

FOURTH AMENDMENT TO MANAGEMENT AND OPERATIONS AGREEMENT

THIS FOURTH AMENDMENT TO MANAGEMENT AND OPERATIONS AGREEMENT (this “Fourth Amendment”), effective as of _____, 2021, is entered into by and between **CAMELOT LANDFILL TX, LP**, a Delaware limited liability partnership (“Contractor”), and the **CITY OF FARMERS BRANCH**, a Texas home rule municipality (“City”). Contractor and City are sometimes referred to herein collectively as “the Parties” and separately as “Party”.

RECITALS

WHEREAS, Contractor and City are parties to that certain Management and Operations Agreement effective October 1, 2008, as amended by (1) that certain First Amendment to Management and Operations Agreement dated July 7, 2016 (the “First Amendment”), (2) that certain Second Amendment to Management and Operations Agreement entered into on April 25, 2016 (the “Second Amendment”), and (3) that certain Third Amendment to Management and Operations Agreement effective as of May 22, 2018 (the “Third Amendment” and, collectively with the First Amendment and the Second Amendment being the “Operations Agreement”), related to the management and operation of the City’s municipal solid waste landfill known as the “Camelot Landfill” (the “Landfill”); and

WHEREAS, the closure of the DFW Landfill located at 1600 S. Railroad Street, Lewisville, Texas 75067 (the “DFW Landfill”) is anticipated to increase the volume of waste disposed of at the Landfill and reduce the anticipated remaining useful life of the Landfill; and

WHEREAS, pursuant to the Third Amendment, Contractor Mothballed the Lewisville C&D Landfill located at 801 East College Street, Lewisville, Texas 75028 (the “Lewisville Landfill”); and

WHEREAS, Contractor and City desire to increase the volume of C&D Waste disposed of at the Lewisville Landfill in an effort to prevent a material increase in the volume of waste disposed of at the Landfill due to the closure of the DFW Landfill; and

WHEREAS, Contractor and City desire to amend the Operations Agreement as set forth herein.

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

TERMS AND CONDITIONS

1. **Amendments to Section 5 of the Operations Agreement**: Section 5 of the Operations Agreement is amended by deleting and replacing the second paragraph of Section 5 with the following:

The Contractor shall be allowed to dispose up to 689,735 tons of waste in the Landfill during the first 12 months of the term of this Agreement, such limit shall increase by 5% each 12 month period thereafter. For purposes of the prior sentence, the Parties acknowledge and agree that effective October 1, 2021, the Contractor shall be allowed to dispose of up to 1,365,627 tons of waste in the Landfill during the 12 month period commencing on October 1, 2021, and such limit increasing annually by 5% beginning on October 1, 2022 and each October 1st thereafter, and (b) subject to Force Majeure, the Contractor shall use commercially reasonable efforts consistent with all generally accepted industry standards and methods applicable to a landfill that is similar to the Landfill and the waste disposed therein to provide a minimum of 20 years of operational life with the earliest end of such operational life being September 30, 2041. The determination of such tons shall exclude any (a) soil or other materials utilized for the purposes of closure or post-closure of the Landfill, (b) cover material placed on the surface of the working face of the Landfill at the end of each operating day to control vectors, fires, odors, blowing litter and scavenging, and (c) soil or materials to be used at a later date for closure or post-closure of the Landfill or intermediate or final cover. If the potential disposal volume should experience a significant increase that would result in exceeding such limit, the Contractor may request that an increase in approved waste volume limit be reviewed and approved by the City, which approval shall not be unreasonably withheld. The Contractor shall have the ability to control access to the Landfill and may suspend access or privileges as necessary to enforce agreements the Contractor may have with any other party.

2. **Amendment to Section 6 of the Operations Agreement:** Section 6 of the Operations Agreement is amended and restated to read in its entirety as follows:

6. City Fees and Compensation. Payments to the City shall be the sum of the Usage Fee and Royalty Fee:

(a) The Usage Fee for each month during the Term shall be \$83,333.00 (with no Consumer Price Index or other adjustment thereto). The Usage Fee shall be payable in monthly installments for the prior month, on or before the 20th day of each month after the first month of each Contract Year. The Usage Fee shall be payable each month regardless of the waste volume accepted at the Landfill.

(b) Contractor shall pay to the City a royalty fee (the "Royalty Fee") that is a percent of the Landfill Gross Revenue. For Royalty Fee calculations, Gross Revenue is defined in Section 23 (h). The percent of Gross Revenue shall be paid according to the following schedule:

<i>Contract Year</i>	<i>Percent of Gross Revenue</i>
#1	18%
#2	14%
#3 and beyond until receipt from the TCEQ of a final, unappealable expansion permit	10%
After receipt from the TCEQ of a final, unappealable expansion permit	16%

Notwithstanding the foregoing to the contrary, the Parties agree the Royalty Fee to be paid on Gross Revenue derived from C&D Waste disposed of at the Landfill shall be twelve percent (12%) until the date the Lewisville Landfill is reopened.

(c) The Royalty Fee shall be payable in monthly installments for the prior month, on or before the 20th day of each month after the first month of each Contract Year.

(d) The City acknowledges and agrees that: (i) it is entitled to receive Royalty Fee payments only if and when the Contractor generates revenue from the burial of waste at the Landfill or the diversion of recycling or green wastes, which have crossed the scale of the Landfill and been accepted at the Landfill, from the Landfill through composting or recycling of such materials; (ii) the Contractor and its affiliates have no obligation to bring in or accept any particular volume of solid waste at the Landfill or to otherwise take any action to maximize or increase the volume of solid waste accepted at the Landfill and, therefore, the Royalty Fee payments; (iii) the Contractor and its affiliates may direct their or any third party's solid waste to any other facility for disposal, recycling or other disposition without any obligation to pay any Royalty Fee or other amount on any solid waste so directed; and (iv) the Contractor will pay the Usage Fee in accordance with 6(a) regardless of the volume of waste disposed or diverted for recycling.

(e) All payments will be made to the City of Farmers Branch, Texas and delivered to the Director of Finance at the address indicated in Section 24 (a).

(f) Contractor shall provide periodic reports required by the City in order for the City to verify that Royalty Fees have been determined, calculated, remitted accurately and timely, and in accordance with appropriate laws. Contractor records relating to the usage and operation of the Landfill shall be made available to the City for audit during normal business hours. The audit may be conducted by City employees or by the City's representatives.

(g) The City will negotiate any costs associated with obtaining a Special Use Permit from the City of Lewisville.

(h) The City shall pay all expenses associated with any Landfill expansion permit. The City will fund all of the cost of required work and fees pertaining to the permit amendment application during the technical review process. Similarly, the City will fund all of the legal and other fees involved in the permit application process including but not limited to public meetings, discovery, settlement meetings, depositions, contested case hearings, requests for reconsideration, and motions to overturn at its discretion.

(i) City is hereby granted an option to purchase for One and No/100 Dollars ("the Option") that certain parcel of real property owned by Contractor consisting of approximately 18.71 acres of land located at Barfknecht Road, commonly known as the O'Leary Tract, in the City of Lewisville, Denton County, Texas, and more particularly described in the Purchase Agreement (the "Real Property"). City's right to exercise the Option shall commence on the filing of an application with the TCEQ for the Landfill Expansion Permit. Conveyance of the Real Property by Contractor to City shall be subject to the terms and conditions set forth in the purchase agreement attached hereto as Attachment II (the "Purchase Agreement"). City shall exercise the Option by presenting to Contractor a signed copy of the Purchase Agreement before the earlier of (i) the termination of this Agreement or (ii) the date of the issuance of a non-appealable Landfill Permit Expansion. Closing on the conveyance of the Real Property shall be on or before the date set forth in the Purchase Agreement, but in any case prior to issuance of the Landfill Permit Expansion to City.

(j) In the event the Landfill Expansion Permit is not granted to City by TCEQ, or in the event the Landfill Expansion Permit is overturned in a contested case hearing or such other hearing or appeal, then on or before the first anniversary of the date the permit is denied or overturned, as the case may be, the City shall re-convey the Real Property to Contractor pursuant to a special warranty deed in substantially the same form as the special warranty by which the Real Property was conveyed to City. Further, if City has not obtained a non-appealable approval of the Landfill Expansion Permit on or before the date that is five (5) years after the Closing Date of the conveyance of the Real Property to City, then City shall re-convey the Real Property to Contractor within thirty (30) days thereafter. City shall be responsible for all costs associated with re-conveyance of the Real Property to Contractor pursuant to this Section 6(j) other than Contractor's attorney fees. The Real Property shall be re-conveyed to Contractor "AS-IS" but in as close to practicable a physical condition as existed as of the date of the original conveyance made to City with no additional exceptions to title other

than (i) the Acceptable Exceptions (as defined in the Purchase Agreement) as contained in the Deed (as defined in the Purchase Agreement) and (ii) such additional easements or exceptions to which Contractor may have granted its consent subsequent to conveyance of the Real Property to City, and with no change in the environmental condition of the Real Property as existed as of the date of Contractor's conveyance of the Real Property to City and if any such change in the environmental condition of the Real Property shall occur City shall be liable for any and all remediation at its sole cost and expense in order to return the Real Property to its condition as existed as of the date of Contractor's conveyance of the Real Property to City except to the extent such change in environmental condition is caused by the intentional or negligent actions of Contractor, its officers, partners, affiliates, employees, agents or Contractor's subcontractors, or their officers, employees, or agents, in which case City shall have no responsibility for any remediation costs. **THE PROVISIONS OF THIS SECTION 6(j) SHALL SURVIVE THE CONVEYANCE OF THE REAL PROPERTY TO CITY AND SHALL NOT MERGE INTO THE DEED.**

(k) City and Contractor acknowledge that as consideration for obtaining the approval of the City of Lewisville ("Lewisville") with respect to the City's application to the Texas Commission on Environmental Quality ("TCEQ") for a permit amendment to expand the Landfill as provided in Section 9, below, City has entered into that certain *Agreement By and Between City of Lewisville, Texas and City of Farmers Branch, Texas Regarding the Expansion of the Camelot Landfill*, which agreement was amended effective on or about October 18, 2016, by that certain *First Amendment to Agreement By and Between City of Lewisville, Texas and City of Farmers Branch, Texas Regarding the Expansion of the Camelot Landfill* (collectively, the "Lewisville Agreement"), copies of which Contractor acknowledges have been provided by City to Contractor. Commencing January 1, 2017, and ending on January 1 of the year in which the final acceptance of Solid Waste at the Landfill occurs, Contractor agrees to pay on City's behalf the amount of \$93,000.00 annually to Lewisville as required by Section V.A. of the Lewisville Agreement.

(l) City and Contractor acknowledge that as consideration for obtaining the approval of Lewisville with respect to the City's application to the TCEQ for a permit amendment to expand the Landfill as provided in Section 9, below, City has entered into that certain *Landfill Use Agreement* effective on or about October 18, 2016, ("the Landfill Use Agreement") providing for the limited right of Lewisville's residents to dispose of solid waste at the Landfill at no cost to the residents, a copy of which is attached as an exhibit to the Lewisville Agreement and which Contractor acknowledges having received. Contractor agrees to cooperate with City to ensure City's ability to successfully perform City's obligations under the

Landfill Use Agreement. Contractor expressly acknowledges that Contractor shall not be authorized to charge a fee to Lewisville residents for the disposal of solid waste at the Landfill to the extent such charges are waived or otherwise not allowed to be assessed pursuant to the Landfill Use Agreement.

(m) Contractor agrees to reopen the Lewisville Landfill on or before October 1, 2022. Contractor and City may agree to extend the Mothballing of the Contractor's Lewisville Landfill in one (1) year increments upon mutual written agreement of the parties not later than six (6) months prior to September 31st of each year, such consent to not be unreasonably withheld, delayed or conditioned. Nothing contained herein is deemed to be a guarantee by the Contractor as to any increase in the volume of waste disposed of at the Landfill.

(n) City and Contractor acknowledge that as additional consideration for this Agreement, as amended, and Contractor's payment to City of the amount of \$700,000 (the "Additional Agreement Consideration") (such payment being made when, and as, called for herein below), not later than ninety (90) days after the effective date of this subsection (n)(which shall be the same date as the Effective Date of the Third Amendment to this Agreement), or as soon thereafter as is reasonably practicable to allow time for the preparation of the necessary documents, including, at the sole option and cost of Contractor, the preparation of a title commitment and a survey, City agrees to convey to Contractor a temporary non-exclusive access and sign easement (the "Temporary Easement") over and upon the real property described as Lots 2, 3, and 4, Block A, Farmers Branch Camelot Landfill Addition, according to the plat thereof recorded as Document No. 2016-2229, Plat Records, Denton County, Texas (the "Easement Property"). The Temporary Easement shall authorize Contractor to use the Easement Property for ingress and egress to and from Contractor's property described as Lot 1, Block A, Lewisville Republic Addition, an addition to the City of Lewisville, Denton County, Texas, according to the plat thereof recorded as Document No. 2016-2221, Plat Records, Denton County, Texas ("Contractor's Property") as well as locate one or more signs at the locations set forth on an exhibit to be attached to the Temporary Easement. The Temporary Easement shall further contain provisions which require Contractor to (i) be solely responsible, at Contractor's costs, for constructing, maintaining, repairing, replacing, and removing any existing or new pavement improvements that Contractor elects to construct or install on the Easement Property, (ii) be solely responsible, at Contractor's cost, for the mowing and maintenance of the Easement Property, and (iii) terminate the Temporary Easement and quitclaim any right, title or interest in and to the Easement Property at such time as the City of Lewisville completes construction of a public street that allows public access directly to Contractor's entrance to the existing hauling

facility located on Contractor's Property. The Temporary Easement will be granted to Contractor at no additional cost to Contractor other than the consideration stated herein; provided, however, Contractor shall pay all costs relating to any title insurance commitment, title policy, recording fees, title company escrow fees, survey, and other costs incurred relating to the determination of the location of the Temporary Easement. City agrees that Contractor may pay the Additional Agreement Consideration to City in installments as follows: \$100,000 on or before the first anniversary of the conveyance of the Temporary Easement to Contractor (the "Easement Recordation"); \$300,000 on or before the second anniversary of the Easement Recordation; and \$300,000 on or before the third anniversary of the Easement Recordation.

(o) AS A MATERIAL PART OF THE CONSIDERATION FOR GRANT AND CONVEYANCE OF THE TEMPORARY EASEMENT ACROSS THE EASEMENT PROPERTY TO CONTRACTOR, THE PARTIES AGREE THAT CONTRACTOR IS ACQUIRING THE TEMPORARY EASEMENT "AS IS" WITH ALL FAULTS AND DEFECTS, LATENT AND PATENT, AND SUBJECT TO THE CURRENT ZONING AND ALL EXISTING EASEMENTS, RIGHTS-OF-WAY, COVENANTS, CONDITIONS, AND RESTRICTIONS, ZONING, AND OTHER ENCUMBRANCES AS MAY APPEAR OF RECORD. CONTRACTOR ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT AND THE TEMPORARY EASEMENT, CITY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE EASEMENT PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, OR THE PRESENCE OR ABSENCE OF ANY POLLUTANT, HAZARDOUS WASTE, GAS OR SUBSTANCE OR SOLID WASTE ON OR ABOUT THE EASEMENT PROPERTY, (B) THE SUITABILITY OF THAT PORTION OF THE EASEMENT PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY INTEND TO CONDUCT THEREON, (C) THE COMPLIANCE CONTRACTOR'S USE OF THE EASEMENT PROPERTY WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY HAVING JURISDICTION INCLUDING WITHOUT LIMITATION, ALL APPLICABLE ZONING LAWS, (D) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE EASEMENT PROPERTY FOR THE AUTHORIZED USES GRANTED IN THE TEMPORARY EASEMENT, OR (E) ANY OTHER MATTER RELATED TO OR CONCERNING THE EASEMENT PROPERTY. CONTRACTOR SHALL NOT SEEK RECOURSE AGAINST CITY ON ACCOUNT OF ANY LOSS, COST OR EXPENSE SUFFERED OR INCURRED BY CONTRACTOR WITH REGARD TO ANY OF THE MATTER DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE AND HEREBY ASSUMES THE RISK OF ANY

ADVERSE MATTERS RELATED TO THE MATTERS DESCRIBED IN CLAUSES (A) THROUGH (F) ABOVE FROM AND AFTER THE DATE OF EASEMENT RECORDATION. CONTRACTOR ACKNOWLEDGES THAT CONTRACTOR, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE EASEMENT PROPERTY, IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE EASEMENT PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF CITY OR ANY STATEMENT, REPRESENTATION OR OTHER ASSERTION MADE BY CITY WITH RESPECT TO THE EASEMENT PROPERTY. CONTRACTOR FURTHER ACKNOWLEDGES THAT NO INDEPENDENT INVESTIGATION OR VERIFICATION HAS BEEN OR WILL BE MADE BY CITY WITH RESPECT TO ANY INFORMATION SUPPLIED BY OR ON BEHALF OF CITY CONCERNING THE EASEMENT PROPERTY, AND CITY MAKES NO REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, IT BEING INTENDED BY THE PARTIES THAT CONTRACTOR SHALL VERIFY THE ACCURACY AND COMPLETENESS OF SUCH INFORMATION ITSELF. CONTRACTOR ACKNOWLEDGES THAT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SECTION ARE AN INTEGRAL PORTION OF THIS AGREEMENT AND THAT CITY WOULD NOT AGREE TO CONVEY THE TEMPORARY EASEMENT ACROSS AND UPON THE EASEMENT PROPERTY TO CONTRACTOR FOR THE ADDITIONAL AGREEMENT CONSIDERATION WITHOUT THE DISCLAIMERS, AGREEMENTS AND OTHER STATEMENTS SET FORTH IN THIS SUBSECTION (O).

3. **Amendment to Section 11 of the Operations Agreement:** Section 11 of the Operations Agreement is amended to read as follows:

11. **Landfill Limited to Solid Waste.** The Contractor shall use industry standard practices to accept only those waste streams approved under the permit issued by TCEQ and as may be amended. In addition, in accordance with all permits, licenses, approvals and authorizations, when mutually agreed by Contractor and City, brush diversion, wood processing, mulching, and/or composting operations may commence at the Landfill without any further amendment to this Agreement.

4. **Recitals; Capitalized Terms.** Contractor and City acknowledge the accuracy of the Recitals and hereby incorporate the Recitals into the body of this Fourth Amendment. Any capitalized terms used herein but not defined have the same meaning as that ascribed to them in the Operations Agreement.

5. **Conflicting Terms.** In the event of a conflict between the terms or provisions of this Fourth Amendment and the terms and provisions of the Operations Agreement, the terms and provisions of this Fourth Amendment will control and prevail.

6. **Ratification.** Except as specifically provided in this Fourth Amendment, the Operations Agreement shall be unamended and all terms and provisions of the Operations

Agreement remain in full force and effect and are hereby ratified by the parties hereto in all respects.

7. **Counterparts; Binding Nature.** This Fourth Amendment may be executed in any number of counterparts, including facsimile and .pdf, each of which constitutes an original and all of which, collectively, constitute one and the same instrument. The signatures of the Parties need not appear on the same counterpart. The provisions hereof are binding upon and inure to the benefit of the Parties and their respective successors and assigns and this Fourth Amendment and the Operations Agreement constitute the entire understanding between the Parties in respect to the subject matter hereof.

[Signature page to follow]

SIGNED AND AGREED this _____ day of _____, 2021

CONTRACTOR:

CAMELOT LANDFILL TX, LP, a Delaware
limited liability partnership

By: Allied Waste Landfill Holdings, Inc., a
Delaware corporation, General Partner

By: _____

Name: _____

Title: _____

SIGNED AND AGREED this _____ day of _____, 2021

CITY:

CITY OF FARMERS BRANCH, a Texas
home rule municipality

By: _____
Charles S. Cox, City Manager

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney