

943-1120

AMENDED AND RESTATED WILLIAMSON COUNTY LANDFILL OPERATION AGREEMENT

This Agreement (herein so called) is entered into the 28 day of OCTOBER, 2003, as an amendment to and restatement of that certain Agreement (the "Original Agreement") of May 6, 1985, by and between Williamson County, Texas, (hereinafter "County") by and through its duly elected County Commissioners Court and R.E. Wolf Enterprises, Inc., 3001 E. 83rd Street, Kansas City, Missouri 64132, since acquired by and merged into Texas Waste Systems, Inc., and subsequently merged into Waste Management of Texas, Inc. (hereinafter "Contractor"), a Texas Corporation located at 9708 Giles Road, Austin, Texas 78653, the Original Agreement having been amended by that certain "Amended and Restated Williamson County Landfill Operation Agreement" dated November 5, 1990.

1. Real Estate

"Landfill" as used in this Agreement, shall refer to that certain parcel of real property owned by County together with all improvements and appurtenances thereto, currently consisting of 575.32 acres of land, more or less, located 3,300 feet northwest of the intersection of FM Highway 1660 and County Road 130 on the northeast side of County Road 130, 3.5 miles north of Hutto in Williamson County, the legal description of which is attached hereto as Exhibit "A" and attached hereto and made a part hereof by reference.

County warrants that it has fee simple title to the property described on Exhibit "A", and that it has transferred all permits necessary for the lawful operation of the Landfill thereon by Contractor. County will support the addition of additional parcels of real property to the Landfill in accordance with any expansion agreement subsequently entered into by Contractor and the County pursuant to Section 14 below.

2. County Oversight

County may appoint a Landfill oversight committee or representative whose function will be: (1) to observe all aspects of Landfill operation; (2) make periodic reports thereon to County; (3) represent the County in discussions with Contractor as to Landfill operation, marketing or development circumstances or practices as they affect the health, safety, welfare, and reputation or other legitimate interest of the county (4) and to explore possible solutions to problems and investment in opportunities as may serve the interests of the parties; such as recycling or other waste reduction strategies to maximize the useful life of the Landfill. Such representative or committee shall further be authorized to communicate on behalf of the County directly with the Texas Commission on Environmental Quality ("TCEQ") and such other state or federal environmental agencies as may have jurisdiction over the Contractor or the Landfill to seek enforcement of laws and regulations governing these activities. Provided that the foregoing language shall not be construed to limit the power or ability of the County Commissioner's Court to make contact with any regulatory agency in any manner it deems appropriate.



Such representative or committee will have an opportunity to review and comment on material changes in operating procedures prior to submission to the appropriate regulatory agency.

3. Term and Post Term Care and Use Restriction

The term of this Agreement shall continue for so long as Contractor continues active sanitary landfilling or gas recovery operations at the Landfill or is diligently pursuing permits and licenses for such operations, unless earlier terminated as provided hereunder. During the term of this Agreement, annually, on each anniversary date of this Contract, Contractor shall provide the County with a written estimate of the remaining life of the Landfill based on information contained within Contractor's records regarding the operation of the Landfill. Such estimate shall be Contractor's best faith estimate of remaining Landfill life, only, and shall not be a guaranty as to remaining Landfill life. Further, Contractor shall at its cost, regardless of such prior termination, perform such post closure care and monitoring of the Landfill as may be legally required and/or as may be deemed advisable by Contractor. The Contractor shall also comply with all post-closure financial assurance requirements imposed by all governmental authorities, including TCBQ. County shall grant access post term to Contractor as necessary to carry out the intent of this provision. Regardless of the foregoing, County shall not, following termination hereof, disturb the integrity of the cover materials placed over the Landfill in any manner, whether by excavation, cultivation, boring, regrading or otherwise, nor construct any structures on the Landfill (except that paving shall be permitted), nor alter any venting or monitoring wells, flares, vegetation or drainage then existing unless Contractor expressly consents to such activity. At Contractor's request, County shall execute a suitable document to bind the Landfill and future owners of the Landfill to the obligations and undertaking of the County in this provision.

4. Revenues

a. In consideration of Contractor's right to operate the Landfill and charge and retain disposal fees and gas recovery fees generated in connection with such operations, Contractor shall pay County a monthly royalty (the "Royalty") equal to 7.5% of the gross disposal receipts actually collected by Contractor in operation of the Landfill. Such payment shall be made within thirty (30) days of the end of the month during which such disposal receipts were collected. "Gross disposal receipts" will be net only of any taxes, fees, tariffs or surcharges imposed by State, Federal or local government upon the business of activity of sanitary landfill waste disposal.

b. Notwithstanding anything contained herein to the contrary, in the event that during any contract year, disposal volume at the Landfill shall exceed 200,000 tons per Agreement year (the "Base Annual Volume"); then the Royalty paid on volume in excess of the Base Annual Income shall increase .25% per year for each 50,000 tons or part thereof, in excess of the Base Annual Volume, with each such incremental increase in Royalty being applied toward such corresponding incremental increased volume. For example, in the event disposal volume at the Landfill for an Agreement year is 275,000 tons, then the Royalty would be paid as follows: (1) 7.5% Royalty on the first 200,000

tons; (2) 7.75% Royalty on the next 50,000 tons or part thereof; and (3) 8.0% Royalty on the remaining 25,000 tons.

c. Provided the Landfill is actively accepting waste, the annual royalty paid by Contractor to the County for any contract year shall not be less than \$60,000.00 per Agreement year (the "Minimum Royalty"); however, the County agrees to use best efforts to cause all governmental agencies within the County to direct solid waste to the Landfill for disposal. These efforts would include, but not be limited to, appropriate marketing of the Landfill to the various governmental agencies within the County.

d. Contractor agrees that all waste (i) generated in the County, and (ii) collected and hauled to the Landfill by County vehicles (but not a subcontractor for the County) (the "County Waste"), up to, but not to exceed 500 tons per month, shall be disposed at the Landfill for a rate equal to the lowest rate charged by Contractor to a third party during the then current calendar month. Any County Waste in excess of 500 tons per month shall be disposed at the Landfill for the then current Landfill gate rate.

e. For the purposes of this Agreement, solid waste disposed of and paid for at the landfill on a yardage basis shall be converted to tonnage in accordance with TCEQ conversion rules and regulations, as amended from time to time.

yardage ÷ 3 = tonnage

f. In the event Contractor shall contract with an unrelated third party for payment of a disposal rate at the Landfill which is less than the Landfill gate rate established from time to time (a "Discounted Gate Rate"), then, for the purposes of calculating the Royalty, the Discounted Gate Rate shall be grossed up to the then current gate rate.

5. Guaranteed Disposal Capacity and Rate Control

Contractor further agrees that the gate rate for disposal at the Landfill of municipal solid waste generated within Williamson County shall be less than or equal to Maximum Disposal Rate (as defined below).

On an annual basis, the maximum disposal rate to be changed hereunder (the "Maximum Disposal Rate") shall be set by Contractor to reflect the average of the posted disposal rates for municipal solid waste charged at Type I sanitary landfills in the CAPCO area. The CAPCO area consists of Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis and Williamson Counties.

The Contractor shall review the most current edition of information updated annually by the TCEQ listing landfills in those counties. The Contractor shall tabulate a listing of all landfills (other than Williamson County Landfill) in those counties with the same classification as Williamson County Landfill (currently Type I). This listing shall include disposal rates charged for various categories of wastes as determined to be appropriate by the Contractor, not to include "special wastes" as defined elsewhere in this contract. The maximum disposal rate for each category shall not exceed the average disposal rate for that category charged by the landfills in this tabulation, rounded to the nearest \$.05.

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Determination of disposal rates at the various landfills may be made by telephone survey, observation of posted rates, or other reliable means available to the Contractor.

Disposal rates for waste requiring special handling, such as asbestos, municipal sludge, and other "special wastes" shall be determined by the Contractor.

Rate adjustments as described herein may occur at times as determined by the Contractor, but not more than one (1) rate adjustment may occur in any calendar year.

The listing need not include any landfills scheduled to close within twelve (12) months of the preparation of the list.

If there are no other landfill facilities in the CAPCO region which qualify for inclusion on this listing, the Contractor shall list disposal rates for the three closest facilities with similar classification and methods of operation.

The Contractor shall not be required to include on the list landfills which are subsidized by other sources of revenue, but shall note any excluded landfills and their disposal rates.

Attached as Exhibit "B" is a sample calculation for calendar year 1990, prepared March 26, 1990.

Notwithstanding the foregoing, Contractor may increase rates at any time to "pass-through" any increases in State, Federal or local taxes, fees, tariffs or surcharges imposed by any such governmental entity.

Contractor does not guarantee to the County the availability of waste disposal in any volume, or at any disposal rate, except as expressly set forth herein.

6. Operations

The Contractor, as operator of the County Landfill, shall at its cost operate in compliance with the TCEQ permit requirements and with all pertinent statutes, regulations, orders, ordinances and permits issued by governing offices of the federal, state, regional, and any local authorities. Contractor shall patrol all access roads within 1/4 mile of the Landfill for purposes of litter collection.

In the event Contractor shall desire to commence any landfilling or any construction activities that will be located within 400 feet of a public road, Contractor agrees to present such plan of activities to the County Commissioner for review and approval of such activities; provided such approval shall not be unreasonably withheld by the County Commissioner, taking into account the exact location and nature of such activities, and the benefits to Contractor and the County.

Contractor shall operate the Landfill from 7:00 a.m. to 5:00 p.m., Monday through Friday, and 7:00 a.m. to 12:00 p.m. on Saturdays. Contractor may close the

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Landfill in observance of the following holidays: New Year's Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.

Contractor shall have the right to construct and maintain such improvements as Contractor may reasonably deem necessary to operate the Landfill as contemplated by this Agreement.

7. Restrictions on Acceptance of Waste

Contractor will not, and shall not be obligated to, accept any regulated quantities of hazardous or toxic waste at the Landfill. Only wastes as approved by the State of Texas will be accepted at the Landfill. If Contractor believes a load of material might be of hazardous nature, it will refuse such waste and record the contents, date of arrival, specifics of the incident, license number and name of hauler for future reference and maintain such record until conclusively audited.

8. Records and Auditing

Gate receipt records shall be retained by Contractor for three (3) years after the date of such receipt. Gate receipts shall be available for review and photocopying, upon ten (10) days' written request of the County Auditor.

Contractor will install a computerized receipts system with video gate monitors or other system acceptable to the parties. Such system will be maintained at the tipping fee gate.

At the Commissioner Court's discretion and expense an accounting firm may from time to time perform an audit of Contractor's gate receipts as directed by the Commissioner's Court. In the event that such an audit discloses a greater than 1% error in reporting gross receipts resulting in a Royalty shortfall, Contractor shall pay for the audit and promptly make up the Royalty shortfall.

9. Site Inspection

Authorized representatives of governmental agencies shall have the right to access and inspect the Premises during business hours. Contractors site supervisors and employees shall cooperate to the fullest extent with such inspections wherever possible to the extent consistent with safe operating practices.

10. Workmen's Compensation and other Employee Insurance

Contractor shall provide workers' compensation for its employees in the amount of statutory limits.

11. Insurance

Contractor shall provide County with minimum insurance liability coverage listed below:

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General Liability
Comprehensive
Premises-Operations

Limits
\$5,000,000
(minimum combined single limit)

Explosion and Collapse Hazard
Contractual Insurance
Products/Completed Operations Hazard
Broad Form Property Damage
Independent Contractors
Personal Injury

Automobile Liability
Comprehensive form

\$1,000,000

Owned
Hired
Non-Owned

Excess Liability

\$2,000,000

Umbrella Form

\$ 500,000

Employee Liability

Such policy or policies will name the County, its employees and officials as additional insureds, by reason of negligent acts of Contractor in connection with operation of the Landfill, limited, however, to such matters for which Contractor must indemnify County pursuant to this Agreement. Contractor shall have no obligation to insure County, its employees or officials for their own negligent acts. All such policies shall contain a provision requiring that the County be notified not less than 30 days prior to substantial modification or cancellation of any such policy.

12. Indemnity

A. General Indemnity - Contractor agrees to indemnify and hold County harmless against any and all claims, demands, damages, costs, and expenses, including reasonable attorney's fees for the defense of such claims and demands, to the extent caused by the negligent acts or omissions of Contractor, and arising from Contractor's conduct or management of the Landfill, or Contractor's use of the Landfill or from any breach on the part of Contractor of any conditions of this Agreement, or from any act or negligence of Contractor, Officers or Directors, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the Landfill. In case of any action or proceeding brought against County by reason of any such claim, Contractor, upon notice from County, agrees to defend the action or proceeding by counsel acceptable to County.

County shall not be liable or responsible for, and shall be saved and held harmless by Contractor from and against any and all claims and damages of every kind, for injury to or death of any person or persons and for damage to or loss of

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property, arising out of or attributed to the operations or performance of Contractor under this Agreement, to the extent such claims or damages are caused by the negligent act or omissions of Contractor. Contractor shall not be obligated to indemnify the County from the negligent acts or omission of the County or its agents, employees or servants.

B. Indemnity from Environmental Assessments - County shall not be liable or responsible for, and shall be saved and held harmless by Contractor from and against any and all claims and assessments brought by local, state, and/or federal government environmental agencies in connection with either the closure of the Landfill or any cleanup costs associated with environmental contamination, whether such cleanup is of air, soil, ground water or surface water contamination, as determined by the governing environmental agency or agencies. Such indemnity shall apply prospectively not only during the term of this Agreement but shall also apply retrospectively to that period of time preceding the effective date of this Agreement during which County owned and/or operated the Landfill.

13. Permits and Costs

Contractor shall be responsible for the cost of obtaining and maintaining all necessary permits and licenses required in the day-to-day operations of the landfill. County shall cooperate and assist in obtaining such permits when necessary. Contractor shall be responsible for all costs of the Landfill operations as required by the applicable permits, and the applicable state and federal regulations. The County agrees to cooperate with Contractor in obtaining any agreed upon or required permit modifications.

14. Site Expansion

Except with respect to the Landfill expansion occurring as of the date of this Agreement, neither party shall be obligated or required to expand the Landfill during the term of this Agreement; however, prior to the expiration of the term of this Agreement, the parties may mutually agree in writing to expand the Landfill, upon such terms and conditions as may be mutually acceptable to the parties, in each party's sole and absolute discretion, including, but not limited to, the nature and extent of such expansion, and allocation of payment of costs for such expansion, including engineering, legal, public relations, and property acquisition costs.

15. Reporting

Contractor will perform as an independent contractor to operate County sanitary landfill. Contractor will report all pertinent activities to the authorized agent of County.

16. Default

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If either party abandons, delays unnecessarily in the performance of, or in any manner refuses or fails to comply with any material term of this Agreement, the other party may notify the party in non-compliance, in writing, of such abandonment, unnecessary delay, refusal or failure to comply. If such non-compliance is not thereafter corrected within (30) days of receiving such written notice (or if such non-compliance is of a nature that it cannot be cured within such thirty (30) day period, the defaulting party fails to commence correction of such non-compliance within such thirty (30) day period, and diligently pursue the curing thereof), then the party giving the notice may declare the Agreement to be in default. At such time as a material default may occur and no action has been commenced on the part of defaulting party within the above 30 day period, the non-faulting party may give immediate notice of termination effective on the 10th day after receipt of such notice unless substantial progress has been made to cure the non-compliance. In the event of a termination of this Agreement for any reason, then Contractor shall immediately cease operations and remove its equipment from the Landfill within thirty (30) days from the termination date.

17. Ownership of Properties and Solid Waste

The Premises shall remain under the ownership and ultimate control of County, including such additional parcels as may be acquired for expansion pursuant to this Agreement and deeded to the County except that Contractor shall have exclusive recycling rights at County landfill.

The County Judge will cooperate with contractor in signing necessary reports, will promptly review reports, and sign same if not deficient, and will cooperate in contesting such deficiencies.

18. Successor and Assigns

The covenants, conditions and agreements made and entered into by the parties of the Agreement are declared to be for the benefit of and binding upon their respective successors, representatives, and assigns. Contractor may not assign its interest hereunder other than to another entity owned, controlled by or under common control with Contractor without the County's consent, which consent shall not be unreasonably withheld.

19. Notice

A letter addressed and sent by registered United States mail, postage prepaid, to either party at its business address shown in this Agreement or to such other respective addresses as the parties may designate from time to time in writing shall be sufficient notice wherever required for any purpose in the Agreement.

20. Venue

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This Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the Parties created by this Agreement are performable in Williamson County, Texas. Venue for causes of action arising out of this Agreement shall be brought in Williamson County, Texas.

21. Invalid Provisions

In the event any covenant, condition or provisions herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provisions herein contained; provided however, that the invalidity of any such covenant, condition or provision does not materially prejudice either Contractor or County in their respective rights and obligations contained in the valid covenants, conditions or provisions in this Agreement.

22. Force Majeure

Contractor guarantees that there shall be no interruption of Landfill services, unless such interruption is the result of force majeure, which shall mean acts of God, strikes, lockouts, materials or labor restrictions by any government authority, civil riot, floods, fires, and any other cause not reasonably within the control of Contractor and which by the exercises of due diligence Contractor is unable, wholly or in part, to prevent or overcome.

23. Waiver

No waiver of default or breach by either party shall be construed to be or act as a waiver of any subsequent default or breach of this Agreement or any provision hereof.

24. Rights and Remedies Cumulative

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive that party's right to use any or all other remedies. The rights and remedies provided in this Agreement are in addition to any other rights the parties may have by law statute, ordinance or otherwise.

25. Entire Agreement

This document (including all documents incorporated herein be reference) contains all covenants, stipulations and provisions agreed upon by the parties. No agent of either party has authority to make, and the parties shall not be bound by, nor liable for, any statement, representation or promise not set forth herein. No changes, amendments or modifications or the terms hereof shall be valid unless reduced to writing and signed by the parties.

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26. Condemnation

If during the term of this Agreement, all of the Landfill is taken for a public purpose by condemnation, this Agreement shall terminate, subject to the continuing obligation of Contractor to provide final cover and closure, and post closure obligations of Contractor. Any such condemnation award shall be equitably split as follows: (i) County shall receive any and all condemnation proceeds attributable to the value of the land; and (ii) Contractor shall receive any and all condemnation Proceeds attributable to the improvements relating to Landfill operations.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

WILLIAMSON COUNTY, TEXAS

By: John C. Daehler 10-28-03

Its: County Judge

WASTE MANAGEMENT OF TEXAS, INC.

By: Charles D. Dees, III

Its: Vice President