

**THIRD AMENDMENT TO
NEW LANDFILL OPERATING AGREEMENT**

THIS THIRD AMENDMENT TO NEW LANDFILL OPERATING AGREEMENT (this "**Amendment**") is entered into on June 8, 2021 (the "**Amendment Effective Date**") by and between the County of San Benito ("**County**") and Waste Solutions Group of San Benito, LLC, a Delaware limited liability company ("**Contractor**"). County and Contractor may be referred to individually as a "**Party**" and jointly as the "**Parties.**"

RECITALS:

WHEREAS, County and Contractor entered into that certain New Landfill Operating Agreement, dated as of December 21, 2010 (the "**Original Agreement**"), that certain First Amendment to New Landfill Operating Agreement, dated as of April 30, 2013 (the "**First Amendment**"), and that certain Second Amendment to New Landfill Operating Agreement, dated as of October 17, 2019 (the "**Second Amendment**" and, together with the Original Agreement and the First Amendment, the "**Agreement**");

WHEREAS, capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement;

WHEREAS, Contractor and County have mutually engaged in an enterprise to provide County residents with waste disposal services;

WHEREAS, Contractor is in the process of applying to CalRecycle to modify the existing Landfill permit by modification of permitted slopes to increase capacity at the Landfill by approximately 400,000 cubic yards within the currently permitted footprint of the Landfill (the "**Permit Modification**");

WHEREAS, due to the need to preserve fifteen (15) years of In-County Waste Disposal capacity, Contractor may have to suspend the acceptance of Out-Of-County Waste pursuant to Section 3.1 of the Agreement if the Permit Modification is not approved;

WHEREAS, in exchange for Contractor's agreement to amend certain provisions of the Agreement to set forth certain new agreements and obligations of Contractor, County has agreed to modify Section 3.1 so as to provide Contractor with a limited amount of additional time to obtain the Permit Modification.

AMENDMENT AND AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations of the Parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are agreed to, accepted and incorporated herein by reference.
2. Specific Amendments to the Agreement and the Second Amendment.

(a) Amendment to Section 6.a. (Purchase of Lima Property). Section 6.a. of the Second Amendment is hereby amended and restated in its entirety to read as follows:

“a. Contractor agrees to bear the option payments and purchase price for approximately 388 acres of the Lima Property, which purchase price Contractor currently anticipates will be approximately \$7,000,000. Contractor shall retain title to the Lima Property until all Post-Closure and corrective action requirements have been completed. Upon completion of all required Post-Closure activities and any corrective action, Contractor shall offer to deed ownership of the Lima Property to the County for the sum of One Dollar, which offer the County may refuse or accept, in its sole discretion.”

(b) Amendment to Section 7 (Additional Road Impacts Fees). Section 7 of the Second Amendment is hereby amended and restated in its entirety to read as follows:

“7. Additional Road Impact Payments. Commencing with the Amendment Effective Date, Contractor shall pay County \$1.00 per ton of Waste accepted at the Landfill for which the Contractor receives Tipping Fee revenue (the “**Additional Road Impact Payments**”). The Contractor agrees to continue the Additional Road Impact Payments until the earliest to occur of the following: (a) Termination of the Expansion; or (b) Final Expansion Approval; or, alternatively, (c) at any time that Contractor has suspended the acceptance of Out-of-County Waste pursuant to Section 3.1, but only during such period of time as such suspension is in effect. Contractor shall be permitted to increase the Out-of-County packer rate as necessary to recover the amount of the Additional Road Impact.”

(c) Amendment to Section 8 (Increased Landfill Depletion Fee). Section 8 of the Second Amendment is hereby amended and restated in its entirety to read as follows:

“8. Increased Landfill Depletion Fee. Commencing with the first quarterly payment after the Amendment Effective Date (*i.e.*, the quarterly payment for the first full quarter to elapse following the Second Amendment Effective Date), the Landfill Depletion Fee Contractor is obliged to pay to County pursuant to Section 7.1 of the Agreement shall be \$3.84 per ton (the “**One-Time Depletion Fee Increase**”). The One-Time Depletion Fee Increase shall continue until the soonest of: (a) Final Expansion Approval, (b) Termination of the Expansion; and (c) at any time commencing on or after December 17, 2023, but only during the period of time that Contractor has suspended the acceptance of Out-of-County Waste pursuant to Section 3.1 (each, the “**Landfill Depletion Fee Increase Termination Date**”). The Landfill Depletion Fee shall decrease by \$0.90 per ton with the first quarterly payment after the Landfill Depletion Fee Increase Termination Date. Upon a Final Expansion Approval, the One-Time Depletion Fee Increase shall cease, at which time Contractor will be obligated to pay the County the increased Landfill Depletion Fees set forth in the “Contingent Amendment to Section 7.1 (Landfill Depletion Fee)” on page 29 of the Second Amendment.”

3. Section 3.1 of the Second Amendment is hereby amended and restated in its entirety to read as follows:

“3.1 Reservation of Disposal Capacity. The Parties acknowledge that as of the Second Amendment Effective Date, the Landfill had in excess of fifteen (15) years of available Waste Disposal capacity to accommodate the In-County Waste Disposal needs. On or before each anniversary of the Second Amendment Effective Date, the Contractor shall hire a third-party registered geologist and/or engineer to prepare an analysis of remaining Waste Disposal capacity (the **“Annual Waste Disposal Capacity Report”**) in the Landfill and shall provide that analysis to the County by August 1st each year. For the purposes of this analysis, the Contractor shall utilize 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. During the term of this Agreement, the Contractor 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 fifteen (15) years of In-County Waste Disposal, the Contractor shall suspend the acceptance of Out-of-County Waste to ensure and maintain the minimum fifteen (15) years of Waste Disposal Capacity for In-County Waste. Such suspension of the acceptance of Out-of-County waste shall remain in effect until additional Disposal capacity is available for the Out-of-County waste while still maintaining the minimum 15 years of Waste Disposal Capacity for In-County Waste. An example of the determination of this reservation of Disposal Capacity is shown in **Exhibit C** to the Second Amendment.

Notwithstanding anything to the contrary in the foregoing, if Final Expansion Approval has not been received within twenty-four (24) months following the Second Amendment Effective Date, Contractor may request to dispose of In-County Waste at an alternative permitted solid waste disposal facility, at Contractor’s sole cost, and the County shall consider such request in good faith.

Additionally, notwithstanding the foregoing, the Parties hereby agree that the In-County Waste limitation will be triggered by the summer of 2021. Therefore, the Parties agree that Contractor may continue to import Out-of-County Waste until September 19, 2021. On September 20, 2021, unless the Permit Modification has been given final approval by all regulatory agencies with jurisdiction, including the Local Enforcement Agency (CalRecycle) and the Regional Water Quality Control Board, Contractor agrees that it will suspend the acceptance of the Out-of-County Waste until the final approval of the Permit Modification or the Final Expansion Approval to ensure that the remaining capacity of the Existing Landfill is reserved for In-County Waste. Further, if Contractor receives the Permit Modification, Contractor shall thereafter re-suspend the importation of Out-of-County Waste if, before the Final Expansion Approval, the quantity of remaining Waste Disposal Capacity falls below the quantity needed to accommodate fifteen (15) years of In-County Waste Disposal.”

4. Temporary Suspension of Section 3.1. Upon the execution of this Amendment, Contractor's obligations under Section 3.1 of the Agreement shall be suspended until September 19, 2021.
5. Parent Guaranty. Upon the execution of this Amendment, Contractor shall deliver to County a Guaranty executed by each of Waste Connections US Holdings, Inc. and Waste Connections US, Inc. to secure all of Contractor's payment and performance obligations under this Agreement, including, without limitation, all Landfill Closure and Post-Closure Obligations set forth in the Agreement or required by Applicable Law. The Guaranty shall be in the form attached as **Exhibit P**. The Guaranty shall be remain in place and effective until all Contractor's obligations under the Agreement are met. No modifications to the Guaranty shall be made without the written approval of the County.
6. Termination of the Expansion. Upon a Termination of Expansion, this Amendment shall automatically terminate and cease to be effective, and the relationship between the Parties shall be governed by the Agreement as if this Amendment had never been executed. Notwithstanding the foregoing, the Guaranty executed by Waste Connections US Holdings, Inc. and Waste Connections US, Inc. pursuant to Section 5 of this Amendment shall remain in place and effective until all of Contractor's obligations under the Agreement are met.
7. Negotiation; Preparation. This Amendment has been arrived at through negotiation between the Parties. Neither Party is to be deemed a drafter of this Amendment within the meaning of California Civil Code section 1654 and the rule of construction it provides shall have no application to this Amendment.
8. Authority. Each person executing this Amendment represents and warrants that it is duly authorized to cause this Amendment to be executed and delivered.
9. Counterparts. This Amendment may be executed in one or more facsimile or original counterparts, each of which shall be deemed an original and both of which together shall constitute one and the same instrument. Signatures may be exchanged by facsimile or emailed pdf or other electronic means with the same force as wet originals.
10. Ratification. All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term "Agreement" in this Amendment and/or Agreement shall include this Amendment.
11. Conflicting Provisions. In the event of any conflict between the terms of the Agreement as amended to the date of this Amendment and this Amendment, this Amendment shall prevail.


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Signature Page Follows.]***

IN WITNESS WHEREOF, County and Contractor have executed this Third Amendment to New Landfill Operating Agreement as of the Amendment Effective Date.

“County”

APPROVED AS TO LEGAL FORM

By: 
Chair
Board of Supervisors


Barbara Thompson, County Counsel
By: Joel Ellinwood, Assistant County Counsel

Date: 6/08/2021

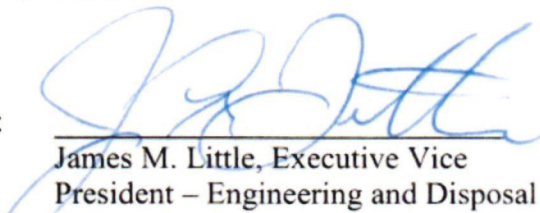
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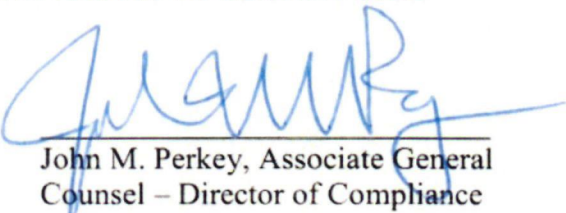
ATTEST:


Jennifer Frechette, Clerk of the Board

“Contractor”

APPROVED AS TO LEGAL FORM

By: 
James M. Little, Executive Vice
President – Engineering and Disposal

By: 
John M. Perkey, Associate General
Counsel – Director of Compliance

Date: 6/2/21

Date: 6/2/21

EXHIBIT P
Exhibit P – Parent Guaranty

Attached hereto.