

**VOLUME II**

*Carmen Johnson*  
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Doc ID#

**APPLICATION FOR  
PERMIT TO CONSTRUCT A  
MIXED WASTE PROCESSING FACILITY  
AT THE  
CUMBERLAND COUNTY SANITARY LANDFILL  
ANN STREET, FAYETTEVILLE, NC  
AND AN  
RDF-FIRED  
ENERGY GENERATION FACILITY  
ADJACENT TO THE DUPONT FAYETTEVILLE WORKS  
BLADEN COUNTY, NC**

**Submitted By:**

**BCH Energy Limited Partnership  
Houston, Texas**

**Submitted To:**

**State of North Carolina  
Department of Environment, Health and Natural Resources  
Solid Waste Section  
P.O. Box 27687  
Raleigh, NC 27611-7687**

**October 23, 1992**

Resource Recovery Agreement  
Between Bladen, Cumberland  
and Hoke Counties  
and BCH Energy Corp.

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Landfill Lease and  
Franchise Agreement  
Between Cumberland County  
and BCH Energy

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**RESOURCE RECOVERY AGREEMENT**  
**BETWEEN**  
**BLADEN, CUMBERLAND, AND HOKE COUNTIES**  
**AND**  
**BCH ENERGY CORP.**  
**DATED AS OF APRIL 24, 1992**

TABLE OF CONTENTS

	<u>Page</u>
I. <u>DEFINITIONS AND INTERPRETATIONS</u> . . . . .	4
II. <u>DUTIES OF CONTRACTOR</u> . . . . .	9
III. <u>DUTIES OF THE COUNTIES</u> . . . . .	22
IV. <u>CONDITIONS PRECEDENT TO OPERATIONS</u> . . . . .	26
V. <u>UNCONTROLLABLE CIRCUMSTANCES</u> . . . . .	28
VI. <u>FEES</u> . . . . .	31
VII. <u>INSURANCE BOND AND LETTER OF CREDIT REQUIREMENTS</u> . . . . .	37
VIII. <u>DEFAULT, DISPUTE RESOLUTION AND TERMINATION</u> . . . . .	45
IX. <u>TERM</u> . . . . .	59
X. <u>REPRESENTATIONS AND WARRANTIES</u> . . . . .	63
XI. <u>PARTIES TO AGREEMENT.</u> . . . . .	68
XII. <u>ENTIRE AGREEMENT</u> . . . . .	69
XIII. <u>NOTIFICATION</u> . . . . .	69
XIV. <u>AUDIT</u> . . . . .	71
XV. <u>AFFIRMATIVE ACTION, EMPLOYMENT POLICY</u> . . . . .	71
XVI. <u>MISCELLANEOUS PROVISIONS.</u> . . . . .	72

**TABLE OF CONTENTS**  
**(continued)**

**Page**

**EXHIBITS**

	<b>Referenced in Section</b>
A Description of MRF	Recitals, Article I
B Description of AFB	Article I
C Landfill Lease and Franchise Agreement	Article I, 4.03

## RESOURCE RECOVERY PROJECT AGREEMENT

THIS RESOURCE RECOVERY AGREEMENT is made and dated as of April 24, 1992, between BLADEN COUNTY, CUMBERLAND COUNTY and HOKE COUNTY (collectively referred to herein as the "COUNTIES"), and BCH ENERGY CORP. (referred to herein as the "CONTRACTOR"), a North Carolina corporation.

### RECITALS

The State of North Carolina pursuant to Chapter 130A, Article 9, Part 2A, of the North Carolina General Statutes (N.C.G.S., §§ 309.01 et seq.) has established a comprehensive solid waste management program requiring counties to develop plans and local programs for the reduction of amounts of solid waste in landfills, to include waste reduction at the generation source, recycling and reuse, composting, and incineration with energy production, and incineration for volume reduction, in that order of preference. To fulfill such policy the State has established goals to reduce the waste stream to certain levels solely by waste reduction at the generation source, recycling, reuse, and composting; reductions beyond such mandatory goals may be achieved by a waste to energy facility.

While the Counties shall continue to develop and implement plans for waste reduction at the sources of solid waste generation, primarily through voluntary recycling at such sources, the Counties estimate that such waste reduction at the source will not meet the recycling, reuse, and composting goals nor the overall policy of reducing goals will require the establishment of a centralized materials recovery facility (MRF) at which recyclables and reusables can be separated from the waste stream.

The Counties further estimate that the costs of modifying and operating landfills in compliance with the new State solid waste management regulation will require reduction of disposal into landfills beyond the goals that can be achieved by recycling, reuse and composting and that such optimum reduction can most efficiently and cost effectively be accomplished by waste to energy programs.

To assist the Counties to meet the State policy and goals for reduction of disposal into landfills and to reduce the costs of modifying and operating landfills, the Contractor has made a proposal for a recycling and incineration for energy production program which will have the following benefits:

- \* Reliability of technology for recycling and energy production
- \* Quality of commitment from a local end user of energy or other product
- \* Cost to the Counties not considering the Counties' share of revenue from recycled materials sales
- \* Environmental benefits
- \* Plan for disposal of residual materials
- \* Quality of key and supervisory personnel for the project
- \* Financial soundness of the Contractor
- \* Technical depth in energy or other product experience of proposer
- \* General quality of project plan in content and completeness

For this project, the Contractor has been approved to construct and operate a materials recovery facility (the "MRF"), on Cumberland County's Ann Street Landfill site, which will provide a comprehensive recycling program. The Contractor shall also construct and operate an alternate fuels boiler, (the "AFB"), on a site to be leased from

E.I. Du Pont de Nemours in Bladen County. The AFB will be designed to burn refuse-derived fuel ("RDF") prepared at the MRF.

The Counties, and private collectors doing business in those counties, will collect household and commercial solid waste including certain recyclables separated at their source, the further disposal of which is subject to agreements between sources and the collectors. Solid waste, excluding privately recovered materials, shall be hauled directly or through the transfer stations for subsequent hauling to the MRF, where, after removal of remaining recyclables, noncombustible and nonrecyclable waste and Unacceptable Waste, remaining waste will be processed into RDF, which will be trucked by the Contractor to the AFB and burned to generate energy. Residues of soil, leaves and other materials not already being recycled may be processed to produce landfill cover and/or compost.

The MRF, which is generally described in Exhibit "A," will have a design capacity which will provide for the processing of 248,000 Tons per year of Acceptable Waste.

Ash from the combustion of waste in the AFB under the provisions of this Agreement may be provided to cement manufacturers or other users, may be landfilled at the Ann Street Landfill, or otherwise processed by the Contractor in an Environmentally Acceptable manner.

The Counties desire to receive and the Contractor desires to provide solid waste processing and resource recovery services under the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

"Acceptable Waste" means any Solid Waste, as herein defined, collected by the Counties and their Designees, including, without limitation, Municipal Solid Waste, tires, source separated wood, and yard waste, but does not include Unacceptable Waste.

"Aggregate Minimum Commitment" shall mean 150,000 Tons, 15,000 Tons and 18,000 Tons from Cumberland, Hoke and Bladen Counties, respectively, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

"Alternate Fuels Boiler" or "AFB" shall mean a facility in which RDF is burned to produce thermal and/or electrical energy, substantially as described in Exhibit B, attached hereto and incorporated herein.

"Ash" shall mean the remainder from combustion of RDF at the AFB.

"Ash Disposal Site" shall mean a facility or location where Ash from the AFB may be disposed of in an Environmentally Acceptable manner. Initially the Ann Street Landfill will be the Ash Disposal Site. Alternate Environmentally Acceptable Ash Disposal Sites may be selected from time to time by the Contractor.

"Commencement Date" means the first date on which all of the conditions precedent set forth in Article IV of this Agreement shall be satisfied or waived.

"Compostable Materials" means the component of Solid Waste that can be composted, including putrescible materials, yard waste and other humus and organic materials. Compostable Materials may include inert materials, such as broken glass, grit and rubble normally less than 1-1/2" in diameter.

"Contract Year" means the period from July 1 of any calendar year through June 30. The last Contract Year shall end on the last day of the term of this Agreement.

"Contractor" means BCH Energy Corp., a North Carolina corporation, and its permitted successors and assigns.

"Counties" means the Counties of Bladen, Cumberland, and Hoke, North Carolina.

"Credit Institution" means a bank or other financial institution, or a group of banks or financial institutions, acting through an agent, severally, or otherwise, providing debt and/or equity financing, or credit support for debt financing for the MRF and/or AFB.

"Designee" or "Designees" shall mean a Person or Persons authorized or selected by the Counties at any time to collect Acceptable Waste.

"Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility selected by the Contractor to which residue is or may be delivered for ultimate disposal or use. The initial disposal site will be the Ann Street Landfill located in Cumberland County. The use of such landfill is evidenced by the Landfill Lease and Franchise Agreement.

"Environmentally Acceptable" means meeting or exceeding all applicable federal government, State of North Carolina, and County laws, ordinances and regulations relating to the composition, control, disposal, monitoring, reporting and transportation of atmospheric emissions, Hazardous Waste, liquid discharges, recyclable materials, RDF, Ash, and other Solid Waste residues from the MRF and AFB.

"Hazardous Waste" means any material defined as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), or applicable state laws and the rules, regulations, policies and guidelines promulgated thereunder, as each may be amended from time to time, or any waste which, by reason of its composition or characteristics is a toxic substance or hazardous waste as defined in the Resource Conservation and Recovery Act, (42 U.S.C. § 6901 et seq.), as amended, and related federal, state and county laws and regulations, or in any future additional or substitute federal, state or county laws and regulations pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; any source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and related regulations; low level radioactive waste, or any other material posing a threat to health or safety or causing injury to or adversely affecting the operation of the MRF or AFB, including, without limitation, pathological, medical or biological wastes, septic, cesspool or other human wastes, human and animal remains, cleaning fluids, crankcase oils, cutting oils, paints, acids, caustics, poisons, explosives and drugs. If any governmental agency having appropriate jurisdiction shall determine that substances which are not, as of the date hereof, considered harmful, toxic, or dangerous, are in fact harmful, toxic, or dangerous, or are hazardous or harmful to health, then any such substance shall thereafter constitute Hazardous Waste for purposes of this Agreement. If all government agencies having appropriate jurisdiction shall determine that a given substance which, as of the Contract Date, was deemed to be a Hazardous Waste, is no longer harmful, toxic or

dangerous, then any such substance shall thereafter no longer constitute Hazardous Waste for purposes of this Agreement.

"Landfill Lease and Franchise Agreement" means the agreement between Cumberland County and the Contractor for a franchise to implement the solid waste disposal program which is the subject of this resource recovery program and a lease of Cumberland County property on which to establish and operate an MRF. The Landfill Lease and Franchise Agreement is attached hereto as Exhibit C.

"Letter of Credit" shall mean a Letter of Credit as defined in Section 7.03.

"Materials Recovery Facility" or "MRF" shall mean the facility substantially described in Exhibit A, attached hereto and incorporated herein.

"MRF Site" means the real property on which the MRF is to be constructed by the Contractor.

"Municipal Solid Waste" or "MSW" refers to Solid Waste generally consisting of commercial, residential, industrial and institutional nonhazardous Solid Wastes.

"N.C.G.S." means North Carolina General Statutes.

"Person" means any individual, corporation, partnership, trust, government agency or other legal entity.

"Recyclable Materials" means those materials that are capable of being recycled as the term is defined in N.C.G.S. § 130A-290(26) and which would otherwise be processed or disposed of as Solid Waste. Recyclable Materials do not include Compostable Materials.

"Refuse Derived Fuel" or "RDF" shall mean combustible materials, derived from operations of the MRF for delivery to the AFB.

"Recovered Materials" means those materials that have known recycling or composting potential, can be feasibly recycled or composted, and have been diverted or removed from the Solid Waste stream for sale, use (other than for energy generation), or reuse by separation, collection or processing.

"Residue" means the remainder of Acceptable Waste after Recovered Materials have been removed at the MRF, other than RDF delivered to the AFB.

"Residue Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility selected by the Contractor to which Residue is or may be delivered for ultimate disposal or use. The initial site will be the Ann Street Landfill.

"Solid Waste" means unwanted and discarded solid materials including solid waste as defined in N.C.G.S. § 130A-290(35) but excluding (i) semi-solid and liquid materials customarily collected and treated in a municipal or county sewage and/or water treatment system, (ii) any materials excluded from the definition of solid waste in N.C.G.S. § 130A-290(35), and (iii) Recovered Materials that have been obtained from the source of Solid Waste and disposed of outside the purview of this Agreement.

"State" means the State of North Carolina.

"Ton" means a "short ton" of 2,000 pounds.

"Unacceptable Waste" means (i) explosives, Hazardous Waste, other hazardous chemicals or materials, radioactive materials, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such

materials; (ii) any item either smoldering or on fire; (iii) non-combustible construction materials and demolition debris, including masonry, brick and stone, structural steel, rebar, and structural shapes; (iv) all other items of waste which, at the time of delivery to the MRF or a Residue Disposal Site, would normally not be disposed of in a sanitary landfill, as set forth in the Cumberland County Solid Waste Management Ordinance and regulations of the County Solid Waste Management Department promulgated thereunder (as may be in effect from time to time, subject to Section 16.02), and (v) any other items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any other regulatory authority, or any applicable law or regulation, from being processed by the MRF.

"Uncontrollable Circumstances" shall have the meaning assigned in Article V of this Agreement.

## II. DUTIES OF CONTRACTOR.

### 2.01 Overview of Contractor's Duties.

(a) The Contractor shall prepare the site for, construct and operate the MRF at the MRF Site in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. So long as and to the extent it is economically feasible to the Contractor and environmentally positive, the MRF shall recover Compostable Materials and Recyclable Materials present in the Solid Waste received at the MRF from the Counties, their Designees and other sources permitted by this Agreement, including, but not limited to the following: aluminum cans, ferrous and bimetal products, corrugated paper, glass, plastics, newspaper and Compostable Materials. Notwithstanding the

foregoing, the Contractor agrees not to dispose of aluminum and ferrous Recovered Materials by landfill deposit. For each Contract Year, in conjunction with the development of the annual Operating Plan provided for in Section 2.11 the Counties and the Contractor shall develop an annual recycling and composting plan. In developing such plan they shall consider market conditions for Recyclable Materials and the economic feasibility of recovering same in an environmentally positive manner and market conditions and other uses (such as landfill cover) for Compostable Materials, the current State goals for reduction of landfill disposal, the amount of recycling and composting being accomplished outside the purview of this Agreement that can be counted against goal attainment, and the benefit of recovering Recyclable Materials and Compostable Materials at the MRF to meet such goals. The Contractor will participate with the Counties in seeking to adopt an annual recycling and composting plan that will permit the Counties to meet mandatory state recycling and composting goals. If it appears that due to market conditions for Recyclable Materials or Compostable Materials recovered at the MRF the State goals for the forthcoming Contract Year may not be met, the following actions shall be taken: (1) the Counties shall make a good faith, reasonable effort, to increase the amount of recycling and composting accomplished outside the purview of the Agreement by voluntary or mandatory resource recovery programs; and (2) the Counties, supported by the Contractor, shall make a good faith best effort to obtain a waiver either of the State goals for such year to the

extent of the estimated shortfall or of the imposition of penalties for failure to meet such goals.

(b) After the Commencement Date, the Contractor shall process and either recycle or otherwise dispose of all Acceptable Waste delivered by the Counties or their Designees (directly or through County transfer stations from which the Contractor will transmit such Waste to the MRF) up to the maximum stated in Section 2.02, regardless of the mechanical status of the MRF and AFB, unless neither facility is able to operate due to factors constituting Uncontrollable Circumstances. The Contractor shall identify, reject, separate and dispose of Unacceptable Waste delivered by the Counties or their Designees to the MRF and shall do so in an Environmentally Acceptable manner subject to reimbursement by the Counties only to the extent set forth in Section 2.03(b)(iii)(A).

(c) In accordance with Sections 6.04, 6.05 and 6.06 of this Agreement, the Contractor shall (i) pay the Counties a share of revenues received for Recyclable Materials recovered from Solid Waste delivered to the MRF and marketed as provided in Section 2.01(a) above and (ii) pay Cumberland County a fee for accepting Compostable Materials.

(d) The Contractor shall equip the MRF and AFB with emission controls designed to insure that the MRF and AFB each comply with all applicable laws and regulations governing air quality and odor and noise emissions.

(e) The Contractor shall obtain a site for, construct and operate the AFB. The Contractor shall install the Best Available Control Technology for air emissions at the AFB and shall insure that the AFB complies with all laws and regulations regulating air emissions. The Contractor shall assure proper use or disposal of Ash from the AFB at an Ash Disposal Site or otherwise in an Environmentally Acceptable place and manner.

(f) The Contractor shall design and operate the transportation system used to convey RDF from the MRF to the AFB in a manner which is Environmentally Acceptable and which will prevent unnecessary disruption of existing urban transportation systems.

(g) The Contractor shall design and construct a transfer station in Bladen County for operation by such County for in-transit shipping to the MRF pursuant to a Construction and Transportation Agreement.

(h) The Contractor shall agree to transport the MSW of Hoke County to the MRF pursuant to a Transportation Agreement.

(i) The Contractor shall give preference in hiring to Cumberland County employees whose jobs are displaced by the operation of the MRF by the Contractor in place of current Cumberland County baling and landfill operations.

2.02 Acceptance of Acceptable Waste. It is the intent of the parties that sufficient Acceptable Waste be provided to allow the AFB to operate at full capacity. The Contractor shall accept and process at the MRF Acceptable Waste delivered to the MRF by the Counties or their Designees, provided, however, that the Contractor shall

not be required to accept more than 6,000 Tons in any seven consecutive days nor more than 223,000 Tons in any Contract Year. The Contractor, upon the unanimous consent of the Counties (which consent will not be unreasonably withheld), may accept Solid Waste for processing at the MRF in accordance with this Agreement from North Carolina sources other than from the Counties and their Designees, but only to the extent that such acceptance does not prevent the Contractor from accepting and processing all of the Acceptable Waste which the Counties and any Designee are entitled to deliver pursuant to this Section 2.02. Such consent shall not as such make such other sources parties to this Agreement. Any contract obtained by the Contractor for delivery of waste to the MRF by a Person other than the Counties shall be interruptible at any time to the extent necessary to permit the Contractor to meet its obligations pursuant to this Section 2.02.

2.03 Right of Contractor to Reject Certain Waste; Handling of Unacceptable Waste.

(a) The Contractor shall have the right to reject, and shall have no obligation to dispose of, any of the following Solid Wastes brought by any Person to the MRF, and shall have the right to prevent the unloading of any vehicle bringing such Solid Waste if such Solid Waste is properly rejected:

(i) Unacceptable Waste detected before unloading (provided, however, that the Contractor shall have an employee present at the tipping floor when Solid Waste is unloaded to identify Unacceptable Waste and the source thereof);

(ii) Solid Waste brought to the MRF at times other than the hours designated for delivery in the Annual Operating Plan as referred to in Section 2.11 or subsequent amendments to that Plan;

(iii) Solid Waste brought to the MRF in excess of the limits set forth in Section 2.02, only if the MRF is unable for any reason to receive and process such amounts;

(iv) Solid Waste brought to the MRF in vehicles not conforming with the requirements set forth in the Annual Operating Plan or subsequent amendments; and

(v) Solid Waste brought to the MRF by a Person who is not a County or its Designee; by a Person who does not have a contract with the Contractor, to which the Counties have consented, to bring Solid Waste to the MRF pursuant to Section 2.02, above; or, notwithstanding the above, by any Person who does not have a valid waste disposal permit from Cumberland County pursuant to its Solid Waste Management Ordinance.

(b) Unacceptable Waste.

(i) The Contractor and the Counties shall adhere to the Solid Waste segregation and screening procedures set forth in the Annual Operating Plan.

(ii) The Contractor shall separate, store, process and dispose of in an Environmentally Acceptable manner, any Unacceptable Waste brought to the MRF (and not rejected by the

Contractor) and not identified by the Contractor as such until after unloading from the delivery vehicle.

(iii) The costs incurred by the Contractor for separation, storage, processing, removal from the MRF, and Environmentally Acceptable disposal of Unacceptable Waste that has been unloaded at the MRF shall be borne as follows:

(A) If such Unacceptable Waste was delivered by a County or its Designee to the MRF or to the transfer station of Bladen or Hoke Counties and was detected prior to the time such Unacceptable Waste left the MRF tipping floor, such County of origin shall reimburse, or shall cause its Designee of origin to reimburse, the Contractor for such disposal costs. Notwithstanding the foregoing, if, after leaving the tipping floor, Unacceptable Waste is identified and the source is identified to the reasonable satisfaction of the Contractor and the County (or its Designee) claimed to have delivered such Unacceptable Waste, then such County shall reimburse, or cause its designee of origin to reimburse, the Contractor for such disposal costs. The Contractor may invoice the Counties not more frequently than monthly for reimbursement of such costs.

(B) In all other cases, the Counties shall have no responsibility for such costs.

2.04 Delivery by Other Persons. The Contractor is not required to accept deliveries of Solid Waste from any Person other than the Counties or their Designees.

2.05 Regulatory Requirements.

(a) Permits and Licenses. The Contractor shall be responsible, at its own expense, for obtaining and maintaining compliance under, and obtaining any necessary extensions of, all permits, licenses, zoning ordinances, and other federal, state and county approvals, including those related to air and water pollution, solid waste, siting, land use, wetlands, flood plain, noise, odor, and building, which may be necessary for the construction, operation, maintenance and repair of the MRF and AFB. If an administrative agency, department, authority, political subdivision or other instrumentality to which an application for a permit required for the operation, maintenance or repair of the MRF, the AFB, or the transfer station of Bladen County or Hoke County fails to take action, whether or not a specific time limitation for such action is prescribed by law, the failure to act shall be treated as an Uncontrollable Circumstance if the failure to act has a material adverse effect on the ability of the Contractor or the Counties to satisfy their obligations under this Agreement. Any applicable time limitation shall be deemed to have commenced on the date when the appropriate application and all related information called for by the application have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) Adherence to Law. The Contractor shall design, construct and operate the MRF and the AFB in a manner which shall not violate any

requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals. Notwithstanding the foregoing, the requirements of Article VII may not be altered by ordinance or other legislation of the Counties.

2.07 Maintenance. Throughout the term of this Agreement, the Contractor shall take all action necessary to ensure that the MRF and AFB at all times meet and conform to good engineering and operating practices. Maintenance shall include the performance of all necessary repairs and replacement. The Contractor shall plan, schedule, and control preventive maintenance to the MRF in accordance with the Annual Operating Plan to ensure minimum downtime to the extent practicable.

2.08 Safety Precautions. In compliance with applicable federal, state and county regulations, the Contractor shall initiate, maintain and supervise safety precautions and programs in connection with the operation and maintenance of the MRF and AFB.

2.09 Transportation. The Contractor shall arrange for transportation of all unprocessed Solid Waste accepted by the Contractor at the MRF and all products of Solid Waste separation and processing from the MRF to recyclables purchasers, to the AFB, or to Disposal Sites, as appropriate.

2.10 Receiving and Operating Hours. The Contractor shall keep the MRF open for the receiving of Acceptable Waste delivered by the Counties or their Designees as designated in the Annual Operating Plan.

2.11 Annual Operating Plan. The Contractor in conjunction with the Counties, shall establish at least thirty (30) days prior to the commencement of each

applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) Inspection by Counties. The Contractor shall permit duly appointed officials of the Counties to have access to and entry upon the MRF Site at any time within regular MRF operating hours, upon advance telephonic notice to the Contractor's MRF supervisor of not less than four hours, to inspect the MRF for the purpose of evaluating the Contractor's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the Contractor including those relating to the safety of persons present on the MRF Site and the protection of the Contractor's proprietary information but no such rule may be used to deny the inspectors reasonable access to the MRF unless such access would violate any applicable law, ordinance or regulation. The provisions of this section do not apply to routine daily operational coordination between MRF personnel and personnel of the Cumberland County Solid Waste Management Department. Such coordination shall be controlled by agreements between the MRF supervisor and the Department Director as set forth in the Annual Operating Plan.

2.06 Financial Responsibility. Except as otherwise provided in this Agreement, the Contractor shall provide and pay for all of the labor, services, parts, supplies, utilities, and other resources other than Acceptable Waste required for the Contractor to operate and maintain the MRF and AFB in accordance with the

Contract Year a detailed service plan (the "Annual Operating Plan") for the MRF. The Annual Operating Plan shall set forth the Contractor's estimates of planned down time, estimated scheduled and unscheduled outage time based on previous experience, and major equipment replacements. The Annual Operating Plan shall include, but not be limited to, daily schedules of operations, specifications for delivery vehicles, fee schedules for the Contractor's handling of Unacceptable Wastes, staffing requirements, record keeping and scale operation procedures, and Solid Waste segregation and screening procedures. In the event that prior to the first day of any Contract Year, the Contractor and the Counties shall have been unable to develop a plan satisfactory to both parties, the Annual Operating Plan for the previous Contract Year shall remain in effect until such time as agreement is reached. In the event that an agreement cannot be reached within six (6) months after the beginning of the Contract Year, the dispute shall be subject to the dispute resolution procedures described in Section 8.05 hereof. The Contractor and the Counties may revise the Annual Operating Plan for the then current Contract Year at any time by mutual consent, which shall not be unreasonably withheld.

2.12 Unscheduled Outages.

(a) In the event of any unplanned outage of the MRF, the Contractor shall: (i) use all reasonable efforts to resume full normal operations of the MRF as quickly as possible and, (ii) arrange for interim processing or disposal of all Acceptable Waste in an Environmentally Acceptable manner. The Counties and their Designees shall, at the direction of the Contractor, divert all Acceptable Waste which the Contractor is unable to accept at the MRF to another materials recovery facility or Disposal Site acceptable to the

Counties. All fees payable pursuant to Article VI shall be payable with respect to such diverted Acceptable Waste only to the extent that such waste is processed by the Contractor, and the Counties shall receive credit toward its Aggregate Minimum commitment for such diverted Acceptable Waste. If such waste is disposed of without processing by the MRF, due to an outage, the Counties will not be billed by the Contractor, and such Counties will continue to receive credit toward their Aggregate Minimum Commitment for such diverted Acceptable Waste.

(b) In the event of an unscheduled outage of the AFB, the Contractor shall continue to receive, recycle and process Acceptable Waste at the MRF, and shall store or dispose of RDF in compliance with all operating permits and otherwise in an Environmentally Acceptable manner.

2.13 Records.

(a) The Contractor shall operate and maintain a motor truck scale at the MRF, calibrated at least quarterly to the accuracy required by the State for public weighing facilities, to weigh all vehicles delivering Solid Waste to the MRF. The Counties shall cause their vehicles, and those of any Designees, to have identification permanently indicated and conspicuously displayed thereon. Each vehicle will be weighed before entering and after leaving the MRF, with the date, time, truck identification and weights (loaded and unloaded) to be entered on a weight record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. The Counties may, at their own expense, have a representative present at the scale

whenever it is operated; such representative shall not interfere in any material respect with normal operations of the MRF and shall comply with all health and safety rules. If the weighing facility at the MRF is out of service, the Contractor shall, in consultation with the Counties and subject to any applicable state regulation, either obtain alternate temporary weighing capability or estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and estimated data based on pertinent historical information.

(b) The Contractor shall maintain daily records of the total Acceptable Waste tonnage delivered by the Counties and any Designee and of all Unacceptable Waste and other materials leaving the MRF. Such daily records shall include detailed and summary listings of tonnage delivered by the Counties and their Designee(s) and each other source delivering Solid Waste to the MRF, the estimated amount of such Solid Waste rejected as being other than Acceptable Waste, and such other records as are necessary to implement the provisions of this Agreement. Summary information for each month shall be provided to the Counties within ten (10) days after the end of such month. Copies of all daily records and weight tickets shall be maintained by the Contractor for a period of at least three (3) years, or for such longer period required by law, and shall be made available for inspection by the Counties during normal business hours upon reasonable notice. In the event the Counties are required by applicable law or regulation to file reports pertaining to the operation of the MRF or equipment or facilities thereof, the Contractor shall provide the Counties with the information required to compile such reports.

2.14 Indemnification. The Contractor will protect, indemnify and hold the Counties harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the Counties including reasonable attorneys' fees, and will, if requested, defend the Counties in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property (including environmental damage), or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the Contractor, its agents or employees acting within the scope of their employment. The Counties shall promptly notify the Contractor of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall, at their option, give the Contractor the opportunity to defend such claim; and shall not settle such claim without the approval of the Contractor, which approval shall not be unreasonably withheld. These indemnification provisions are for the protection of the Counties only, do not apply to claims of the Counties themselves against the Contractor under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

### III. DUTIES OF THE COUNTIES.

3.01 Delivery of Acceptable Solid Waste; Aggregate Minimum Commitment. Commencing on the Commencement Date and continuing throughout the term of this Agreement, each County shall deliver or cause to be delivered to the MRF, in vehicles meeting the requirements of the Annual Operating Plan, its Aggregate Minimum Commitment during each Contract Year, plus, to the extent the MRF has the capacity to accept such Solid Waste, any additional Acceptable Waste collected for disposal by each

county and its Designees during each Contract Year subject to the Contractor's right to reject the Counties' deliveries in excess of aggregate amounts stated in Section 2.02. For purposes of this Section 3.01, Acceptable Waste is deemed to be "collected for disposal" if it is presently being delivered to a landfill or to a general materials recovery facility.

3.02 Computation of Aggregate Minimum Commitment.

(a) Amounts Included in Computation of Aggregate Minimum Commitment. Each County shall receive credit toward meeting its Aggregate Minimum Commitments for all Solid Waste delivered by such County and its Designees and accepted by the Contractor at the MRF, or, in cases where the MRF is temporarily shut down, to any other destination specified by the Contractor and agreed to by the Counties as described in Section 2.12.

(b) Amounts Not Included in Computation of Aggregate Minimum Commitment. A County shall receive no credit toward meeting its Aggregate Minimum Commitment for any Solid Waste properly rejected by the Contractor in accordance with Section 2.03 hereof.

3.03 Acceptable Waste for Testing. After completion of construction of the MRF and prior to the Commencement Date, on the Contractor's request, each County shall provide individual truckloads or similar small quantities of Acceptable Waste to the Contractor for the purpose of testing the MRF, at no cost to any of the Counties.

3.04 Reduction in Payment to Counties. Each County agrees with the Contractor that it will allow the Contractor to recoup any liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses, or suits, including reasonable attorneys' fees, and will defend the Contractor, at its option, in any suit,

including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of such County, its agents, or employees acting within the scope of their employment (herein the "Losses"). The Contractor shall promptly notify such County of the assertion of any claim against which it asserts a right of recoupment or defense hereunder; shall give the County against which a claim is made the opportunity to defend such claim; and shall not settle such claim without the approval of such County, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against any County under this Agreement or any related agreements, and shall not create any benefit or liability to third parties.

The parties have agreed that the right of recoupment permitted under the first paragraph of this Section 3.04 shall be satisfied solely out of amounts due to each of the Counties under the provisions of Sections 6.04 and 6.05. Moreover, the Counties agree that the Contractor shall be permitted to obtain and pay for a policy or policies of insurance (with the Contractor named as owner and loss payee of such policy or policies) to indemnify the Contractor against any of the Losses for which Contractor might otherwise have a right of recoupment under this Section 3.04. The Contractor may deduct the premium and any other costs incurred in obtaining any such insurance from any amounts due to each of the Counties under Sections 6.04 and 6.05 in accordance with Section 6.07.

3.05 Residue Transport Equipment. Cumberland County shall provide and operate all equipment necessary to collect the Residue from the MRF and transport such Residue to the landfill.

3.06 Disposal of Compostable Materials. Cumberland County shall be responsible for accepting Compostable Materials comprising up to twelve and one half percent (12.5%) of the municipal solid waste stream for use as landfill cover or other Environmentally Acceptable uses.

3.07 Solid Waste Flow Ordinances. On or prior to January 1, 1993, the Counties shall each promulgate and enforce flow ordinances mandating that all MSW, up to the maximum tonnages specified in Section 2.02 hereof, generated in each of the Counties after the Commencement Date and thereafter so long as this Agreement is not terminated, shall be delivered exclusively to the Contractor under this Agreement, excluding Unacceptable Waste and Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement. Subject to its obligations to provide for the health and safety of its citizens and to other limitations required by law, the Counties agree to use their best efforts to aid Contractor in obtaining the permits and licenses referenced in Section 2.05(a).

3.08 Ash and Residue Disposal. After the Commencement Date and so long as the Ann Street landfill is operating, Cumberland County shall permit the Contractor to dispose of Ash, Residue and other Solid Waste; provided, however, that Cumberland County shall not be required to accept for disposal at such landfill Ash, Residue and other Solid Waste that has not been determined to be Environmentally Acceptable in accordance with pertinent state and federal laws and regulations. The Contractor shall

pay Cumberland County the amounts stipulated in Section 6.07 for Ash, Residue and other Solid Waste deposited at such landfill.

IV. CONDITIONS PRECEDENT TO OPERATIONS.

The obligations of the Counties to commence delivery, and of the Contractor to commence processing, of Acceptable Waste, are conditional upon the occurrence of all of the following:

4.01 The Contractor shall have obtained a 20 year agreement satisfactory to it in its sole discretion for the sale of energy (electricity or steam) to be produced at the AFB, and shall have provided evidence thereof to the Counties.

4.02 The Contractor shall have obtained all environmental and other governmental permits, licenses and authorizations necessary for construction and operation of the MRF, the AFB and the transfer stations referred to in the agreements which are the subject of Section 4.05.

4.03 The Contractor and the Counties shall have agreed upon an Annual Operating Plan, as described in Section 2.11, and Cumberland County and the Contractor shall have executed the Landfill Lease and Franchise Agreement substantially in the form of Exhibit C.

4.04 The Landfill Lease and Franchise Agreement between Cumberland County and the Contractor shall have included the right to dispose the Ash, Residue and other Solid Waste covered by Section 3.08. The Contractor shall have entered into contracts, and shall have provided the Counties with evidence thereof, with one or more users or Residue Disposal Sites for the disposal, at no cost to any County, of Ash,

unburned or unburnable Acceptable Waste, or Unacceptable Waste delivered to the MRF which by law may not be disposed of in the Cumberland County Landfill.

4.05 The Contractor and Bladen and Hoke Counties shall have entered into the Construction and Transportation Agreement and the Transportation Agreement, respectively.

4.06 The Contractor shall have received an unconditional written commitment from a Credit Institution with assets of not less than \$250,000,000 for a loan, bond or equity securities underwriting or other similar type of non-recourse financing, repayable over the term of this Contract and on such terms and conditions as are satisfactory to Contractor in its sole discretion. The Contractor shall make application for such financing and shall furnish any information and execute any instruments required in connection with such application. The Counties agree to negotiate any changes to this Agreement reasonably required by the Credit Institution and such changes shall not be unreasonably refused; provided, however, that such changes shall not violate any law or regulation of any federal, state or municipal government.

4.07 The Contractor shall have advised the Counties that start-up operations and capacity testing have been completed satisfactorily, and that the MRF is ready to receive Acceptable Waste. The Contractor shall invite the Counties' officials to witness tests, review data and concur that the MRF is ready for use, with such concurrence not to be unreasonably withheld. The Contractor and the Counties agree that this condition shall not be satisfied by Contractor prior to July 1, 1993.

4.08 The Contractor shall have provided evidence of having satisfied all Insurance Requirements as set out in Article VII of this Agreement.

4.09 The Counties shall have adopted the Solid Waste Flow Ordinances that are the subject of Section 3.07.

4.10 The Counties and the Contractor shall have agreed to an initial Annual Operating Plan as described in Section 2.11.

Section 9.02 shall apply if the above conditions precedent are not met.

V. UNCONTROLLABLE CIRCUMSTANCES.

5.01 Any act, event or condition, whether affecting the MRF, the AFB, the transfer station of Bladen County or Hoke County, the vehicles used by the Contractor to transport Solid Waste to the MRF, the Counties, the Contractor or any of the Contractor's respective subcontractors shall be deemed an Uncontrollable Circumstance to the extent that it materially and adversely affects the ability of either party to perform the obligations hereunder (other than the payment of money except as provided in Paragraph 5.01(f) below), if such act, event, or condition is beyond the reasonable control of and is not also the result of the willful or negligent action or inaction, principally of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. The good faith contesting of, or the failure to contest, action or inaction of a third party, shall not be construed as willful or negligent action or lack of reasonable diligence by the party claiming that such third party action or inaction constitutes Uncontrollable Circumstances. The failure of equipment used in the MRF, the AFB, the aforesaid transfer stations or the vehicles transporting Solid Waste to the MRF shall not be deemed to give rise to an Uncontrollable Circumstance unless such failure was caused by a

condition external to the equipment itself, such as a power surge or power interruption. Acts or events constituting Uncontrollable Circumstances may include, but shall not be limited to, the following:

(a) An act of God, such as hurricane, landslide, lightning, earthquake or flood; fire, explosion, or similar occurrence; acts of a public enemy, extortion, sabotage or civil disturbance;

(b) The failure of any federal, state, county or city public agency or private utility having jurisdiction in the area in which the MRF or AFB is located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the sites, which are required for the construction, start-up, testing, operation or maintenance of such facilities;

(c) The failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused by an Uncontrollable Circumstance and the affected party is not reasonably able to obtain substitute labor, services, materials or equipment on terms and conditions no less favorable to the affected party;

(d) Governmental pre-emption of materials or services in connection with a public emergency, any act or omission of the Counties in their governmental capacity or any condemnation or other taking by eminent domain of any portion of the MRF or AFB or their sites;

(e) Any change in law which is (i) legally binding with respect to the design, construction, testing, utilization, operation or maintenance of the MRF or AFB, (ii) occurs subsequent to the date hereof, and (iii) has the effect

of temporarily or permanently preventing a party from performing any of their obligations hereunder including the following: any change in, or adoption of, any constitution, charter, act, statute, law, ordinance, code, rule, regulation or order; or any change in the standards or criteria contained in a permit, which standards or criteria must be met in order for the MRF or AFB to be operated lawfully at the levels specified in this Agreement; any denial of an application for, delay in the review, issuance or renewal of or suspension, termination, interruption, imposition of a new condition in connection with the renewal of or failure of renewal, on or after the Contract Date of any governmental permit, license, consent, authorization or approval, or any other legislative or administrative action or refusal to act of the United States of America or the State of North Carolina or any agency, department, authority, political subdivision or other instrumentality thereof (except that no action of the Counties or any instrumentality thereof shall excuse the performance of the Counties under this Agreement); or any decree, judgment or order of a court. Any change of law which requires the MRF or AFB to install or upgrade equipment shall qualify hereunder as a change of law, and the time required to install or upgrade equipment, if it requires a shutdown or slowdown of the operation of either the MRF or the AFB, shall qualify as an Uncontrolled Circumstance; or

(f) If all the following events shall have occurred and the Contractor shall have received an opinion of counsel of a County verifying the occurrence thereof: (i) funds were not appropriated for the succeeding fiscal

year during the term hereof in an amount equal to the payments due hereunder during the fiscal year; (ii) written notice thereof was given to the Contractor within ten (10) days of the adoption of the final budget for such fiscal year; and (iii) the County properly, and in timely manner, took all necessary and appropriate actions to budget and appropriate sufficient funds to satisfy the obligations due under this Agreement in the succeeding fiscal year and the County diligently pursued and exercised all reasonable efforts to obtain such funds, the County so notifying the Contractor shall be considered burdened by an Uncontrollable Circumstance, subject to the further terms of this Article V.

5.02 Any party shall be excused from performance hereunder (except for such party's payment obligations other than as contemplated in Section 5.01(f)) when their nonperformance was caused directly or indirectly by Uncontrollable Circumstances. The party whose performance is affected shall give to the other party prompt written notice of the Uncontrollable Circumstances, and thereupon the obligations of the party giving the notice, so far as such obligations are affected by the Uncontrollable Circumstances, shall be suspended during such Uncontrollable Circumstances and for a reasonable time thereafter as required to remedy any physical damage or otherwise overcome the effect of such Uncontrollable Circumstances.

5.03 Any party excused from performing any obligation pursuant to Section 5.02 above shall promptly, diligently and in good faith take all reasonable action required for it to be able to commence or resume performance of its obligations hereunder.

VI. FEES.

6.01 Fixed Fee. Each County shall pay the Contractor a fixed fee of seventeen dollars and no cents (\$17.00) per Ton of Solid Waste delivered by each such County or its Designees to the MRF and accepted by the Contractor (as provided in Article II). This fee shall be fixed for the initial term of this Agreement, including any conversion thereof to a longer term as contemplated by Section 9.01 hereof.

6.02 Variable Fee. In addition to the fixed fee set out in section 6.01, each County shall pay the Contractor a variable fee which initially shall be eighteen dollars and fifteen cents (\$18.15) per Ton of Solid Waste (including wood) delivered by each such County and its Designees to the MRF and accepted by the Contractor. Each County and its Designees shall also pay a separate fee for tires in the amount of \$55.00 per ton. The variable fee and the fee for tires shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1994 using calendar year 1992 as the base year from which adjustment is made, to be in effect until July 1, 1994, and then a further adjustment effective July 1, 1994, using the year ended June 30, 1993, as the base year from which adjustment is made. Further adjustments shall be made effective each July 1 thereafter for adjustments occurring during the preceding twelve months ended June 30.

6.03 Minimum Total Fee. In no event shall the total fee paid to the Contractor by each of the Counties for any Contract Year be less than the sum of the fees

per Ton payable under Sections 6.01 and 6.02 for the applicable year, multiplied by the following tonnages for each county:

Bladen County	18,000 Tons
Hoke County	15,000 Tons
Cumberland County	150,000 Tons

with such tonnages being prorated for Contract Years containing less than 365 days.

6.04 Recycling Revenue Share. The Contractor shall pay or credit to the Counties a net amount equal to fifty percent (50%) of the excess of: (a) all revenues received during each Contract Year from the sale of ferrous metals, glass, paper, compost, aluminum, auto batteries, plastics and any other recyclable materials (other than RDF) derived from Solid Waste delivered to the MRF regardless of the identity of the party delivering the Solid Waste, over (b) the costs, if any, incurred by the Contractor in transporting Recyclable Materials to purchasers or end users, the costs of disposing of Compostable Materials or other Recyclable Materials (except for costs of disposal of same in landfills, which shall not be deductible). The Contractor may also deduct from the resulting amount due the Counties the cost of any insurance obtained under Section 3.04 hereof, prorated in accordance with the relative tonnage of Acceptable Waste from each County and each of their Designees and processed at the MRF by the Contractor for the period such insurance is in force. Such net payment or credit shall be allocated among the Counties pro rata in accordance with the relative tonnage of Acceptable Waste from each County and each of their Designees and processed at the MRF by the Contractor during the month for which payment or credit is being made.

6.05 Cumberland County Compost Fee. The Contractor shall pay Cumberland County a fee of fifteen dollars (\$15.00) per Ton to accept and receive the Compostable Materials referenced in Sections 2.01(a) and 3.06, so that Cumberland County may compost such materials for utilization as landfill cover or other Environmentally Acceptable uses. This fee shall be adjusted each year in accordance with Consumer Price Index referenced in Section 6.02 and as illustrated in Exhibit K.

6.06 Increase in Deductions and Fees Due to Increased Environmental Law Compliance. In the event that, after the Commencement Date, either (a) the operating costs of the MRF or the AFB escalate or (b) the MRF or the AFB must be reconfigured, upgraded or altered because of a change in applicable environmental laws, regulations or ordinances, then the Contractor shall be entitled to recoup a portion of the increased operating costs and/or the costs of such reconfiguration, upgrade or alteration from the Counties, as the case may be, after deduction of a portion of such costs, all as further provided herein. The Contractor shall first calculate the amount of increased operating and/or capital costs to be incurred over the full term of this Agreement. From this amount \$500,000 shall be deducted, prorated between operating and capital costs in proportion to the gross amount of costs in each category. The \$500,000 deducted amount shall represent costs to be absorbed by the Contractor. The Contractor shall next recalculate the annual increased operating costs incurred and/or the annual amortized capital costs of such improvements in both cases after deduction of such \$500,000 amount, similarly prorating the deductible amount among various capital items (referred to herein as the "annual net increased operating costs" or "annual net amortized operating costs"). Capital costs shall be amortized in accordance with generally accepted

accounting principles based upon the estimated lives of such improvements. The Contractor shall furnish its calculations of the above costs to each of the Counties in sufficient detail for the Counties to confirm the basis and accuracy of the calculations of costs. The net increased annual operating costs and/or the net annual amortized capital costs as thus calculated shall first be deducted as a cost from any amounts set forth in Section 6.04, as if such costs were a cost of disposing of Recyclable Materials, until the net amount due to the Counties under Section 6.04 is reduced to zero. Then, fifty per cent (50%) of any remaining annual net increased operating costs or annual net amortized capital costs not deducted under Section 6.04 shall be added annually to the fees to be paid under Section 6.01, allocated per ton on the basis of the Acceptable Waste processed by the Contractor in the preceding Contract Year (and for the first Contract Year based upon an assumed annual tonnage of Acceptable Waste of 208,000 tons).

6.07 Method of Payment.

(a) In accordance with Article VI, on or before the tenth day of each month after the Commencement Date, the Contractor shall invoice each of the Counties for services rendered by the Contractor under this Agreement during the preceding month. The total amount of the invoice shall be the sum of the following:

(i) the number of Tons of Solid Waste delivered by each County and each of their Designees and accepted by the Contractor at the MRF during such month, multiplied by the then applicable fee per Ton, plus

(ii) any amount owed by each County to the Contractor pursuant to Section 2.03 (b) (iii), minus (subject to the provisions of Section 3.04)

(iii) the monthly share of recycling revenue owed to each County by the Contractor under Section 6.05, and

(iv) as to Cumberland County, any amount payable under Section 6.06.

(b) All invoices shall be delivered by hand or mailed first class, postage prepaid to the Counties at the addresses set forth in Article XIII, and such invoices shall be paid within thirty (30) days after the date of the invoice.

The Counties may supply other addresses at their discretion at any time.

6.08 Ash and Residue Disposal Fee. The Contractor shall pay Cumberland County an Ash and Residue disposal fee calculated at the amount of the total of the fixed and variable fee payable to the Contractor as set forth above less ten dollars (\$10.00) for each ton of Ash and Residue disposed of in the Cumberland County Landfill plus a special handling fee in an amount to be determined in the event that special procedures for the disposal of Ash are required by the State of North Carolina pursuant to regulations not yet promulgated. The Contractor shall pay Cumberland County a disposal fee equal to the fixed and variable fees set forth in Sections 6.01, 6.02 and 6.03 and then applicable to the Counties for MSW other than Ash and Residue delivered to the Cumberland County Landfill.

6.09 Alternate Disposal Costs. In the event that, for any reason, the Contractor is unable to perform services in the manner contemplated by this Agreement, and the Contractor is forced to use alternate disposal methods for Acceptable Waste delivered and paid for by the Counties, any resulting increase in the Contractor's costs shall be borne by the Contractor.

## VII. INSURANCE BOND AND LETTER OF CREDIT REQUIREMENTS.

7.01 Insurance. The Contractor shall obtain at its own cost and expense the types of insurance listed herein. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the Counties shall have the right to approve such insurer based on its financial soundness, which shall not be reasonably withheld. The Contractor shall not commence construction of the MRF and AFB until all Insurance Requirements applicable during construction are satisfied. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained, unless the Contractor's General Liability policy specifically provides Independent Contractor's Protective Coverage.

Without limiting the Contractor's indemnification requirements, it is agreed that the Contractor accepts the following conditions and shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors to procure and maintain these same policies:

- (a) The Contractor's Commercial (Comprehensive) General Liability Policy.

(b) The insurance to be procured and maintained shall include the following types of coverages, and the minimum acceptable limits of liability shall be those stated below:

(i) COMPREHENSIVE GENERAL LIABILITY OR COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, with minimum Combined Single Limits of \$5,000,000 per Occurrence, and \$5,000,000 Aggregate including:

- (A) Premises - Operations Coverage
- (B) Completed Operations
- (C) Contractual Liability
- (D) Broad Form Property Damage
- (E) Independent Contractors'  
Protective Liability

Coverage may be written in layers, as long as each layer is on a "Following Form" basis, provided that the aggregate policy limits are not reduced. The policy must specifically state, by endorsement or otherwise, that this insurance applies only to bodily injury, property damage, or personal injury arising out of premises and/or operations necessary or incidental to the project described herein, or any expansion thereof.

(ii) AUTOMOBILE LIABILITY, with minimum limits of \$1,000,000 for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. Code 1 "Any Auto" symbol is required for this liability coverage. This policy shall include the Endorsement for Motor Carrier Policies of Insurance for Public Liability under

Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90), if hazardous waste is transported.

(iii) **WORKERS' COMPENSATION: Statutory Limits.**

(iv) **EMPLOYERS' LIABILITY: \$500,000 each accident or disease.**

(v) **The minimum limits stated in (i), (ii) and (iv) above shall increase automatically at every five (5) year interval from the Commencement Date by ten percent (10%) of the original limits, for each occurrence and aggregate. The Contractor may incur such deductibles as are standard in the industry, not to exceed 10% of the face amount of the coverage of the policy amount in question.**

7.02 **Construction Performance and Payment Bonds.** The Contractor, prior to the commencement of the construction of the MRF contemplated herein, shall procure and maintain, or cause to be procured and maintained, until the construction is completed and accepted, **Construction Performance and Payment Bonds** in the amount of 100% of the estimated cost of construction of the MRF, guaranteeing completion of the MRF in accordance with contract specifications and payment of all labor and materials associated with such construction. The bonds shall be procured from acceptable surety companies and shall run in favor of the Credit Institution, primarily, and then to Cumberland County.

7.03 **Letter of Credit.**

On or before the Commencement Date, the Contractor shall provide a Letter of Credit (the "Letter of Credit") in a form reasonably acceptable to the

Counties, which shall provide payment to the Counties for compensatory damages incurred as a result of a breach by the Contractor of this Agreement. The Letter of Credit shall be an irrevocable standby letter of credit issued by a bank or financial institution (the "Issuing Bank") with a credit rating on its senior unsecured debt of at least "AA3" from Moody's Investors Service and at least AA- from Standard & Poor's Corporation or otherwise acceptable to the Counties in their sole discretion, shall be in an amount of \$3,000,000, and shall be outstanding throughout the term of this Agreement. Beginning on the fifth anniversary of the Commencement Date, the Letter of Credit shall be adjusted annually, using the previous year as the base year, in increments of \$100,000 to reflect increases and decreases in the index referenced in Section 6.02. No adjustment shall be made for increases or decreases involving less than \$100,000. The Letter of Credit shall be arranged in such a manner that permits any County to draw upon the Letter of Credit under either of the following circumstances:

(1) The Letter of Credit may be drawn upon from time to time for any liquidated amount owed to any County under this Agreement or the Landfill Lease and Franchise Agreement after the Contractor has committed a breach of this Agreement in a manner that has caused monetary damage to any County. The Letter of Credit shall provide that the County making a claim may draw upon the Letter of Credit immediately upon the submission of a written agreement signed by such County and the Contractor authorizing such payment or thirty (30) days after submission to the Issuing Bank of a written finding by an arbitrator pursuant to an arbitration proceeding under Section 8.05 certifying the amount owed by the Contractor to such County.

(2) Since a Letter of Credit will be outstanding throughout the term of this Agreement, the Letter of Credit posted as security under this Agreement will be replaced or renewed periodically, normally on an annual basis. The Contractor will be obligated to furnish a replacement Letter of Credit for any Letter of Credit expiring within fifteen (15) business days of the expiration date of any Letter of Credit then outstanding. In the event the Contractor does not furnish such replacement Letter of Credit on or before such time, the Counties may draw upon such Letter of Credit to the full remaining amount thereof prior to its expiration, and the proceeds of such drawing shall be deposited with an escrow agent, which shall be a bank or trust company (the "Escrow Bank"), for the Counties pursuant to the terms of an escrow agreement (the "Escrow Agreement") between the Counties and the Escrow Bank, which terms shall not be materially changed during the course of this Agreement. The Counties shall furnish a copy of the Escrow Agreement to the Contractor.

The Escrow Agreement shall provide that an escrow account under the Escrow Agreement shall be maintained at the Escrow Bank bearing interest at current market rates. The Contractor shall not be entitled to obtain any amounts on deposit in said escrow account (except the right to receive interest as provided below) except upon (i) termination of this Agreement (other than as a result of an Event of Default by the Contractor, in which case the Counties may first make any claims to amounts in such account pursuant to Article VIII, releasing promptly any amounts to which they have no bona fide claim); or (ii) the posting by the Contractor of a new Letter of Credit pursuant to this Paragraph which meets all the standards stated in this Section 7.03. The Escrow

Agreement shall further provide that, upon written request of any County, the Escrow Bank shall make payments from the escrow account from time to time to the County for the amount of damages incurred by the Counties as a result of an Event of Default which shall be evidenced by either a written statement to such effect executed by both parties or a written finding by an arbitrator under the arbitration procedure described in Section 8.05.

The Contractor shall have the right to contest any request for the payment of damages to the Counties, or any amounts to be drawn down from the Letter of Credit or to be received under the Escrow Agreement, in any arbitration proceeding pursuant to Section 8.05. If the Counties agree to the Contractor's objections, or if the Contractor prevails in contesting any such payment or payments of damage and the Counties have been permitted to receive moneys under the Letter of Credit or Escrow Agreement, the Counties shall repay the Contractor the amount of such payment or payments plus interest from the date of the payment or payments to the Counties to the date of such payment or payments to the Contractor at the then existing prime rate established by the largest commercial bank operating in North Carolina.

Interest on moneys in the escrow account not theretofore disbursed to the Counties shall be paid not less than quarterly to the Contractor.

All costs and expenses for the Letter of Credit and Escrow Agreement, whether fees, assessments, reimbursements, or otherwise, shall be solely payable by the Contractor, and the Counties shall have no liability arising therefrom.

7.04 Acceptability of Insurers. Insurance shall be placed with insurance companies with an A.M. Best rating of no less than "A," unless proper financial

information relating to the company is submitted to and approved by the Counties prior to coverage being placed with such insurance company. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the Counties shall have the right to approve such insurer based on its financial soundness, which shall not be reasonably withheld.

7.05 Notice Upon Cancellation and Non-Renewal. The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the Counties duplicate copies of all policies, including applicable endorsements, prior to applicable phase of project as well as the Certificates of Insurance as provided herein upon the commencement of construction. The Certificates shall include provisions stating that the policies may not be cancelled (except for non-payment) or materially amended without the Counties having been provided at least thirty (30) days' written notice. The Certificates shall identify the contract to which they apply and shall include the name and address of the person executing the certificate as well as the person's signature. The Contractor shall also have both the Commercial General Liability and Automobile Liability insurance policies specifically endorsed to state that the Counties will be given thirty (30) days advance notice of cancellation or nonrenewal of such policies, and forward such endorsement copies to the Counties. Since policies will expire before the completion of the contract, renewal certificates of insurance shall be furnished to the Counties by the Contractor before the expiration date of each policy, for the term of the contract. Certificates will provide for a ten (10) day advance notification to the Counties if cancellation is to be made for failure of the Contractor to pay premiums.

7.06 Time for Furnishing Certificates and Copies of Policies. Certificates of Insurance and copies of all insurance policies as required herein shall be furnished no later than five (5) days prior to commencement of construction of the MRF to the Counties at the addresses set forth in Article XIII.

7.07 Effect of Approval of Insurance. Approval of the insurance by the Counties shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that the Counties do not in any way represent that the specified limits of liability or coverage or policy forms are adequate to protect the interest or satisfy all liabilities of the Contractor.

7.08 Coverage Limitation. The Counties, their officials, employees and representatives shall be named as insureds, as their interests may appear, under the policies listed above with respect to liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; and premises owned, leased or used by the Contractor.

7.09 Operations Performance Bond. In lieu of a Letter of Credit, the Contractor may, at its option, provide an Operations Performance Bond or other form of insurance acceptable to the Counties, which shall be posted by Contractor and shall provide payment to the Counties in the event of a breach of this Agreement by the Contractor. Payments under the Operations Performance Bond shall be made pursuant to the same procedures for payment under the Letter of Credit, as set forth in Section 7.03(1).

7.10 If any event or condition has occurred which but for applicable periods of notice, grace or cure (including cure periods granted to the Credit Institution) would

constitute an Event of Default, and such event or condition damages any County, such County may draw upon the Letter of Credit or Operations Performance Bond provided in Sections 7.03 and 7.09, respectively, during any such periods of grace or cure to compensate it for such damages incurred to the date of the claim in accordance with the procedures set forth therein as if such event or condition had matured into an Event of Default.

VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.

8.01 Remedies for Default.

(a) Default by Contractor.

(i) Upon the occurrence of an Event of Default by the Contractor under this Agreement, and subject to the further provisions of this Article VIII, the remedies of the Counties shall be compensatory damages, specific performance, or termination.

(ii) Termination by the Counties shall be limited as set forth in Section 8.02 hereof.

(iii) Termination by the Counties shall be subject to any applicable extension or Cure Period and to the rights of the Credit Institution under Section 8.09 hereof.

(iv) Pending cure by the Credit Institution of an Event of Default, at the Counties' election, the Contractor shall assign to the Counties, subject to prior assignment to the Credit Institution, any or all of the Contractor's contracts with licensed landfills or other Ash or Residue Disposal Sites. The Contractor shall obtain consent to

such assignment from Ash or Residue Disposal Site operators as part of any agreement it enters into subsequent to the date hereof.

(v) Any amounts of Acceptable Waste delivered by the Counties to a landfill or other Residue Disposal site following an Event of Default by the Contractor under Section 8.02, shall be credited toward the Counties' delivery of their Aggregate Minimum commitment under Section 3.01.

(b) Default by Counties.

(i) Upon the occurrence of an Event of Default by the Counties under this Agreement, the remedies of the Contractor shall be compensatory damages, specific performance, or termination of this Agreement.

(ii) Termination by the Contractor shall be limited as set forth in Section 8.03 hereof.

(iii) Termination by the Contractor shall be subject to any applicable extension or Cure Period.

8.02 Events of Default by the Contractor.

(a) Each of the following shall constitute an Event of Default on the part of the Contractor, for which the Counties may seek compensatory damages, specific performance, or termination of this Agreement, using the procedures set out herein.

(i) Contractor failure (which is not excused by Uncontrollable Circumstances), occurring at any time after completion

of a 180-day shakedown period following the Commencement Date, to receive, recycle, process, or dispose of in an Environmentally Acceptable manner, Acceptable Waste delivered by the Counties or their Designees (up to the limits set forth in Section 2.02), for a continuous period of fourteen (14) days.

(ii) Should the Contractor, its agents or employees acting in the scope of their employment be proven to have violated any law or regulation and such violation results in substantial liability to the Counties which is not reimbursed by the Contractor within 30 days of the liability being payable.

(iii) Contractor failure to obtain and maintain the insurance or performance bond required by Article VII for a period of more than thirty (30) days after such insurance or bond has been cancelled, revoked, or gone unrenewed.

(iv) A failure to pay or credit any amount of monies due by the Contractor to the Counties under this Agreement when such amount becomes due and payable, and when such amount remains unpaid for thirty (30) days after written notice to the Contractor that such payment is past due; provided, however, that if the payment or credit is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05

(v) An express abandonment of the MRF or AFB by the Contractor (which, for purposes of this Agreement, shall mean an express abandonment of the MRF or AFB premises by all the employees and agents of the Contractor for a period of more than fourteen (14) consecutive days);

(vi) A failure by the Contractor to operate the AFB at a sufficient capacity consumption rate that results in the Contractor depositing in the Ann Street Landfill more than 30% of the RDF produced by Contractor during any consecutive twelve month period.

(vii) A failure by the Contractor to initiate operations at the MRF and/or AFB by June 30, 1995.

(b) Each of the following shall constitute an Event of Default by the Contractor, for which the Counties may seek compensatory damages or specific performance hereunder:

(i) The failure or refusal by the Contractor substantially to fulfill any of its material obligations (other than the material obligations set forth in Section 8.02(a)) in accordance with this Agreement, unless such failure or refusal shall be excused or justified as provided under Article V hereof.

(ii) If, at any time, any material written representation or warranty made by the Contractor herein shall be determined to have been untrue or incorrect when made and such condition is shown to

have a continuing material adverse impact on the Contractor's ability to perform its obligations under this Agreement.

(iii) Failure of the Contractor to indemnify the Counties in accordance with Section 2.14.

(c) No failure or refusal under this Section 8.02 shall constitute an Event of Default unless and until:

(i) the Counties shall have given prior written notice of the alleged Event of Default (describing such default in reasonable detail) to the Contractor and the Credit Institution, except in case of a default under Section 8.02(a)(iii) or in case of abandonment of the MRF or the AFB by the Contractor; and

(ii) the circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Counties) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence, but in no event longer than nine (9) months from the date the default first occurred. For the purposes of this Section 8.02, "reasonable steps"

shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Counties, the Credit Institution or other interested parties of the means by which the Event of Default may be cured. Notwithstanding the foregoing, if more than nine (9) months are necessary to remedy the Event of Default, the period during which the Contractor may correct the Event of Default shall be reasonably extended by the Counties upon a showing by the Contractor of the necessity for more time, whereupon the Contractor shall continue to be obligated to seek to remedy the Event of Default with due diligence until same is cured. The provisions of this paragraph shall not prevent any County from obtaining compensatory damages under Sections 7.03, 7.09 and 7.10.

(d) No correction of a default of the Contractor by or on behalf of the Counties, or reasonable steps taken by the Counties to correct a default of the Contractor, shall cause the Contractor's default to cease to be an Event of Default; provided, however, that the Contractor and the Credit Institution (pursuant to Section 8.09) shall have the prior right and opportunity to effect any correction or cure of a default or Event of Default.

8.03 Event of Default by the Counties.

(a) Each of the following shall constitute an Event of Default on the part of a County for which the Contractor may terminate this Agreement using the procedures set out herein as to the County in default, or, in any case, seek compensatory damages or specific performance against the County creating or contributing to the Event of Default:

(i) The failure by any County to pay any amount of monies due to the Contractor under this Agreement when such amount becomes due and payable, and such amount remains unpaid for thirty (30) days after written notice to the Counties that such payment is past due; provided, however, that if the payment demanded is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

(ii) Should a County, or its employees acting in the scope of their employment under this Agreement, be proven to have violated any law or regulation and such violation results in substantial liability to the Contractor which is not reimbursed by such County within 30 days of the liability being payable.

(b) Each of the following shall constitute an Event of Default by a County, for which the Contractor may seek compensatory damages or specific performance hereunder against the County creating or contributing to the Event of Default:

(i) The failure of a County to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i) or the delivery of less than the minimum tonnages set forth in Section 6.04 hereof), unless such failure shall be excused or justified as provided in Article V hereof. Notwithstanding the foregoing or any other provision of this Agreement, if the Counties in the aggregate meet the aggregate commitment of all the Counties under Section 6.04 (even though one or more of the Counties fails to meet its individual minimum commitment under Section 6.04) no Event of Default shall have occurred under this Agreement and no minimum payment shall be due under Section 6.04. In the event that a County's failure to provide the minimum tonnages set forth in Section 6.04 result in damages to the Contractor in excess of the minimum payments required in Section 6.04, such failure shall constitute an Event of Default under this subsection to the extent of such excess.

(ii) If, at any time, any representation or warranty made by a County herein shall be determined to have been untrue or incorrect when made and such condition is shown to have a continuing material adverse impact on the County's ability to perform its obligations under this Agreement.

(c) No failure or refusal under this Section 8.03 shall constitute an Event of Default unless and until

(i) The Contractor shall have given prior written notice to the County creating or contributing to the Event of Default of the alleged Event of Default (describing such default in reasonable detail), with copies to the non-defaulting Counties; and

(ii) The circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.03(c) (i)). If the defaulting County shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the defaulting County is continuing to take reasonable steps to correct such default, but in no event longer than nine (9) months from the date the default first occurred. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the defaulting County of actions or planning to remedy the Event of Default, such as communication with parties capable of aiding the defaulting County in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Contractor, the Credit Institution or other interested parties of the means by which the Event of Default may be

cured. Notwithstanding the foregoing, if more than nine (9) months are necessary to remedy the Event of Default, the period during which the defaulting County may correct the Event of Default shall be reasonably extended by the Contractor upon a showing by the defaulting County of the necessity for more time.

(d) No correction of a default of the defaulting County, by or on behalf of the Contractor, or reasonable steps taken by the Contractor to correct a default of the defaulting County, shall cause the default of the defaulting County to cease to be an Event of Default; provided, however, that the defaulting County shall have the prior right and opportunity to effect any correction or cure of a default or Event of Default.

(e) Any one or more of the non-defaulting Counties shall have the right, but not the obligation, to cure the default of another County then in default during any cure or grace periods granted to the defaulting County, in the same manner and to the same extent provided herein for a defaulting County.

8.04 Notice of Termination for Default. If any party shall have a right of termination for cause in accordance with this Article VIII by virtue of the fact that an Event of Default exists, after all periods of grace and cure have then expired (including any cure period granted to the Credit Institution) the right of termination may be exercised by written notice of termination given to the party in default. The notice shall specify the termination date, which shall be no less than thirty (30) days from the date

of such notice, except in the case of abandonment by the Contractor under Section 8.10 herein.

8.05 Dispute Resolution. In the event a party disagrees with a finding by the other that there has been an Event of Default giving rise to termination under the terms of this Agreement, or in the event of any other contract dispute that cannot be resolved between the parties (including resolution pursuant to Section 8.08), either party shall immediately notify the other of such disagreement and shall apply to the American Arbitration Association for appointment of a completely disinterested arbitrator with relevant business experience in the recycling or RDF industry and local government Solid Waste management, who will arbitrate such dispute pursuant to N.C.G.S. § 1-567.1 to 1-567.20 and will hear the parties at a location in North Carolina acceptable to both parties and render a decision within thirty (30) days after receipt of the notice of disagreement. If either party shall object in good faith to the arbitrator so named, the parties shall apply to a judge of the Superior Court of Wake County to appoint an arbitrator with the qualifications stipulated in this Section. The cost of such procedure shall be borne as decided by the arbitrator, and until such decision is rendered, no termination of this Agreement shall become effective. The provisions of this section shall be exclusive.

8.06 Survival of Certain Rights and Obligations. The rights and obligations of the parties governing the ability of either party to terminate this Agreement and the manner of determining the rights of the parties with regard thereto shall survive any termination of this Agreement. No termination of this Agreement shall limit or otherwise affect the respective rights and obligations of either party accrued prior to the date of

such termination, including any rights as the result of the breach of this Agreement by either party.

8.07 Right of Termination Not Exclusive. Any rights of termination, and any rights to purchase provided under this Agreement upon an Event of Default by the Contractor or the Counties, are not exclusive and may be exercised without prejudice to any right provided by law to either party to bring appropriate action, subject to the preemptory requirements of Section 8.05, to recover actual damages for failure in the performance by the defaulting party of their obligations pursuant to this Agreement.

8.08 Non-Binding Mediation. Except for matters which are referred for arbitration hereunder, either party hereto may give the other written notice of any dispute with respect to the Contractor's satisfaction of any capacity standard, any performance guaranty, or any matter regarding engineering or design specifications, for resolution by mediation. Such notice shall specify a date and location for a meeting of the parties hereto, at which such parties shall attempt to resolve such dispute. In the event that such dispute cannot be resolved by the parties hereto within thirty (30) days, such dispute may be referred by either party for resolution by arbitration under Section 8.05.

8.09 Right to Cure by Credit Institution.

(a) Right to Cure. If any of the Counties allege an Event of Default under this Agreement, then, provided the Contractor has provided the Counties notice of the name and address of the Credit Institution, the Counties shall give written notice of the Event of Default to the Credit Institution at the same time that it gives written notice to the Contractor as required under Section 8.02(c)(i). The Credit Institution shall have the same right as the

Contractor to arrange for the cure of the Event of Default and shall also have the right (if and when granted to the Credit Institution pursuant to the Agreements between it and the Contractor) to substitute for the Contractor a responsible new operator acceptable to the Counties and to the North Carolina Department of Environment, Health, and Natural Resources (referred to herein as the "Replacement Contractor"), which right the Credit Institution may invoke upon fourteen (14) days written notice at any time during the period stipulated under Section 8.02(c) to the Counties and the Contractor. Any Replacement Contractor shall use its best efforts to effect a Successful Cure as soon as possible, but in no event shall such substitute performance by the Replacement Contractor exceed the cure period set forth in Section 8.09(b)(i).

(b) Cure Period. If the Credit Institution invokes its right to install a Replacement Contractor under Section 8.11(a), there shall be a period within which the Replacement Contractor may be substituted and the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

(i) one (1) year from the date on which the default first occurred or such longer period as is required for the delivery and start up of equipment to cure the default, but in no event longer than two years;

(ii) the date the Credit Institution gives notice to the Counties that cure is no longer being attempted, or

(iii) the date that all Events of Default have been cured, and the Replacement Contractor has assumed in writing the obligation to resume full compliance with the terms of this Agreement (herein called a "Successful Cure").

(c) Operations During Cure Period. During the Cure Period, the Credit Institution or the Replacement Contractor shall cause the MRF and AFB to be operated in accordance with this Agreement. During the Cure Period, neither the Replacement Contractor nor the Credit Institution shall be liable to the Counties for damages caused by the Contractor in excess of cash available from MRF and AFB revenues after payment of debt service and operating costs. The provisions of this paragraph shall not prejudice the rights of the Counties under Section 7.03.

(d) Revenues During Cure Period. During any Cure Period, the Counties shall pay to the Credit Institution or Replacement Contractor, as instructed by the Credit Institution, all fees required by Article VI. The operator of the AFB and MRF (either the Credit Institution or Replacement Contractor) shall document and provide to the Counties the information requested by this Agreement to be furnished by the Contractor to the Counties.

(e) Subsequent to Cure Period. If a Successful Cure is achieved, upon termination of the Cure Period, the Replacement Contractor shall be subject to all the terms and conditions of this Agreement from the end of the Cure Period to the expiration of the Agreement.

8.10 Right of Counties to Operate Upon Abandonment. In the event the Contractor abandons the operation of the MRF and/or the AFB, the Credit Institution may appoint and inform the Counties of a Replacement Contractor to assume the Contractor's duties under this Agreement as provided in Section 8.09. Until such time as Credit Institution provides a Replacement Contractor, the Counties shall have the immediate right to enter upon the property of the MRF and/or the AFB to operate them in the manner contemplated by this Agreement. By exercising this right, the Counties shall incur no liability to the Credit Institution for any payment on bonds used to finance the project or any other obligation of the Contractor, and this provision shall not be construed to limit the Counties' ability to terminate this Agreement.

8.11 Purchase Option Upon Termination For Contractor Default. If this Agreement is validly terminated by the Counties due to the occurrence of a Contractor Event of Default after all periods of grace and cure have expired, Cumberland County shall have the right to purchase for \$1,000 the MRF subject to the mortgage or other rights of any Credit Institution. Cumberland County shall give the Contractor written notice of its decision to purchase within ninety (90) days after the termination, and the Contractor shall immediately execute instruments of conveyance of the MRF properties to Cumberland County.

IX. TERM.

9.01 Term. Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature by the parties, and shall remain in effect for seven (7) years from the execution date of this

Agreement, provided that said term shall be automatically converted, without any requirement for further agreement on the part of the parties, to an initial term of twenty one (21) years from the Commencement Date, with an option on the part of the Contractor to extend such converted initial term hereof in accordance with the further provisions of this Section 9.01, all upon the enactment of legislation by the General Assembly of North Carolina which will add the name of Cumberland County, Bladen County and Hoke County to the names of North Carolina counties set forth in N.C.G.S., § 153A-229.6, and thereby permit said Counties to enter into a contract for the disposal of solid waste for such converted initial term stated herein. The Counties further covenant and agree to cause such legislation to be timely introduced before the 1992 session, and subsequent sessions if necessary, of the General Assembly and in good faith to exercise its best efforts to support and promote its enactment during such sessions. If such legislation is enacted, each County agrees thereafter, within ninety (90) days, to approve and affirm this Agreement, the extended term hereof and the renewal option by ordinance or other appropriate County action. Upon the enactment of such legislation, the Contractor shall possess the option to extend the term of this Agreement for an additional five (5) years (subject to the enactment of the legislation referred to in the preceding section) at any time during the term hereof subject to the following conditions: (a) on the date of exercise of the option the Contractor shall not be in default under this Agreement or the Landfill Lease and Franchise Agreement; (b) such option must be exercised, if at all, at least two (2) years before the expiration of the converted initial term of this Agreement. In the event the Contractor exercises its option of extension as provided in this Section 9.01, the rents and fees called for under the Landfill Lease and

Franchise Agreement shall remain the same, but the Fixed Fee provided to be paid by the Counties under Sections 6.01 and 6.03 above shall no longer be payable by the Counties during such extended term of this Agreement. Notwithstanding any other provision hereof, the Contractor shall have the right to terminate its obligations under this Agreement if the legislation discussed in this Section 9.01 extending the term hereof is not passed and in full effect by September 30, 1992.

9.02 Termination for Failure to Meet Conditions Precedent. In the event that all conditions precedent stated in Article IV are not satisfied by June 30, 1995, this Agreement may be terminated by any Party hereto upon thirty (30) days' prior written notice by such Party to all other Parties, unless such failure to satisfy all such conditions precedent is caused by an Uncontrollable Circumstance as hereinafter provided, in which case the date stipulated above shall be extended by that number of days during which an Uncontrollable Circumstance occurred.

9.03 Rights at Expiration of the Term. The Counties agree that at and after the expiration of the term of this Agreement, should this Agreement not have been terminated as the result of an Event of Default by the Contractor, subject to the provisions of applicable law, before entering into negotiations with any third party for the provision of services to process waste, the Counties will first negotiate in good faith with the Contractor for the provision of such services at the MRF and AFB. The Contractor agrees, upon expiration of this agreement, to negotiate in good faith with the Counties to provide waste processing services.

If, at the expiration of the term of this Agreement, the parties are unable to reach an agreement as described in the preceding paragraph, each County may, at its

option, recover any property granted to the Contractor by lease or franchise, and Cumberland County may purchase pursuant to the Landfill Lease and Franchise Agreement the property used in the MRF which the Contractor owns, on an "as is" basis and subject to the mortgage and other rights of the Credit Institution. Upon such purchase, the Contractor shall convey to Cumberland County all of its right, title and interest to the property used in the MRF and owned by it, subject to all encumbrances. If Cumberland County elects to exercise its option to purchase the MRF, Cumberland County shall give the Contractor at least six months irrevocable written notice of its intention. At least three months prior to the purchase of the facilities, the parties hereto will enter into good faith negotiations to determine the fair market value of the Contractor's equity interest pursuant to this Agreement. The Landfill Lease and Franchise Agreement and other site control agreements pertaining to the MRF executed in connection with any sale of the property relating to the MRF hereunder shall preserve and perfect the rights of Cumberland County under this section as to all present and subsequent owners of the facilities.

9.04 Determination of Fair Market Value. If, pursuant to any provision of this Agreement, the fair market value of the MRF is to be determined, such value shall be the value which would be obtained for such facility in an arm's length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller, under no compulsion to sell, taking into account all encumbrances (i.e., on the assumption that the buyer is assuming all indebtedness secured by any encumbrance and that the facility remains subject to any other encumbrances) and based upon the then current condition of such facility, and further assuming the continuing

operation of such facility by the owner to process the Counties' Acceptable Waste for recycling purposes at the most recent price in effect under this Agreement, subject to future periodic adjustment as set forth in this Agreement. If the Contractor and Cumberland County are unable to agree on the fair market value of a facility within 60 days from the commencement of negotiations, and if either the Contractor or Cumberland County shall give written notice to the other requesting determination of such fair market value by appraisal, the appraisal shall be made by two independent appraisers who shall be qualified, nationally recognized appraisers of industrial property or investment bankers familiar with MSW disposal and with facilities similar to the MRF, one of whom shall be chosen by the Contractor and one of whom shall be chosen by Cumberland County, or, if two such appraisers cannot agree, by a third appraiser chosen by the mutual consent of such two appraisers. If either party shall fail to appoint an appraiser within 10 days from written notice from the other party requesting such appointment, or if such two appraisers cannot agree upon the amount of such appraisal and fail to appoint a third appraiser within 10 days, then either party may pursue the dispute resolution procedures set forth in Section 8.05 hereof to make such appointment.

X. REPRESENTATIONS AND WARRANTIES.

10.01 Representations and Warranties of the Counties. As of the date of execution of this Agreement, each of the Counties severally represents and warrants to the Contractor as follows:

- (a) The County is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The County has

agreed to implement solid waste disposal and resource recovery systems and facilities, and to provide solid waste management services to the public.

(b) The County has all requisite power, authority and capacity to enter into and deliver this Agreement and related documents, to engage in the transactions contemplated hereby and to perform its obligations hereunder in accordance with the terms hereof.

(c) The execution, delivery and performance of this Agreement by the County has been duly and effectively authorized by all necessary County action, and the officer of the County who are here undersigned has been empowered by all necessary authorizations and resolutions to execute and deliver this Agreement on its behalf.

(d) This Agreement has been duly and validly executed and delivered on behalf of the County, and subject only to the approval of the County's governing board, and assuming due authorization, execution and delivery of this Agreement by the Contractor, this Agreement constitutes the valid and legally binding obligation of the County, enforceable against the County in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of the parties hereto generally.

(e) There is no action, proceeding or governmental investigation pending or, to the knowledge of the County, threatened against such County which could materially and adversely affect the design, construction, start-up, testing, performance requirements, maintenance, management or operation of

the MRF and AFB or which could materially and adversely affect consummation of any of the transactions contemplated hereunder, or which could materially and adversely affect the performance of any of the obligations of such County under this Agreement, which have not been previously disclosed in a written communication from the County to the Contractor.

(f) The execution, delivery and performance of this Agreement by the County is not in conflict with and will not result in a breach of, or constitute a default under any provisions of any indenture, contract, agreement or other instrument to which the County is a party or by which the County is bound. The execution, delivery and performance of this Agreement by the County will not violate any provision of law applicable to the County or any order, writ, injunction, judgment or decree of any court or governmental authority by which the County is bound.

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the County to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the County to perform its obligations under this Agreement (or the Landfill Lease and Franchise Agreement in the case of Cumberland County), except for the license, permits and other approvals relating to the design, construction, start-up, testing and operation of the MRF and AFB and except for the further state legislation referenced in Section 9.01. Cumberland County represents and warrants that the real property which is the subject of the Landfill Lease and

Franchise Agreement is, and will continue to be, properly zoned for the uses contemplated under such agreement.

10.02 Representations and Warranties of the Contractor. As of the date of execution of this Agreement, the Contractor represents and warrants to the Counties as follows:

(a) The Contractor is a corporation duly organized, validly existing and in good standing under and by virtue of the laws of the State of North Carolina and is duly authorized to do business in and is in good standing in the State. The copies of its organizational documents heretofore furnished to the Counties are true, correct and complete copies of such documents.

(b) The Contractor has all requisite power, authority and capacity under the laws of the State of North Carolina and its organizational documents to enter into and deliver this Agreement and all referenced Exhibits, to engage in the transactions contemplated hereby and to perform its obligations hereunder in accordance with the terms hereof.

(c) There is no action, proceeding or governmental investigation pending or, to the knowledge of the Contractor, threatened against the Contractor which could materially and adversely affect the design, construction, start-up, testing, performance requirements, affect the design, operation, maintenance or management of the MRF or AFB or which could materially and adversely affect consummation of any of the transactions contemplated hereby or which could materially and adversely affect the performance of any of the obligations of the Contractor under this Agreement.

(d) The execution, delivery and performance of this Agreement by the Contractor have been duly and effectively authorized by all necessary Contractor action.

(e) This Agreement has been duly and validly executed and delivered on behalf of the Contractor and assuming due authorization, execution and delivery of this Agreement by the Counties, this Agreement constitutes the valid and legally binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of the parties hereto generally.

(f) The execution, delivery and performance of this Agreement by the Contractor are not in conflict with, and will not result in any breach of, or cause a default under, any of the terms of the Contractor's organizational documents, or with any provisions of any indenture, contract, agreement or other instrument to which the Contractor is a party or by which the Contractor is bound.

(g) The execution, delivery and performance of this Agreement by the Contractor will not violate any provision of law applicable to the Contractor or any order, writ, injunction, judgment or decree of any court or governmental authority by which the Contractor is bound.

(h) No further order, consent, approval, authorization of, or declaration or filing with, any governmental or public body, is required in order for the Contractor to execute and deliver this Agreement or perform its

obligations hereunder, except for the licenses, permits, and other approvals relating to the design, construction, start-up, testing and operation of any facility which the Contractor is required to obtain hereunder.

**XI. PARTIES TO AGREEMENT.**

The parties to this Agreement are Bladen, Cumberland, and Hoke Counties, and the Contractor. Each County and the Contractor are independent parties under this Agreement and neither party is the servant, agent or employee of the other, nor are they partners or coventurers and neither shall share with the other in any risk or liability which arises out of any act of commission or omission in carrying out the provisions of this Agreement or the transactions arising therefrom; provided, however, that each party shall be entitled to enforce this Agreement against the other and seek remedies available at law or in equity and each shall be responsible for its own negligence in carrying out or for breach of the provisions of this Agreement.

The rights and obligations created under this Agreement shall apply exclusively to the parties hereto and their successors and permitted assigns and no rights shall be created in any other party by reason of this Agreement or any separate act or action taken independently by any party hereto. Nothing contained in this Agreement is intended to nor shall it confer upon any person, firm or corporation not a party hereto or referred to herein or consenting hereto or being bound by any obligation hereunder, any right, or vest any cause of action in, or to authorize any such other person to institute, join or maintain any suit or suits, claim or claims against any party hereto.

XII. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding between each of the Counties and the Contractor, and there are no other terms, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever, except as to related documents referred to herein or which are Exhibits hereto. No extension or indulgence granted by either the Counties or the Contractor; no alteration, change or modification of this Agreement consented to or agreed to by either party; and no act or omission of either party or their agents shall constitute an amendment to, or modification of, this Agreement (nor shall same be interposed as a defense against the enforcement of either party's rights under this Agreement or give rise to an implied waiver of any rights or any equitable estoppel); rather, this Agreement may be modified or amended only by a document in writing which is duly executed by the Counties and the Contractor. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

XIII. NOTIFICATION.

All notices, demands or other communications permitted or required herein to be given by any party to the other shall be in writing and shall be postage prepaid, return receipt requested, or personally delivered.

In the case of the Counties, notice to designated parties shall be sent as follows:

Bladen County:

County Manager  
P.O. Box 1048  
Elizabethtown, NC 28337-1048

Cumberland County:

County Manager  
P.O. Drawer 1829, Suite 512  
Fayetteville, N.C. 28302-1829

Hoke County:

County Manager  
P.O. Box 266  
Raeford, N.C. 28376

In the case of the Contractor, notice to designated parties shall be sent as follows:

BCH Energy Corp.

\_\_\_\_\_, North Carolina \_\_\_\_\_

and

BCH Energy Corp.  
Attention: President  
11757 Katy Freeway  
Suite 820  
Houston, Texas 77079

with a copy to:

Joseph W. Barnett, General Counsel  
JWP Energy and Environment  
2975 Westchester Avenue  
Purchase, New York 10577

Eddy J. Rogers, Jr.  
Mayer, Brown & Platt  
700 Louisiana, Suite 3600  
Houston, Texas 77002

Notice shall be sent to such other person or persons and/or addresses as the parties may from time designate in writing to each other.

XIV. AUDIT.

The Contractor shall maintain during the time this Agreement is effective and retain not less than two years after completion thereof, or for such longer period as may be required by law, complete and accurate records of all Contractor's costs of operating the MRF and AFB under this Agreement, and the Counties shall have the right, at any reasonable time, to inspect and audit project records by authorized representatives of its own, or of any public accounting firm it selects. The records to be thus maintained and retained by the Contractor shall include, without limitation:

- (a) Accounting records of the amounts of all Solid Waste and Hazardous Waste, identified by source, delivered to the MRF;
- (b) Accounting records of the amounts of each type of substance derived from Acceptable Waste delivered to the MRF; and
- (c) Accounting records of revenues received from the sale of substances derived from Acceptable Waste delivered to the MRF.

XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.

15.01 Affirmative Action. The Contractor shall have an affirmative action plan at the MRF and AFB.

15.02 Discrimination in Employment. The Contractor agrees that in the performance of this Agreement with the Counties, it will not discriminate against any

worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

XVI. MISCELLANEOUS PROVISIONS.

16.01 Multiple Counterparts. This Agreement may be executed in four or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such Counterparts provided that the counterpart produced bears the signature of the party sought to be bound.

16.02 Governing Law; Interpretation. This Agreement shall be governed, construed, interpreted and enforced, in all respects, in accord with the laws of the State of North Carolina. Any approval, consent or affirmation required by either party under the terms of this Agreement shall not be unreasonably withheld. The parties hereto agree that each party will perform its obligations and enforce its rights hereunder in good faith. No right, benefit or obligation of the Contractor under this Agreement may be materially and adversely affected by ordinance, regulation or other legislation of the Counties unless (a) such regulation involves the health and safety of its residents, or (b) the economic effect of such legislation is, as part of such legislation, reflected in an amendment hereto that makes the Contractor whole.

16.03 Severability. The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall

negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect. Without limiting the foregoing provision, the parties agree that in the event this Agreement is determined by a court of law to be a franchise, then the term of the Agreement shall be deemed to be the maximum franchise term legally permissible.

16.04 Binding Effect. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

16.05 Assignment.

(a) The Contractor shall have the right at any time to assign this Agreement and the Contractor's rights hereunder to an affiliated entity, including without limitation a corporation or general or limited partnership whose general partners include the Contractor, its shareholders or other entities affiliated with the Contractor. Upon the Contractor's execution of any such assignment and delivery of notice of such assignment to the Counties, such assignee shall be deemed to be the "Contractor" for all purposes of this Agreement. The Contractor shall also have the right to collaterally assign this Agreement to a Credit Institution. In the event of any permitted assignment, the Counties shall certify, if required, that such assignment is permitted and accepted.

(b) Except as set forth in paragraph (a), the Contractor may not assign this Agreement without the prior written consent of the Counties. This Agreement may not be assigned by the Counties without the prior written consent of the Contractor. No assignment shall relieve any party of any of its obligations under any provision of this Agreement.

16.06 Failure or Indulgence Not Waivers; Cumulative Remedies. Except as expressly provided herein, no failure to exercise and no delay in exercising any right, power or remedy hereunder on the part of either party shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any Event of Default other than the Event of Default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided therein by the waiving party. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. All the rights, powers and remedies of either party shall be cumulative and shall be in addition to any and all other rights, powers and remedies provided at law, in equity, by statute or otherwise, except as expressly limited in this Agreement. The exercise of any right, power or remedy by either party shall not in any way constitute a cure or waiver of any Event of Default by the other party, or prejudice such party in the exercise of any of its rights, powers or remedies.

16.07 Further Assurances. The Counties and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and

documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other party to carry out the intent of this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed and delivered by their duly authorized officers or representatives as of the aforementioned date.

BLADEN COUNTY

By: Lewis A. Axtum  
Chairman of the Board of  
Commissioners

DATE: April 30, 1997

APPROVED AS TO FORM:

Walter J. ...  
County Attorney

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act

Ann D. ...  
Director of Finance

CUMBERLAND COUNTY

By: Bill Fleming  
Chairman of the Board of  
Commissioners

DATE: 24 April 92

APPROVED AS TO FORM:

[Signature]  
County Attorney

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act

\_\_\_\_\_  
Director of Finance

HOKE COUNTY

By: Wyatt G. Upchurch  
Chairman of the Board of  
Commissioners

DATE: 24 April 92

APPROVED AS TO FORM:

[Signature]  
County Attorney

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act

Charles A. Darr  
Director of Finance

BCH ENERGY CORP.

By: George H. Armistead  
George H. Armistead, President

Attest: Alan McDonald  
Alan McDonald, Secretary

DATE: 24 April 92

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LANDFILL LEASE  
AND  
FRANCHISE AGREEMENT

by and between

BCH ENERGY CORP.  
A North Carolina Corporation

and

THE COUNTY OF CUMBERLAND  
State of North Carolina

April 24, 1992

\*\*\*\*\*

NORTH CAROLINA  
CUMBERLAND COUNTY

LANDFILL LEASE AND  
FRANCHISE AGREEMENT

THIS AGREEMENT, made effective this \_\_\_\_\_ day of April, 1992, by and between BCH ENERGY CORP., a North Carolina Corporation (hereinafter referred to as "BCH") and the COUNTY OF CUMBERLAND, North Carolina (hereinafter referred to as "COUNTY").

W I T N E S S E T H:

WHEREAS, BCH desires to acquire and COUNTY desires to grant to BCH the exclusive right and license to install and operate a materials recovery facility (hereinafter referred to as an MRF) on and within the Ann Street Landfill (herein "Landfill") described in Exhibit A hereto located in Fayetteville, North Carolina, for the purpose of providing solid waste processing and resource recovery services pursuant to a Resource Recovery Agreement contemporaneously entered into by and between BCH and the North Carolina Counties of Bladen, Cumberland and Hoke (hereinafter referred to as "the Resource Recovery Agreement") and whereas BCH desires to lease lands within the Landfill for the purpose of constructing facilities and locating equipment for the MRF; and

WHEREAS, the Board of Commissioners of the COUNTY has found and determined that granting such franchise and lease will substantially benefit and protect the public health, safety and welfare and, in particular, materially promote and expedite accomplishment of the purposes and goals of the State of North Carolina with regard to solid waste management set forth in Chapter 130A, Article 9, Part 2A, of the North Carolina General Statutes (N.C.G.S., Sections 130A-309.01 et seq.) and has agreed

OFFICE OF  
THE COUNTY ATTORNEY  
County of Cumberland  
P. O. Drawer 1829  
Fayetteville, N.C. 28302-9990

BWLRCOIF.AQ1

to grant such franchise and lease subject to the terms and conditions specified herein;

NOW, THEREFORE, in consideration of the grants and assignments and covenants and promises hereinafter made and set forth, and the mutual benefits to be derived therefrom, the parties hereto grant, lease and otherwise agree as follows:

ARTICLE I. GRANT OF FRANCHISE RIGHTS AND LEASEHOLD INTEREST

Section 1.1. The COUNTY hereby grants and assigns unto BCH the exclusive right and franchise, for and subject to the terms and conditions set forth below, to install, construct and operate a materials recovery facility (hereinafter referred to as an MRF) on and within the Ann Street Landfill (herein "Landfill") described in Exhibit A hereto located in Fayetteville, North Carolina, for the purpose of providing solid waste processing and resource recovery services pursuant to the Resource Recovery Agreement.

Section 1.2. The COUNTY hereby demises and leases unto BCH the real property described in Exhibit B hereto (and herein referred to as "the Property"), for and subject to the terms and conditions set forth below, for the purpose of providing a specific location within the Landfill on which to exercise the franchise rights hereinabove granted.

Section 1.3. The COUNTY further grants and assigns unto BCH the rights of ingress and egress to, from and across the Landfill, for and subject to the terms and conditions set forth below, for the purpose of gaining access to the Property from public roads adjoining the Landfill in order to construct, equip, maintain and

operate the MRF as hereinbefore described, provided such rights shall be exercised on existing roads and cartways in the Landfill or otherwise on roads and cartways established by BCH with the consent of the COUNTY, which consent shall not be unreasonably withheld.

Section 1.4. The COUNTY further grants and assigns unto BCH the exclusive right and franchise for and subject to the terms and conditions set forth below to use the balers and other equipment associated with the use of the COUNTY Landfill baling facility, said balers and other equipment being more particularly described in Exhibit C hereto (and herein referred to as "the Equipment"), for the purpose of operating the MRF as hereinbefore described; provided, that the COUNTY shall have and retain the right to use the Equipment or any unit or units thereof in the event that, pursuant to Section 2.12 of the Resource Recovery Agreement BCH is unable to process or otherwise dispose of solid waste delivered to the MRF as required by such section and such unprocessed solid waste must be disposed of directly into the Landfill in accordance with local public health and other solid waste management laws and regulations. Such use of equipment and disposal of unprocessed solid waste by the County shall be accomplished pursuant to the MRF Operation Plan to which the parties have agreed as a part of the Resource Recovery Agreement.

1.5 The COUNTY further grants and assigns unto BCH the right and franchise to dispose of certain solid waste received and processed by the MRF or otherwise produced in performance of the Resource Recovery Agreement in the Landfill; such right shall be

subject to conditions and limitations in said Resource Recovery Agreement.

## ARTICLE II. PERIOD TERM OF AGREEMENT

2.1 Term The term of this Agreement shall commence upon signature by the parties, and shall remain in effect for seven (7) years from the execution date of this Agreement, provided that said term shall be automatically converted, without any requirement for further agreement on the part of the parties, to an initial term of twenty one (21) years from the Commencement Date, with an option on the part of BCH to extend such converted initial term hereof in accordance with the further provisions of Section 2.2, all upon the enactment of legislation by the General Assembly of North Carolina which will add the name of Cumberland County to the names of North Carolina counties set forth in North Carolina General Statutes, Section 153A-229.6, and thereby permit said County to enter into a contract for the disposal of solid waste for such converted initial term stated herein. The County further covenants and agrees to cause such legislation to be timely introduced before the 1992 session, and subsequent sessions if necessary, of the General Assembly and in good faith to exercise its best efforts to support and promote its enactment during such sessions. If such legislation is enacted, the County agrees thereafter, within ninety (90) days, to affirm the converted term hereof by ordinance or other appropriate County action.

OFFICE OF  
THE COUNTY ATTORNEY  
County of Cumberland  
P. O. Drawer 1829  
Fayetteville, N.C. 28302-9990

Section 2.2 CONTRACTOR shall possess the option to extend the converted term of this Agreement for an additional five (5)

years (subject to the enactment of the legislation referred to in the preceding section) at any time during the term hereof subject to the following conditions: (a) on the date of exercise of the option CONTRACTOR shall not be in default under this Agreement or the Resource Recovery Agreement; (b) such option must be exercised, if at all, not later than two (2) years before the expiration of the initial term of this Agreement. In the event CONTRACTOR exercises its option of extension as provided in this Paragraph, the rents and fees called for under Section 3.1 shall remain the same, but the Fixed Fee provided to be paid by the Counties under Sections 6.01 and 6.03 of the Resource Recovery Agreement shall no longer be payable by the Counties during such extended term of this Agreement.

#### ARTICLE III. FEES AND RENTS

Section 3.1. BCH shall pay a total combined franchise fee and rent in the amount of Three Hundred Twenty-eight Thousand, Two Hundred and Eighty-seven and No/100ths Dollars (\$328,287.00) per Contract Year as such term is defined in the Resource Recovery Agreement.

Section 3.2. The annual combined franchise fee and rent is payable each year in advance in one lump sum, the first such payment being due on the 15th day following the Commencement Date as such term is defined in the Resource Recovery Agreement. Subsequent installments shall be due on the 15th day of July of each Contract Year thereafter. If the first payment becomes due after the first day of a Contract Year or the Agreement terminates before the last day of a Contract Year, the amount of the combined

franchise fee and rent shall be prorated by comparing the number of days the Agreement is in effect during such Contract Year with total number of days in such Contract Year.

#### ARTICLE IV. USES UNDER THE FRANCHISE AND LEASE

Section 4.1. Uses of the Property and of the solid waste delivered thereto under the franchises and leases herein granted and assigned shall be limited to those uses that are permitted by the Resources Recovery Agreement and those otherwise described herein. For the purpose of interpreting this Section, the provisions of the Resources Recovery Agreement pertaining to uses of the Property thereunder are incorporated by this reference into this agreement as though fully set forth herein.

Section 4.2. During the period between the effective date of this Agreement and the Commencement Date, as such term is defined in the Resource Recovery Agreement, the uses of the Property and ancillary activity at the Landfill by the CONTRACTOR shall be limited to those uses and activity reasonably necessary to preparation of the Property for the commencement of operations pursuant to the Resource Recovery Agreement. During such period the COUNTY shall be permitted to use the Property and the Equipment for purposes of solid waste disposal into the Landfill in the guise and manner such disposal is currently being conducted pursuant to the County Solid Waste Management Ordinance and Landfill regulations promulgated thereunder. During such period the COUNTY and the CONTRACTOR shall coordinate their respective uses and activities hereunder so that each party will not unreasonably interfere with the uses and activities of the other.

ARTICLE V. PROPERTY RIGHTS, REMOVAL AND RESTORATION

Section 5.1. The parties hereby agree that any structures and other improvements constructed on the Property and permanently attached to the land shall be property of BCH during the term of this agreement, but shall become the property of the COUNTY upon termination of the franchises and leases granted hereunder, subject, however to any liens and encumbrances securing acquisitions and installation costs of improvements.

Section 5.2. The parties hereby further agree that all personal property of BCH placed on the Property and any structures and other improvements constructed or placed on the Property which are not permanently attached to the land shall be and remain property of BCH during the term of this agreement, provided that such property is further subject to provisions of the Resource Recovery Agreement pertaining to removal of BCH property and rights of the COUNTY to purchase such property. Upon written request by BCH, the COUNTY shall provide a waiver or estoppel certificate in a form satisfactory to BCH, acknowledging that such property is owned by BCH and is subject to the right of removal by BCH, in accordance with the Resource Recovery Agreement. Such provisions are incorporated by this reference into this Section as though fully set forth herein. BCH shall restore any damage to the property of the County caused by the removal of the BCH property.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF THE COUNTY

Section 6.1. The COUNTY represents and warrants that no agreement currently exists, either verbal or written, that grants or assigns any or all of the franchise rights; demises or leases

the leasehold interest hereinabove granted and leased to BCH to any party; or grants any other rights to any party with respect to the Property other than to BCH. This representation does not apply to the right of the public, or specified members thereof, under the County Solid Waste Management Ordinance, to access to the Property for solid waste disposal purposes.

Section 6.2 BCH and its employees, assigns, agents, and contractors shall have freedom of access to the Property and the MRF at all times. The County warrants that BCH will enjoy quiet possession of the property, limited only to the extent of the residual rights of the COUNTY hereunder to access to and use of the Property and Equipment in accordance with this Agreement and the Resource Recovery Agreement and to the extent of any requirement to exercise the police powers of the COUNTY to protect the public health, safety and welfare.

Section 6.3. The COUNTY shall have and retain the right to use and develop the Landfill excluding the Property without any restriction for other lawful purposes, provided that any such use or development shall not prevent or otherwise interfere with the construction, operation, maintenance, and accessibility of the Property or the MRF. The COUNTY shall inform BCH of any proposed changes in the current use and development of the Landfill, allow BCH access to plans for such changes, and elicit BCH assistance in design and engineering of such changes in order to prevent any such interference.

Section 6.4. The COUNTY hereby warrants that it has good and marketable title to the Property and warrants that it has the full

right and authority to grant to BCH the rights set forth in this Agreement. The enforceability of such warranty shall be a condition precedent to all obligations of BCH hereunder and the COUNTY agrees to defend the title and shall indemnify and hold BCH harmless from and against any loss, costs or expenses arising from any claims or actions brought by any third party asserting rights to the Property.

Section 6.5. The COUNTY acknowledges and represents that it is the "owner" and "operator" of the Ann Street Landfill pursuant to the permit issued by the State of North Carolina in accordance with Chapter 130A of the North Carolina General Statutes and regulations promulgated thereunder and the COUNTY represents and warrants that as "owner" and "operator" of the Landfill, the COUNTY will fully comply with all federal, state, or local environmental, landfill and solid waste management laws applicable to it as such a permittee. The parties understand and agree that the neither the Property nor the use of the Property contemplated in this Lease and Franchise Agreement or the Resource Recovery Agreement constitute, independently of the Ann Street Landfill, a "landfill" or the operation of a "landfill" as the word is defined in N.C.G.S., Section 130A-290(a)(16), and that BCH is not an "owner" or "operator" of a "landfill" as so defined. Notwithstanding the foregoing, the parties understand and agree that the MRF on the Property may be designated by the State of North Carolina as a "resource recovery" facility, as the term is defined in N.C.G.S., Section 130A-290(a)(29), or a solid waste management facility other than a "landfill", for which a permit

may be required, in which case the provisions of Article VII below apply.

Section 6.6 The COUNTY hereby warrants and represents that the present condition of the Property does not violate of any federal, state, or local environmental laws and that it does not contain toxic or hazardous material (as defined by state or federal law) and agrees to indemnify BCH, its successors, and assigns from any and all claims of every type and nature arising out of any actions brought against BCH or its successors and assigns as a result of the Property presently being in violation or alleged violation of any environmental law or regulation. The COUNTY further warrants that in compliance with responsibilities as owner and operator of the Landfill as set forth above, it shall prevent and remedy any environmental damage to the Property resulting from its operation of the Landfill.

Section 6.7. The COUNTY shall maintain fire and extended coverage insurance contracts insuring the Property and all structures thereon, including structures and other improvements permanently attached to the land which are added to the Property by the CONTRACTOR. The COUNTY shall also maintain contracts insuring the Equipment, the use of which has been granted to the CONTRACTOR, against fire and other casualty loss.

#### ARTICLE VII. REPRESENTATIONS AND COVENANTS OF BCH

Section 7.1. BCH shall, at its own expense, install and operate an MRF on the Property and for that purpose shall construct, acquire and otherwise provide such structures and real improvements other than those acquired under the lease and such

equipment, materials, supplies and other personal property necessary for such operation, all pursuant to the Resource Recovery Agreement to be entered into by and between BCH and the Counties of Bladen, Cumberland and Hoke.

Section 7.2. BCH will faithfully perform and execute its duties and obligations under the Resource Recovery Agreement as provided therein.

Section 7.3. BCH shall obtain from the appropriate governmental bodies all licenses, permits, approvals and authorizations which may be necessary for the installation, maintenance and operations of the MRF as and when required by the Resource Recovery Agreement and represents and warrants that it will fully comply with all federal, state or local environmental, landfill and solid waste management laws applicable to it as such a permittee.

Section 7.4. BCH shall not suffer or permit the Property or the Equipment to become subject to any lien or encumbrance securing any debt of any kind owed by BCH.

Section 7.5. BCH shall be responsible for maintaining in a good state of repair its facilities on the Property, to include the maintenance of equipment leased hereunder and roads on, to and from the Property used exclusively by BCH. The COUNTY shall maintain any roads used by the COUNTY and other parties including BCH.

Section 7.6 BCH shall be responsible for the security and control of the Property, and shall provide a suitable fence around the facilities located thereon.

Section 7.7. BCH will bear the cost to the COUNTY of fire and other casualty loss insurance covering structures and other improvements permanently attached to the Property which have been added to the Property by the CONTRACTOR and the cost of the same insurance covering the Equipment the use of which has been granted to the CONTRACTOR herein. BCH shall bear the cost of any contracts insuring equipment and other personal property, including structures and improvements not permanently attached to the land, against fire and other casualty loss.

#### ARTICLE VIII. DEFAULT

Section 8.1. If there is a default in a provision of the Resource Recovery Agreement, or if there is a default in any provision of this Agreement other than the payment of the fees and rents called for under Section 3.1, the default provisions of the Resource Recovery Agreement shall govern what constitutes a default, what periods of grace and cure exist, by when and by whom cure may be effected, and the remedies agreed upon in the event of default. For such purpose the default and remedy provisions of the Resource Recovery Agreement are incorporated into this Section as though fully set forth herein. A default under the Resource Recovery Agreement is a default under this Agreement and termination of the Resource Recovery Agreement shall constitute a termination of this Agreement.

Section 8.2. In the event that BCH fails to pay the fees and rents called for by Section 3.1, the COUNTY shall notify the breaching party and any credit institution named under the Resource Recovery Agreement, in writing, of the non-receipt of

payment. BCH, if in default, and such credit institution shall have fifteen (15) days after receipt of such notice in which to make full payment. Full payment shall consist of payment of all arrearages, plus interest of 1.0% per month, or a prorated portion thereof, after the due date. Should BCH fail to make full payment within said fifteen (15) days, the non-breaching party shall have the right to terminate this Agreement. Alternatively, the County may draw upon the letter of credit or operations performance bond posted under the provisions of Section 7.02(c)(ii) of the Resource Recovery Agreement to effect full payment. BCH shall cause such letter of credit to be issued in such a manner that shall permit the County to effect payment in such manner.

#### ARTICLE IX. ASSIGNMENT

Section 9.1 The provisions of this Agreement shall inure to the benefit of and be binding upon all parties hereto and their successors, assigns, and/or delegates. BCH shall have the right, to pledge or encumber this Agreement for financing purposes or, subject to approval of the other party, which shall not be unreasonably withheld, to sell, assign, or otherwise transfer any interest herein, and upon any such sale, assignment, or transfer, the transferring party shall be relieved of any further obligation under this Agreement as to the interest sold, assigned, or transferred.

#### ARTICLE X. NOTICES

Section 10.1. Any notice to be given under the Agreement shall be in writing and shall be deemed to have been properly given and received (i) when delivered in person to the authorized

representative of the party to whom the notice is addressed, or (ii) on the date received as indicated on the return receipt when sent by prepaid certified or registered mail, return receipt requested, to the party to be notified at the address indicated as follows:

To BCH: BCH Energy Corp.  
Attn: President  
11757 Katy Freeway  
Suite 820  
Houston, TX 77079

To COUNTY: Director  
Solid Waste Management Department  
COUNTY of Cumberland  
698 Ann Street  
Fayetteville, NC 28301

Section 10.2. Either party may change such representative or address by written notice to the other party.

#### ARTICLE XI. PROPERTY TAXES

Section 11.1 BCH shall, during the term of this Agreement, pay all ad valorem property taxes that may be levied lawfully upon or assessed against personal property that it owns and is located within the taxing jurisdiction of the COUNTY or municipality in the COUNTY pursuant to this Agreement, including its leasehold and franchise interests in real and personal property hereunder.

#### ARTICLE XII. TERMINATION

Section 12.1. The parties agree that this agreement and the grants and assignments of franchises and leases and the terms

thereof set forth above are and shall be subject to the conditions subsequent that (i) if the Resource Recovery Agreement, as it may be from time to time amended, has not been executed by April 30, 1992, this Agreement and the grants and assignments of franchises and leases made hereunder shall terminate as of midnight on that date, or (ii) if the Resource Recovery Agreement is terminated for any cause or reason following execution, this Agreement and the grants and assignments of franchises and leases made hereunder shall terminate effective the day and year of the termination of the Resource Recovery Agreement.

Section 12.2. In the event of termination of this Agreement and the grants and assignments of franchises and leases made herein, the provisions of the Resource Recovery Agreement pertaining to termination thereunder and to the rights and obligations of the parties upon such termination shall apply to terminations of this Agreement and the rights and obligations of the parties thereafter. For purposes of this Section said provisions of the Resource Recovery Agreement are incorporated by such reference into this Agreement as though fully set forth herein.

#### ARTICLE XIII. GENERAL PROVISIONS

13.1. This Agreement sets forth all understandings between the parties respecting the subject matter of this contract and all prior agreements, understandings, and representations, whether written or oral, representing this subject matter, are merged into and superseded by this written Agreement.

13.2. No modification or amendment of the Agreement shall be binding on the other party unless in writing and executed by both parties.

13.3. The waiver of either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar thereto.

13.4. This Agreement is not intended to be recorded, but the parties shall contemporaneously execute and acknowledge a memorandum of this Agreement for recording purposes in the form acceptable under North Carolina law to the COUNTY Register of Deeds.

13.5. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

13.6. Nothing in this Agreement shall be construed as creating a joint enterprise between the parties hereto nor as being for the benefit of third parties for any purpose, including, without limitation, establishment of any type of duty, standard of care, or liability with respect to third parties.

13.7. It is not the intention of the parties entering into this Agreement to create, nor shall this Agreement be construed as creating any partnership, joint venture, or agency relationship between the COUNTY and BCH.

13.8. This Agreement shall be binding on the successors, and assigns of the parties hereto with reference to the subject matter of this Agreement.

13.9. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

13.10. This Agreement shall be governed by the law of the State of North Carolina.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this instrument in duplicate originals the day and year first above written.

ATTEST:

BY: Mary Ann Dollister  
MARY ANN DOLLISTER  
Deputy Clerk

COUNTY OF CUMBERLAND  
North Carolina

BY: Billy R. King  
Billy R. King, Chairman  
Board of COUNTY Commissioners

ATTEST:

BY: Alan McQuill  
Secretary

BCH ENERGY CORP.,  
A North Carolina Corporation

BY: George Amstutz  
President

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, ELAINE J. BOWSER, a Notary Public in and for the State of North Carolina, certify that MARY ANN DOLLISTER personally appeared before me this day and acknowledged that she is the Deputy Clerk to the Board of COUNTY Commissioners; that BILLY R. KING is the Chairman of said Board; that the seal affixed to the foregoing Instrument is the Corporate Seal of said Board; that said Instrument was signed and sealed by said Chairman and attested by the said Board, all by its authority duly granted; and that said MARY ANN DOLLISTER acknowledged the said Instrument to be the act and deed of the said Board.

WITNESS my hand and seal this the \_\_\_\_\_ day of \_\_\_\_\_, 1992.

\_\_\_\_\_  
Notary Public

My Commission Expires: April 28, 1993

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

THIS IS TO CERTIFY that on the \_\_\_\_ day of \_\_\_\_\_, 1991, before me personally came \_\_\_\_\_, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Secretary and that \_\_\_\_\_ is the President of BCH ENERGY CORP., the corporation described herein and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by said President, and that said President and Secretary subscribed their names thereto and said common seal was affixed, all by order of the Board of Directors of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal, this the \_\_\_ day of \_\_\_\_\_, 1992.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

OFFICE OF  
THE COUNTY ATTORNEY  
County of Cumberland  
P. O. Drawer 1829  
Fayetteville, N.C. 28302-9990

LANDFILL LEASE AND FRANCHISE AGREEMENT

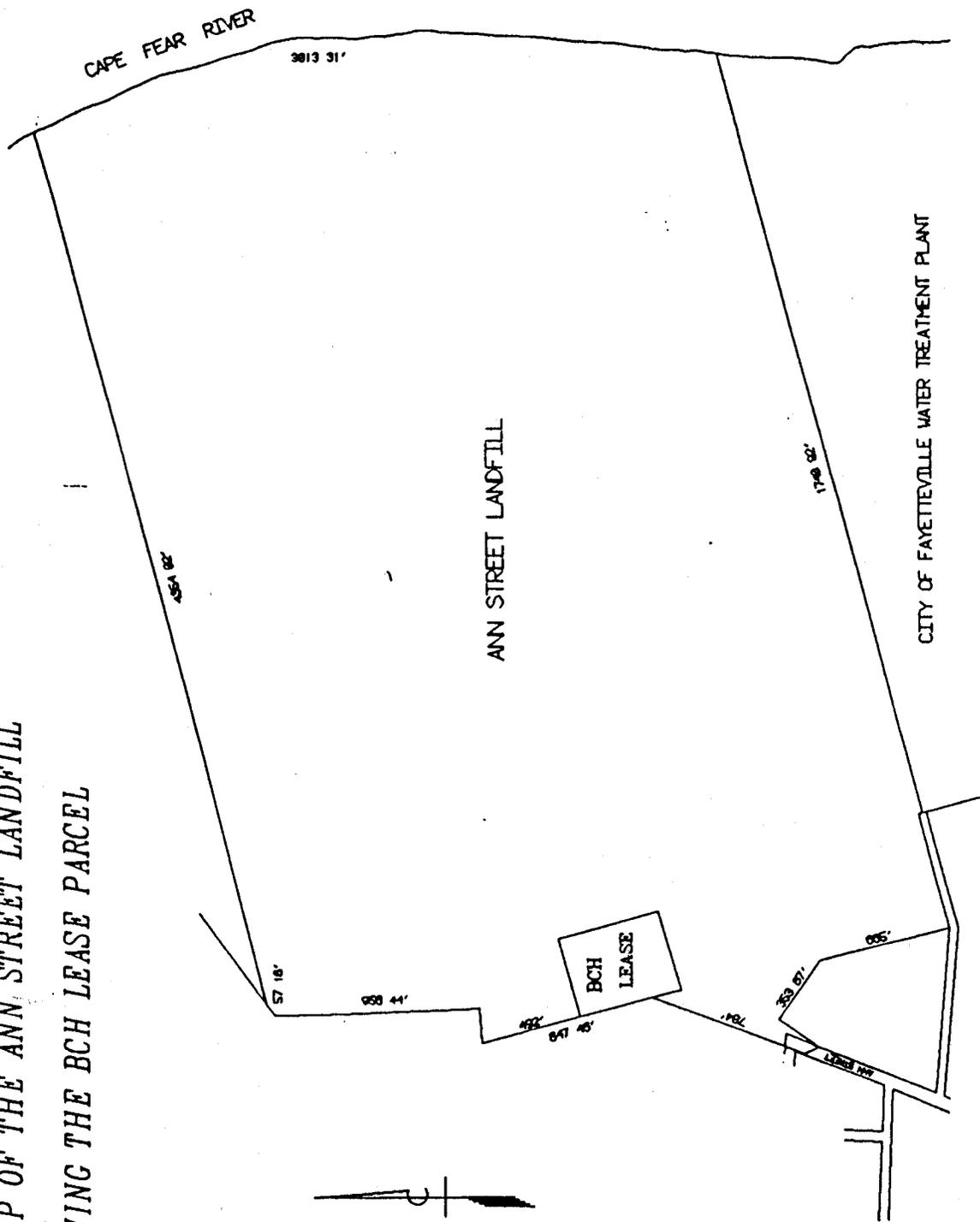
"EXHIBIT A"

Description of Ann Street Landfill:

Being all that property more particularly described in deeds recorded in book 2756, page 207 and book 2756, page 187, and a condemnation judgment recorded in book 2779, page 132, Cumberland County Registry, consisting of 354.5 acres more or less. Cumberland County PIN 0447-18-5746.

See map attached.

SITE MAP OF THE ANN STREET LANDFILL  
SHOWING THE BCH LEASE PARCEL



LANDFILL LEASE AND FRANCHISE AGREEMENT

"EXHIBIT B"

Description of Property leased to BCH Energy Corp.:

Beginning at a property corner of the Ann Street Landfill, said point being the intersection of the western property lines more particularly described as the metes and bounds calls "North 27 deg 58 min East, 784.19 feet" and "North 06 deg 30 min West, 847.46 feet" set forth in deeds recorded in Book 2756, Page 187, and Book 2756, Page 207, of the Cumberland County Registry; thence running South 06 deg 30 min East a distance of 145 feet to a point; thence running parallel to and through a concrete retaining wall south of the Baling Facility tipping floor, North 83 deg 30 min East a distance of 400 feet to a point; thence running parallel and through the back of concrete curb and gutter to the east of the Baling Facility, North 06 deg 30 min West a distance of 500 feet to a point; thence running South 83 deg 30 min West a distance of 400 feet to a point; thence running with the Ann Street Landfill property line, South 06 deg 30min East a distance of 355 feet to the point of beginning, containing 4.59 acres more or less.

See plat attached.



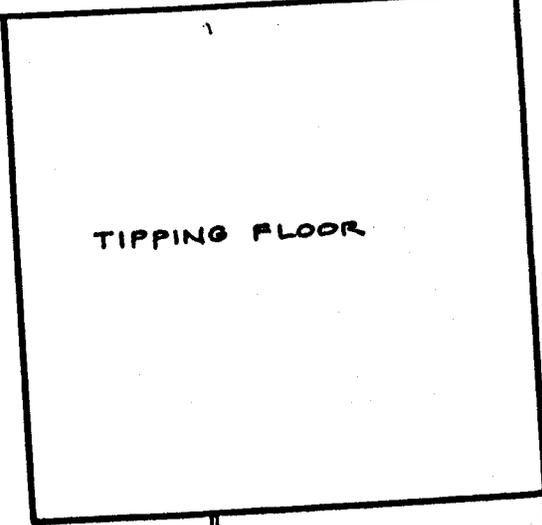
S 83° 30' 00" W 400'

R

S 06° 30' 00" E 355'



CONC. PVMT.



CONC. PVMT.

POINT OF BEGINNING

S 06° 30' 00" E  
145'

CONC. PVMT.

CONC. RETAINING WALL

N 83° 30' 00" E 400'

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LANDFILL LEASE AND FRANCHISE AGREEMENT

"EXHIBIT C"

BALING AND OTHER EQUIPMENT, PARTS AND SUPPLIES

1. FIXED EQUIPMENT Consists of two (2) Mosley SW-400 Balers (identified as JENNY and BULLWINKLE respectfully), two (2) Mayfran Steel Belt Conveyors, Model 9250T. Each Baler requires a power unit (pumps) an electric control unit and computer controls. Two (2) Air Compressors are utilized with dust collectors, one for each baler. One (1) small compressor (fixed) is utilized for the fire system in the building.

2. AUXILIARY OPERATING EQUIPMENT Consists of two (2) Dressor 520-B Wheel Loaders, one (1) Dressor 515-B Wheel Loader, one (1) Case 1845 Uniloader, and one (1) Power Boss Sweeper.

3. MAINTENANCE PARTS AND OPERATING MATERIALS Consists of building and equipment spare parts stocks and miscellaneous repair and operating materials, i.e. cleaning and rebuild materials, wire strapping for baling waste, etc.