out-Of-County Waste; provided, however, Company retains sufficient Disposal capacity for the In-County Waste that is routinely delivered to the Landfill (refer to Section 3.1). Company shall use reasonable commercial efforts to accommodate both the In-County and Out-Of-County Waste but shall not be required to breach any contractual obligation it may at any time have to accept Out-of-County Waste if unusually large amounts of In-County Waste are delivered to the Landfill. Company shall limit its contractual obligations for acceptance of Out-of-County Waste to retain Disposal capacity sufficient to accept In-County Waste at a rate of 150% of the greater of the previous year's In-County Waste Disposal or the average of the previous 3 years In-County Waste Disposal. An example calculation of the 150% is shown in Exhibit D

C. Out-of County waste acceptance protocol: Company shall assure that all Out-of-County Waste customers shall have a State approved Hazardous Waste screening program. Company shall verify that any Out-of-County facilities that deliver Acceptable Waste have Hazardous Waste screening programs.

4.9 Diversion Activities. The Company shall assist the County in attaining the goals set forth in AB 939 as more fully described in the San Benito County Integrated Waste Management Regional Agency Summary Plan. Company and County shall cooperate to establish additional diversion programs ("Diversion Programs"). Currently, the Diversion Programs include diversion of materials such as wood waste, yard waste, tires, white goods, scrap metal, mattresses, CRTs and other e-waste and inerts. In this effort, the Company upon approval of the County may use the Landfill for Diversion and ancillary uses, including Diversion Material stockpiling, organic waste composting, operation of a materials recovery facility, beneficial reuse, recycling, materials salvaging activities, waste processing, waste treatment, waste transformation, energy recovery and such other uses as may be allowed by law at solid waste disposal facilities. County will cooperate with Company if Company chooses to undertake any additional Diversion Activities. Company and County shall meet and confer to review and evaluate the cost and expense of implementing any new Diversion Programs and the means and methods of compensating Company for same. Company shall give preference to community benefit /non-profit organizations whose mission is to provide employment training for environmental services as long as price and service are equal.

4.10 Alternative Technology. Neither the County nor the Company shall enter agreements with alternative technology companies Diverting In-County Waste as feedstock without the other Parties' Approval.

4.11 Other Ancillary Uses. Company may park and maintain collection and transfer vehicles at the Landfill provided these vehicles are used by Company for Waste collection and transportation activities, transporting Waste to the Landfill and Diversion activities at the Landfill. All Landfill improvements constructed to maintain collection and transfer vehicles of the Company at the Landfill shall be at the sole cost of the Company and not reflected in the tipping fees charged to County rate payers.

4.12 Weighing and Incoming Waste Reports. Company shall operate and maintain the scale system at the Landfill in accordance with State of California certified motor vehicle scales and Applicable Law. The County and its representatives shall have access to the Landfill Scalehouse at all times it is open or in use for the purpose of verifying the accurate weighing of vehicles entering and exiting the Landfill. Company shall generate incoming Waste reports as provided in Exhibit E ("Incoming Waste Reports") attached hereto and by this reference incorporated into this Agreement. The County shall be provided this report on a monthly basis by the 20th of the next succeeding month, so as to review the Company's scale records and tonnage computation at the Landfill.

4.13 Class I Drainage. Company shall provide all necessary grading to achieve positive drainage on the Class I site as a result of the utilization of the former drainage area now being used for Disposal. County has obtained a permit from the Department of Toxic Substances Control for this purpose and Company shall comply with the terms of this permit or any revised permit in the future.

4.14 Waste after Final Closure. After the date of Final Closure, Company may continue to accept Waste to the extent: (a) Company can economically process or use the Waste as Diversion Material; or (b) transfer the Waste should Company have constructed a transfer station or material recovery facility on the Landfill site.

SECTION 5. COUNTY'S RETAINED OBLIGATIONS

5.1 Pre-existing Conditions. Company shall not be responsible for any environmental condition that existed as of July 15, 1985 (“Pre-existing Environmental Condition”) nor shall Company be required to undertake or perform any “clean-up” or remediation work (or bear any cost or expense related to any remediation work) that arises out of or in any way relates to a Pre-existing Environmental Condition including remediation that is or may become related to the “Class I area for the City of Hollister”. This “Pre-existing Environmental Condition” is more clearly described in Exhibit F. County will indemnify, defend and hold Company, its parent company and their respective officers, directors, employees harmless from and against any and all liability, damage, cost, expense, fines, penalties, suits, and losses arising out of or in any way related to a Pre-existing Environmental Condition.

5.2 County Cost Responsibilities. County shall pay for the following operational costs at the Landfill:

- i. Extraction well maintenance required by the Pre-existing Conditions;
- ii. Groundwater monitoring costs required by the Pre-existing Conditions;
- iii. All permit and post-closure maintenance costs of the Class I WMU;
- iv. Operation of Household Hazardous Waste Facility.

5.3 County's In-County Disposal Commitment and Flow Control. County as lead agency for the San Benito County Integrated Waste Management Regional Agency, consisting of the Cities of Hollister and San Juan Bautista and unincorporated San Benito County shall ensure that any Designated Hauler (s) collection contract direct all Acceptable Waste to the John Smith Road Landfill and once closed to the (to be named) Landfill. The current contract with Recology San Benito states in Article 7.01 “Transportation to Disposal facility. Contractor will transport and deliver all refuse to John Smith Road Landfill located at 2650 John Smith Road, Hollister, CA 95023.”

5.4 County's Owner Representation, Inspection. The County shall identify to Company, a representative (the “County Representative”) who shall have authority to act on behalf of County as Landfill “Owner” and to grant County approvals and consents as Landfill Owner. The County Representative may enter the Landfill at any time for the purpose of ascertaining the condition of the Landfill and Company's compliance with the terms and conditions of this Agreement. The County Representative shall comply with Company protocols for worker and employee safety at the Landfill at all times the County Representative is on or about the Landfill. County may hire outside consultants to assist the County in its inspections of the Landfill and Company shall cooperate with such consultants to the same extent as it would for the County Representative. The County Representative and consultants (if any) shall obtain training from Company for safety purposes before commencing such inspections. The County Representative may be accompanied by employees of governmental agencies acting within the scope of their duties and responsibilities. This section shall not limit any rights of inspection duly authorized local governmental officials may otherwise have by law which are applicable to all property owners' property.

SECTION 6. TIPPING FEE

6.1 Tipping Fees.

A. The County shall have the sole right to set and adjust the In-County Waste Tipping Fees. The Tipping Fees for In-County Waste, as of the Effective Date, are shown in Exhibit G. The Company shall not charge Tipping Fees for In-County Waste higher than the Tipping Fees for In-County Waste set by the County.

B. The Company shall have the sole right to set and adjust the Out-of-County Waste Tipping Fees.

C. Company shall collect the Tipping Fees, pay the Landfill Depletion Fee from the collected Tipping Fees, and keep complete and accurate records of the Tipping Fees collected and provide same to County on a quarterly basis, by the 20th day of the month following the close of each calendar quarter.

D. In an effort to facilitate customer relations, the Company may offer credit terms and charge interest for payment over time; as well as, charge penalty fees and collection fees for late or un-timely payment. Company may also seek reimbursement for legal fees related to collection of un-timely payments and may refuse to accept any Waste or Diversion materials from any customer who is not current with payment.

6.2 Adjustments to Company Compensation for In-County Waste Disposal.

The County acknowledges that the Company has entered into this Agreement with an expectation of revenue derived from the In-County Waste Disposal based on the Tipping Fees in place as of the Effective Date. The County agrees to adjust the Company's compensation for the In-County Waste as described below. The County may determine a compensation adjustment methodology which may include In-County Tipping Fee rate increases, direct payment, Landfill Depletion Fee or surcharge reductions or any combination thereof. The Company's compensation shall be adjusted for each of the following:

A. **'Cost-of-Living Adjustments' (COLA).** On or before March 1st each year, Company shall provide County with the COLA index adjustment factors, for implementation on July 1st of each year. To modulate fluctuations in the annual COLA, Company shall never receive COLA-related compensation increases of more than six percent (6%) per year or less than two percent (2%) per year. The following indices shall be utilized in determining the Cost of Living Adjustment:

- i. Consumer Price Index for Urban Consumer All Items for the Oakland, San Francisco-San Jose Area Series cuura422sa0 for General and Administrative Costs.
- ii. Consumer Price Index for Urban Consumers Motor Fuel for the Oakland, San Francisco-San Jose Area Series cuura422setb for Fuel costs.
- iii. Employment Cost Index for Total Compensation, Not Seasonally Adjusted, for Private Industry Workers by Occupation, Series ID CIU2010000405000I for Labor costs.
- iv. Indices for December 31 will be used.

- v. An example COLA calculation is attached in Exhibit H for demonstration purposes. Exhibit H is incorporated herein by this reference.

B. Change of Law. The Parties acknowledge that solid waste disposal is a highly regulated and highly taxed enterprise. From time to time, state, federal and local governments impose new taxes or increase existing Fees and Taxes. In addition, changes in laws and regulations (and interpretation thereof) require additional investment of capital and cause Company's costs of operations to increase. As soon as Company determines that a pending Change of Law that will result in increased Landfill operation costs (or otherwise cause an adverse economic impact to Company), Company shall provide written notice to the County within 21 business days of the date of that determination. Once the pending Change of Law is finalized and an effective date is known, Company shall provide County with a written assessment of cost and expense impacts due to Change in Law within 30 business days. The compensation for the costs of the Change in Law shall be calculated based on a prorata or per ton basis, spread over all Acceptable Waste tons Disposed coming from all customers equally. An example Change of Law calculation is attached in Exhibit I for demonstration purposes. Exhibit I is incorporated herein by this reference.

C. Prevailing Wages – If a properly constituted government agency having jurisdiction or a court decision pursuant to the applicable provisions of the California Labor Code determines or holds that this Agreement is a public works contract and as a result Company is or becomes obligated to pay prevailing wages, as soon as Company becomes aware of a pending change in the Prevailing Wages that will result in increased costs, Company shall provide written notice to the County. Once the pending Prevailing Wage rate change is finalized and an effective date is known, Company shall provide County with a written assessment of cost and expense impacts due to Prevailing Wage. The compensation for the costs of the Prevailing Wage shall be calculated based on a prorata or per ton basis, spread over all Acceptable Waste tons Disposed coming from all customers. An example change in Prevailing Wage costs calculation is attached in Exhibit I for demonstration purposes. Exhibit I is incorporated by reference.

D. Uncontrollable Circumstances –As soon as Company becomes aware of a pending change or inability to perform an obligation resulting from an Uncontrollable Circumstance that will result in increased costs, Company shall provide written notice to the County. Once the pending Uncontrollable Circumstance change is finalized and an effective date is known, Company shall provide County with a written assessment of cost and expense impacts due to Uncontrollable Circumstance. The compensation for the costs of the Uncontrollable Circumstance shall be calculated based on a prorata or per ton basis, spread over all Acceptable Waste tons disposed coming from all customers. An example change in Uncontrollable Circumstance costs calculation is attached in Exhibit I for demonstration purposes. Exhibit I is incorporated herein by this reference.

E. County's Delayed Action. In the absence of a County decision of the means of adjustment in compensation, by July 1st for COLA adjustments or by the date that the Change of Law, Prevailing Wage, or Uncontrollable Circumstance occurs, the Company can reduce the Landfill Depletion Fee to achieve the compensation adjustment while the County deliberates.

F. Unresolved Cost Compensation. The Parties agree to submit any unresolved cost compensation adjustment to Arbitration according to Section 14.

SECTION 7. PAYMENTS TO THE COUNTY AS LANDFILL OWNER.

7.1 Landfill Depletion Fee – Company shall pay County a Landfill Depletion Fee (the “Landfill Depletion Fee”) of Two Dollars and fifty cents (\$2.50) for each ton of Waste accepted at the Landfill for which the Company receives Tipping Fee revenue. The Landfill Depletion Fee shall be due and be paid quarterly to the County, on or before the 30th day of the first calendar month following the calendar quarter in which the Company accepted Waste at the Landfill.

A. The Landfill Depletion Fee shall be adjusted annually by the same percentage as the COLA adjustment in accordance with Section 6.2 Ai.

B. Should the Landfill Depletion Fee be received after the due date, a penalty of 10% of the payment shall be immediately due and payable.

7.2 Five-year Review: Company and County agree to a Five-year, or more frequent, review of the Landfill Depletion Fee as described in Exhibit J.

7.3 County’s Expansion Cost Reimbursement. Within 60 days of the Commencement Date, the County shall provide the Company with an accounting of all third party expenses incurred by County during the permitting process to secure the 2 Million Cubic Yard Expansion. The Company shall reimburse County in full for these third party expenses incurred by County during the permitting process of the expansion within 60 days of receipt of the County’s accounting.

7.4 Landfill Gas Royalty – Company shall pay County a royalty (the “Landfill Gas Royalty”) in the amount of twelve percent (12%) of the gross revenue the Company receives for the sale of the landfill gas to an unaffiliated third party and all other landfill gas-related activities that generate revenue.

7.5 Free Disposal for County Departments. Company shall allow County to deposit Acceptable Waste generated by County operations generated on County-owned property, possessed and controlled or maintained by County in the Landfill without charge for the duration of this Agreement. This provision shall not apply to any County-owned or operated solid waste facilities.

SECTION 8. INDEMNITY, INSURANCE, PERFORMANCE BOND.

8.1 Indemnification: General. Company shall indemnify, defend and hold harmless County, its officers, employees, agents, contractors and volunteers, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the “Claims”), to the extent arising out of or in any way related to Company’s performance of, or failure to perform, its obligations under this Agreement. Upon the occurrence of any event upon which County intends to make an indemnifiable Claim, Company, upon receipt of notice of such Claim shall, at Company’s sole cost and expense, defend the Claim with attorneys reasonably acceptable to County. Company’s duty to indemnify shall survive the expiration or earlier termination of this Agreement.

A. County shall indemnify, defend and hold harmless Company, its parent company and affiliates and their respective officers, employees, agents, contractors and volunteers, from and against any and all Claims to the extent arising in any way related to County's performance of, or its failure to perform, its obligations under this Agreement.

8.2 Hazardous Substances Indemnification. Company shall indemnify, defend, protect and hold harmless County, its elected officials, officers, employees, volunteers, agents, assigns and any successor or successors to County's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, County or its elected officials, officers, employees, volunteers or agents to the extent arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste accepted for Disposal by Company pursuant to this Agreement which is or has been transported, transferred, processed, stored, disposed of which has otherwise come to be located by Company, or its activities pursuant to this Agreement result in a release of a Hazardous Waste into the environment.

8.3 County shall indemnify, defend, protect and hold harmless Company, its officers, directors, contractors and employees, assigns and any successor or successors (collectively, Company) from and against all claims, actual damages (including special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing and in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, Company arising from or attributable to any repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) arising out of or in any way related to Hazardous Waste or Hazardous Substances or Unacceptable Waste accepted for disposal at the Landfill prior to the date upon which Company commenced operation of the Landfill.

8.4 These indemnification obligations, hereinabove set forth, are intended to be an agreement pursuant to § 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(e), and California Health and Safety Code § 25364 and shall survive the expiration or earlier termination of this Agreement.

SECTION 9. INSURANCE.

9.1 Types and Amounts of Coverage. Company, at Company's sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the Term, the following types and amounts of insurance:

A. Workers' Compensation and Employer's Liability. Company shall maintain worker's compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Company shall maintain employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or injury.

B. Commercial General Liability. Company shall maintain Commercial General Liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, plus Five Million Dollars (\$5,000,000) of Umbrella Coverage, covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Company's performance of the Services or its obligations under this Agreement.

C. Pollution Liability Insurance

In addition to all other policies of insurance required to be provided by Company pursuant to this Agreement, Company shall provide and maintain at all times during the term of this Agreement pollution/environmental hazards insurance, in form and content reasonably acceptable to County, covering all of Company's activities on the Landfill property in a minimum amount of Five Million Dollars (\$5,000,000). The policy required by this paragraph may be a 'stand-alone policy' or an endorsement to the public liability insurance policy required as provided herein, and shall be with companies reasonably acceptable to the County, shall name the County as a named insured, and shall contain provision giving the County as a named insured at least thirty (30) day's notice prior to cancellation of said insurance. Proof of such insurance shall be furnished by Company by certificates of insurance. Company's failure to renew such insurance shall be grounds for immediate termination of this Contract by the County without notice. The coverage amount may be increased at the request of the County provided that (i) such increase shall not exceed coverage limits generally required for similar programs throughout the industry; and (ii) Company is compensated for the increased premium expense resulting from such increased coverage. Company shall provide said insurance certificate to the County Risk Manager prior to the Commencement Date.

D. Other Customary Insurance Required for Landfills

Performance Bond: Company must procure bonds from underwriters licensed in California and rated "A-: VII" or better by A.M. Best Company, Inc., or, if not licensed to sell insurance in California, rated "A-: VIII" or better by A.M. Best Company, Inc. The County may waive those requirements. Bonds must name the County as obligee and provide at least 30 days prior notice of any cancellation. Company shall secure and throughout the Term of this Agreement maintain in full force and affect a performance bond in an amount no less than \$500,000 during the first Contract Year or portion thereof, and thereafter guaranty and assure the timely and complete performance of Performance Obligations, fully prepaid for each Agreement year. Operator may alternatively procure an alternative form of security, including irrevocable letters and lines of credit and pledges of securities, in favor of the County, or unconditional and irrevocable guarantees by Company's parent Company upon approval of the County in its sole discretion. The Performance Bond must be in substantially the form of commercial blanket bond form approved by the County.

As of the Commencement Date, Company must submit a letter from its broker or underwriter addressed to the County stating that the broker or underwriter is committed to provide Company

the performance or surety bond described above commencing as of the Commencement Date.

SECTION 10. REPRESENTATIONS AND WARRANTIES OF COMPANY

11.1 Corporate Status. Company is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the State of California, and is qualified to do business in the State of California. It has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

11.2 Corporate Authorization. Company has the authority to enter into and perform its obligations under this Agreement. The person signing this Agreement on behalf of Company has authority to do so, and by doing so, has the power to bind Company.

11.3 Statements and Information. The statements and information submitted to County by Company, on which County has relied in entering into this Agreement, do not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

SECTION 12. ADMINISTRATIVE REMEDIES; TERMINATION

13.1 Notice; Response; Resolution.

A. Notice of Deficiencies; Response. If the County determines that Company is in breach of any provision of this Agreement, County shall give Company notice of the breach, specifying the breach in reasonable detail and specifically cite the provision of this Agreement which has allegedly been breached. Company shall respond to the notification of breach within thirty (30) days from the receipt of the notice of breach and either effect a cure of the breach within the thirty (30) day period (the "Cure Period") or dispute the alleged breach. If Company does not cure the breach within the Cure Period to the satisfaction of County, County shall notify Company to that effect and the Parties shall meet on a date not later than the 20th day following County's notice and attempt to resolve the dispute. If the Parties are unable to resolve their dispute within ten (10) days of the date of the meeting, either Party may demand that the dispute be arbitrated in accordance with Section 14.

B. Contractor shall not be in default under this Contract in the event the Services are delayed, interrupted or prevented from exercising its rights or performing its obligations by reason of an event of Force Majeure, then in each such event, Contractor shall be excused, without liability or fault, from performance of its obligations under this Agreement for so long as the condition causing the Force Majeure event is in existence. Contractor shall give Company notice within twenty-four (24) hours of the occurrence of any event of Force Majeure that affects its performance and shall use reasonable commercial efforts to eliminate the cause of the Force Majeure event and resume performance of its obligations.

SECTION 14. ARBITRATION

If any dispute or controversy arising out of this Agreement cannot be settled by the Parties, such controversy or dispute shall be submitted to arbitration in the County. Arbitration proceedings shall be initiated when the Party requesting arbitration notifies the Party with whom a dispute exists that arbitration is demanded in accordance with this provision. If the Parties cannot mutually agree upon an arbitrator to settle their dispute or controversy, each Party shall then select one arbitrator and the two arbitrators so selected shall select a third arbitrator. The decision of the majority of the arbitrators shall be binding upon the Parties for all purposes and the Party to whom the award is granted may apply to any court having jurisdiction for the enforcement of such award. The arbitrators shall conduct all proceedings pursuant to the existing rules and regulations of the American Arbitration Association governing commercial transactions.

SECTION 15. ASSIGNMENT

15.1 Assignment; Assignment Defined. For purposes of this section, "assignment" shall include, but not be limited to a sale, exchange or other transfer to a third party of substantially all of Company's assets dedicated to service under this Agreement.

15.2 Consent Required. Company shall not assign its rights or delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of County, which consent shall not be withheld unreasonably. Any such assignment made without the consent of County shall be void and the attempted assignment shall constitute a breach of this Agreement.

A. First Right of Refusal. County shall have first right of refusal to purchase this Agreement prior to consideration of any assignment ("First Right of Refusal") but after Company receives an offer to establish market value. The First Right of Refusal shall not apply to any assignment between Company and any subsidiary, affiliate or other entity owned or controlled by Company. If Company desires to assign this Agreement and the proposed assignment requires the consent of County, Company shall notify County of its intent to assign this Agreement (the "Assignment Notice") and include with the Assignment Notice the proposed assignment document that would give effect to the assignment (the "Assignment Document"). County shall have a period of 30 days (the "Evaluation Period") from the date of its receipt of the Assignment Notice in which to exercise its First Right of Refusal and, if County so elects, it shall exercise the First Right of Refusal by giving notice to Company given at any time within the Evaluation Period. Company shall cooperate with County at all times during the Evaluation Period and shall provide County with such other information, terms and conditions concerning the proposed assignment that County may request to the extent such information is within the control or ability of Company to provide in accordance with Section 15.2 B., below. If County exercises the First Right of Refusal, it shall be on the terms set forth in the Assignment Document and the assignment shall be effected within the 30-day period following County's notice to Company of its exercise of the First Refusal Right.

B. Sale of Agreement Proceeds to County. If County rejects the First Right of Refusal, Company shall pay County 10% of the goodwill portion of the gross proceeds from the value of the assignment of the Agreement. The Parties acknowledge that if the sale is a stock transaction that there is no goodwill portion of gross proceeds.

C. **Consent Requirements.** If Company requests County's consideration of and consent to an assignment for which County consent is required, County may deny or approve such request in its reasonable discretion. No request by Company for consent to an assignment need be considered by County unless and until Company has met the following requirements:

- i. **County Expenses.** Company and its proposed assignee shall pay County its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- ii. **Assignee Financial Statements.** Company shall furnish County with audited financial statements of the proposed assignee operations for their immediately preceding three (3) operating years;
- iii. **Assignee Qualifications.** Company shall furnish County with satisfactory proof of the following:
 - a. that the proposed assignee has at least ten (10) years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Company;
 - b. that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management laws and that the assignee has provided County with a complete list of such citations and censures;
 - c. that proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion;
 - d. that proposed assignee conducts its solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including, though not limited to, hazardous waste as defined in Title 22 of the California Code of Regulations; and,
 - e. any other information required by County to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.
 - f. any assignee agrees to all terms and conditions of this Agreement.

SECTION 16. GENERAL PROVISIONS.

16.1 County's Resource Recovery Park. Company acknowledges that County is in the process of rezoning 30 acres of land for industrial use on COUNTY owned property located at 2733 John Smith Road, Hollister, CA 95023 for a Resource Recovery Park. Should Company

with approval of the County determine that all or a portion of this area is better suited for landfill purposes, an alternative location for the Resource Recovery Park activities shall be provided by Company. County and Company agrees to meet and confer prior to signing any lease for use of the 30 acre area.

16.2 Status of Parties. The Parties intend that Company perform the Services as an independent entity contractor and not as an officer or employee neither of County, nor as a partner of or joint venturer with County. No employee or agent of Company shall be deemed to be an employee of County, nor an agent of County. No employee or agent of County shall be deemed to be neither an employee of Company nor an agent of Company. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the Waste handling, processing, and disposal and all persons performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents.

16.3 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the Parties and their representatives, successors and permitted assigns.

16.4 Waiver. The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

16.5 Maintenance, Review and Audit of Records. Company and County each shall compile, on a daily basis, accurate records of their respective operations at the Landfill in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Agreement. County shall have the right during regular business hours to review and audit and make copies of (at County's Expense) any documents relevant to this Agreement, including, but not limited to, records maintained in electronic, magnetic and other media. Company shall have reciprocal rights, at its expense, to inspect and copy public records maintained by County.

16.6 Compliance with Law. In providing the Services required under this Agreement, Company shall at all times comply with all Applicable Laws.

16.7 Law to Govern; Venue; Jury Waiver. The law of the State of California shall govern this Agreement without regard to any otherwise governing principles of conflicts of laws. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Benito.

16.8 Amendments. All amendments to this Agreement shall be in writing duly executed by the parties. Purported oral amendments shall be void and of no force or effect.

16.9 Notices. All notices, including any correspondence required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by telecopier or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To County County of San Benito
Integrated Waste Management Department
3220 Southside Road
Hollister, CA 95023

To Company: Waste Solutions Group of San Benito LLC
c/o Waste Connections, Inc.
2295 Iron Point Road
Suite 200
Folsom, CA 95630
Attn: General Counsel

or to such other address as County or Company from time to time may designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or sent by telecopier or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

16.10 Savings Clause and Entirety. If any non-material provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

16.11 Joint Drafting. This Agreement was drafted jointly by the parties to this Agreement.

16.12 Incorporation by Reference. The Exhibits to this Agreement, as they may be amended from time to time, all are incorporated into this Agreement by this reference.

16.13 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto relative to operations at the Landfill. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement, or expressly incorporated by reference into this Agreement, are of no force and effect.

16.14 Binding on Successors. The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

Signatures on page that follows:

IN WITNESS WHEREOF, the County and Company have executed this Agreement as of the day and year first above written.

“COUNTY”

APPROVED AS TO LEGAL FORM

By: Reb Monaco
Reb Monaco, Chair
Board of Supervisors

Terra L. Chaffee
Terra L. Chaffee, Deputy County Counsel

Date: 12/21/10

Date: 12/20/10

ATTEST:

Denise R. Thome

Denise R. Thome, Clerk of the Board

“COMPANY”

APPROVED AS TO LEGAL FORM

By: _____
Paul Nelson, Division Vice President

Tom Kehoe, Corporate Counsel

Date: _____

Date: _____

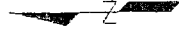
EXHIBIT "A"

John Smith Road Landfill Property

BOOK	PAGE
025	19

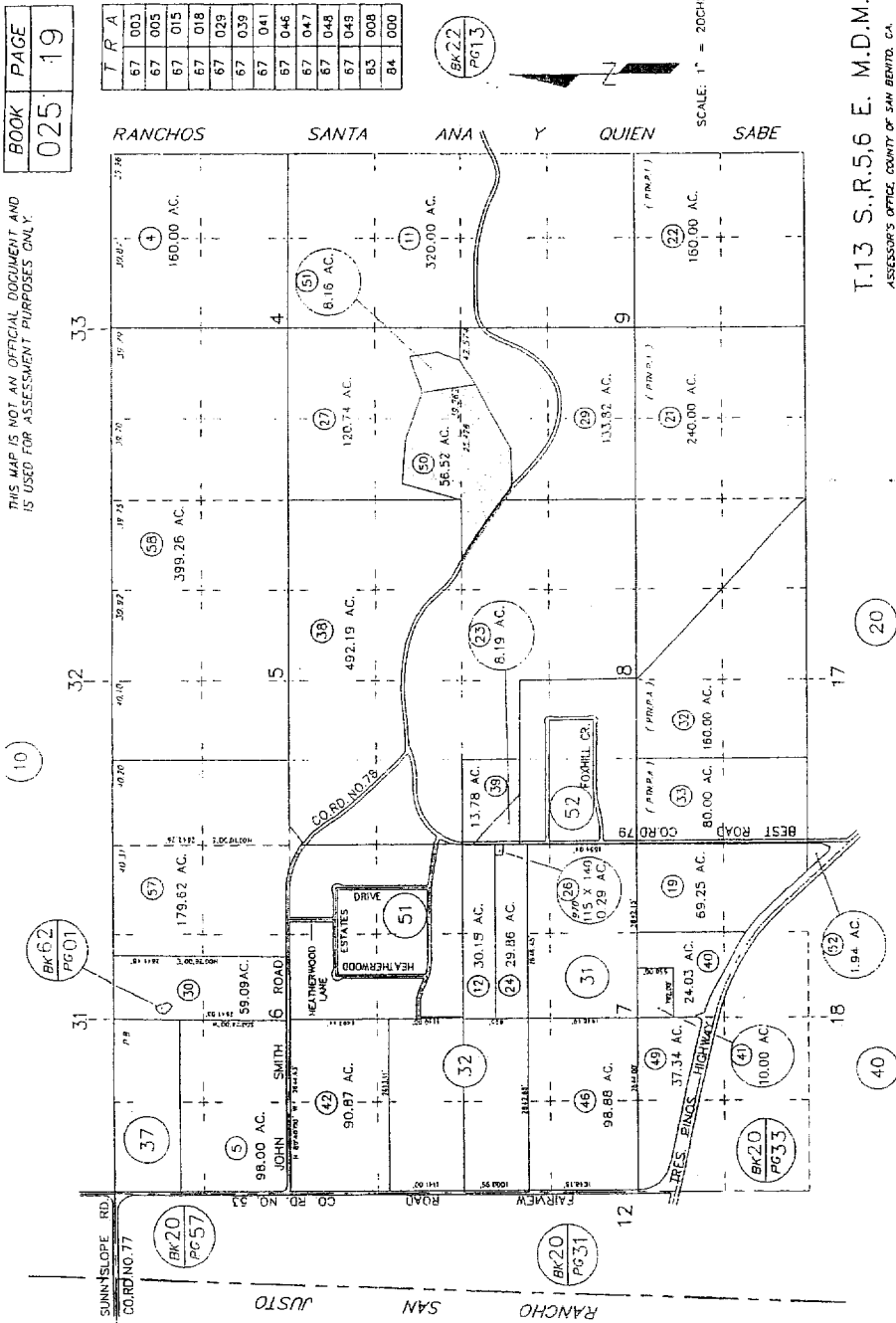
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BK 22
PG 13



SCALE: 1" = 200'±

THIS MAP IS NOT AN OFFICIAL DOCUMENT AND IS USED FOR ASSESSMENT PURPOSES ONLY.

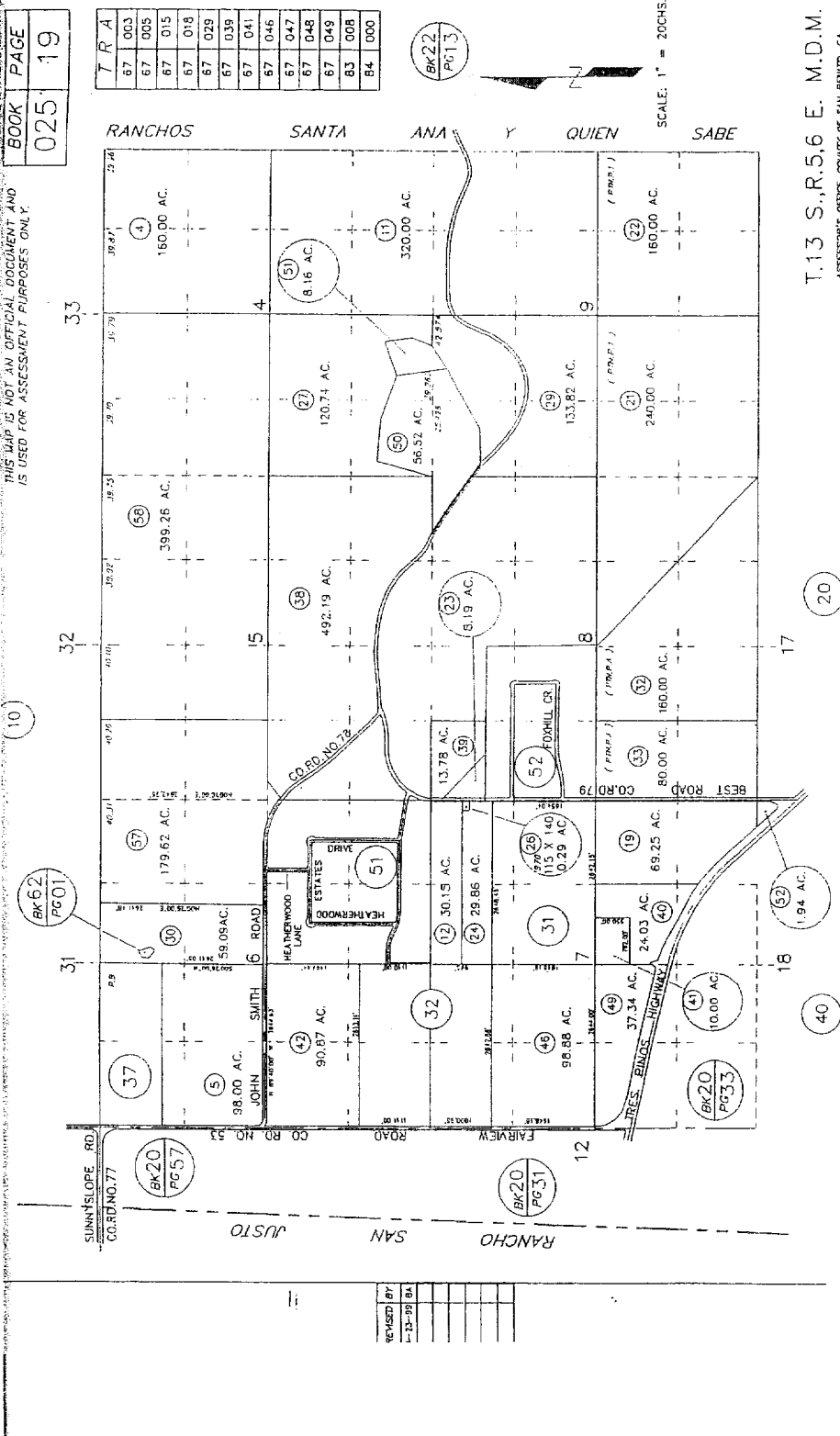


T.13 S., R.5,6 E., M.D.M.
ASSESSOR'S OFFICE, COUNTY OF SAN BERNARDINO, CA

REVISED BY	
DATE	
BY	
DATE	
BY	
DATE	

EXHIBIT "B"

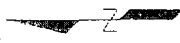
(To be named) Landfill Property



BOOK	PAGE
025	19

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BK 22
PG 13



SCALE: 1" = 200CHS.

T.13 S., R.5.6 E. M.D.M.
ASSESSOR'S OFFICE, COUNTY OF SAN BEBITO, CA.

THIS MAP IS NOT AN OFFICIAL DOCUMENT AND IS USED FOR ASSESSMENT PURPOSES ONLY.

REVISED BY	
DATE	

EXHIBIT "C"

Reservation of Disposal Capacity: Example for 2010

In-County Waste Disposal (in tons as reported to State:

<http://www.calrecycle.ca.gov/LGCentral/Reports/DRS/Origin/FacSummary.aspx>

2009	47,078
2008	44,513
2007	48,117
Average	46,569

Use the higher of the Average or the previous year which ever is greater

Remaining Disposal Capacity

In Cubic Yards	2,588,000	(includes capacity for waste and cover soils but excludes capacity for liners and closure cap; obtained from 2010 Annual Capacity Report)
In Tons	1,552,800	(use capacity utilization factor: 0.6 tons/cubic yard to convert cubic yards to tons)
In Years	33	(divide tons by waste disposal; 1,552,800/47,078)

EXHIBIT "D"

Contractual Obligation Limit: Example Calculation for 2010

In-County Waste Disposal in tons as reported to State:

<http://www.calrecycle.ca.gov/LGCentral/Reports/DRS/Origin/FacSummary.aspx>

2009	47,078
2008	44,513
2007	48,117
Average	46,569

Use the higher of the Average or the previous year which ever is greater

Contractual Obligation Limit

Permit Limit	180,500	permit daily limit of 500 tons/day times operating days, 361 d/yr
150% of Waste Disposal	70,617	multiply 47,078 times 1.5
Limit	109,883	subtract 150% of waste disposal from permit limit; 180,500-70,617

EXHIBIT "E"

INCOMING WASTE REPORTS

WASTE CONNECTIONS INC
JOHN SMITH ROAD LANDFILL
DAILY TONNAGE REPORT
Nov 2010

Date	Total Tons Inbound	Total Export Recycle	Includes: Greenwaste, wood, metal, tires, mixed recycles	Add back: Mixed Recycle	Onsite Recycle: Dirt, Concrete, Asphalt	Woodchips and Mulch Used On-site as Erosion Control	Buried Tonnage
1	244.19				3.81	21.52	218.86
2	278.04	0.63		0.53	65.66	20.06	192.32
3	348.25				65.60	25.58	257.07
4	312.36				47.75	29.95	234.66
5	535.14				41.24	23.37	270.53
6	108.79				2.38	13.35	93.06
7	34.07				0.19	7.75	26.13
8	207.06	1.18		1.18	41.36	18.41	147.29
9	288.29				28.40	16.87	243.02
10	253.83				20.08	17.46	216.29
11	278.85	7.41			50.17	29.27	192.00
12	316.18	5.67			81.45	42.34	186.72
13	63.45				0.76	16.15	46.54
14	62.43				1.20	12.58	48.65
15	356.93				84.99	14.62	257.32
16	378.80	2.02			81.68	28.64	266.46
17	406.74				103.12	38.07	265.55
18	361.25				81.31	37.07	242.67
19	402.49				48.51	37.88	316.10
20	33.15					6.52	26.63
21	66.99				2.32	3.89	60.78
22	317.50				41.24	28.18	248.08
23	301.22				64.78	26.14	210.30
24	262.96	11.19			20.26	20.85	210.66
25							0.00
26	177.10					23.50	153.60
27	150.87					14.36	136.51
28	25.23					6.92	18.31
29	306.72				65.16	20.32	221.24
30	312.16				40.91	35.32	235.93
							0.00
Total	6991.04	28.10		1.81	1084.33	636.94	5243.48

WASTE CONNECTIONS INC
 JOHN SMITH ROAD LANDFILL
 MONTHLY TRANSACTION REPORT
 Oct 2010

WASTE TYPE	Units	Tons
Unweighed Transactions		
109/Agricultural Plastic	0	100.24
110/Refuse	2	1416.67
111/Demolition	0	112.22
112/Greenwaste	7	514.87
113/Woodwaste	1	81.53
114/Metal (Non-Appliance)	0	0.61
115/ Special Waste	0	0.00
116/Dirt/Conc/Asph	1	1069.16
120/Packer	0	1898.16
130/Residual Solid Waste	0	1724.07
131 Special Handling Fee	51	0.00
140/Tires <36"	64	0.00
141/Tires, 36"+	1	0.00
142/Tires, 49" >	1	0.00
143/Tires, > 60"	0	0.00
145/Appliances	60	0.00
146/Non-recyclable items	80	1.58
147/Freon Appliances	12	0.00
148/Mattresses/Box Springs	177	8.33
149/Drum(s)	0	0.00
150/Monitors/Computers	16	0.03
151/Televisions<21"	17	0.01
152/Televisions, 21"+	4	7.85
153/Microwaves	5	0.00
160/PU Tarp Fee	13	0.00
161 Non Tarp Fee	0	0.00
170/Greenwaste \$10 Flat	168	30.97
171/Woodwast \$10 Flat	36	9.57
172/Metal \$10 Flat	0	0.00
173/Dirt/Concrete/Asphalt \$10 Flat	16	15.17
174/Agricultural Plastic \$10 Flat	0	0.00
Total	732	6,991.04
Non-Disposal Transactions		
190/Export Metal	0	13.08
191/Export Tires	0	2.02
192/Export Greenwaste/Woodwaste	0	0.00
193/Export Treated Wood Waste	0	0.00
194/Export Mixed Recyclables	0	0.00
195/Export Mattresses	0	5.09
196/Export Electronics	0	6.10
198/	0	0.00
199/Reuse Material	0	0.00
Total		
Disposal Reporting		
Gate Tons		6,991.04
Unweighed Mixed Recyclables		
Total Incoming Tonnage		
Total Working Days		29
Average Daily Inbound Tonnage		241.13
Total Incoming Tonnage		
Total Export Recycle		
Total Onsite Recycle		
Total Wood Chips used onsite		
Net Tonnage to Landfill		
Total Working Days		29
Average Daily Tonnage Landfilled		180.81

remember to color code this cell

* Add back due to tons not weighed coming in to the landfill

2010

WASTE CONNECTIONS INC
 JOHN SMITH ROAD LANDFILL
 YEAR TO DATE TONNAGE SUMMARY REPORT

MONTH	INCOMING TONS			TOTAL RECYCLE	NET BURIED TONS/DISPOSAL	Working Days	Tons/Day
	GATE TONS	UNWEIGHED MIXED RECYCLABLES	INCOMING TOTAL				
JANUARY	7850	2	7853	1096	6757	30	225
FEBRUARY	9167	6	9173	1430	7743	28	277
MARCH	11368	3	11371	1780	9592	31	309
APRIL	11549	0	11549	1371	10178	29	351
MAY	10728	0	10728	920	9808	31	316
JUNE	11126	1	11128	1852	9276	30	309
JULY	9855	6	9861	1722	8140	31	263
AUGUST	10217	7	10224	2008	8216	31	265
SEPTEMBER	8449	4	8453	2144	6309	30	210
OCTOBER	6826	3	6828	2194	4634	31	149.5
NOVEMBER	6991	2	6993	1749	5243	29	180.8
DECEMBER			0				#DIV/0!
TOTALS:	104126	36	104162	18265	85896	331	260

EXHIBIT "F"

PRE-EXISTING ENVIRONMENTAL CONDITION

In 1985, the City of Hollister (City) and the County of San Benito (County) approved consent agreements with the DTSC and the US Environmental Protection Agency (EPA) to close the Class I area and to characterize the soil and groundwater contamination extent in both the Class I and Class III portions of the site. The results of this characterization work indicated the presence of volatile organic compounds (VOCs) in groundwater beneath the Class III area. The 1987 Solid Waste Assessment Test (SWAT) investigation¹ indicated that the VOC contamination extended off site and in 1988, the RWQCB issued a Cleanup and Abatement Order (CAO No. 88-31) requiring additional off-site groundwater characterization.

In 1989, the City and County entered into a second consent agreement with the EPA (Administrative Order of Consent, Docket No. RCRA-09-88-0017) specifying the work to be performed at both the Class I and Class III portions of the site. The consent agreement required the owner/operator to conduct groundwater monitoring at the Class I area and a RCRA Facility Investigation, and Corrective Measures Study at the Class III area.

In 1991, the RCRA Facility Investigation Report², which characterized the nature and extent of contamination, was submitted to and approved by the EPA. In early 1993, an additional on-site characterization report³ was submitted; it was approved by the EPA in early 1993. It was determined through these investigations that groundwater, both on site and immediately off site, was contaminated with VOCs at levels that exceeded state and federal drinking water standards. Some metals and inorganic parameters were also present in the contaminated groundwater at concentrations greater than drinking water standards. Upgradient and perimeter groundwater, which was not contaminated by VOCs, exhibited similar characteristics. Those metals and inorganic parameters, therefore, were considered naturally occurring and not part of a release. The primary source of the VOCs was determined to be leachate that was derived from hazardous and nonhazardous waste discharged in the northeast portion of the Class III landfill. Leachate infiltration transported VOCs to the underlying groundwater and the flowing groundwater transported the VOCs to their off-site location.

In 1993, the interim remedial measures designed to mitigate the groundwater contamination were begun. They included leachate extraction wells LW-1 and LW-2, on-

site groundwater extraction well EW-1, and off-site groundwater extraction wells EW-2 and EW-3. The goal of the on-site extraction wells was to hydraulically contain the VOCs in groundwater to eliminate continued off-site migration and reduce the source of future groundwater contamination (leachate). The goal of the off-site extraction system was to hydraulically contain the VOC plume to stop downgradient migration, and to reduce the concentration of the VOCs to below health-based levels. Fluid extracted from these groundwater and leachate wells was piped to a common point and discharged to a sanitary sewer line constructed for this purpose. The sewer line leads to the Publicly Owned Treatment Works (POTW).

EXHIBIT "G"

TIPPING FEES

JOHN SMITH ROAD LANDFILL

RATE SCHEDULE

ALL RATES ARE SUBJECT TO WASTE CHARACTERIZATION IDENTIFICATION

<u>MATERIAL</u>	<u>RATE</u>	<u>UNIT</u>	<u>SPECIAL CONDITIONS</u>
SOLID WASTE	\$57.00	Per Ton	Rate applies to all vehicles.
Pick-ups, Cars, Vans, Trailers of any length; and Commercial Vehicles	\$10.00	Minimum Charge	
ALL LOADS WEIGHED			
REGULATED WASTES:			Loads subject to Approval based on analytical analysis. Non-hazardous waste manifest form must accompany load.
Non-Friable Asbestos (wetted and Double bagged)	\$57.00	Per Ton	See Landfill personnel for analytical criteria per WDR.
Petroleum Contaminated Soil	\$26.00	Per Ton	
Treated Wood Waste	\$57.00	Per Ton	Special handling fees may apply in addition to

Drilling Muds/ Dredgings	\$26.00	Per Ton	per ton charge.
BioSolids: Wastewater Treatment Sludge, Water Treatment Sludge and Brine	\$30.00	Per Ton	
COMPACTED FRANCHISE SOLID WASTE:	\$43.00	Per Ton	Applies to compacted Franchise hauled refuse only.
SPECIAL HANDLING FEE:	\$75.00	Per Load	Any waste requiring special handling or immediate burial, including but not limited to loose debris, confidential documents, fumigation plastics, boats, trailer shells, mobile homes, dead animals, large non-recyclable metal items, or any other waste as determined by landfill personnel. Charges are <u>in addition to</u> per ton solid waste rate.
RESIDUAL SOLID WASTE:	\$30.00	Per Ton	Applies to solid waste that remains after processing by a CIWMB permitted or Registered facility. "Processing" is as defined in CCR Title 14 Section 17402 (20) Inspection of facility of origin required prior to disposal.
CLEAN SORTED WOODWASTE AND YARDWASTE Pick-ups, cars, Vans, Trailers Under 10 feet in length: All other vehicles and trailers are weighed. CLEAN SORTED WOODWASTE AND YARDWASTE	\$10.00	Per Load	WOODWASTE AND YARDWASTE ACCEPTANCE POLICY. No refuse, dirt, treated or lead based painted lumber, poison oak, rootballs or materials over 8 feet in length or 4 feet in diameter. \$10.00 minimum charge.

MATTRESSES AND BOX SPRINGS:	\$10.00	Each	Includes all sizes of mattresses and box springs.
TIRES Less than 36": 36" to 48": 49" to 60": Over 60": Bulk Loads (over 25):	\$2.00 \$16.00 \$48.00 \$128.00 \$280.00	Each Each Each Each Per Ton	Tire handling charges include motorcycle and golf cart tires. Please remove rims from tires and recycle with scrap metal. Bulk load rate is regardless of tire size. Waste Tire Hauler Certification & Manifest are required for disposal of 10 or more tires.
ELECTRONIC WASTE Computers and Televisions (including consoles) Other Electronic items Microwaves:	FREE FREE No Charge	Each Each Each	Computer and Television screens cannot be broken Telephone systems, VCR's, DVD players, cell phones, radios, keyboards, printers, copiers, fax machines, etc. 25lbs and under; above 25 lbs charged at refuse rate. Above 25 lbs charged at refuse rate
AGRICULTURAL PESTICIDE CONTAINERS:	\$10.00	Each	Metal, fiber or plastic drums must be empty, certified triple rinsed by County Agricultural Commissioners office (must have certificate), punctured and labels removed.
RECYCLABLE MATERIALS:	FREE		Includes cardboard, newspaper, junk mail, telephone books, magazines, paperboard (cereal boxes), glass, aluminum, tins cans; plastics # 1-7, and metal 25 pounds and

			under. Used motor oil and oil filters (5 gallons per day)
RE-WEIGH/TARE CHARGE:	\$25.00	Per Occurrence	Vehicles found to have removed their tare weight sticker will be assessed this charge for re-weighing and affixing a new tare sticker.
TARP FEE UNCOVERED/UNSECURED LOADS Pick-ups, Cars, Vans & Trailers under 10 feet in length:	\$5.00	Per Vehicle	All vehicles entering the landfill must have refuse/recycling materials fully covered, secured and tied to the vehicle body to prevent spilling and litter per California Vehicle Code Section 23115. SEE UNCOVERED/UNSECURED LOAD POLICY.
WEIGHED LOADS:	\$50.00		

County of San Benito to retain \$26.00, as a surcharge, of the \$57.00 charged on all solid waste classified as demolition (materials not source separated for recycling).

GENERAL WASTE ACCEPTANCE INFORMATION

- ❖ **PLEASE RECYCLE FIRST! RECYCLING SAVES YOU MONEY AND SAVES YOUR PUBLIC LANDFILL SPACE.**
- ❖ **RESIDENTIAL AND COMMERCIAL SELF-HAULERS SHOULD CONSIDER THE CONVENIENCE AND COST SAVINGS OF HAVING REFUSE, RECYCLING, AND YARDWASTE COLLECTION AT YOUR HOME OR BUSINESS.**
- ❖ **Weighable vehicles will be charged per cubic yard (CY) when scale/computer is inoperable: Solid Waste: \$10.00/CY; Compacted Refuse: \$8.00/CY; Clean woodwaste, yardwaste, concrete etc: \$5.00/CY. All other rates remain in effect.**
- ❖ **Higher unit rate (solid waste rate) applies to mixed loads and contaminated concrete, dirt, asphalt, baserock, brick, porcelain, woodwaste and yardwaste loads.**
- ❖ **NO discounts given for airspace.**
- ❖ **All incoming commercial, industrial and residential waste loads will be periodically inspected for hazardous and unacceptable wastes. Commercial and industrial loads found containing hazardous waste will be turned away and all incident information will be turned over to the County Environmental Health Department for further action.**

EXHIBIT "H"

COLA Calculation Example based on 2008 adjustment

Consumer Price Index		
Year	Annual	% Change
2007	216.0	
2008	222.8	3.1%

Consumer Price Index - Fuel		
Year	Annual	% Change
2007	237.27	
2008	271.64	14.5%

Employment Cost Index						
Year	1st QRT	2nd QRT	3rd QRT	4th QRT	Average	% Change
2007	104.4	105.7	106.5	107.4	106.0	
2008	108.6	109.7	110.3	110.8	109.9	3.6%

Expense	Amount	% of Cost	Index	% Increase	COLA	
Labor ¹	\$573,214	42.6%	3.6%	1.5%		
Fuel ²	\$191,731	14.2%	14.5%	2.1%	08 Revenue	Increase
Other ³	\$581,405	43.2%	3.1%	1.3%	\$3,447,319	\$170,719
Total	\$1,346,351			4.95%		

1) Sum of Total Labor, Total Supervisor, & Wage Related Items from Truck Variable

2) Line item 52142 from 2008 P&L

3) Total operating costs & SG&A less labor & fuel

4) Floor and Cap set at 2 & 6 percent respectively

EXHIBIT I

Change of Law, Prevailing Wages, Uncontrollable Circumstances: Example Calculation

Waste received by John Smith Road Landfill during the previous 12 months

Total Tons Received	103,000	(use data from Monthly Landfill Tonnage Report as shown in Exhibit F)
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Cost of Change of Law, Prevailing Wages, Uncontrollable Circumstances

Dollars Cost/Ton

Operating Cost Increase	\$50,000	(divide cost by tons received (50,000/103,000); cost reimbursement does not terminate)
Capital Cost Increase	\$100,000	\$0.97 (divide cost by tons received (100,000/103,000); cost reimbursed terminates after capital cost repayment)
Total Increase	\$150,000	\$1.46 (divide cost by tons received (150,000/103,000)

Exhibit J

5-Year Landfill Depletion Fee Review Example

The following calculation shall be used for determining any increase or decrease in the Landfill Depletion Fee. For purposes of this calculation, \$34.73 per ton (the "Floor Tip Fee") as of the Commencement Date shall be the Floor Tip Fee. The Floor Tip Fee shall be adjusted annually in accordance with Section 6.

The Floor Tip Fee represents a projected weighted average Tip Fee as if the Landfill were taking 500 tons per day on the Commencement Date. To set the Floor Tip Fee the 2009 annual host fee report was used to determine the 2009 average daily tonnage and 2009 average tip fee for the In-County Waste (169 tons/day @ \$43.98/ton). The balance of the tonnage (331 tons/day) was multiplied by the current Out-of-County Tip Fee of \$30/ton.

$$\text{Floor Tip Fee} = ((169 \text{ tons} * \$43.98/\text{ton}) + (331 \text{ tons} * \$30.00/\text{ton})) / 500 \text{ tons} = \$34.73/\text{ton}$$

During the 5 Year Review the analysis shall evaluate the average Tip Fee, as escalated, for both the past 5 years and project the average Tip Fee (total revenue divided by total tons) for the next 5 years. If the previous 5 Year average Tip Fee exceeds the Floor Tip Fee then the Landfill Depletion Fee shall be increased by 20% of the amount above the Floor Tip Fee. If the previous 5 Year average Tip Fee is less than the Floor Tip Fee, as of the date of the 5-year evaluation, then the Landfill Depletion Fee will not adjusted.

The projected average Tip Fee shall be determined utilizing historical averages for tonnage and price at the Landfill and forecasted market conditions. If the projected average Tip Fee for the next 5 years is anticipated to exceed the Floor Tip Fee, then the Landfill Depletion Fee adjustment shall be re-evaluated annually.

**SIXTH AMENDMENT TO OPERATING AGREEMENT BETWEEN
THE COUNTY OF SAN BENITO AND WASTE CONNECTIONS INC.**

This sixth amendment to the Operating Agreement concerning the John Smith Road Landfill is made and entered into at Hollister, California, on the 21 day of December 2010, by and between the COUNTY of San Benito ("COUNTY") and Waste Solutions Group of San Benito, LLC, a Delaware limited liability company, a wholly owned subsidiary of Waste Connections Inc., ("COMPANY").

1. COUNTY and COMPANY have entered into an operating agreement whereby COMPANY acquired the exclusive right to operate the John Smith Road Landfill (the "Landfill") in San Benito COUNTY, as more completely detailed in the Operating Agreement, dated May 25, 1993 (the "Operating Agreement"), and as amended on August 24, 1994 (the "first amendment"); May 28, 1996 (the "second amendment"); July 6, 2004 (the "third amendment"); October 7, 2008 (the "fourth Amendment"); and May 12th 2009 (the "fifth amendment") which together constitute "prior amendments"; such Operating Agreement and the prior amendments are attached to this sixth amendment as "Attachment A" and are made a part of this sixth amendment.

2. On December 17, 2002, an Agreement between the COUNTY of San Benito and John Smith Landfill, Inc. regarding Consent to the Assignment of the Operating Agreement was approved and the Operating Agreement was transferred to Waste Solutions Group of San Benito, Inc. Subsequently, the ownership interests of Waste Solutions Group of San Benito, Inc. (which converted to Waste Solutions Group of San Benito, LLC) on February 22, 2005, were transferred to Waste Connections, Inc., as consented to and acknowledged by COUNTY on that date.

3. On September 14, 2010, the COUNTY elected to revise the current Operating Agreement with Waste Connections, Inc. The purpose of this Sixth Amendment is to memorialize the terms and conditions of the significant change in the scope of services provided by the Company and a significant change in the ownership liabilities and responsibility of the COUNTY. The agreed upon changes follow:

4. Paragraph 3 of the Operating Agreement is hereby amended to read as follows:

3. Term. The term of this agreement shall be for the period commencing on July 1, 1993 and continue until the date when all permitted waste disposal capacity, as set forth in Solid Waste Facility Permit # 35-AA-0001 including any extensions, expansions, modification or replacement of said permit, has been fully consumed.

5. Paragraph 9 of the Operating Agreement is hereby amended to read as follows:

9.1 COMPANY shall comply with all requirements of all county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the COMPANY'S use and operation of the premises as a Class III solid waste disposal site, and shall faithfully observe in the use and operation of a Class III solid waste disposal site all local, state and federal statutes now in force or that may hereafter be in force. This obligation includes, without limitation,

operating John Smith Solid Waste Disposal Site consistent with the County's Integrated Waste Management Plan. In carrying out this obligation, Company shall provide County with an assessment of impacts due to: 1) on-going and new statutory requirements as well as any (2) new regulatory requirements and/or (3) the interpretation of statutory and regulatory requirements by March 1st of each year and County shall determine a compensation methodology which may include, but is not limited to, rate increases, direct payment, franchise fee or surcharge reductions or any combination thereof, for implementation by July 1st of each year.

- 9.2 Annually, not later than April 1st, COMPANY and County shall meet and confer to evaluate the financial impact and the methodology of compensating COMPANY for those cost increases that result from the sources described in 9.1, above, such methodology to be at the sole discretion of the COUNTY. Should COMPANY fail to notify COUNTY of above-described financial impacts within the stipulated time period, it shall be conclusively presumed that COMPANY intends not to seek additional compensation.

6. Also on September 14, 2010, the COUNTY approved preparation of an application to revise the Solid Waste Facility Permit 35-AA-0001 including CEQA review to accommodate: (i) a two million cubic yard expansion (the "Expansion") of the Landfill's waste disposal capacity on the north side of John Smith Road, and (ii) an increase in the maximum permitted daily disposal capacity to a tonnage amount of not less than 800 nor more than 1,000 tons per day.

6.1. Notwithstanding the increased permitted daily tonnage of up to 1000 tons per day, COMPANY agrees to reserve no less than fifteen (15) years of remaining waste disposal capacity for in-county generated waste disposed at the Landfill. For the purposes of this determination, the Company shall utilize the previous year's annual In-County Waste Disposal as reported to the State. If the remaining waste disposal capacity falls below 15 years for in-County waste disposal before the Expansion is approved, then the Company will not accept more than 350 tons per day from out-of-county sources without County approval.

7. A New Landfill Operating Agreement, attached as "Attachment B" shall become effective upon the issuance of the final governmental permit required. Company may waive the requirement to receive any final permit to construct and operate the Landfill at any time after the County has obtained compliance with the California Environmental Quality Act ("CEQA") approving the 2 Million Cubic Yard (1,200,000 tons) and the landfill is receiving an annual average of four hundred (400) tons per day of buried waste. Once the New Landfill Operating Agreement becomes effective, it shall fully replace the Operating Agreement and the Operating Agreement shall terminate.

8. This sixth amendment has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this sixth amendment within the meaning of California Civil Code Section 1654.

IN WITNESS WHEREOF, the County and Company have executed this Agreement as of the day and year first above written.

“COUNTY”

APPROVED AS TO LEGAL FORM

By: Reb Monaco
Reb Monaco, Chair
Board of Supervisors

Terra L. Chaffee
Terra L. Chaffee, Deputy County Counsel

Date: 12/21/10

Date: 12/21/10

ATTEST:

Denise R. Thome

Denise R. Thome, Clerk of the Board

“COMPANY”

APPROVED AS TO LEGAL FORM

By: Paul Nelson
Paul Nelson, Division Vice President

Patrick Shea
Patrick Shea, General Counsel

Date: 12/21/10

Date: 12/20/2010