

**FRONT RANGE LANDFILL PROPERTY
PRE-ANNEXATION AGREEMENT**

THIS PRE-ANNEXATION AGREEMENT (“Pre-Annexation Agreement”) is made and entered into this ____ day of _____, 2018 (the “Effective Date”), by and between FRONT RANGE LANDFILL, INC., a Delaware corporation, hereinafter referred to as the "Owner," and the TOWN OF ERIE, a Colorado municipal corporation, hereinafter referred to as "Erie" or "Town".

WITNESSETH

WHEREAS, the Owner desires to annex to Erie in the immediate future the property more particularly described on **Exhibit "A,"** attached hereto and incorporated herein by this reference, and known as the SE ¼ Section Property, excluding that approximate five (5) acre parcel owned by the Town where the Town has constructed water tanks (the “Town Property”) (such SE ¼ Section Property excluding the Town Property is hereinafter referred to as the “Owner Property”); and

WHEREAS, Owner, in accordance with the terms of this Pre-Annexation Agreement, will execute and submit to the Town a petition to annex the Owner Property to the Town (“Annexation Petition”), a copy of which petition is attached hereto as **Exhibit “B,”** and is incorporated herein by this reference; and

WHEREAS, it is to the mutual benefit of the parties hereto to enter into the following Pre-Annexation Agreement; and

WHEREAS, Owner acknowledges that upon annexation the Owner Property will be subject to all ordinances, resolutions, and other regulations of the Town of Erie, as they may be amended from time to time.

NOW, THEREFORE, in consideration of the above premises and the covenants as hereinafter set forth, it is agreed by and between the parties as follows:

1. Annexation Petition Submittal. Owner shall fully execute and submit to the Town the Annexation Petition for the Owner Property, in the form generally as set forth on **Exhibit “B,”** within Sixty (60) days of the Effective Date of this Pre-Annexation Agreement.

2. Annexation Petition Conditions.

A. The Owner’s submission of the Annexation Petition for the Owner Property to the Town is specifically conditioned upon approval and execution of the annexation agreement (the “Front Range Landfill Annexation Agreement”) by the Town Board of Trustees on or before December 31, 2018 which date may be extended by up to six (6) months at the written request of either party (as the Front Range Landfill Annexation Agreement may be mutually amended by the parties hereto from time to time).

B. The Owner desires PD – Planned Development Zoning (“PD”) for the Owner Property, as set forth in more detail in Section 3, herein below, as such zoning is authorized by Title 10, of the Code of Ordinances of the Town of Erie, Colorado (“Code”). Owner acknowledges and accepts that no warranty, guarantee or promise is made on the part of the Town to so zone the Owner Property as PD Zoning. Owner acknowledges and understands that the Town Board of Trustees determines what is an appropriate zoning for the Owner Property, and the desired zoning as set forth herein does not in any way bind the Town Board of Trustees to adopt the zoning for the Owner Property. The Owner states that granting of such PD zoning by the Town as requested by Owner herein is a condition to annex the Owner

Property and Owner may withdraw the Annexation Petition if it is not granted. Owner shall take all action necessary to permit zoning by the Town of the Owner Property within the time prescribed by state statutes.

3. Annexation Agreement Terms. The Front Range Landfill Annexation Agreement shall contain the following terms:

A. Owner shall apply to Town to rezone the Property to be included in the current PD Zoning and CD Ordinances (Ordinances 33-2005 and 34-2005).

B. Owner shall apply to Town to amend the current PD Zoning and CD Ordinances (Ordinances 33-2005 and 34-2005), as part of its zoning application, to accommodate the following land uses:

1. The three landfill expansion areas more particularly described and illustrated on **Exhibit "C"** (the "Expansion Areas") shall be designated and zoned to be used for landfill purposes,

2. The Town Property shall be designated and zoned to be used for landfill purposes (the Town will provide a letter of authorization to Owner allowing Owner to apply to rezone the Town Property),

3. The corner property more particularly described and illustrated on **Exhibit "D"** (the "Corner Property") shall be designated and zoned to be used for all anticipated future Owner uses, including a new truck and hauling facility and relocation of the landfill entrance (the Town will provide a letter of authorization to Owner allowing Owner to apply to rezone the Corner Property), and

4. To allow the Owner's landfill to accept the following non-hazardous waste types: medical waste, bulk animal carcasses, incinerator fly ash, liquid dairy industrial by-product and treated wastewater/domestic sludge.

C. Owner shall dedicate and deed an additional thirty (30) foot wide strip of Owner Property along and adjacent to County Road 7 to the Town upon the Town's request of such dedication. Such thirty (30) foot wide strip of Owner Property along and adjacent to County Road 7 shall be used for the future expansion of County Road 7.

D. Owner shall pay to the Town the amount of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) commencing on the Effective Date of the annexation and zoning of the Owner Property. Owner and Town may, by mutual agreement, alter the payment date to provide for a payment schedule, with all payments being made no later than December 31, 2025.

E. Owner may, at Owner's sole determination and option, apply to the Colorado Department of Public Health and Education (the "CDPHE") for a major modification to the Owner's EDOP in conformance with the terms of the amended PD Zoning and CD Ordinances (Ordinances 33-2005 and 34-2005), as set forth herein above.

Such terms as set forth herein above shall be incorporated into the Front Range Annexation Agreement.

4. Negotiation and Finalization of the Front Range Landfill Annexation Agreement. The period of time from the Effective Date to and including December 31, 2018, or as such date may be extended pursuant to Section 2.A., above, shall be used by the parties to negotiate and finalize the Front

Range Landfill Annexation Agreement. Such negotiations shall be held in good faith by both parties.

5. Exclusivity of Negotiations, Annexation Petition. Owner agrees to not enter into, entertain or take part in any annexation negotiations or discussions outside of the Front Range Landfill Annexation Agreement negotiations agreed to with Town herein. Owner agrees to not sign any petition for annexation of the Owner Property or any petition for an annexation election relating to the Owner Property, except as agreed to with Town herein.

6. Remedy for Owner. In the event the Front Range Landfill Annexation Agreement, as it may be mutually amended by the parties hereto, is not approved by the Town on or prior to December 31, 2018, or as such date may be extended pursuant to Section 2.A., above, then, in that event, at the Owner's sole option, the Owner may withdraw the Annexation Petition for the Owner Property by written notice delivered to the Town and the Owner Property shall not be annexed by the Town.

7. Remedy for Town. In the event the Owner fails to perform any of its obligations as contained herein or defaults hereunder, after written notice and a thirty (30) day period to cure or remedy the default, the Town may pursue whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce the Owner's obligations by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, and no other remedy, and the Town will not be entitled to or claim damages, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages.

8. Cooperation. The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of this Pre-Annexation Agreement, and will execute such additional documents as necessary to effectuate the same.

9. Binding Effect of Pre-Annexation Agreement. This Pre-Annexation Agreement shall run with the Owner Property and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

10. Assignment. Owner's duties and obligations pursuant to this Pre-Annexation Agreement may not be assigned to any third party or agency without the express written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed.

11. Modification and Waiver. No modification of the terms of this Pre-Annexation Agreement shall be valid unless in writing and executed with the same formality as this Pre-Annexation Agreement, and no waiver of the breach of the provisions of any sections of this Pre-Annexation Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

12. Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, certified mail, return receipt requested, addressed as follows:

Erie:

Town Administrator
Town of Erie
P.O. Box 750
Erie, Colorado 80516-0750

Owner:

1830 Weld County Road 5
Erie, CO 80516
Attn: Regional Manager

With a copy (which shall not constitute notice) to:

Town Attorney
Town of Erie
P.O. Box 750
Erie, Colorado 80516-0750
Town of Erie

With a copy (which shall not constitute notice) to:

3 Waterway Square Place
Suite 110
The Woodlands, Texas 77380
Attn: Counsel

and

Brownstein Hyatt Farber Schreck LLP
Attention: Caitlin Quander
410 17th Street, Suite 2200
Denver, Colorado 80202

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

13. Previous Agreements. This Pre-Annexation Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the annexation of the Owner Property, with the exception that the “Town of Erie and Front Range Landfill, Inc., Denver Regional Landfill, Inc., and Waste Connections of Colorado, Inc. Agreement,” dated _____, 2018, shall remain valid and in full force and effect.

14. Title and Authority. Owner warrants to Erie that Owner is the record owner of the Owner Property. The undersigned further warrants to have full power and authority to enter into this Pre-Annexation Agreement.

15. Severability. If any part, section, subsection, sentence, clause or phrase of this Pre-Annexation Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Pre-Annexation Agreement. The parties hereby declare that they would have ratified this Pre-Annexation Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

16. Attorney Fees. In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this Pre-Annexation Agreement, the defaulting party shall pay the other’s reasonable attorney’s fees and costs incurred in enforcing the provisions of this Pre-Annexation Agreement.

17. Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Pre-Annexation Agreement. Venue shall be in the District Court of Weld County.

18. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Pre-Annexation Agreement.

[Signatures on following page]

EXHIBIT A

OWNER PROPERTY LEGAL DESCRIPTION

SOUTHEAST $\frac{1}{4}$ OF SECTION 28, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO; EXCLUDING THE APPROXIMATE FIVE (5) ACRE PARCEL OWNED BY THE TOWN OF ERIE.

EXHIBIT B

FORM OF ANNEXATION PETITION

TO: THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

RE: PETITION FOR ANNEXATION

DATE:

The undersigned landowner ("Petitioner"), in accordance with the Municipal Annexation Act of 1965 as set forth in Article 12, Title 31, Colorado Revised Statutes ("Act"), as amended and as in effect on the submission date set forth below, hereby petitions the Board of Trustees of the Town of Erie for annexation to the Town of Erie ("Town") of the following unincorporated territory located in the County of _____ and State of Colorado, the property being more particularly described by its legal description in "Exhibit A," which is attached hereto and incorporated herein by reference ("Property").

In support of this petition for annexation ("Petition"), Petitioner further alleges to the Board of Trustees of the Town that:

1. It is desirable and necessary that the territory described on Exhibit A be annexed to the Town.
2. The requirements of C.R.S. §§ 31-12-104 and 31-12-105, as amended, exist or have been met in that:
 - a) Not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the Town or will be contiguous with the Town within such time as required by C.R.S. § 31-12-104.
 - b) A community of interest exists between the area proposed to be annexed and the Town.
 - c) The area proposed to be annexed is urban or will be urbanized in the near future.
 - d) The area proposed to be annexed is integrated with or is capable of being integrated with the Town.
 - e) No land within the boundary of the territory proposed to be annexed which is held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels were separated by a dedicated street, road or other public way.
 - f) No land within the boundary of the area proposed to be annexed which is held in identical ownership, comprises twenty (20) acres or more, and which, together with the buildings and improvements situated thereon

has an assessed value in excess of two hundred thousand dollars (\$200,000.00) for ad valorem tax purposes for the year next preceding the annexation, has been included within the area proposed to be annexed without the written consent of the landowner or landowners.

- g) The Property is not presently a part of any incorporated city, city and county, or town; nor have any proceedings been commenced for incorporation or annexation in an area that is part or all of the Property; nor has any election for annexation of the Property or substantially the same territory to the Town been held within the twelve (12) months immediately preceding the filing of this Petition.
 - h) The annexation of the territory proposed to be annexed will not result in the detachment of area from any school district or attachment of same to another school district.
 - i) Except to the extent necessary to avoid dividing parcels within the Property held in identical ownership, at least fifty percent (50%) of which are within the three-mile limit, the proposed annexation will not extend the municipal boundary of the Town more than three (3) miles in any direction from any point of the current municipal boundary in any one year.
 - j) Prior to completion of the annexation of the territory proposed to be annexed, the Town will have in place a plan for that area, which generally describes the proposed: Location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the Town; and the proposed land uses for the area; such plan to be updated at least once annually.
 - k) In establishing the boundary of the territory proposed to be annexed, if a portion of a platted street or alley is to be annexed, the entire width of the street or alley has been included within the territory to be annexed.
 - l) The Town will not deny reasonable access to any landowners, owners of any easement, or the owners of any franchise adjoining any platted street or alley which is to be annexed to the Town but is not bounded on both sides by the Town.
3. Petitioner is the landowner of the entirety of the Property and, thus, Petitioner comprises more than fifty percent (50%) of the landowners in the Property owning more than fifty percent (50%) of the Property, excluding public streets, alleys and any land owned by the annexing municipality, and the Petitioner hereby consents to the establishment of the boundaries of the Property as shown in the annexation maps submitted herewith.
4. Accompanying this Petition are four (4) copies of an annexation map (_____ Annexation Map) containing the following information:

- a) A written legal description of the boundaries of the area proposed to be annexed;
 - b) A map showing the boundary or the area proposed to be annexed, said map prepared and containing the seal of a registered engineer;
 - c) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;
 - d) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the Town and the contiguous boundary of any other municipality abutting the area proposed to be annexed, and a showing of the dimensions of such contiguous boundaries.
5. The affidavit of the circulator of this Petition certifying that the signature on this Petition is the signature of each person whose name it purports to be certifying the accuracy of the date of such signatures is attached hereto as "Exhibit B" and is incorporated herein by this reference.
 6. The proposed annexation of the Property complies with § 30(1)(b) of Article II of the Colorado Constitution.
 7. Upon the annexation ordinance becoming effective, the Property proposed to be annexed will become subject to all ordinances, rules and regulations of the Town, except for general property taxes of the Town which shall become effective as the January 1 next ensuing following the adoption of the annexation ordinance.
 8. This Petition is conditioned upon the zoning classification for the area proposed to be annexed being approved as PD – Planned Development Zoning, consistent with Petitioner's adjacent real property to the northwest and as more fully described in the Pre-Annexation Agreement between Petitioner and the Town dated _____, and approval by the Petitioner of an annexation agreement acceptable to the Petitioner and the Town. Accordingly, it is Petitioner's intent, and Petitioner has submitted this Petition on the express condition that Petitioner may withdraw its signature from this Petition at any time prior to the effective date of the annexation in accordance with the provisions of C.R.S. § 31-12-107(1)(e) of the Act by delivering written notice of such withdrawal to the Town Attorney's Office. If Petitioner withdraws its signature from the Petition in accordance with this Section 8, the Petition shall be void and of no further effect.
 9. Except for the terms and conditions contained or referenced in this Petition, which terms and conditions Petitioner expressly approves and therefore do not constitute an imposition of additional terms and conditions within the meaning of C.R.S. §§ 31-12-107(4) and 31-12-110(2) of the Act, Petitioner requests that no additional terms and conditions be imposed upon annexation of the Property to the Town.

WHEREFORE, the following Petitioner respectfully requests that the Town, acting through its Board of Trustees, approve the annexation of the Property pursuant to the provisions of the Act.

[Signature Page to Follow]

Respectfully submitted this ____ day of _____, 20____. By this acknowledgment, the undersigned hereby certify that the above information is complete and true.

OWNER:

Name of Owner: _____

By: _____

Title: _____

Date of Signature: _____

Mailing Address:

Resident of the Property: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____.

My commission expires:

Witness My hand and official seal.

Notary Public

EXHIBIT A

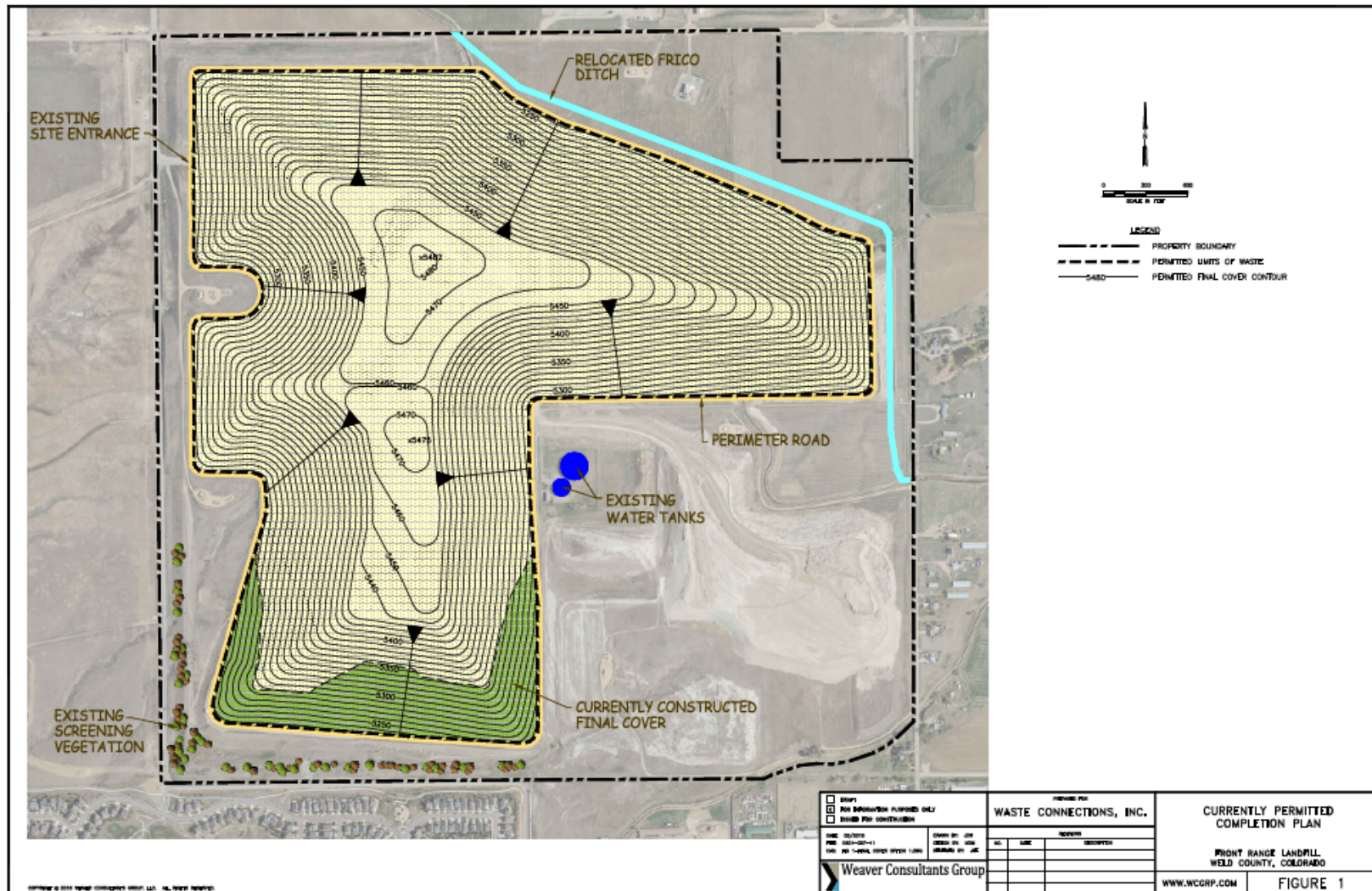
Legal Description of Property to be Annexed

Affidavit of Circulator

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EXHIBIT C

Expansion Areas



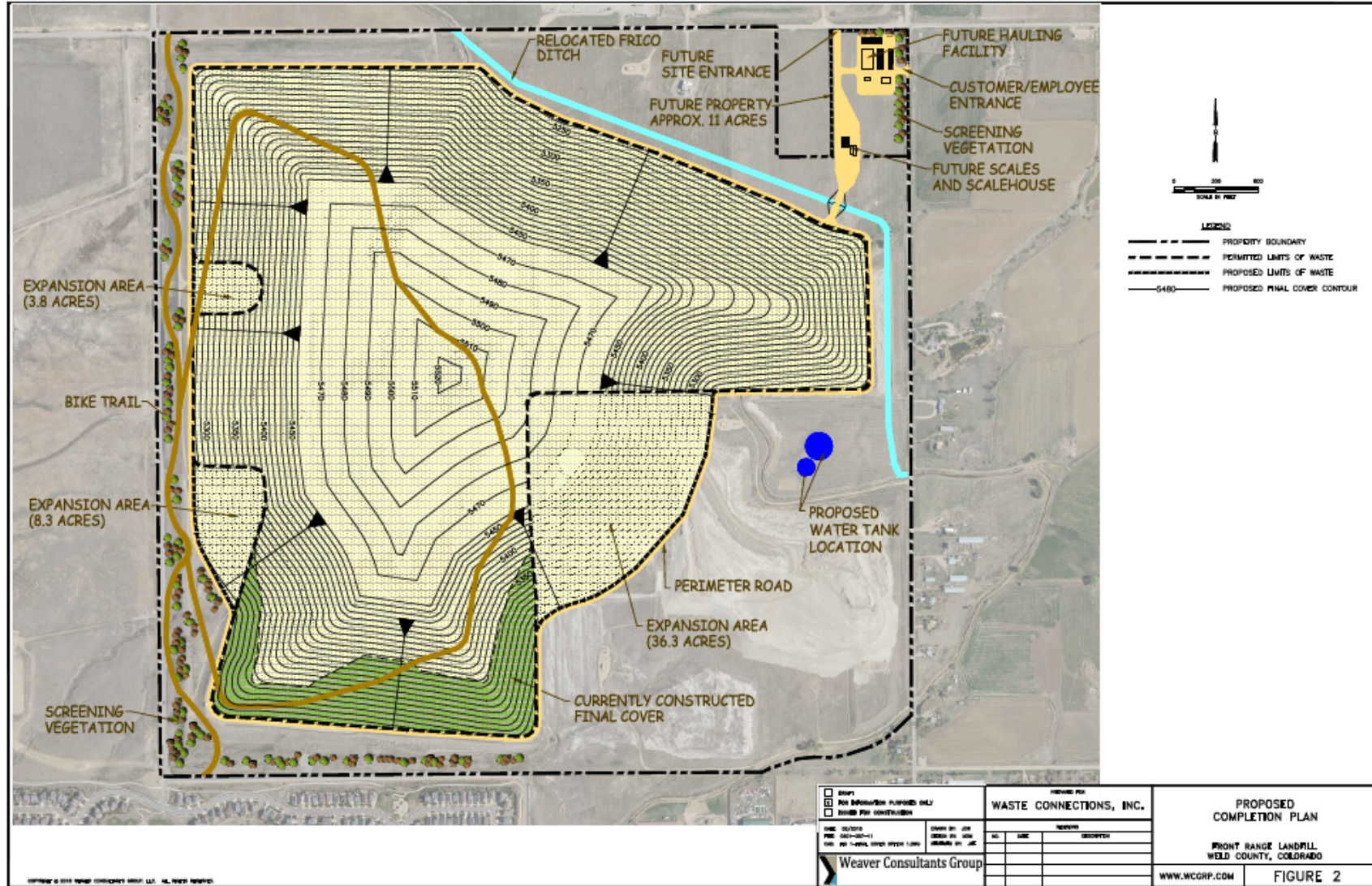


EXHIBIT D

CORNER PROPERTY

