

ADDENDUM AGREEMENT FOR A SUSTAINABILITY FEE AT THE SIMI VALLEY LANDFILL AND RECYCLING CENTER

This Addendum Agreement is made and entered into this 19th day of July, 2011, by and between the COUNTY OF VENTURA ("County") and WASTE MANAGEMENT OF CALIFORNIA, INC. ("Waste Management"), a California corporation.

RECITALS

WHEREAS, the County previously issued Conditional Use Permit No. 3142 ("CUP No. 3142") to Waste Management authorizing the operation of a solid waste facility on real property located at, or about, 2801 Madera Road in the unincorporated area of the County, which CUP currently authorizes Waste Management to maintain a disposal area up to approximately 186 acres, a disposal elevation of approximately 1,118 feet, and a daily tonnage limit for municipal Solid Waste of 3,000 tons and for Recovered Materials of 6,250 tons; and

WHEREAS, Public Resources Code section 40059 and County Ordinance Code sections 4760 through 4760-2 together provide that no person shall operate a solid waste facility in the unincorporated area of the County without first entering into a franchise or contract with the County; and

WHEREAS, Waste Management and the County have entered into an *Agreement for the Operation and Closure of the Simi Valley Landfill and Recycling Center* governing the current operation of a solid waste facility under CUP No. 3142, the current effective version of which was entered into on November 26, 2002, and amended in 2004 and 2005 ("Operating and Closure Agreement"); and

WHEREAS, Waste Management is currently operating a solid waste facility referred to as the Simi Valley Landfill and Recycling Center ("Landfill") at the Madera Road site under the authority of CUP No. 3142 and the Operating and Closure Agreement; and

WHEREAS, the Operating and Closure Agreement provides that it is subject to review and renegotiation when Waste Management applies for a major modification of CUP No. 3142, and Waste Management has, in fact, applied for a major modification which if approved would increase the disposal area from approximately 186 acres to approximately 371 acres, the disposal elevation from approximately 1,118 to 1,270 feet, and the daily tonnage limit for municipal Solid Waste from 3,000 to 6,000 tons and for Recovered Materials from 6,250 tons to 3,250 tons ("Waste Management Expansion Plan"); and

WHEREAS, Waste Management has agreed to this Addendum Agreement as the result of arm's-length negotiations under the authority of Public Resources Code section 40059 and County Ordinance Code sections 4760 through 4760-2, to supplement contractual arrangements to promote waste diversion and energy conservation, and preserve disposal capacity for Ventura County.

NOW, THEREFORE, the County and Waste Management, for, and in consideration of, the covenants and agreements as hereafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do mutually agree as follows:

ARTICLE 1. INCORPORATION OF TERMS OF OPERATING AND CLOSURE AGREEMENT

Section 1.1 Except to the extent amended herein, the provisions of the Operating and Closure Agreement, as it may be amended from time to time, are incorporated herein as if set forth in full, including, but not limited to, all capitalized terms defined therein, which shall have the same meaning herein.

Section 1.2 To the extent any part of this Addendum Agreement is in conflict with the provisions of the Operating and Closure Agreement, this Addendum Agreement shall prevail. No action required of either party by this Addendum Agreement shall constitute a breach or violation of the Operating and Closure Agreement.

Section 1.3 The above Recitals are hereby incorporated by reference into this Addendum Agreement.

ARTICLE 2. TERM OF ADDENDUM AGREEMENT

Section 2.1 TERM. The term of this Addendum Agreement shall commence with the effective date of CUP No. 3142, Major Modification No. 8 authorizing the Waste Management Expansion Plan, and shall expire at time of Site Closure for the entire Landfill. Notwithstanding the foregoing, should Waste Management, by January 1, 2014, fail to obtain a Solid Waste Facility Permit and Waste Discharge Requirements, Sections 3.1, 3.2, 4.1 and 4.2 of this Addendum Agreement shall be temporarily suspended until the above permits are received, at which time these provisions will be automatically reinstated with no further action required by the parties. Failure to obtain any other permits related to the Waste Management Expansion Plan, including those for the materials recovery facility, office building, co-generation facility or any other use or structure, shall not suspend any obligation of Waste Management under this Addendum Agreement.

Section 2.2 IMPLEMENTATION OF ARTICLES 3 and 4. Implementation of Articles 3 and 4 below shall commence on January 1, 2012.

ARTICLE 3. SUSTAINABILITY FEE

Section 3.1 SUSTAINABILITY FEE.

- A. Solid Waste. For Solid Waste received by the Landfill originating from any point outside the geographic boundaries of Ventura County, California, Waste Management shall pay the County a Sustainability Fee as follows:

(1) \$4.00 per ton from January 1, 2012, until the date Toland Landfill closes, or December 31, 2029, whichever is sooner; and

(2) \$5.00 per ton from January 1, 2030, or the day after Toland Landfill closes, whichever is sooner, and automatically increasing by 2% per year thereafter beginning on January 1 of each subsequent year for the duration of the term.

The Sustainability Fee on Solid Waste shall be paid independent of, and in addition to, any Mandated Fees or other fee or surcharge payable to the County, including but not limited to the general County Surcharge.

- B. Recovered Materials. For Recovered Materials received by the Landfill that originate from any point outside the geographic boundaries of Ventura County, California, Waste Management shall pay the County a Sustainability Fee as follows:

(1) 8% of the actual per ton cost charged by Waste Management from January 1, 2012, until the date Toland Landfill closes, or December 31, 2029, whichever is sooner; and

(2) 10% of the actual per ton cost charged by Waste Management from January 1, 2030, or the day after Toland Landfill closes, whichever is sooner, and automatically increasing by 2% per year thereafter beginning on January 1 of each subsequent year for the duration of the term (e.g. in the first subsequent year, the percentage would be 10.2%).

The Sustainability Fee on Recovered Materials shall be paid independent of, and in addition to, any Mandated Fees or other fee payable to the County. Notwithstanding the foregoing, no general County Surcharge shall be payable for Recovered Materials subject to the Sustainability Fee.

As part of the Summary Report required in Section 3.4 below, Waste Management shall provide County documentation to verify all of Waste Management's actual charges for Recovered Materials received at Landfill. To the extent Waste Management cannot provide such documentation for any out-of-County Recovered Materials, all such affected tonnage of Recovered Materials shall be subject to the Sustainability Fee rates payable for Solid Waste stated in section 3.1(A) above.

- C. Notwithstanding any provision to the contrary herein, the Sustainability Fee shall not apply to Solid Waste or Recovered Materials originating from outside the State of California.

Section 3.2 MATERIALS EXEMPT FROM SUSTAINABILITY FEE. Notwithstanding section 3.1, the Sustainability Fee shall not apply to:

- A. Any Solid Waste or Recovered Materials originating either from within the geographic boundaries of the County or from outside the geographic boundaries of the State of California;
- B. In any given quarter, 75,600 tons of Solid Waste originating from outside the geographic boundaries of the County;
- C. In any given quarter, 33,338 tons of Recovered Materials originating from outside the geographic boundaries of the County not sorted or processed, and subsequently transported outside the Landfill's boundaries within 90 days of receipt for recycling purposes;
- D. Any Solid Waste or Recovered Materials received by the Landfill at no cost as authorized under the Operating and Closure Agreement; or
- E. Beginning January 1, 2015, any Recovered Materials received by the Landfill, sorted or processed, and subsequently transported outside the Landfill's boundaries within 90 days of receipt for recycling purposes.

In the event that deliveries of material to the Landfill are less than the exempted amounts set forth in (B) and (C) above in any calendar quarter, the number of tons below the exempted amount may be carried over and applied to subsequent calendar quarters for purposes of calculating the exempted amounts and the Sustainability Fee payment, provided that there will be no carry over to subsequent Calendar Year (January 1- December 31).

Section 3.3 VERIFICATION OF ORIGIN. Prior to operating under the terms of CUP No. 3142, Major Modification No. 8, Waste Management shall establish a tonnage origin verification process to accurately determine the applicability of the Sustainability Fee on all

materials received by the Landfill. The verification reporting process, at a minimum, shall comply with Condition 55(b) of Major Modification No. 8 to CUP No. 3142, and shall include:

- A. With respect to non-Ventura County materials recovery facilities ("MRF")/transfer stations: 1) Name of facility 2) Volume of material by origin.
- B. With respect to non-Ventura County commercial/account customers, 1) customer/account name 2) volume of material by origin.
- C. With respect to Ventura County non-account customers, 1) Name and driver's license number, 2) Vehicle license number, 3) Building and Safety permit number if applicable and 4) Origin of material. Waste Management shall obtain this information on a form provided by the County, to be signed by the customer. The completed forms shall be provided to the County with the quarterly report in accordance with Section 3.4.

Current Disposal Reporting System provides detailed reports from in-County MRF's/transfer stations and Ventura County commercial/account customers and will continue.

Customers in non-compliance with the Landfill's tonnage origin verification process (i.e., providing false or inaccurate information) will be given a notice and written warning for the first offense, and may be denied use of the Landfill after a subsequent offense. Copies of all notices will be provided to the County. County staff may physically audit the Landfill's tonnage origin verification process by providing Waste Management at least three (3) days advance written notification to verify the accuracy of tonnage origin verification methods and data. The County reserves the right to implement reasonable modifications to the Landfill tonnage origin verification process as necessary and Waste Management shall exercise reasonable cooperation in implementing all such modifications.

Section 3.4 QUARTERLY REPORTING. Waste Management shall submit to the *County of Ventura Public Works Agency, Water and Sanitation Department, Integrated Waste Management Division, Attn: Contracts Administration - Simi Valley Landfill* a Sustainability Fee Summary Report ("Summary Report"), as described below, on a quarterly basis no later than 75 days after the close of the preceding quarter, or as soon as the data is received from material recovery facilities ("MRFs") per state reporting timelines. The Summary Report shall contain the information obtained in accordance with Section 3.3, the tonnage of non-Ventura County Solid Waste received, the amounts charged for receipt of non-Ventura County Recovered Materials, and the tonnage of Recovered Materials transported off site. The County reserves the right to implement reasonable modifications to the quarterly reports as necessary and Waste Management shall exercise reasonable cooperation in implementing all such modifications.

Section 3.5 PAYMENT TO COUNTY. Following submittal of the quarterly reports indicated in section 3.4, County shall invoice Waste Management for the Sustainability Fee for

that quarter, and Waste Management shall remit to the County the Sustainability Fee payment within 30 days of receipt of invoice.

Section 3.6 RIGHT TO AUDIT. The County has the right to audit the books and records of Waste Management related to this Addendum Agreement for four (4) immediate past years to verify reporting and payment accuracy.

Section 3.7 EFFECT OF ANNEXATION . Notwithstanding Section 2.1, if the real property on which the Landfill is situated is annexed to any city, Article 3 of this Addendum Agreement shall survive, and Waste Management shall continue to pay the County the full Sustainability Fee provided for in this Addendum Agreement until Site Closure.

In the event an annexation process is initiated, the County agrees that it will enter into good faith negotiations with all parties with the intent to reach agreement on revenue sharing issues which will, at a minimum, keep the County revenue from the Sustainability Fee at the then current level. Thereafter, in the event the parties are unable to reach agreement they then agree to participate in mediation to resolve the revenue sharing issues.

Waste Management does not, by virtue of this Addendum Agreement, waive any rights to request a reconsideration hearing, participate in protest proceedings, or challenge any future boundary change that may be proposed as provided for under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000. Although Waste Management and the County expressly acknowledge the inability of this Addendum Amendment to conflict with state law, including the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Waste Management and the County nevertheless acknowledge their mutual intent that in the event of annexation or incorporation, and subject to final LAFCO determination, each of their respective obligations to one another under this Addendum Agreement will remain unchanged or substantially similar such that each party remains whole through the life of this Addendum Agreement.

Section 3.8 AUTHORIZATION TO OPERATE. County authorizes Waste Management to operate the Landfill to the full extent allowed under the terms of CUP No. 3142, Major Modification No. 8, subject to any required federal or state approval.

Section 3.9 SEVERANCE. Should any court of competent jurisdiction, or arbitrator with the authority to issue a final and binding award, determine that any provision of this Addendum Agreement is invalid, void, or unenforceable, the remainder of this Addendum Agreement shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law. In addition, the parties agree to negotiate in good faith to revise this Addendum Agreement to place the parties in the same legal and economic position they would otherwise have occupied in the absence of such determination, to the extent feasible, and in particular to place the County in the same financial position it would have occupied as of the date of any such determination based on its receipt of the County Surcharge, Solid Waste

Control Fee, and Sustainability Fee under the terms and conditions set forth herein. The parties further agree to use best efforts to conclude negotiations and execute an Addendum Agreement within ninety (90) days of the effective date of any final determination.

If the parties do not execute an amended Addendum Agreement within ninety (90) days of the effective date of any final determination that the Sustainability Fee is unenforceable, either party may demand, as of right, that the issue be submitted to a neutral arbitrator, who shall have the authority to make a final and binding amendment to the Addendum Agreement that accomplishes the goals of the parties described above. Time is of the essence. The parties agree to cooperate in an expedited arbitration resulting in a final decision within 30 days of a demand for arbitration.

ARTICLE 4. MISCELLANEOUS FEE ADJUSTMENTS AND SPECIAL PROVISIONS

Section 4.1 REDUCED GENERAL COUNTY SURCHARGE FOR RECOVERED MATERIALS. Notwithstanding anything to the contrary in the Operating and Closure Agreement, beginning on January 1, 2015, the general County Surcharge as applied to Recovered Materials shall: (a) be calculated at 5% of the amount charged by Waste Management; and (b) not apply to Recovered Materials received by the Landfill, sorted, or processed, and subsequently transported outside the Landfill's boundaries within 90 days of receipt for recycling purposes.

Section 4.2 CAP ON GROWTH OF SOLID WASTE CONTROL FEE.

A. Pursuant to County Ordinance Code sections 4703 through 4703-4, solid waste facility operators, haulers, and others must pay a solid waste control fee which collectively is used to pay for the program costs (i.e., operating budget) of the Environmental Health Division of the County's Resource Management Agency. The County establishes the amount of the solid waste control fee annually by resolution. The County agrees that in consideration of Waste Management's promise to pay the charges described elsewhere in this Addendum Agreement, the program costs considered in calculating the solid waste control fee payable by Waste Management in its capacity as operator of the Landfill during the term of this Addendum Agreement will be capped at the amount of program costs used to determine the fiscal year 2010-2011 fee, (i.e., \$850,000.00) plus 3% per year thereafter, compounded annually.

B. RELIEF FROM CAP. Should any federal or state law or regulation that is enacted after the effective date of this Addendum Agreement or any legal expenses substantially increase the program costs used to calculate the amount of the County's solid waste control fee, the County may use those additional program costs to adjust the Solid Waste Control Fee notwithstanding anything in this Addendum Agreement to the contrary.

Section 4.3 WASTE MANAGEMENT'S REPRESENTATIONS AND ACKNOWLEDGMENTS.

- A. No Negative Fiscal Impact On City Of Simi Valley. Waste Management represents, based on its review of this Addendum and upon execution of this Addendum by both parties, that no reduction in the fees and value of services accruing to the City of Simi Valley under the Memorandum of Understanding (MOU) entered into between Waste Management and the City is required. Waste Management has notified the City of Simi Valley in writing that a reduction is not required. A copy of that letter is attached as Exhibit 1.
- B. California Constitution Waste Management has reviewed Articles XIIC and XIID of the California Constitution, and in particular those portions of the above Articles added or amended by Proposition 218 and Proposition 26, and acknowledges to the best of its reasonable knowledge and judgment that nothing in the above constitutional provisions affects the applicability or enforceability of the Sustainability Fee as set forth in Sections 3.1 and 3.2 of this Addendum.

Section 4.4 WASTE FLOW. Notwithstanding any provision to the contrary in the Operating and Closure Agreement, the County agrees to include a provision in any future franchise, license, permit, ordinance, or contract authorizing the collection of residential Solid Waste for the Lake Sherwood, Lynn Ranch, Unincorporated Moorpark, Oak Park West, Regency Hills, Santa Susana Knolls, Unincorporated Simi Valley and Yerba Buena service areas requiring that all Solid Waste collected from within these areas be delivered to the Simi Valley Landfill for disposal. With respect to Oak Park West only, in the event that a franchise, license, permit, ordinance, or contract for collection from that service area is issued to a person or entity other than Waste Management, Waste Management agrees to accept Solid Waste from such entity delivered to the Simi Valley Landfill at a rate not to exceed the volume discount rate for greater than 2100 tons per month plus 75% of the difference between the posted gate rate for municipal Solid Waste and the volume discount rate stated above. Waste Management agrees to defend, indemnify and hold the County harmless from and against all claims, damages, costs, and fees or other charges arising from the County's inclusion of this requirement in any such franchise, license, permit, ordinance, or contract.

ARTICLE 5. GENERAL PROVISIONS

Section 5.1 GUARANTY BY WASTE MANAGEMENT, INC. Prior to the effective date, and for all conditions and obligations of this Addendum Agreement, Waste Management shall provide to the Director proof of guaranty by Waste Management, Inc., meaning that company currently traded on the New York Stock Exchange, and its successors in interest, of the performance by Waste Management of each provision of this Addendum Agreement to be performed by Waste Management. Proof of guaranty shall be in the form set forth in Exhibit 2 and a copy of the guaranty must be transmitted to the *County of Ventura Public Works Agency, Water and Sanitation Department, Integrated Waste Management Division, Attn: Contracts Administration - Simi Valley Landfill.*

Section 5.2 COMPLETE AGREEMENT. This Addendum Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No verbal agreement with any officer, agent, or employee of the County nor any agreement either before or during the execution of this Addendum Agreement shall affect or modify any of the rights granted or obligations assumed herein.

Section 5.3 AMENDMENTS. This Addendum Agreement may not be amended except by a written agreement, signed by both parties, specifically providing that same is an amendment to this Addendum Agreement.

Section 5.4 NO THIRD-PARTY BENEFICIARY ENFORCEMENT. While this Addendum Agreement benefits the public interest throughout Ventura County, it is a contract between only the County and Waste Management and, accordingly, only the County and Waste Management may enforce the contract. No claims, demands, or causes of action by any entity, party, or person claiming to be a third-party beneficiary hereunder are enforceable.

Section 5.5 ARBITRATION. Any controversy or claim arising out of or relating to this Addendum Agreement, or the breach thereof, may be settled by arbitration in accordance with the rules of JAMS or the American Arbitration Association, as modified herein, as the parties may agree. California judicial rules of evidence shall apply to the arbitration proceedings. The arbitration decision shall be decided under and in accordance with California law, supported by a preponderance of the evidence, and in writing in the form of a Statement of Decision pursuant to Code of Civil Procedure section 632. This section 5.5 does not constitute a remedy for or procedure for remedying any disputes between the parties arising out of the issuance or terms and conditions of CUP No. 3142, or any extensions or modifications thereof; for determinations made by a third party, such as the California Department of Resources, Recycling and Recovery (aka CalRecycle); or for any disputes arising out of a condemnation proceeding.

Section 5.6 GOVERNING LAW. This Addendum Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 5.7 SEPARATE AGREEMENT. This Addendum Agreement is separate from, and independent of, any other agreement between the County and Waste Management in effect prior to the effective date of this Addendum Agreement.

Section 5.8 NOTICES. All notices or other communications ("Notice") to be given pursuant to this Addendum Agreement shall be in writing and will be deemed given when mailed by registered or certified United States mail, addressed to the parties as follows:

To County: County of Ventura
Attention: Director, Water and Sanitation
Department, Public Works Agency
800 South Victoria Avenue
Ventura, California 93009-1600

To Waste Management: Waste Management of California, Inc.
c/o Simi Valley Landfill and Recycling Center
Attention: General Manager
2801 Madera Road
Simi Valley, California 93062

A change of address or a change in the person or title to which Notice is to be given will be effectuated by Notice to the other party.

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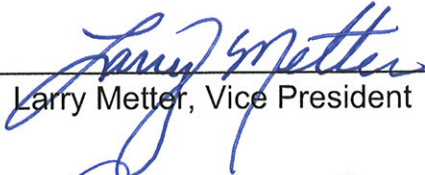
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IN WITNESS WHEREOF, the parties voluntarily enter into this Addendum Agreement effective on the date first provided on page one hereof.

WASTE MANAGEMENT OF CALIFORNIA, INC.
A California Corporation

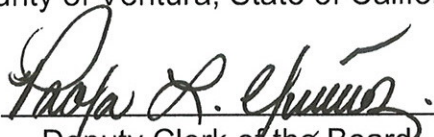
By 
Larry Metter, Vice President

By 
Lawrence Galek, Vice President and
Assistant Treasurer

COUNTY OF VENTURA

By 
LINDA PARKS, Chair
Board of Supervisors

ATTEST: MICHAEL POWERS
Clerk of the Board of Supervisors,
County of Ventura, State of California

By: 
Deputy Clerk of the Board

