Gaither, Allen

From: Stephen King [SKing@haywoodnc.net]
Sent: Tuesday, September 06, 2011 5:21 PM
To: Gaither, Allen; Keller, Andrea
Cc: Marty Stamey; David Francis
Subject: Haywood County Landfill Management

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http://haywoodnc.net/downloads/commissioners/2011%20Agendas,%20Minutes/September/090611/A11-090611.pdf

Allen,
Above is a link to the agreement that was presented between Santek and Haywood County for the Management of WOLF. I would like to set up an appointment with you to discuss a Permit Modification to our Operational Plan to include Santek. I would also like to discuss a Substantial Amendment to the permit to change our service area. Please let me know when would be a good time for us to meet.
Thank you,
Stephen King
Haywood County
Solid Waste
828-627-8042

Pursuant to North Carolina General Statutes Chapter 132, Public Records, this electronic mail message and any attachments hereto, as well as any electronic mail message(s) sent in response to it, may be considered public record and as such are subject to request and review by anyone at any time.

SANITARY LANDFILL OPERATION AGREEMENT

BETWEEN

HAYWOOD COUNTY, NORTH CAROLINA AND

SANTEK ENVIRONMENTAL OF NORTH CAROLINA, LLC

AS OF SEPTEMBER 6, 2011

SANITARY LANDFILL OPERATION AGREEMENT

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SANITARY LANDFILL OPERATION AGREEMENT

THIS SANITARY LANDFILL OPERATION AGREEMENT (this "Agreement") is entered as of the ___ day of _____ by and between **HAYWOOD COUNTY, NORTH CAROLINA** (the "County"), a governmental entity created under the laws of the State of North Carolina and the entity having legal jurisdiction over the ownership and management of the White Oak Landfill, and **SANTEK ENVIRONMENTAL OF NORTH CAROLINA, LLC**, a limited liability company organized under the laws of the State of North Carolina ("Contractor"), and authorized and licensed to do business in the State of North Carolina.

RECITALS:

WHEREAS, the County owns and operates a sanitary landfill known as the White Oak Landfill, as more specifically defined hereafter;

WHEREAS, the County is empowered to perform solid waste management tasks in Haywood County, North Carolina, and in connection therewith;

WHEREAS, the County desires that the White Oak Landfill be operated by a private professional entity with expertise in the management of municipal sanitary landfills, and the Contractor has such expertise and is willing to manage the White Oak Landfill for the County pursuant to the terms and conditions of this Agreement,

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing premises and the other mutual covenants between the parties, the receipt and sufficiency are hereby acknowledged, the parties hereto do hereby agree as follows:

I. DEFINITIONS

1.1 **Definitions.** The following terms shall be defined in the following manner throughout this Agreement.

Adjusted Gross Revenues. This term shall mean revenues that are received by Contractor from the billing of tipping fees for the disposal of Solid Waste delivered to the Landfill and the Drop-off Center at the Landfill; provided, however, that Adjusted Gross Revenues shall not include such revenues comprised of, arising or related to: (i) Haywood County Generated Solid Waste, (ii) amounts that are refunded, reimbursed, credited and/or adjusted, and (iii) federal, state and/or local taxes, fees (including without limitation availability fees), assessments and other charges measured by such revenues, or otherwise related to or based upon such revenues or the operation of the Landfill.

Agreement Year. A successive twelve-month period commencing for the first year on the first day of the month of the Commencement Date and thereafter annually on the anniversary of the Commencement Date.

Closed C&D Landfill. The closed C&D Landfill of approximately four acres in size on the Landfill premises more particularly described as Exhibit A attached hereto.

Closure. All actions required in order to close a municipal solid waste landfill pursuant to the Solid Waste Laws. Interim Closure actions do not constitute Closure, but are interim measures required by the Solid Waste Laws to be taken prior to final Closure, such as interim cover.

Commencement Date. The date which is the earlier of the first day Contractor has possession and assumes operation of the Landfill, or such other date as may be agreed upon in writing between the parties hereto. The Contractor shall document the Commencement Date in a letter to the County.

Contracted out-of-County Waste. Waste generated outside of the County that was disposed of in the Landfill pursuant to a written contract between Contractor and a generator that has a term of at least 36 months.

Construction and Demolition (C&D) Waste. Non-Hazardous Solid Waste resulting from construction, remodeling, repair and demolition of structure and from road building. C&D wastes include but are not limited to bricks, concrete and other masonry materials, soil, rock and lumber, road spoils, rebar, paving material, or other materials as defined by Solid Waste Laws.

Drop-off Center. Facilities, including one located on the premises of the Landfill that are operated by or on behalf of the County that accepts Solid Waste and Recyclables. Such Solid Waste is Haywood County Generated Waste and is then transferred from such facility directly to the Landfill for disposal, and Recyclables are transferred to Materials Recovery Facility (MRF), located at 278 Recycle Road, Clyde NC.

EPA. The United States Environmental Protection Agency (EPA), which is the administrative agency for the United States of America that issues various environmental permits, including but not limited to Solid Waste Permits, and oversees the enforcement of the environmental laws of the United States.

Economic Frustration. A determination by Contractor made in good faith that it is economically unreasonable to continue operation of the Landfill, which is supported by facts submitted to the County in writing demonstrating that the revenues from operations by Contractor under this Agreement are insufficient to cover the costs to perform Contractor's obligations under this Agreement.

Economic Frustration cannot be triggered by the Contractor before a payment to the County in an amount equivalent to the Performance Security in effect at the time of the Economic Frustration, and Contractor's obligations with respect to Closure and Post-Closure after triggering an event of Economic Frustration are set forth in Section 8.4 of this Agreement.

Environmental Impairment. A determination that is made by the Contractor within the first twelve (12) months following the Commencement Date that pre-existing environmental conditions exist on, under or about the Landfill, which Contractor did and could not have determined during its due diligence, such that in the Contractor's reasonable discretion, the continued operation of the Landfill will subject the contractor to environmental liability, which is supported by facts submitted to the County in writing.

Equipment. The equipment or other personal property owned by the County that is leased by Contractor from the County to be used in the operation of the Landfill, as described more specifically on Exhibit B attached hereto.

Expanded Management Commencement Date. The date following the Commencement Date, which is the earlier to occur of the date (i) the County receives written notice from the Contractor acknowledging the Expanded Management Commencement Date has occurred, or (ii) on which the average daily volume (over any 90-day period beginning after the Commencement Date) of Solid Waste disposed of in the Landfill from the aggregate of (A) Haywood County Generated Waste and (B) Contracted Out-of-County Waste equals or exceeds 396 tons. In the event that the circumstance in clause (ii) above is the first to occur, the Contractor shall notify the County in writing of the achievement of the Expanded Management Commencement Date.

Haywood County Generated Solid Waste. Solid Waste generated within the County, including without limitation waste sent to the Landfill from any Drop-off Center, and waste generated by the municipalities and incorporated areas.

Hauler. Any individual, firm, entity or other person who transports or otherwise performs hauling services of Solid Waste to the Landfill.

Hazardous Waste. Any waste meeting the classification "Hazardous Waste" as defined in Resource Conservation and Recovery Act (RCRA), as amended, or applicable federal or state regulations promulgated pursuant to RCRA as they may be modified or amended from time to time, or other subsequent regulation that replaces or supersedes such rules, including NC GS 130A-290(a)(8), as amended from time to time.

Infectious Waste. Those wastes which may cause disease or reasonably be suspected of harboring or transmitting pathogenic organisms; included are wastes

resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves as defined by Solid Waste Laws, as amended from time to time.

Land Clearing and Inert Debris Area (LCID). An area as described and limited by the Landfill Permit that accommodates a grinding area for land-clearing and inert debris.

Landfill. The sanitary landfill known as White Oak Landfill located on approximately 296 acres of land at 3898 Fines Creek Road, Waynesville, NC 28785, which as of the Commencement Date is operated under the Landfill Permit, including without limitation all landfill cells and/or phases built or to be built within the permitted footprint of the Landfill Permit and as more particularly described in Exhibit C attached hereto, and as any and all may be expanded from time to time hereafter. The Landfill does include the grinding and drop off area and compost activities addressed in the Landfill Permit and the Closed C&D Landfill.

Landfill Permit. The solid waste landfill permit issued by North Carolina Department of Environment and Natural Resources, permit number 44-07, related to the Landfill, which as of the Commencement Date permits approximately 60.4 acres to be developed for the disposal of waste, together with any and all expansions, replacements, supplements, modifications, renewals or amendments of any of the foregoing. This includes any and all related permits needed to operate said landfill, including but not limited to the water quality and air quality permits.

Leachate. A liquid that has passed through or emerged from Solid Waste and contains soluble, suspended, or miscible materials leached from such waste.

Leachate Costs. Costs arising from Leachate generated at the Landfill that are incurred for treatment, pre-treatment, transportation, and disposal, including pumping, handling and other disposal costs; provided that Leachate Costs do not include remediation and or response costs required in response to the presence of a hazardous waste constituent.

Materials Recovery Facility (MRF). Haywood County's existing MRF which is located on 278 Recycle Road, Clyde, NC 28721, which handles Recyclables delivered to the Landfill and/or Drop-off Center, and is and will continue to remain under the control and operation, and the financial obligation, of the County.

Monthly Fuel Surcharge. A monthly amount, if any, which equals the additional fuel costs incurred by Contractor above the monthly fuel costs based on the Fuel Cost Basis. The Fuel Cost Basis equals $3.01. The Monthly Fuel Surcharge is calculated by (i) taking the percentage increase, if any, in the East Coast DOE [Department of Energy] off-road fuel surcharge (see No. 2 Distillate Prices by Sales Type), as determined on the first (1st) Friday of each month, above the Fuel Cost Basis, and (ii) multiplying such percentage increase by $10,000. For example, if in a month during the contract the East Coast DOE off-road fuel surcharge is $3.40, then the percentage increase would be 13% (301/340=1.13), and the Monthly Fuel Surcharge for that month would equal $1300 (.13 multiplied by $10,000). Contractor shall invoice the County for the Monthly Fuel Surcharge in arrears for each month by the 15th of the following month.

NCDENR. The North Carolina Department of Environment and Natural Resources (NCDENR), an agency of the State of North Carolina, or any entity that replaces or succeeds it, which is designated to oversee the environmental activities of North Carolina, which includes but is not limited to, enforcing, regulating and permitting of Solid Waste activities.

Performance Security. This term shall identify the security provided and maintained by Contractor pursuant to Section 12.6 hereof for performance of its obligations under this Agreement unless funded otherwise by mutual agreement of the parties. This security may be provided by Contractor in the form of a surety bond, security fund established for the benefit of the County, or other similar security instrument; provided, that whatever type of security that is chosen from time to time by Contractor must be reasonably acceptable in form to the County; and if a bond, or other third-party instrument, then such instrument shall be issued by a bank or financial institution or surety having, to the extent available, a credit rating for its long term debt of at least an A or equivalent thereof from a nationally recognized credit rating agency, and delivered to the County on the Commencement Date. However, in no event shall such credit rating be less than an A-. If in the form of a Performance Bond, it shall be executed by Contractor and a corporate bonding company licensed to transact business in the State of North Carolina and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular No. 570. If at any time a surety on any such bond is declared bankrupt or looses its rights to do business in the State of North Carolina or is removed from the list of surety companies accepted on federal bonds, Contractor shall, within thirty (30) days of actual knowledge, notify the County and substitute an acceptable security instrument in such form and signed by such other surety as may be reasonably satisfactory to the County. For the purposes of this Agreement, the Contractor has agreed in Section 12.6 hereof to provide Performance Security during the term of this Agreement.

Permit Work Product. Hard copy and, when reasonably available, in digital format, of any and all documentation on or relating to the Landfill Permit and all other permits related to the Landfill, including without limitation all applications, reports, memoranda, documents, materials, instruments, plans, drawings, sketches, notes, data, design information, correspondence, and all other documented data, and other materials, and drafts of any of the foregoing.

Post-Closure Care. The taking of those actions after Closure of a landfill or a landfill property that is necessary to meet the applicable post-closure care requirements of the Solid Waste Laws. Interim post-closure care actions do not constitute Post-Closure Care, but are interim measures required by the Solid Waste Laws to be taken prior to final Closure. Furthermore, any response actions in excess of normal post-closure care requirements under the Solid Waste Laws are not included in Post-Closure Care, including without limitation, remedial actions of a nature similar to superfund response actions or RCRA corrective actions.

Process Waste. Solid Waste or other waste that is generated by, produced by or results from an industrial, manufacturing or commercial processing, operation or activity.

Recyclables. Materials which may be recovered, recycled or reused and are not discarded or disposed of in the Landfill as defined by RCRA and Solid Waste Laws.

Refuse. All Non-hazardous Solid Waste originating at residences and commercial establishments, including industrial, institutional, commercial, municipal and medical sites, which is not Process Waste, including without limitation, wastes such as discarded materials from dwelling places, households, apartment houses, stores, office buildings, restaurants, hotels, and institutions, including garbage, paper, cardboard, wood, cans, glass, ashes and boxes, cuttings from trees, lawns and gardens, septic tank pumping and dried digested sludge grit. The term "Refuse" as used herein does not include Hazardous Waste or Infectious Waste, including, but not limited to acids, explosives, radioactive materials, toxic industrial wastes; nor shall it include any materials that are, or in the future may be, prohibited from dumping by the regulations of the State of North Carolina, or by any other public agency, or by operation of law.

Roads.

Access Road - A paved all-weather road located outside the Landfill property, which terminates at the gate to the Landfill.

Haul Road - A paved or unpaved road in the Landfill that is provided to allow users of the Landfill to operate vehicles from the gate of the landfill to the tipping area at the active face of the Landfill.

Service Road - All roads in the Landfill other than Haul Roads.

Solid Waste. Any Garbage, Refuse, Process Waste, including without limitation Recyclables when they become discarded, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011). This term includes Special Waste and other materials approved by NCDENR for disposal at the Landfill, but this term expressly excludes Hazardous Waste and Infectious Waste.

Solid Waste Laws. Those state laws and regulations, both as may be amended from time to time, which regulate the operation of and set forth the compliance requirements for a sanitary landfill, as defined in North Carolina General Statutes 130A-290(a)(31).

Special Waste. Those wastes that are considered "special waste" pursuant to the Solid Waste Laws, as amended from time to time.

State Regulatory Agencies. The State of North Carolina agencies that have the responsibility of regulating the operation and maintenance of a sanitary landfill, including without limitation, NCDENR.

Unacceptable Waste. All Solid Waste which is Hazardous, Infectious (or otherwise not included in Garbage, Refuse, and C&D Waste) and any other waste expressly excluded by the Landfill Permit, including without limitations the banned items listed on Exhibit D hereto (unless the Solid Waste Laws remove the ban).

Work. Contractor's work obligations during the term of this Agreement, in conformance with the terms of Sections 3.1 and 3.2 hereof, and as more specifically described hereinafter, which consist of the following:

Prior to the Expanded Management Commencement Date, Work shall include:

(a) Manage and operate the Landfill and the Drop-off Center at the Landfill; provided, that Contractor shall not manage, operate and/or maintain the MRF;

(b) Operate and maintain equipment as necessary to perform the Work described in clauses (a) - (d) above;

(c) Provide and train personnel as necessary to perform the Work described in clauses (a) - (d) above;

(d) Furnish all supplies, materials, and equipment necessary to perform the Work described in clauses (a) - (d) above;

(e) Pay the reasonable expenses of all utilities needed to perform the Work;

(f) Undertake good faith efforts to develop markets for Solid Waste for disposal at the Landfill and complete a permit modification to increase the service area.

Following the Expanded Management Commencement Date, Work shall include:

(a) Manage, operate and maintain the Landfill and the Drop-off Center at the Landfill; provided, that the Contractor shall not manage, operate and/or maintain MRF;

(b) Design, construct and finance the operation of the Landfill;

(c) Conduct at its cost the Closure of the Landfill upon end of its operational life and interim Post-Closure Care required during the term of this Agreement, and at its option either conduct or provide for the costs of Post-Closure Care after Closure;

(d) Operate and maintain equipment as necessary to perform the Work described in clauses (a) - (d) above;

(e) Provide and train personnel as necessary to perform the Work described in clauses (a) - (d) above;

(f) Furnish all supplies, materials, and equipment necessary to perform the Work described in clauses (a) - (d) above;

(g) Pay the reasonable expenses of all utilities needed to perform the Work;

(h) Conduct all billings and collection of revenue for the disposal of waste at the Landfill that is sent to the Landfill for disposal on or after the Expanded Management Commencement Date (as the County conducts these duties for all waste disposal at the Landfill prior to the Expanded Management Commencement Date).

(i) Undertake good faith efforts to develop markets for Solid Waste for disposal at the Landfill.

II. WARRANTIES, REPRESENTATIONS AND COVENANTS

2.1 **Warranties, Representations and Covenants of the County.** County hereby warrants, represents and covenants that, as of the date of the execution of this Agreement:

(a) County is duly authorized and empowered to enter into and fully perform this Agreement according to its terms, and any and all prior agreements regarding the operation and/or management of the Landfill have lawfully and rightfully expired or terminated; and

(b) There is no known decree, judgment, or administrative order of any kind threatened or in existence enjoining or restraining the County from taking any action required under this Agreement; and

(c) The County has obtained all necessary land use and environmental approvals for the operation of the Landfill and shall continue to use best efforts to assist Contractor with any and all renewals, amendments and/or modifications of the Landfill Permit, other permits, access rights, approvals, consents, and rights-of-way from federal, State and local authorities, to enable the Contractor, on behalf of the County, to perform work under the Landfill Permit consistent with the scope of this Agreement, and pursuant to applicable law, regulation and the terms of this Agreement; and

(d) The County has disclosed to Contractor, to the best of its knowledge after reasonable inquiry, its knowledge of all the facts, information and data necessary and pertinent to the Landfill, and all of the representations and warranties contained in this Agreement and any written statements and exhibits prepared in connection with this Agreement, are true and correct as of the date of the execution hereof, to the best of this County's knowledge; and

(e) The County owns the Equipment and has the right, power and authority to lease the Equipment to the Contractor pursuant to the terms of this Agreement; and

(f) The County has produced to the Contractor all of the Permit Work Product as of the Commencement Date, and shall from time to time during the term of this Agreement immediately produce any and all additional Permit Work Product to the Contractor as soon as any such work product comes into the County's possession and/or control; and

(g) The County meets, as of the execution of this Agreement, and will continue to meet during the term of this Agreement, the criteria set forth in North Carolina law to allow the County to demonstrate financial assurance for Closure and Post-Closure Care as required in Section 8.4 of this Agreement; and

(h) All the representations and warranties contained in this Agreement and any written statements and exhibits prepared in connection with this Agreement, are true and correct as of the date of the execution hereof.

2.2 **Warranties, Representations and Covenants of Contractor.** Contractor hereby warrants, represents, and covenants that, as of the date of the execution of this Agreement:

(a) All of the Contractor's representations and warranties contained in this Agreement and any written statements and exhibits prepared in connection with this Agreement, are true and correct as of the date of execution hereof, and

(b) The Contractor is a duly authorized limited liability company organized under the laws of North Carolina; and

(c) Contractor has the requisite expertise and financial ability to fully, completely, and satisfactorily perform its obligations hereunder in full compliance with applicable law; and

(d) To the best of its knowledge, the Contractor has disclosed to County its knowledge of all facts, information and data pertinent to its capacity to perform its duty and obligations under this Agreement.

III. SCOPE OF WORK

3.1 **Intent.** In order to assure viability for the Landfill and assure disposal capacity for Haywood County Generated Solid Waste for a period of 10 years following the end of the Initial Term of this Agreement, the Contractor intends to develop markets for Solid Waste to increase the anticipated volume to be received at the Landfill. The Contractor shall perform all Work hereunder in compliance with all applicable federal, State, county, and municipal laws, ordinances and regulations. Prior to the Expanded Management Commencement Date, the County and Contractor shall work together in pursuing an expansion of the service area under the Landfill Permit. After the Expanded Management Commencement Date, it shall be the financial responsibility of the Contractor to maintain any and all existing permits and/or licenses, and timely pay any and all fees required by said permits and/or licenses, and utilize its reasonable efforts to obtain in the County's

name any and all new permits and/or licenses and/or renewals, expansions or modifications of any existing permits and/or licenses as may be required in order to operate said Landfill as anticipated by this Agreement. It is further intended by the County that the Contractor shall have maximum flexibility, except as expressly limited by the terms of this Agreement, in performing the Landfill operations and other Solid Waste management operations contemplated by this Agreement, which includes, without limitation, performance of the Work, the ability to accept Solid Waste and other wastes allowed by NCDENR and/or Environmental Protection Agency (EPA), for disposal at the Landfill, and the discretion to make and implement at Contractor's expense design improvements and changes to expand and/or enhance the capacity of the Landfill, including vertical and horizontal expansions of the Landfill cells. For purposes of this section and throughout this Agreement, expansions contemplated in the scope of work shall all be only those vertical and/or lateral expansions which may be achieved and permitted on the property described in Exhibit C.

3.2 **Contractor's Solid Waste Responsibilities.** As more specifically set forth in this Agreement, Contractor agrees to conduct the Work in material accordance with the Solid Waste Laws, and in accordance with applicable standards of care, and to receive process, dispose of and otherwise handle Solid Waste, and to receive other wastes allowed by NCDENR and/or EPA.

3.3 **County's Responsibilities.**

(a) As more specifically set forth in this Agreement, the County shall work in good faith with Contractor to facilitate Contractor's performance of its obligations hereunder, including without limitation the efforts to enhance the efficiency and capacity of the Landfill, and the intent of the parties to modify the service area of the Landfill. The County agrees that Contractor shall be entitled to use any and all facilities and resources on the Landfill in order for Contractor to perform its contractual obligation hereunder. To fulfill such responsibilities, the County agrees to exercise any and all lawful means available to it to fulfill such responsibilities, including without limitation, the obtaining approval for modification of the permitted service area, and the obtaining of all necessary permits, licenses and approvals, or any amendments, modifications, or supplements to existing permits, licenses and approvals, the causing of any and all needed utilities to be available for the operation and/or development of the Landfill. To further fulfill such responsibilities, the County agrees (subject to the limitations set forth in Section 3.1 of this Agreement) to exercise any and all lawful means available to it for the acquisition, at Contractor's expense, of interests in real estate, such as rights of ingress or egress, rights of way, easements, access to utilities, and soil for cover material; provided, under no circumstances shall the County be obligated to use its powers of eminent domain to accomplish these

responsibilities. All real property interests purchased pursuant to this Section shall be titled to the County.

The County retains responsibility for performance of all obligations to NCDENR and/or EPA pursuant to orders, demands, or other enforcement actions arising from or related to circumstances existing at the Landfill prior to the Commencement Date

(b) The County shall lease to the Contractor all Equipment for a period of five (5) years and for an annual rental payment in an aggregate amount equal to $25,000.00 for a total cumulative rent for the entire 5-year rental period of $125,000.00, with the initial payment due on the Commencement Date and a commensurate annual payment to be due from Contractor to County on the anniversary date of the Commencement Date for the next four (4) years, such Equipment to be used in such manner as Contractor shall deem appropriate in its sole discretion, so long as compliant with lease agreements. The transfer of Equipment may be further evidenced by written lease consistent with this Agreement, at the request of either party hereto. Contractor shall carry out a reasonable equipment maintenance program to keep the Equipment in as good an operating condition as is practicable, ordinary wear and tear excepted; provided, that in the event that any piece of Equipment is determined by Contractor in its sole discretion to no longer be serviceable, Contractor may replace such Equipment with its own equipment. All replaced Equipment shall be returned to the County and deleted from the lease/Agreement, whichever is applicable. The replacement equipment shall remain the property of the Contractor. At the end of the five (5) year term, Contractor has the option to (i) purchase some or all of the Equipment at the then fair market value, (ii) renew the lease/Agreement term of the Equipment for a second term of 5 years on the same terms, or (iii) return the Equipment to the County. Provided, further, that the Equipment shall remain at the Landfill during the entirety of the lease/Agreement term, except to the extent temporary relocation is necessary to repair or maintain such Equipment. All equipment and supplies shall be inventoried and mutually agreed upon by both parties prior to the Commencement Date.

3.4 **Designated Representatives.** The County designates the County Manager for Haywood County as the initial Contract Administrator ("Contract Administrator"), who shall serve as the County's primary liaison with the Contractor. The Contract Administrator shall be required to devote only the time and effort to the administration of this Agreement that the County shall require. Contractor also shall designate in writing an individual (the "Liaison Representative") to serve as its primary liaison with the Contract Administrator. The Liaison Representative shall administer this Agreement on behalf of Contractor. Instructions and/or representations from the Contract Administrator and the Liaison Representative shall be deemed to be instructions and/or

representations from the County and the Contractor, respectively; provided, that the Contract Administrator may on a case-by-case basis expressly condition his or her actions hereunder with respect to any particular issue upon obtaining the prior authorization and approval from the full County Board of Commissioners.

3.5 **Agreement Period.** This Agreement shall be effective upon execution by the parties hereto and the Contractor shall commence the Work on or before the Commencement Date. The initial term of this Agreement shall continue for a period of twenty (20) years subsequent to the Commencement Date ("Initial Term"); provided that the County may extend the Agreement from time to time for one or more additional periods not to exceed in the aggregate ten (10) years after the Initial Term. In the event that either party wants to extend the term of this Agreement beyond the Initial Term (or if already extended beyond such period, then current term), such party shall provide written notice to the other party at least ninety (90) days prior to end of the Initial Term or the then current term of this Agreement. Notwithstanding the foregoing, upon the occurrence of the Expanded Management Commencement Date, the term of this Agreement shall be automatically extended to continue until the completion of the operational life (to the full extent permitted under the Landfill Permit, as expanded from time to time). Provided, however, that the term of this Agreement shall end immediately upon ninety (90) days notice (the "End of Term Notice") from Contractor to the County in the event that either of the following events occur: (a) the Landfill Permit, or any other permit required by NCDENR, EPA or other federal or State agency, enabling disposal of waste at the Landfill does not remain current and in effect throughout such term, unless the permit effectiveness is interrupted as the direct result of Contractor's negligent actions; provided, however, both the County and the Contractor shall use all commercially practicable efforts to maintain any and all such permits current and effective to enable performance of obligations of this Agreement; (b) Economic Frustration; or (c) Environmental Impairment. In the event that the term of this Agreement ends because of Economic Frustration, the Performance Security shall be surrendered to the County as liquidated damages.

3.6 **Disposal of Haywood County Generated Solid Waste.** The Contractor agrees to provide the County with the ability to dispose of Haywood County Generated Solid Waste as provided by the terms of this Agreement for the longer of (a) the normal operational life of the Landfill during the term of this Agreement or (b) a period of thirty (30) years after the Commencement Date, and assure performance of such ability to the County in the form of a Performance Security as defined herein. This Section survives the termination of this Agreement; provided, that compliance with this covenant shall be determined as of the date of termination and shall be based on a mutually agreed upon third party's engineering calculation of available airspace remaining in the Landfill using the average daily volume of 396 tons.

3.7 **County Landfill Inspector.** The County, at its expense, shall be entitled to hire or engage and maintain an inspector who shall be a qualified employee or a qualified, independent, third party for the purpose of monitoring the operation of the Landfill and the Drop-off Center at the Landfill and the Contractor's obligations with respect to the Work. The County Landfill Inspector shall have the right to be present at such facilities at any and all times during normal business hours or after hours, with notice to Contractor and shall have access to all areas of such facilities other than those areas of the facilities where the Contractor's proprietary, attorney-client privileged or attorney work product and/or nonpublic records and information are stored or maintained, provided that the County Landfill Inspector shall not disrupt or interfere with operations at such facilities and shall comply with Contractor's safety and health requirements and procedures and other operational procedures.

IV. PERMITTING AND LICENSING

4.1 **Permits.** Prior to the Expanded Management Commencement Date, the County, with Contractor's assistance, shall remain responsible, for procuring and renewing of all permits, orders and licenses required for the Landfill to be fully operational, provided that the Contractor shall assist the County in pursuing an expansion of the service area under the Landfill Permit. After the Expanded Management Commencement Date, the Contractor shall be responsible, at its expense, for the procurement, modification and expansion of all permits, orders and licenses required for the Landfill to be fully operational after the Commencement Date. All permits, orders and licenses applicable to the Landfill have been and shall be issued in the name of the County. The Contractor shall materially comply with the provisions of all such permits, orders and licenses. The County shall supply to the Contractor a copy of all Permit Work Product, permits, orders and licenses and NCDENR waste discharge requirements for the Landfill, including without limitation any and all documents, instruments and other writings concerning and/or related to the County's efforts to maintain and/or modify the Landfill Permit. The County agrees to support and assist the Contractor in obtaining any and all permits or permit amendments, expansions and/or modifications necessary hereunder in a manner consistent with its obligations under Section 3.1 of this Agreement. The County will timely cooperate with Contractor in the scheduling of and having appropriate Contractor and County representatives available for required, necessary and/or desirable public hearings and meetings in connection with the approval of the amendments and expansions of or modifications to the Landfill Permit.

4.2 **Title to Landfills and Permits.** At all times hereunder, title to the Landfill, the Landfill Permit and all other applicable permits, orders and licenses shall remain in the name of the County.

V. OPERATION, ADMINISTRATION AND MAINTENANCE OF LANDFILL

Except as otherwise provided herein, the Contractor shall, at its expense, conduct the Work, including, but not limited to, the specific items listed below:

5.1 **Annual Reports.** The Contractor shall make annual and monthly reports to the Contract Administrator within sixty (60) days after the end of each Agreement Year regarding the operation of the Landfill and the activities contemplated hereunder, and each yearly report shall include without limitation the applicable tonnage limitation for the upcoming year, as determined by Section 5.13 of this Agreement. Such written reports shall include monthly reports for the operations of the Landfill detailing the amount of in-county and out-of-county waste received at the Landfill. Contractor shall furnish to the County within ten (10) days of reporting same to NCDENR and/or EPA, as required by law, or within ten (10) days of receiving any notice, report, order or other filing from NCDENR, EPA, or other agency, a copy of all test and monitoring results, regulatory inspection reports, volume reports, regulatory correspondence, as-built drawings and other documents pertinent to monitoring, inspecting, permit or order compliance or other activity which may be required by this Agreement or by law for the Landfill.

5.2 **Hours of Operation.**

(a) Haulers and the public shall only deliver Solid Waste to the Landfill according to the days and hours set forth by law and in all relevant permits. Subject to the foregoing, the Landfill and the Drop-off Center at the Landfill will be open for business, at a minimum, Monday through Friday from 7:30 a.m. to 3:30 p.m., Eastern Time and on Saturday from 7:30 a.m. to noon, Eastern Time. The hours of operation of the Landfill may be modified only by mutual agreement of the Parties to this Contract.

(b) Notwithstanding the foregoing, the Landfill and Drop-off Center at the Landfill shall be closed on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and any other holiday recognized by Haywood County Solid Waste Department. However, Contractor must give fifteen (15) days prior notice to the public of its intent to close on a designated holiday by placing a newspaper notice in a local publication of general circulation and/or one or more locally oriented websites. The Contractor shall obtain prior written approval from the Contract Administrator if the Contractor reduces the operating hours below the above-stated minimum for any unexpected and unavoidable reason. The Contractor shall be at the Landfill and Drop-off Center at the Landfill operating during scheduled hours and such additional time as necessary to fulfill the requirements of the Agreement.

5.3 **Personnel.** Contractor shall offer each non-exempt (hourly) employee of the County who is currently employed on a non-salary basis by the County at the Landfill (and who passes customary drug screening tests) an equivalent employment position with Contractor at the same hourly rate of pay currently received, with such benefits as the Contractor generally provides to similarly situated non-exempt employees, which as of the Commencement Date includes health and dental insurance, 401(k) program, vacation, holidays, PTO and longevity pay, all as more specifically provided in the Contractor's employment benefits policies, as may be modified from time to time Said offer shall be for employment either at the Landfill or at a facility within reasonable commuting distance from Haywood County. Provided that each non-exempt employee of the County who accepts the offer of employment shall be given seniority with the Contractor consistent with the seniority said employee had at the County for all purposes, including the purposes of calculating vacation time, retirement benefits and all other employee benefits. Contractor also agrees to provide such employees work uniforms (including a voucher equal to $100 for boots) at no cost to the employees and eligibility for Contractor's insurance coverage (per its term) effective as of midnight on the Commencement Date of this Agreement. Finally, travel time incurred by said employees in traveling between the Landfill and other facilities of Contractor shall be treated by Contractor as normal work time with respect to compensation.

The Contractor shall assign personnel to perform operations at the Landfill on such days and during such hours that Solid Waste is being delivered and disposed of on the premises, as may be reasonably required to assure a smooth and efficient operation. Contractor shall assign adequate qualified personnel to operate equipment and direct traffic to the proper delivery and/or disposal area. An authorized representative of the Contractor shall be present at the Landfill at all times that any operations are being conducted thereon. The Contractor shall file with the Contract Administrator the names, addresses and telephone numbers of authorized representatives who can be contacted at any time. These authorized representatives must maintain offices within the County and be fully authorized and equipped to respond to reasonable requests of the Contract Administrator. If the Contract Administrator finds it necessary to give directions to assure compliance with the provisions of this Agreement, the Contract Administrator shall give such directions in writing to the authorized representative of the Contractor.

An authorized representative of the Contractor shall be responsible for handling complaints from customers of the Landfill, and the Contractor shall post information at the Landfill about how to lodge a complaint. The Contractor shall notify the County of complaints received at the Landfill on a monthly basis.

5.4 **Landfill Monitoring.** During the term of this Agreement and to the full extent required by then current law, Contractor shall conduct all Environmental

Monitoring in accordance with permitted documents to include but not limited to National Pollutant Discharge Elimination System, groundwater, surface water, air and landfill gas monitoring, sampling and quality control at the Landfill, and shall provide the same information, at its expense, to NCDENR and the County with regard to all testing required by Solid Waste Laws and the Landfill Permit.

5.5 **Methane and Leachate Collection.** The Contractor shall provide a landfill gas-monitoring program for methane migration as required by applicable Solid Waste Laws and the Landfill Permit. The Contractor shall maintain an on-site Leachate collection system for the removal of Leachate from the Landfill. Prior to the Expanded Management Commencement Date, the Contractor shall be responsible for the actual cost incurred for Leachate treatment, pre-treatment, transportation, and disposal, including pumping, handling and other disposal costs (collectively, "Leachate Costs") for the Leachate up to 3 million gallons per Agreement Year. Any Agreement Year prior to the Expanded Management Commencement Date when the volume of Leachate transported off the Landfill exceeds 3 million gallons, Contractor and County shall each be responsible for 50% of the Leachate Costs. After the Expanded Management Commencement Date, as long as the Leachate Disposal Agreement attached hereto as Exhibit E is fully executed and delivered by all parties thereto (the "Leachate Disposal Agreement"), is a valid and binding agreement upon all parties thereto, and such agreement remains in full force and effect, the Contractor shall be responsible for all Leachate Costs. In all other circumstances, at any time after the Expanded Management Commencement Date that either (a) the actual haul distance for Leachate disposal and/or treatment exceeds the distance between the Landfill and the Town of Maggie Valley's wastewater treatment facility, or (b) the actual Leachate Costs per gallon for Leachate exceeds the then current Leachate Costs of $.03 per gallon, then the Contractor, at its option, may adjust the Host Fees due under Section 10.6 of this Agreement. Such adjustment of the Host Fees shall reflect a credit for Contractor equal to the pro rata portion of the Leachate Costs relating to Haywood County Generated Solid Waste delivered and accepted for disposal at the Landfill versus total volume of Solid Waste delivered and accepted for disposal at the Landfill. Throughout the term of the Agreement, the County shall use its reasonable efforts to maintain the existence and effectiveness of Leachate Disposal Agreement and, in the event such agreement is no longer effective, secure for Contractor another cost effective means of Leachate treatment, pretreatment and disposal.

5.6 **Use of Landfill and Facility Accessibility.** Subject to clause (c) below, the County hereby grants to the Contractor the exclusive right of control of the Landfill and all improvements thereon for the purposes of controlling access and providing security for the Landfill, and Contractor may utilize at no charge any and all of the natural resources of the Landfill property in order to perform its obligations hereunder, including without limitation the maintenance of all equipment (including without limitation, the Equipment) and the use of soils for

cover and rock for stone. All permanent real property improvements to the Landfill made by the Contractor during the term of this Agreement shall remain on the property and become the property of the County after the term of this Agreement.

(b) Upon written notice to the Contract Administrator, Contractor shall have the authority to and in its discretion may deny access to the Landfill to the entity or person designated in such notice, whether for non-payment of charges, attempts to deliver Unacceptable Waste, or any other valid reason. Contractor shall ensure that the Landfill is accessible during normal operation hours to County, State and federal officials for any purpose, including inspection, official tours or any other reasonable activity as determined by the Contract Administrator to be appropriate. The Contractor promptly shall notify the Contract Administrator of any inspections by EPA and/or State Regulatory Agencies.

(c) The County shall have the reasonable right to inspect the Contractor's Work, as long as such inspections do not unreasonably interfere with performance of the Work. The inspection of the Work shall not relieve the Contractor of any obligation to fulfill the Agreement as prescribed hereunder or operate as a waiver of any right of the County under this Agreement. Contractor shall meet with County Manager or a designee at least quarterly to discuss all issues and review Contractor's actions at the Landfill and under the Agreement.

5.7 **Stormwater, Litter, Dust and Noise Control.** The Contractor shall use reasonable efforts to maintain and keep free of litter and other foreign material related to hauling of waste to the Landfill, within all areas in the Landfill and on all Access Roads, including specifically that Contractor shall use such reasonable efforts to maintain and keep free of litter and other foreign material the Access Road between the Landfill and Interstate (.8 miles). Contractor shall, in accordance with industry standards, be responsible for maintaining the Landfill in a reasonably clean, vector-free, and sanitary condition (normal wear and tear excepted), and to the extent commercially practicable, control run-on and run-off of storm water such that there is no adverse effect on neighboring property. The Contractor shall furnish, maintain and use such dust/noise/storm water control equipment and/or measures as may be reasonably necessary to protect employees, the public and adjacent properties and to minimize the creation of dust at the Landfill.

5.8 **Wind Screens (Temporary).** The Contractor shall furnish portable windscreens, which Contractor shall use during periods of high wind to contain blowing waste, such as paper and other light debris. Suitable equipment and adequate personnel shall be provided to collect windblown waste, as needed, to keep the screens cleared of such waste and to relocate screens cleared of such waste.

5.9 **Placement and Compaction of Solid Waste.** Unless otherwise required by the State Regulatory Agencies and confirmed by the Contract Administrator, all Solid Waste delivered to the disposal area shall be placed, compacted, and covered daily by the Contractor. Contractor reserves the right to use synthetic or any other acceptable alternative daily cover, per NCDENR regulations and approvals.

5.10 **C&D Waste.** C&D Waste may be placed in the Landfill. However, the County must keep the Closed C&D Landfill closed in accordance with the closure plan approved by NCDENR.

5.11 **Unacceptable Waste Procedures.** The Contractor shall exert all reasonable efforts to enforce applicable laws, regulations and orders regarding the unlawful disposal of Unacceptable Wastes at the Landfill, and to prevent deposits of Unacceptable Waste at the Landfill, and to prevent the burying of any Unacceptable Waste at the Landfill other than those permitted by NCDENR and permitted by this Agreement. It is recognized that some Unacceptable Wastes, including Hazardous and Infectious Waste, may occasionally be unloaded at the Landfill by waste generators and Haulers. The Contractor shall train appropriate employees to recognize such Unacceptable Waste and shall use diligent efforts to observe procedures set forth below:

(a) The active operation of unloading, compacting and covering Solid Waste shall be suspended in the immediate vicinity of the identified Unacceptable Waste. Safety measures shall be instituted as necessary.

(b) If the vehicle that transported the Unacceptable Waste can be identified and is still at the Landfill, the Contractor's employees shall record the license number and any other identifying signs or features of the vehicle and shall request the operator of the vehicle to remain at the Landfill, and shall immediately notify NCDENR and the other agencies and officials as required by law. The Contractor's employees shall endeavor to get the operator of the vehicle that delivered the Unacceptable Waste to take appropriate actions to properly dispose of the Unacceptable Waste. Regardless of Contractor's success in having the offending party remove the Unacceptable Waste, Contractor shall make formal demand upon the responsible party that it remove the Unacceptable Waste or any portion remaining from the Landfill in accordance with procedures approved by NCDENR.

(c) If no responsible party can be identified or if a responsible party refuses to remove and properly dispose of Unacceptable Waste delivered to or deposited at the Landfill, the Contractor shall remove the Unacceptable Waste from the Landfill cells within forty-eight (48) hours of the discovery of said Unacceptable Waste, and thereafter promptly and

properly dispose of the Unacceptable Waste at its costs with full right of recovery against the responsible party. The County hereby assigns to Contractor any and all of its cost recovery rights under CERCLA, 42 U.S.C. § 9601 *et seq.*, against such responsible party when Contractor removes and disposes of such Unacceptable Waste.

(d) The Contractor shall generate a written report on each discovery of Unacceptable Waste and notify Contract Administrator by telephone as soon as practicable and in any event within seventy-two (72) hours of discovery. The report shall include documentation of interviews with all of the Contractor's employees and others who witnessed the illegal dumping and/or discovered the Unacceptable Waste. The written report shall include descriptions of the suspected vehicle(s), operators of the vehicles, and other information. The report shall indicate the procedures taken by the Contractor to remedy the problem. The Contractor agrees to cooperate and make employees available for any investigation, civil litigation or criminal proceedings regarding the delivery of Unacceptable Waste. Contractor shall comply with NCDENR regulations, if applicable to the handling of Unacceptable Waste.

5.12 **Load Checking.** Contractor shall operate a program of spot-checking loads of Solid Waste delivered to the Landfill in compliance with all applicable laws, regulations ordinances, and applicable permit requirements.

5.13 **Tonnage Limitation.** Except with the approval of the County, Contractor agrees not to accept waste at the Landfill at a volume in excess of an average of 400 tons per day; such limitation shall be computed as average tons per day for any consecutive 30-day period during the term of this Agreement. If a generator of Haywood County Generated Solid Waste seeks to dispose of waste in the Landfill, but the tonnage limitation prevents the Contractor from accepting such waste, the Contractor shall request from the County an increase in the tonnage limitation in order to accommodate the generator's waste stream. In addition, in the event that the tonnage limitation set forth herein limits access of any Haywood County Generated Solid Waste to the Landfill, the Contractor shall take reasonable steps to adjust out of County waste volume to accommodate such in-County waste streams. It is the responsibility of the Contractor to pursue all aspects of Landfill Permit modifications to achieve the modified waste limits and modified service area, including but not limited to the cost of the modification to the Landfill Permit.

As stated above, it is the goal of Contractor and the County to achieve a limited expansion of the service area and daily tonnage capacity and use of the Landfill, in an effort to achieve economies of scale whereby the operation of the Landfill effectively funds the compliant operation, maintenance, financial assurance, Closure and Post-Closure Care requirements set forth in Solid Waste Laws and

provides assurance of compliant solid waste management capacity for Haywood County for a minimum period of 10 years past the Initial Term for a total of 30 years capacity assurance. To that end, Contractor will immediately apply for a service area permit modification of the Landfill Permit in preparation for the ability to serve any county within the State of North Carolina.

At no time will any out of state waste be accepted into the Landfill.

5.14 **Mulch Stockpile.** The Contractor agrees to operate the existing LCID (Land Clearing and Inert Debris) area and maintain a grinding area for land-clearing inert debris in accord with the Landfill Permit and to maintain a mulch stockpile in a manner similar to the mulch stockpile previously maintained by the County on the Landfill site, and to allow citizens access to the stockpile for disposal of approved material for grinding during normal business hours of the Landfill. Contractor shall collect and receive as compensation for its services under this Section 5.14 all revenue generated from the operation of the LCID, including without limitation the current $55.00 per ton tipping fee for handling of land clearing and/or inert debris.

5.15 **Capital Improvements of Landfill Facilities**. Contractor agrees to design, engineer, permit and construct the following capital improvements at the Landfill, in accord with applicable law and the terms of this Agreement:

1. Public Drop-off Center at the Landfill – including area for source separation and storage of materials to be taken to County's MRF.
2. Improvements to the Haul Road.
3. New truck scales (with a 70 foot length) and scales house (60 feet by 12 feet, with restrooms and meeting facilities).
4. A wheel wash facility, provided that the County and Contractor shall share equally the capital cost and the total capital cost shall not exceed $75,000.00 each.
5. After the Expanded Management Commencement Date, any future Landfill expansions, either lateral or vertical

The Contractor will notify the County of its plans and designs for the foregoing prior to construction.

VI. ACCESS AND SAFETY

6.1 **Haul Roads and Service Roads.** It shall be the Contractor's responsibility to provide and maintain, at its expense, all Haul Roads and Service Roads within the Landfill required for the purposes of transporting Solid Waste to the actual point of disposal, or transporting earth materials for fill within the property, and such other roads within the Landfill as may be required for its convenience. Haul

Roads shall be well maintained and shall provide safe all-weather access at all times.

6.2 **Access Roads.** As of the date of this Agreement, the Contractor acknowledges that access to the Landfill is adequate to perform its obligations under this Agreement. The County shall ensure that the Contractor will continue to have adequate Access Road(s) for ingress to and egress from the Landfill, and upon request of the Contractor, shall use its powers to secure and preserve adequate means of ingress and egress. The Contractor shall not be responsible for the maintenance of roads outside the Landfill property.

6.3 **Fire Protection.** The Contractor shall have the right to use and maintain existing water lines and/or water storage at the Landfill as may be required for fire fighting. Contractor shall be responsible for payment of all utilities on the Landfill (if operating the same) which are incidental to operation so that they are available at all times in case of emergency. In the event of a fire, the Contractor shall immediately notify the local fire fighting agency, and shall diligently work to extinguish the fire. The contractor shall report fires to NCDENR as prescribed by their guidelines.

6.4 **Access to Tipping Area.** The Contractor shall take reasonable steps to ensure that vehicles may have clear and safe access to the tipping areas at all times.

6.5 **Signs and Traffic.** The Contractor shall provide and maintain all existing and future signs displaying rules applicable to the Landfill in a clean and readable condition. The Contractor shall provide and maintain signs for the convenience of the vehicles using the Landfill and for safe and efficient traffic flow to and from the tipping areas.

6.6 **Gate Control.** Contractor shall provide a gate control program at the Landfill as required by applicable State regulations.

VII. DEVELOPMENT OF LANDFILL FACILITY

7.1 **Contractor's Responsibility.** After the Expanded Management Commencement Date, the Contractor shall, at its cost, develop the Landfill in accordance with the Landfill Permit and the terms of this Agreement, and obtain all licenses, permits and approvals necessary to construct and operate the Landfill on behalf of the County. The Landfill, as it is developed, will continue to be owned by the County, and all permits for this facility shall be issued in the name of the County.

7.2 **County's Responsibility.** The County shall, as needed, assist the Contractor in obtaining any and all permits, licenses and approvals necessary (or essential to the economic viability of the Landfill) to construct and operate the Landfill in accordance with the Landfill Permit and the terms of this Agreement.

7.3 **Contractor's Rights**. The Contractor may design, construct, operate and develop the Landfill in its discretion using the property within the Landfill boundaries, as long as Contractor complies with all Solid Waste Laws and the Landfill Permit, allowing the County a right to review and approval prior to permit application and construction. The Contractor may contract for and accept any and all Solid Waste for disposal at the Landfill as expanded; provided it complies with all laws, rules and regulations governing the Landfill and the terms of this Agreement.

7.4 **Development of Potential Energy Rights**. The County expressly reserves the rights to develop, produce, use and/or sell energy or rights related thereto from gases generated by, from or related to the Landfill ("Reserved Rights") during the term of this Agreement; provided, that any exploitation of any such Reserved Rights by the County shall not (i) be performed in a manner that will unreasonably interfere with Contractor's Work; (ii) increase the costs of performance of Contractor's obligations under this Agreement without adequate additional compensation; or (iii) otherwise impede Contractor's ability to perform its obligations and rights hereunder. The Contractor shall have no entitlement to the same and is prohibited from exploiting any such Reserved Rights without the prior written consent of the County; except to the extent necessary for Contractor to comply with applicable law. Contractor has a right of first refusal to participate in each and every Reserved Rights operation by the County to any other contractor or service provider; and, if such right of first refusal is exercised, the Contractor shall be entitled to be the exclusive provider of such services to the County, provided Contractor agrees to meet the revenue terms of any other proposals received by the County. Except as may be mutually agreed to between the parties in a separate written agreement, the Contractor shall have no obligation to perform services or incur costs related to or arising from the Reserved Rights, and any such activities by or on behalf of the County shall not unreasonably interfere with Contractor's operations at the Landfill.

VIII. CLOSURE OF LANDFILL

8.1 **Final Cleanup.** Upon completion of this Agreement or Closure of the Landfill, the Contractor shall remove from, and dispose of, all surplus and discarded materials, rubbish, temporary structures, construction equipment and debris which may have accumulated at or upon the Landfill during the term of this Agreement.

8.2 **Closure/Post-Closure Care of Landfill**.

(a) Prior to the Expanded Management Commencement Date, the Contractor shall only be responsible for compliance with any interim Closure and interim Post-Closure Care requirements prior to final Closure for the Landfill arising during the term of this Agreement. Assuming proper closure of all cells in the Landfill filled prior to the Commencement Date,

the Contractor shall also be responsible for compliance with Post-Closure Care for all closed portions of the Landfill and the Closed Landfill during the term of this Agreement.

(b) Upon the occurrence and after the Expanded Management Commencement Date, subject to the terms of this Agreement, the Contractor shall be responsible for final Closure of the Landfill upon termination of this Agreement due to the natural expiration of the operational life of the Landfill (i.e., utilization of all permitted airspace). During the term of this Agreement, Contractor shall perform any interim Post-Closure Care required prior to final Closure. Upon such termination and final Closure of the Landfill, Contractor shall have the option upon written notice to the County to either (i) perform Post-Closure Care subject to the terms of this Agreement until completed, as confirmed by NCDENR, and/or (ii) remit to the County an amount equal to the present value of the remaining Post-Closure Care costs of the Landfill, as reasonably projected at the time of such election after final Closure; provided, that in no event shall the amount be less than the then current cost estimate for Post-closure Care that NCDENR has either agreed with or accepted. At any time upon election by Contractor of the option to remit the costs of Post-Closure Care to the County, Contractor's obligations for Post-Closure Care shall immediately terminate upon County's receipt for the Contractor's remittance of such costs.

(c) Notwithstanding the foregoing, in no event shall Contractor be responsible for (i) any obligations under, arising with respect to, or related to the issues addressed by either (A) orders issued by NCDENR concerning circumstances existing at the Landfill prior to the Commencement Date, or (B) closure and post-closure obligations related to or arising from the Closed C&D Landfill; (ii) the investigation, corrective action and/or remediation of any condition existing at the Landfill prior to the Commencement Date under the Solid Waste Laws; and/or (iii) the investigation, corrective action and/or remediation under any federal, state or local law other than the Solid Waste Laws, including without limitation the federal and State "superfund," hazardous waste, air pollution or water pollution laws related to circumstances existing at the Landfill prior to the Commencement Date.

8.3 **Financial Assurances.** The County acknowledges that the County must comply with an annual financial assurance requirement with the State of North Carolina for Landfill Closure and Post-Closure Care under the Solid Waste Laws, and that the County may satisfy this requirement by a "contract of obligation" or similar State governmental mechanism. The County will continue to meet such annual financial assurance obligations with the State. Notwithstanding anything herein to the contrary, Contractor is under no obligation to directly meet the financial assurance regulations promulgated under the Solid Waste Laws.

In consideration of County's continuing compliance with the foregoing obligation, and only after the Expanded Management Commencement Date, the Contractor will provide the County with financial assurance (in addition to the Performance Security) for the performance by the Contractor of its obligations under Subsection 8.2(b) hereinabove ("Closure Assurance"); the amount of such Closure Assurance shall be calculated to cover the costs of Closure and Post-Closure Care for the Landfill, as determined in Contractor's reasonable determination; provided, that in no event shall the amount of the Closure Assurance be less than the then current cost estimate for Closure and Post-closure Care that NCDENR has either agreed with or accepted. Subject to terms set forth below, Contractor shall be entitled to select the methods and/or instruments of Closure Assurance to be provided to the County to satisfy such financial assurance obligations, and Contractor may from time to time change and/or substitute such methods and/or instruments; provided, that the form of any financial assurance instrument(s) provided from time to time by the Contractor to the County pursuant to this section shall materially meet the standards required of Contractor's Performance Security; and to the extent commercially practicable, the Closure Assurance shall be of a type of financial mechanism acceptable to the County (e.g., Surety Bond, Insurance, Trust Fund) and in a form that is generally consistent with the financial assurance mechanisms that are provided for under the potentially applicable Solid Waste Laws and its financial assurance regulations administered by NCDENR. The Closure Assurance shall be reviewed annually by Contractor and County, and if necessary adjusted in amount to continue to be calculated to cover the costs of Closure and Post-Closure Care for the Landfill in light of the then current amount of waste disposed of in the Landfill and the estimated costs of Closure and Post-Closure Care, as determined in Contractor's reasonable determination; provided, that in no event shall the amount of the Closure Assurance in any annual period be less than a then current cost estimate for Closure and Post-closure Care that NCDENR has either agreed with or accepted. After the Contractor has performed all of its Closure obligations for the Landfill under this Agreement and at its option, performed Post-Closure Care or paid the County for Post-Closure Care as set forth in Subsection 8.2(b) hereinabove, Contractor may immediately cancel or terminate any and all Closure Assurance provided to the County by Contractor. Notwithstanding anything contained in this Agreement to the contrary, Contractor's obligations with respect to Closure and Post-Closure Care are subject to and contingent upon Contractor's access to any funds escrowed, secured or otherwise reserved by or on behalf of the Contractor for the Closure and/or Post-Closure Care of the Landfill pursuant to or in lieu of this Section that is available to or for the benefit of the County.

8.4 **Early Termination of Agreement**. Upon the occurrence and after the Expanded Management Commencement Date, subject to the terms of this Agreement, in the event that this Agreement is terminated during and/or prior to the end of the

Landfill's operational life, then if the termination is due to (a) an Event of Default under Section 9.1, (b) the early termination of this Agreement at the Contractor's initiative (c) the expiration of the permits and/or licenses for necessary Landfill operation (unless caused by the County's negligence or intentional misconduct), or (d) Economic Frustration, then the parties by mutual agreement will determine that Contractor shall either (i) conduct Closure on the Landfill promptly upon termination, or (ii) pay to the County an amount equal to the costs for Closure (as reflected in the Closure Assurance) for the portion of the Landfill that has accepted waste prior to termination of this Agreement. However, if such termination is due to Contractor's rights in response to a material default by County under Section 9.3, or the early termination of this Agreement at the County's initiative, then the County shall immediately assume full responsibility for Closure and Post-Closure Care for the Landfill, and the Contractor shall be relieved of any further responsibility for Closure of the Landfill; provided that Closure Assurance shall remain in effect pursuant to this Agreement until final adjudication of any related claims.

IX. DEFAULT

9.1 **Event of Default.** An "Event of Default" occurs when Contractor fails to materially perform any of its obligations under this Agreement including, but not limited to the following, and Contractor fails to cure its default within thirty (30) days after its receipt of written notification by the County; provided, that if such default cannot be cured within thirty (30) days, an event of default does not occur if the Contractor promptly initiates steps to cure the default and diligently pursues correcting the default until cure is achieved, which cure must be achieved as soon as practicable, but in no event more than 180 days after the County's written notice of default:

(a) Failure of Contractor to materially comply with any and all Landfill Permit conditions;

(b) Willful or grossly negligent failure of Contractor to prevent dumping of unacceptable or non-permitted wastes at the Landfill and does not correct the situation pursuant to Section 5.10 hereof;

(c) Failure of Contractor to substantially perform any aspect of the Work; or

(d) Failure to materially comply with any federal, State or local law, rule, resolution or ordinance applicable to the Work;

(e) Failure of Contractor to comply with the financial obligations of this Agreement, including, but not limited to, providing adequate Performance Surety, failure to comply with the obligations to pay required proceeds to the County, or accurately collect, record and report all weights and

proceeds from the scales, failure to effectively supervise gate fees collections, and, following the Expanded Management Commencement Date, failure to pay the Host Fees, failure to provide adequate Closure Assurance or perform Closure or Post-Closure Care obligations as set forth in this Agreement.

Upon the occurrence of an Event of Default, the County shall have the right to terminate this Agreement by written notice to Contractor at any time prior to cure or County's waiver of said Event of Default, and in the alternative has the right, but not the obligation, to cure said Event of Default, at Contractor's expense; provided, that in the event that the County exercises its right to terminate this Agreement hereinabove, the parties shall in good faith agree to a reasonable transition period for Contractor to cease or transfer operations to the County in an orderly manner and exit the Landfill and the Convenience Centers.

9.2 **County's Rights.** In the event the County terminates this Agreement in whole or in part as provided in Section 9.1, the County shall have the right to assume control over the operations on the Landfill, and to operate the Landfill for the remainder of the term of this Agreement and the Performance Security and, after the Expanded Management Commencement Date, Closure Assurance shall be forfeited to the County to the extent of actual damages. If County terminates under this provision and it is later adjudicated that Contractor was not in breach of this Agreement, then County's termination shall constitute a breach by County.

9.3 **Contractor's Rights.** After receipt by County of thirty (30) days written notice of a material breach of this Agreement by the County that significantly impacts the Contractor and subject to Sections 8.3 and 8.4 of this Agreement, Contractor shall have the right to terminate this Agreement at any time prior to cure or Contractor's waiver of said breach. If Contractor terminates under this provision and it is later adjudicated that County was not in breach of this Agreement, then Contractor's termination shall constitute a breach by Contractor.

9.4 **General.** The rights and remedies of the parties provided in this Paragraph IX shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Failure on the part of either party to exercise any right or remedy granted to it hereunder for previous default shall not constitute a waiver to exercise any right or remedy granted to it hereunder in the event of a subsequent default.

9.5 **Notices Concerning the Landfill.** Both parties agree to copy the other party promptly, but in no event later than seven (7) days of receipt of any notice of deficiency, notice of violation, warning letter, inspection report, or other correspondence related to the Landfill received from NCDENR.

X. REVENUE COLLECTION & COMPENSATION

10.1 Revenue Collection: Billing.

(a) **Prior to the Expanded Management Commencement Date.** Prior to the Expanded Management Commencement Date, the County will remain generally responsible for billing and the collection of all revenue, including tipping fees and availability fees assessed and collected by the County in accordance with NC GS_153A-292 and 293, for disposal of waste at the Landfill. The Contractor will be responsible for the operation of the entry gate to the Landfill, scale house and computer in accordance with the permit and applicable law, collect tipping fees and other charges or payments for any and all disposal of Solid Waste at the Landfill and deposit or otherwise transfer to the County such funds paid within one business day of receipt or credit to the Contractor of such funds. All cash payments of tipping fees or other charges for Solid Waste disposed at the Landfill shall be deposited or otherwise transferred to the County within two (2) business days of receipt or credit to Contractor of such funds. The County will be responsible for the payment of all State or federal fees and/or surcharges assessed to waste. The Contractor shall maintain auditable records of data related to all aspects of scale operation, solid waste weights accepted at the Landfill, county of origin of the solid waste accepted at the Landfill, generator identification of the solid waste accepted at the Landfill, gate fees collected at the Landfill and the customer/hauler identification who paid the gate fees collected at the Landfill and shall report these data on a monthly basis to County in a mutually agreed-upon and auditable format.

(b) **After the Expanded Management Commencement Date**. After the Expanded Management Commencement Date, the Contractor will be responsible for the billing and collection of all revenue, including tipping fees, for use of the Landfill. For the first 90 days following the Expanded Management Commencement Date the Contractor shall assist the County with the transition of the billing and collection responsibilities for waste volumes delivered to the Landfill prior to the Expanded Management Commencement Date, provided, that the Contractor shall not guarantee or otherwise be liable for any delinquent outstanding amounts due from the disposal of waste at the Landfill. The Contractor will be responsible for the payment of all State or federal fees and/or surcharges assessed to waste. The Contractor shall maintain auditable records of data related to all aspects of scale operation, solid waste weights accepted at the Landfill, origin of the solid waste accepted at the landfill, generator identification of the Solid Waste accepted at the Landfill, gate fees collected at the Landfill and shall report these data on a monthly basis to County in a mutually agreed-upon and auditable format.

10.2 Service Fee.

(a) Prior to the Expanded Management Commencement Date. Prior to the Expanded Management Commencement Date, Contractor's monthly fees for services rendered under this Agreement during the term shall equal the sum of (i) any revenue received by Contractor from the operation of the LCID pursuant to Section 5.14, and a monthly fixed payment of $127,000.00. The County shall pay Contractor the fixed monthly service fee arising under clause (ii) above, which shall be due and payable on or before the first (1st) day of each calendar month, beginning on the second full month after the Commencement Date. The first payment will include an additional pro rata amount to compensate the Contractor for the days between the Commencement Date and the first day of the next month thereafter.

(b) After the Expanded Management Commencement Date. After the Expanded Management Commencement Date, Contractor shall receive all revenues, fees (except availability fees which will continue to be assessed and collected by the County in accordance with NC GS_153A-292 and 293), charges, assessments or other income collected for Solid Waste Disposal activities conducted at the Landfill in consideration of its obligations under this Agreement, thereby terminating the County's obligation for payment of the fixed monthly fee of $127,000.

10.3 Tipping Fees and Other Charges.

(a) **Prior to the Expanded Management Commencement Date.** Prior to the Expanded Management Commencement Date, the County shall have the right to establish with notice to Contractor, all rates, fees and charges for the disposal of Solid Waste delivered to the Landfill and the Drop-off Center at the Landfill, including without limitation the right to establish rates, fees and charges of general applicability and/or the right to negotiate individual rates, fees and charges for specific generators and/or haulers of waste.

The County shall not impose on Contractor any surcharge, fee, duty, tax or other charge upon the operation or management of the Landfill. In the event that such charges are imposed, the Service Fee to Contractor shall be increased to an amount equal to any such surcharge, fee, duty, tax or other charge.

(b) **After the Expanded Management Commencement Date.** After the Expanded Management Commencement Date, Contractor shall have the right to establish all rates, fees and charges for the disposal of Solid Waste delivered to the Landfill, including without limitation the right to establish any and all rates, fees and charges of general applicability and/or the right to negotiate individual rates, fees

and charges for specific generators and/or haulers of waste. Notwithstanding the foregoing, and subject to the express adjustments set forth in this Agreement, starting on the Expanded Management Commencement Date, the rate under this Agreement for disposal at the Landfill of Haywood County Generated Solid Waste will be fixed $22.25 per ton, unless the County and Contractor mutually agree otherwise.

The County shall be responsible for the payment of tipping fees and charges for any Haywood County Generated Solid Waste sent to the Landfill by or on behalf of the County, including without limitation residential household waste, waste generated by County-related activities (e.g., road department, government office buildings, fire department and police) and waste from the Drop-off Centers. Any other Haywood County Generated Solid Waste generated by private business, commercial, industrial, manufacturing, construction and demolition activities shall be the responsibility of the originating generator or its designee.

After the Expanded Management Commencement Date, Haywood County Generated Solid Waste shall be adjusted as of the first day of the first calendar month following the anniversary of the Commencement Date (the "Adjustment Month"), to reflect increases, if any, during the previous twelve month period ending in calendar month immediately preceding the Adjustment Month, in the Consumer Price Index, new series, as issued by the Bureau of Labor Statistics of the United States Department of Labor (the "Price Index"). The adjusted rate for Haywood County Generated Solid Waste shall be established for the next twelve (12) months, based on the result of multiplying the then current rate for Haywood County Generated Solid Waste by a fraction, the numerator of which shall be the Price Index ending in such month, and the denominator of which shall be the Price Index ending in its counterpart the preceding year:

$$\text{current Rate} \times \frac{\text{Price Index for target month, current year}}{\text{Price Index for target month, preceding year}}$$

In the event the Price Index ceases to incorporate a significant number of items, or if a substantial change is made in the method of establishing the Price Index, then the Price Index used herein shall be adjusted to the figure that would have resulted had no change occurred in the matter of computing the Price Index. In the event that an index (or a successor or substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information thereto for use in determining this Agreement's Price Index shall be used in lieu of the consumer price index.

Notwithstanding the foregoing, the Contractor shall have the right to adjust the rates (including the rate for Haywood County Generated Solid Waste) in the event that federal, State, or local laws, rules, regulations or ordinances become effective

after (or have been construed differently subsequent to) the Commencement Date, and such effect and/or interpretation results in a materially adverse impact on the Contractor.

The County shall not impose any surcharge, fee, duty, tax or other charge upon the operation or management of the Landfill. In the event that such charges are imposed, the Contractor shall be entitled to make an adjustment in the rates, as the Contractor deems appropriate.

Contractor agrees to offer free disposal of a rolling annual average of up to 2,000 tons per year in the aggregate of Solid Waste at the Landfill for a "Declared Natural Disaster", which shall mean the Governor of North Carolina or the President of the United States declares same.

10.4 **Verification of Weights.** Quantities of Solid Waste delivered to the Landfill for processing, handling or disposal shall be measured by scale ton, based on weight slips for each load weighed. Such weight slips shall show the gross weight of the truck, including that of the Solid Waste, the tare weight of the truck and the net weight of the Solid Waste. Weight slips and minimum load slips obtained when the Solid Waste is received and weighed at the Landfill shall be used as the basis of payment. In the event the scales are inoperable, a vehicle or container will be charged based on the historical net weight in tons of such vehicle or container. Weigh-out may be optional if Contractor has a current tare weight on file for the empty vehicle or container.

Whole mobile homes cannot be weighed on the scales and shall be charged a fixed tipping fee determined from time to time by the Contractor, which shall initially be set at $1000 per mobile home, except Contractor is responsible for ensuring banned materials are removed prior to disposal in accordance with applicable regulations.

10.5 **Payment Terms.** For all waste delivered by Haulers, Contractor shall negotiate acceptable payment terms, including appropriate deposits, with such Haulers.

10.6 **Host Fees.** After the Expanded Management Commencement Date, and thereafter during the term of this Agreement, Contractor agrees to pay the County host fees in an amount equal to 5% of Adjusted Gross Revenues collected at the Landfill that arise from waste disposed of at the Landfill after the Expanded Management Commencement Date. No Host Fees accrue prior to the Expanded Management Commencement Date.

Host Fees shall be paid quarterly, based on actual gate collections for out of county generated Solid Waste. Payments of the host fees shall be made to Haywood County within thirty (30) days of the end of each calendar quarter during the term of this Agreement.

10.6 **Recyclable Materials.** The County shall be entitled to retain all revenues, if any, derived from the sale of any Recyclable Materials that the Contractor removes from the Solid Waste accepted at the Landfill disposal and which is taken to the MRF. In addition, Contractor will maintain records of Solid Waste separated and recycled in accordance with Solid Waste Laws. The Contractor will provide assistance to the County, from time to time, with loading certain items requiring heavy equipment usage.

10.7 **Records and Reporting.**

(a) The Contractor shall transmit to the County a monthly report on operation of the Landfill in such form as shall be mutually agreed upon. This monthly report shall be provided within thirty (30) days after the end of each month. The County shall be entitled from time to time, upon at least twenty-four (24) hours advance written notice to the Contractor, to review and copy at the Contractor's offices during normal business hours, any and all correspondence between the Contractor and any state or federal regulatory authorities, which is public information and that pertains to the Landfill together with correspondence between the Contractor and customers or the public involving complaints or compliments regarding the operation of the Landfill or the Drop-off Center at the Landfill Upon advance written notice given by the County to the Contractor, the Contractor shall provide to the County within a reasonable period of time after the Contractor's receipt of such notice copies of reasonably requested information, data, documents or correspondence that pertain to the Landfill or the Drop-off Center that have been provided to state or federal governmental authorities or are required to be maintained by Contractor in accordance with Solid Waste Laws, *e.g.*, all monitoring reports including, but not limited to, testing of ground water, surface water, air, landfill gas, condensate and Leachate which have been received or otherwise in the possession of operator, annual fly over photograph, including map and report on landfill usage and capacity.

(b) The Contractor shall provide to the County copies of the following reports, documents and information within thirty (30) days after such reports, documents or other information are filed by the Contractor with any governmental agency or are received by the Contractor from any governmental agency, as the case may be, which constitute public information and pertain to the Landfill or the Drop-off Center at the Landfill:

(i) NCDENR Annual Report which may include total tonnage to Landfills by type, Host Fees paid, volumes of Alternative Daily Cover received, conversion report with cover soil ratio, all government entity imposed fees or similar charges on the operation of the Landfill and any compensation to the County which is not currently identified;

(ii) NCDENR Annual Mixed Waste Report which may include total volume of Solid Waste disposed of at the Landfill on a Calendar Year basis with annual calculations of landfill capacity; and

(iii) Inspection reports received by the Contractor, which may include scales inspections conducted by the North Carolina Department of Agriculture, NCDENR reports and copies of notices of alleged or actual violations of Solid Waste Laws.

(c) The Contractor shall notify the County Landfill Inspector's office by telephone, e-mail or telefax, during Contractor's regular business hours, of any occurrence of the Contractor rejecting Solid Waste for disposal in the Landfill, within one business day of such occurrence, and in the event the Contractor rejects any Unacceptable Waste at a time when notification of the County is not possible (*e.g.*, on a holiday, Saturday, Sunday, etc.), then the Contractor will notify the County Landfill Inspector's office by telephone, e-mail or telefax no later than the next following business day.

(d) The Contractor shall provide the County with twenty-four (24) hours advance notice by telephone, e-mail or telefax of any planned or anticipated temporary closure of the Landfill or the Drop-off Center at the Landfill of one-half day or more.

(e) The Contractor will provide reasonable notice to the County by telephone, e-mail or telefax of the imposition of any new fees or similar charges based upon tonnage received or other operation of the Landfill, by any governmental entity or agency.

(f) The Contractor reserves the right to charge to the County a reasonable per page copying fee (which shall compensate the Contractor for its copying and personnel costs involved with making, processing and delivering such copies) for any copies of information, documents, reports or other items it provides to the County under this Section.

(g) Notwithstanding anything in this Agreement to the contrary, the Contractor shall not be obligated to provide to the County any information, documents, reports or other items which are considered by the Contractor in its reasonable business judgment to be non-public information, confidential, proprietary, trade secret, attorney-client privileged or attorney work product, including without limitation such any information, documents, reports or other items that qualify and are designated as an exception to Chapter 132 "Public Records" as Confidential Information defined by GS 132-1.1 and GS 132-1.2, either as trade secret as defined in GS 66-152(3) or as a confidential communication by legal counsel as set forth under Gs 132-1.

XI. NO ENCUMBRANCES: RIGHT OF FIRST REFUSAL

11.1 **Sale or Encumbrance of the Landfill.** This Agreement and all the rights of Contractor hereunder shall run with the real property except for the existing mortgage evidenced by a recorded mortgage or deed of trust identified as Exhibit F, the County will not in any manner sell, alienate, mortgage or encumber the Landfill, unless such purchaser, transferee or lien holder takes, subject to all terms and conditions of this Agreement, evidence of which shall be furnished in advance to the Contractor, in form and substance satisfactory to the Contractor; and any attempt to sell, alienate, mortgage or encumber the Landfill contrary to the provisions hereof shall be void as to the Contractor. The Contractor reserves the right to terminate this Agreement in the event that the County transfers an interest in the Landfill to an entity that is in competition with Contractor. A foreclosure or similar exercise of rights under any mortgage or deed of trust imposed on the Landfill by or on behalf of the County which results in a transfer of title to the Landfill property, including the existing mortgage or deed of trust identified on Exhibit F shall constitute a material breach of this Agreement by the County.

11.2 **No Liens.** The Contractor agrees that it shall not cause or allow any liens, encumbrances, charges or assessments to be placed or levied upon the Landfill or any interest therein, and further agrees that, in the event of such occurrence, it will promptly and fully discharge the same.

XII. GENERAL PROVISIONS

12.1 **Independent Contractor.** The Contractor is, for all purposes arising out of this Agreement, an independent Contractor and shall not be deemed an employee, agent or mandate of the County. It is expressly understood and agreed that the Contractor shall in no event as a result of this Agreement be entitled to any benefits to which the County employees are entitled, including, but not limited to, overtime, any retirement benefits, worker compensation benefits, any injury leave or other leave benefits.

12.2 **Assignment and Subcontracting.** This Agreement or any portion thereof may not be assigned by the Contractor without the expressed prior written consent of the Contract Administrator, which approval (a) shall not be unreasonably withheld, and (b) if approval cannot be reasonably withheld by the Contract Administrator, approval shall be timely given. It is reasonable for the Contract Administrator to withhold approval of the Contractor's assignment if the proposed assignee is not at least as qualified as Contractor to operate the Landfill and at least as financially viable as the Contractor. Contractor shall not be relieved of any of its liabilities under this Agreement by an assignment hereof unless and until the assignee fully assumes Contractor's liabilities hereunder in writing.

Contractor shall have the right to subcontract all or a substantial portion of any or all of the Work; provided that any subcontract of a substantial portion of the Work shall be subject to the express written consent of the Board of County Commissioners, which approval shall not be unreasonably withheld and timely given. The Contractor shall give its personal attention to the fulfillment of the Agreement and shall keep the Work under its control. No subcontractor shall be recognized as such, and all persons engaged in the Work shall be considered as employees of the Contractor, and Contractor shall be held responsible for a subcontractor's Work, which shall be subject to the provisions of the Agreement.

12.3 <u>Hold Harmless Clause</u>.

(a) To the extent allowed by applicable law, the Contractor agrees to indemnify, save harmless, and defend the County, its present and future affiliates, officers, members, employees, and agents from and against any and all third-party liabilities, claims, penalties, forfeitures, suits, and the costs and expenses related thereto including costs of defense, settlement, and reasonable attorney fees, which the County may hereafter incur, become responsible for or pay out as a result of death or bodily injuries to any person, destruction or damage to any property or any violation of governmental laws, regulations, or orders caused by the negligent or willful act or omission of Contractor, its employees, agents, or servants in the performance of the Work under this Agreement. However, the Contractor shall not be required to indemnify the County for any matter to the extent that it is due in whole, or in part, to the negligence, willful misconduct or wrongful act of the County.

(b) The Contractor shall not be responsible for or be required to indemnify the County for any claim, suits, fines, losses, expense, or costs arising from slow and gradual release or escape of pollutants from the landfill, except to the extent that the release of escape is established by competent evidence to have been caused by the negligent or willful misconduct of the Contractor, its officers, agents, employees, or servants or operation of the landfill arising after the Commencement Date.

(c) The Contractor does not release or indemnify the County for any liability attributable to any actions of the County either during the term of this Agreement or actions taken by the County prior to the Commencement Date or conditions at the Landfill created by the County prior to the Commencement Date that might be discovered thereafter. The Contractor shall not be liable for prior operations at the Landfill causing, contributing to, or resulting in the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, or other contaminants into or upon the land, the atmosphere, or any course of body of water whether above or

below ground. The County will remain liable for any actions that occurred prior to the Commencement Date.

(d) The Contractor shall not be responsible for past operations or remedial action to bring the Landfill into proper compliance as a result of actions taken by the unty prior to the Commencement Date.

(e) The Contractor agrees to be responsible for operating compliance with all permits but shall not be responsible for additional major capital expenditures associated with the remediation of past actions by the County not related to Contractors operation of the Landfill.

(f) If the Landfill Permit is terminated due to violations not attributable to the Contractor, the Contractor shall not have any liability and/or responsibility to the County for claims made due to the closed Landfill or for curing the defects or violations that caused the termination of the permit.

(g) The Contractor shall not indemnify or in any way be liable or responsible for any fines, charges, or penalties against the County for any violations directly attributable to actions by the County either prior to or after the Commencement Date.

(h) To the extent allowed by applicable law and to the extent not inconsistent with the foregoing, the Contractor will indemnify and save harmless the County, its present and future officers, agents, servants, and employees from and against any and all suits, sections, legal proceedings, claims, demands, damages, costs, orders (including consent and clean-up orders) and expenses (including engineer and attorney fees) arising from third-party claims for personal injury, including death or disease, and property damage, including environmental contamination, to the extent resulting from willful misconduct, negligent acts, or omissions of the Contractor, its officers, agents, servants and employees related to or arising from Contractor's performance under this Agreement.

12.4 **Taxes, Assessments and Fees.** This Agreement is not a lease. However, to the extent that the terms of this Agreement may result in the creation of one or more possessory interests in real or personal property that are or may be subject to real estate taxes the County shall be responsible for the payment of all such taxes, assessments, fines, penalties, permit and/or license fees and any other fees assessed or levied upon the Contractor by reason of the business or other activities of Contractor hereunder during term of this Agreement; provided, that ad valorem taxes assessed on Contractor's equipment, furniture or similar tangible personal property are not addressed by this covenant. The Parties further agree not to allow such taxes, assessments or fees to become a delinquent lien. Nothing herein contained shall be deemed to prevent or prohibit the Contractor from contesting

the validity or the amount of any such tax, assessment or fee in the manner authorized by law.

12.5 **Insurance.** The Contractor shall secure and maintain throughout the term of this Agreement the following types of insurance with limits as shown to protect the County, the Contract Administrator and the authorized agents and employees of all the above, from any damage claims, including exemplary or punitive damages, for damage such as bodily injury, death or property damage, which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor, a subcontractor, an agent of Contractor, or anyone employed by Contractor directly or indirectly. The Landfill property owner shall be named as an additional insured on all insurance policies providing coverage as to the Landfill site and all activities conducted thereon:

(a) Worker's Compensation Insurance. The Contractor and Subcontractors shall procure and maintain during the term of this Agreement Worker's Compensation Insurance for all of its employees to be engaged in the Work under this Agreement. In case any class of employees engaged in the Work under this Agreement is not protected under the Workers Compensation Statute, the Contractor shall provide employer's liability insurance for the protection of such of its employees as are not otherwise protected. Employer's Liability Insurance shall be a minimum of $1,000,000 each occurrence.

(b) Contractor's General Liability Insurance. The Contractor shall procure and maintain in full force and effect during the term of this Agreement and including completed operations and coverage for underground explosion or collapse, a Comprehensive Liability Policy on an occurrence basis. Comprehensive Liability Insurance shall be a yearly minimum of $2,000,000 per occurrence and $5,000,000 in the aggregate.

(c) Comprehensive Automobile Liability Insurance. The Contractor agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability on an occurrence basis and providing Property Damage Liability on an accident basis. The policy shall protect the Contractor against all liability arising out of the use of automobiles, both private, passenger, and commercial, regardless of whether such vehicle shall be owned by the Contractor, owned by others, or hired. Limits of Liability for Comprehensive Automobile Liability Insurance shall be $1,000,000 per occurrence combined single limit.

(d) Professional Error and Omissions. The Contractor agrees to maintain professional liability coverage in the minimum amount of $5,000,000.

(e) Environmental Liability Insurance. The Contractor shall procure and maintain in full force and effect during the term of this Agreement Environmental Liability Insurance in the amount of $2,000,000 per occurrence during the first (1st) year of the term of this Agreement; (y) $5,000,000 per occurrence during the second (2nd) year of the term of this Agreement; and (z) $10,000,000 per occurrence starting with the third (3rd) year of the term and thereafter.

(f) Certificate of Insurance. This Certificate shall be used in submitting evidence of compliance with the above requirements. The Contractor will provide the County with a copy of The Contractor's Certificates of Insurance.

The foregoing insurance policies shall be carried with responsible insurance companies authorized to transact business in the State of North Carolina; shall name the County as an additional insured; shall provide that with respect to the interest of the County in such policy or policies, the insurance shall not be invalidated by any action or inaction of the Contractor or by any breach or violation of Contractor of any warranties, declarations or conditions contained in such policy or policies; and shall provide that County shall be given at least thirty (30) days written notice prior to any modification or termination of said insurance. Prior to the commencement of any activity or operation by the Contractor hereunder, the Contractor shall furnish to the County certificates evidencing insurance coverage satisfactory to the County as set forth herein above.

12.6 Performance Security. Unless the parties agree otherwise in writing, the Contractor shall provide to the County at Contractor's expense Performance Security in the annual amount of: (a) $500,000 for the first five (5) years of the term of this Agreement; (b) $1,000,000 for the sixth (6th) through tenth (10th) years of the term of this Agreement; and (c) $1,500,000 for the eleventh (11th) year and thereafter until the end of the term of this Agreement. The Contractor shall maintain such Performance Security during the entire term of the Agreement and for a period of one year after the termination of this Agreement; provided, that the Performance Security shall not lapse with respect to any claim asserted against it within such period until the claim is finally adjudicated. The Performance Security serves as assurance for collateral for the County to protect it from all costs and damages that the County suffers as a direct result of an Event of Default under this Agreement by Contractor. Performance Security is in addition to the Closure Assurance that Contractor will fund following the achievement of the Expanded Management Commencement Date.

12.7 Cooperation: Non-Compete. Whenever the consent, approval or cooperation of one party is expressly or implicitly required or is necessary by the terms of this Agreement or to the effective and successful performance of the other party, such

consent, approval or cooperation shall not be unreasonably withheld, denied, or delayed. Subject to the express limitations set forth in this Agreement, the County will support the efforts of the Contractor in obtaining any additional permit modifications, expansions and approvals and will cooperate, with Contractor in the scheduling of and having appropriate representatives available for public hearings and meetings. To the extent allowed by law, the County agrees that it shall not take any action or omission that would unreasonably impair or interfere with the performance of the Contractor's obligations under this Agreement or the benefits and rights of the Contractor hereunder, including without limitation the creation, operation, or encouragement of a competing solid waste landfill or alternative technologies or processes for waste disposal or treatment in the County or within any solid waste region that includes the County, or the assignment of Agreement to any party other the County, or the sale, transfer or further encumbrance of its interest in the Landfill. To the extent allowed by law, the County agrees that it shall not impose any fee, surcharge, duty, tax or other charge of any nature against the Contractor, the Landfill and the Landfill Permit, which is payable from revenues generated under this Agreement, the operations conducted by the Contractor, and operations of the Landfill. The County agrees that any tax, local fee, surcharge, duty, tax or other charge not in existence as of the Commencement Date, of any nature imposed against the Contractor, the Landfill, or the Landfill Permit, which is payable from revenues received by the Contractor that are generated under this Agreement, or by the operations of the Landfill, shall be deducted from the Host Fees payable pursuant to Section 10.6 of this Agreement.

Contractor and County recognize that the parties' intend to expand the service area of the Landfill to include eighteen (18) westernmost counties in the state of North Carolina, which are specified on Exhibit G attached hereto (the "Proposed Service Area") and upon the successful amendment of the Landfill Permit to expand the service area for the Landfill, Contractor agrees that it will enter into contracts with any individual county, group of counties, or any private entities within those 18 counties only with the sole intent of disposing those counties' Solid Waste in the Landfill. All revenues from the disposal of Solid Waste under any contract with any one or more counties or private entities within the Proposed Service Area collected by Contractor during the term of this Agreement will be governed by, and accounted for and managed as provided in, this Agreement. Notwithstanding the foregoing, any Solid Waste volumes collected by Contractor in the Proposed Service Area that cannot be lawfully disposed of in the Landfill, either due to the Solid Waste Laws, the Landfill Permit conditions and limitations, or pursuant to the terms of this Agreement, shall not be governed by, accounted for or managed as provided in, this Agreement.

12.8 Audit and Inspection of Records.

The Contractor shall keep accurate records of all income and expenditures related to the operation of the Landfill, and/or to any activity performed at the Landfill by the Contractor. At any time during normal business hours and as often as the County may reasonably deem necessary, the Contractor shall make available to the County for examination of copies all of its data and records regarding matters covered by this Agreement, and shall permit the County to audit, examine, and make excerpts or transcripts from such data and records, and to make audits of all invoices, material, payrolls, records of personnel, records of equipment usage if requested by the Contract Administrator, and other data relating to all matters covered by this Agreement. All State Inspector reports will be made available to Contract Administrator within five (5) days of receipt of such report. The County shall permit Contractor to inspect and audit all data and records of quantities of Solid Waste previously delivered to the Landfill, including but not limited to calibration of scales, operation of scales, weight tickets, invoices, accounts receivables, receipts, and all related compensation parameters. The Contractor shall have access at any time during normal business hours and as often as the Contractor may reasonably deem necessary. The County shall permit the Contractor to audit, examine, and make excerpts or transcripts from such data and records. The County shall maintain such data and records in an accessible location in the County. At the expiration or termination of this Agreement and at the County's request, Contractor shall provide County with exact photocopies of all documents not previously provided to the County that materially pertain to its performance under this Agreement (excluding confidential trade information) including all documents transmitted to or received from any governmental agency.

12.9 **Control of the Work.** The Contractor may not change any conditions of service under this Agreement without the prior written approval of the Contract Administrator. The Contractor shall not be assessed with damages for delay in performance of Contractor's obligations hereunder where such delay is caused by the County's failure to perform its obligations under this Agreement.

12.10 **Force Majeure.** Notwithstanding the foregoing, the Contractor shall not be assessed with damages during any delay in the performance of its obligations hereunder caused by events beyond the reasonable control of Contractor, including without limitation: acts of God, war, riot, explosion, sabotage fires caused by an unrelated third party, floods, earthquakes, epidemics and quarantine restrictions, labor strikes, suppliers' or vendors' strikes, freight embargoes and severe weather conditions, legislative action, regulatory action or inaction, provided that such events are not directly or indirectly the result of Contractor's omission, material fault or negligence. The Contractor shall make reasonable efforts to mitigate the effects of said causes.

12.11 **Compliance with Laws.** Contractor agrees to comply with all laws and regulations federal, State and local laws and regulations now in force and which

may hereafter be in force during the term of this Agreement, including compliance with all applicable permits, licenses, testing, reporting and inspections, or regulations as amended.

12.12 **OSHA.** To the extent applicable, Contractor shall comply with the Department of Labor Safety and Health Regulations promulgated under the Occupational Safety and Health Act of 1970 (PL-596) and under Section 107 of the Agreement Work Hours and Safety Standard Act (PL-9154) and under corresponding North Carolina statutes and regulations.

12.13 **Discrimination.** Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.

12.14 **Notices.** All notices or other communications required or permitted hereunder shall be sent by telecopier, facsimile, email, certified mail or by express mail, addressed as follows or to such other addresses as may be designated hereunder from time to time:

Contractor: Santek Environmental of North Carolina, LLC
650 25th Street, NW, Suite 100
Cleveland, Tenn. 37311
Attn: President
Fax: (423) 479-1952

With copy to: Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tenn. 37201
Attn: G. Scott Thomas

County: Haywood County Commission
215 N. Main Street
Waynesville, NC 28786
Attn: County Manager

12.15 **Affirmative Action and Equal Employment Opportunity.** Contractor shall comply with all affirmative action and equal employment opportunity requirements as set forth herein or as required by applicable laws, rules or regulations.

12.16 **Drug Testing.** Contractor shall adopt appropriate drug testing procedures for employees at the Landfill and shall administer drug testing in compliance with such procedures.

12.17 Time is the Essence/Survival or Terms. Time is of the essence in this Agreement and in each of its provisions. The provisions of paragraph 12.3 (Hold Harmless Clause) shall survive the termination of this Agreement.

12.18 Future Landfill Development Protections

(a) Intent. Under this Agreement, Contractor agrees to undertake at its expense the future development of the Landfill, which will require Contractor to invest several millions of dollars into the Landfill. Contractor's only way to recoup and earn a return on its investment is to operate the Landfill throughout the term of this Agreement. This paragraph is intended to prevent Contractor from losing its substantial investments in the Landfill in the event the validity of this Agreement is challenged. However, this paragraph only makes the County responsible for protecting the Contractor's investments when the County will benefit from the continuing operation of the Landfill. For example, if the Contractor develops a new cell in the Landfill that remains unused or partially unused when a proceeding described below renders the Agreement void, and the County then subsequently uses or causes the use of such cell in the Landfill, the Contractor is entitled to Loss Compensation. However, if under the same example the County closes the Landfill and never uses the available air space, the County does not owe the Contractor Loss Compensation.

(b) Loss Compensation. In the event of any administrative or judicial proceeding initiated by anyone other than the Contractor or County that contests the validity of this Agreement or the County's ability to enter into and bind the County to any of the terms and conditions of Agreement, and that results in a material adverse impact on the Contractor's rights to operate the Landfill under this Agreement, the Contractor's obligations hereunder for capital improvements to the Landfill shall be suspended until a final resolution of such a proceeding favorable to the Contractor, unless the County in its sole discretion provides the Contractor with adequate protections in the event of a successful proceeding; provided, that such suspension of obligations to make improvements shall not impair the Contractor's obligation to operate the then existing cell(s) of the Landfill. In the event any such proceeding is successful, the County shall provide Contractor with Loss Compensation unless the Landfill is and remains permanently closed. For purposes of Agreement, Loss Compensation shall be a reasonable amount of compensation, on a time and materials basis, for capital improvements to the Landfill consistent with the Solid Waste Laws, implemented or paid for by the Contractor; provided, that Loss Compensation does not include any element of loss of future profits from operation of the Landfill, Landfill operating costs paid by Contractor or defense costs. Loss Compensation may be satisfied by

the County requiring subsequent operators of the Landfill (including without limitation the Contractor) to discharge the Loss Compensation obligation.

XIII. MISCELLANEOUS

13.1 **Complete Agreement.** This Agreement, including the Exhibits, represents the complete agreement between the parties, and it supersedes all prior agreements, requests for proposals, and proposals. No terms of any previous agreement remain in force or effect.

13.2 **Section Headings.** The section or paragraph headings are used only for convenience and are not to be used in determining the intent of the parties or in otherwise interpreting this Agreement.

13.3 **Provisions Unenforceable.** If any provision of Agreement shall be declared illegal, void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect, unless the resulting interpretation of the Agreement shall materially alter the obligations of either party so as to work an unfair hardship on such party (the "Burdened Party"), in which case the Burdened Party shall have the option to request a renegotiation of the Agreement and/or to terminate this Agreement upon ninety (90) days advance written notice to the other party stating the reason for termination. This Agreement may be modified, amended, discharged or waived only by an agreement in writing signed by each party.

13.4 **Successors and Assigns.** This Agreement shall be binding upon and will inure to the benefit of the successors and assigns of the respective parties hereto.

13.5 **Counterpart.** This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

13.6 **Attorney's Fees.** The parties hereto shall be responsible for their own attorney's fees in any action related to this Agreement.

13.7 **Governing Laws.** This Agreement will be governed by and construed according to the laws of the State of North Carolina. The venue of any action by either party to this Agreement to enforce their respective rights hereunder against the other party shall be the General Court of Justice, Superior Court Division for Haywood County, North Carolina.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized

representatives to execute this Agreement as of the day and year first above written.

HAYWOOD COUNTY, NORTH CAROLINA

By: _____
Title: _____

SANTEK ENVIRONMENTAL OF NORTH CAROLINA, LLC

By: _____
Title: _____

EXHIBIT A

[Description of Closed C&D Landfill]

That certain portion of the Landfill that was operated and closed as a C&D Waste landfill, known as Haywood County White Oak MSW Landfill Phase 1 Construction /Demolition Landfill, as more particularly described in (a) the Closure Plan submitted to NCDENR, Division of Waste Management, Solid Waste Permitting Section, under cover letter addressed to Mr. Ming-Tai Chao, P.E., dated June 27, 2008 from Jeffery R. Bishop, P.E., McGill Associates, P.A., and approved by NCDENR on November 25, 2008 (b) the Professional Engineering Certification of Completion certified by Jeffery R. Bishop, P.E., McGill Associates, P.A. on August 31, 2009, and (c) That certain Record Drawing of the White Oak Landfill, C&D Landfill- Phase 1, Sheet C-101, Job No. 08.00701, file name 08.00701-C-101-RD-Record-Drawing.dwg, dated August 2009, as certified by Jeffery R. Bishop dated August 28, 2009.

EXHIBIT B

[LIST OF EQUIPMENT]

EQUIPMENT AT WOLF

CAT 725 OFF ROAD DUMP TRUCK
FORD F750 WATER TRUCK
CAT D5 DOZER
CAT D6 DOZER
CAT 320 EXCAVATOR
JOHN DEERE 850 GALLON HYDROSEEDER*
TEREX 370 COMPACTOR
TEREX 390 COMPACTOR
LEEBOI 785 MOTOR GRADER

VEHICLES AT WOLF
2007 F250 PICKUP TRUCK

*Contractor agrees that County may upon reasonable notice borrow the Hydroseeder from time to time; provided that County shall keep the frequency and duration of its use of such equipment to a minimum and upon each such borrowing the County shall promptly return the Hydroseeder to the Landfill upon completion of its use.

EXHIBIT C

[LANDFILL DESCRIPTION]

Real Property Description

All of that property described in Plat Cabinet C, Slot 5541 Haywood County Registry entitled "Haywood County Landfill", prepared from survey dated June 15, 2009 by Herron Associates, J. Randy Herron, RLS consisting of a 103.641 acre tract, a 85.544 acre tract, the total of which is 268.70 acres.

Together with and including and subject to that road right of way and easement recorded in Deed Book 388, Page 626 Haywood County Registry as well as any rights of way and easements pertaining to the 10 foot soil road; and easements in favor of Carolina Power & Light Co., all of which are specifically described or referred to upon the above referenced recorded plat.

EXHIBIT D

[LIST OF BANNED ITEMS]

13.8 Items Currently Banned from Disposal in Landfills

1. Used oil.
2. Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the County. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
3. White goods.
4. Antifreeze (ethylene glycol).
5. Aluminum cans.
6. Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
7. Lead-acid batteries, as provided in G.S. 130A-309.70.
8. Beverage containers that are required to be recycled under G.S. 18B-1006.1.
9. Motor vehicle oil filters.
10. Recyclable rigid plastic containers that are required to be labeled as provided BELOW, that have a neck smaller than the body of the container, and that accept a screw top, snap cap, or other closure. The prohibition on disposal of recyclable rigid plastic containers in landfills does not apply to rigid plastic containers that are intended for use in the sale or distribution of motor oil or pesticides.
    - (a) For polyethylene terephthalate, the letters "PETE" and the number 1.
    - (b) For high density polyethylene, the letters "HDPE" and the number 2.
    - (c) For vinyl, the letter "V" and the number 3.
    - (d) For low density polyethylene, the letters "LDPE" and the number 4.
    - (e) For polypropylene, the letters "PP" and the number 5.
    - (f) For polystyrene, the letters "PS" and the number 6.
    - (g) For any other, the letters "OTHER" and the number 7.

- Wooden pallets, except that wooden pallets (mixed into construction waste) may be disposed of in a landfill that is permitted to only accept construction and demolition debris.
- Oyster shells.
- ***(Effective July 1, 2011)*** Discarded computer equipment (includes laptops, desktops, monitors, video displays, printers, scanners, printer-scanner-fax combos, mouses and keyboards).
- ***(Effective July 1, 2011)*** Discarded televisions.

EXHIBIT E
Leachate Disposal Agreement

This **LEACHATE DISPOSAL AGREEMENT** (this "Agreement") is by and among Haywood County, North Carolina (the "County"), the Town of Maggie Valley, North Carolina (the "Town"), and Santek Environmental of North Carolina, LLC ("Santek"), Regarding the Town's commitment to accept leachate from the County owned sanitary landfill known as the White Oak Landfill (the "Landfill") at the Maggie Valley Wastewater Treatment Plant (the "Plant").

W I T N E S S E T H:

WHEREAS, the County owns the Landfill and needs to provide for the disposal of leachate generated at the Landfill in order to comply with applicable federal and state law;

WHEREAS, Santek is the management company engaged by the County pursuant to that certain Sanitary Landfill Operations Agreement to operate and manage the Landfill for the County, and as such has responsibility to handle the proper disposal of leachate from the Landfill; and

WHEREAS, the Town operates the water treatment plant with the capability and capacity to receive leachate from the Landfill (the "Plant") and is willing to enter into an arrangement with the County and Santek in order to provide assurance for the proper and cost effective disposal of leachate from the Landfill at the Plant,

NOW, THEREFORE, for and in consideration of the foregoing premises and the considerations provided hereinafter, the receipt and sufficiency of which are hereby acknowledged all the parties hereto, the parties agree as follows:

1. The Town agrees to accept leachate at the Plant from the Landfill in an amount not to exceed 50,000 gallons per day.

2. The Town agrees to charge for acceptance of leachate at the Plant no more than $130.00 per tanker load of leachate. Each such load will be considered 6,000 gallons or less of leachate. Billing for loads will be done on a weekly basis, and will be due within 30 days of the bill date. Each year the price per load may be adjusted by the CPI-W South Urban Non-Metropolitan rate as calculated by the Bureau of Labor Statistics on the March to March rate.

3. The County and/or Santek, as the case may be, agree to unload tankers transporting leachate to the Plant at a manhole designated by the Town's Public Works Director. Whenever a load is delivered to the Plant, the driver of the tanker must sign the log to indicate a load has been delivered. The Town prefers to receive leachate in the morning, however, will accept it at all times, unless circumstances prevent the Plant from being able to accept it.

4. The Town agrees to provide adequate space to maneuver the tanker to get to its unloading position; provided, that the County and/or Santek, as the case may be, agree to be responsible for any damage that is done at the Plant that is attributable to the movement of the tanker.

5. During the term of the Sanitary Landfill Operations Agreement, Santek will provide to the Town quarterly TCLP analysis of the leachate. The Town reserves the right to temporarily suspend acceptance the leachate if the constituents in the leachate shall be in such concentrations that it is determined to have a material adverse impact on the ability of the Town to operate the Plant in compliance with applicable law.

6. Annually during the term of the Sanitary Landfill Operations Agreement, Santek will evaluate the approximately two hundred (200) feet of gravel road providing access to the Town's treatment plant for the need to add gravel and grade such access road, and if gravel and/or grading is necessary, Santek will supply such materials and apply it to said access road no more than once per year.

The Town, the County and Santek each represent that this Agreement is a valid and binding agreement on them, and that their respective party has the requisite power and authority to enter into this Agreement, that such party has specifically approved this Agreement and empowered the representative below to executed and deliver this Agreement on its behalf, and such party agrees to perform its obligations under this Agreement in accordance with its terms. The Town and the County both represent that that this Agreement does not violate or is otherwise contrary to any state or local statute, regulation, ordinance, order or other legally binding determination.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day and year first above written.

TOWN OF MAGGIE VALLEY

By: _____
Title: _____

HAYWOOD COUNTY, NORTH CAROLINA

By: _____
Title: _____

Representative of Santek Environmental of North Carolina, LLC:

By: _____
Title: _____

EXHIBIT F

[EXISTING MORTGAGE]

Exhibit F

2009006648
HAYWOOD CO, NC FEE $84.00
PRESENTED & RECORDED:
07-01-2009 10:20:11 AM
AMY R. MURRAY
REGISTER OF DEEDS
BY: DEB SCHAFFER
DEPUTY

BK: RB 764
PG: 328-348

Drafted by and
Return to: Donald P. Ubell, Esq.
Parker Poe Adams & Bernstein LLP
Three Wachovia Center
401 South Tryon Street, Ste. 3000
Charlotte, North Carolina 28202

STATE OF NORTH CAROLINA

COUNTY OF HAYWOOD

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

This **DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING**, is made and entered into as of July 1, 2009 (this ***"Deed of Trust"***), from the **COUNTY OF HAYWOOD, NORTH CAROLINA** (hereinafter called the ***"Grantor"***), whose address is 215 N. Main Street, Waynesville, North Carolina 28786, to **CB SERVICES CORP.**, whose address is 301 Fayetteville Street, Suite 1100, Raleigh, North Carolina 27601, as deed of trust trustee (hereinafter called the ***"Trustee"***), for the benefit of **RBC BANK (USA)**, a state banking corporation, whose address is 301 Fayetteville Street, Suite 1100, Raleigh, North Carolina 27601, Attention: Public and Institutional Banking (the ***"Bank"***) (the Bank and its successors and assigns hereinafter called the ***"Beneficiary"***).

PREAMBLES

WHEREAS, the Grantor and the Bank have entered into an Installment Financing Contract, dated as of July 1, 2009 (the ***"Installment Financing Contract"***), pursuant to which (1) the Bank has agreed to advance certain monies to enable the Grantor to construct and equip the Project (as defined in the Installment Financing Contract), and (2) the Grantor has agreed to make the Installment Payments (as defined in the Installment Financing Contract) to the Bank;

WHEREAS, this Deed of Trust has been executed and delivered to secure (1) the obligations of the Grantor to make the Installment Payments, and (2) the payment and performance of all of the other liabilities and obligations, whether now existing or hereafter arising, of the Grantor to the Bank under the

COLLATERAL IS OR INCLUDES FIXTURES

Installment Financing Contract, all such obligations and liabilities described in (1) or (2) above hereinafter collectively called the ***"Indebtedness"***;

WHEREAS, it is intended that this Deed of Trust comply with the provisions of Sections 45-67, *et. seq.* of the General Statutes of North Carolina, as amended; and for purposes of complying with such provisions, the Grantor hereby represents as follows:

(a) That this Deed of Trust has been executed and delivered by the Grantor to secure present and future Indebtedness which may be incurred from time to time under the Installment Financing Contract;

(b) That the principal amount of present Indebtedness secured by this Deed of Trust is in an amount not to exceed $4,500,000;

(c) That the maximum principal amount, including present and future Indebtedness, which may be secured by this Deed of Trust at any one time is $9,000,000 (exclusive of advances that may be made under the terms of the Installment Financing Contract or this Deed of Trust for the protection of collateral, payment of taxes, impositions and assessments, attorneys' fees and costs and other sums which the Grantor is required by the terms of said instruments to repay), subject to the limitation that at no time shall the total principal amount of Indebtedness secured hereby exceed said maximum principal sum of $9,000,000 plus interest, attorneys' fees and costs and other sums for the protection of collateral, payment of taxes, impositions and assessments and similar sums advanced by the Beneficiary which the Grantor is obligated to repay hereunder, under the Installment Financing Contract, or otherwise; *provided, however,* that the foregoing limitation shall apply only to the lien upon real property located in the State of North Carolina created by this Deed of Trust and shall not in any manner limit, affect or impair any grant of a security interest in or lien on any other real property or any personal property in favor of the Beneficiary;

(d) That the period within which such future Indebtedness may be incurred shall expire not later than 15 years from the date of this Deed of Trust, and shall be effective without the recordation of an amendment, modification or supplement to this Deed of Trust; and

(e) It shall not be a requirement for any such future Indebtedness to be secured hereby that the Grantor sign an instrument or other notation stipulating that such Indebtedness is secured by this Deed of Trust, as no such future Indebtedness is required, under the Installment Financing Contract or otherwise, to be evidenced by a written instrument or notation; and

WHEREAS, the Grantor desires to secure (1) the payment of the Indebtedness and any renewals, modifications or extensions thereof, in whole or in part, and (2) the additional payments hereinafter agreed to be made by or on behalf of the Grantor, by a conveyance of the lands and security interests hereinafter described;

NOW, THEREFORE, in consideration of the above preambles and for the purposes aforesaid, and in further consideration of the sum of Ten Dollars ($10) paid to the Grantor by the Trustee and other valuable consideration, receipt of which is hereby acknowledged, the Grantor has given, granted, bargained and sold, and by these presents does give, grant, bargain, sell and convey unto the Trustee, its heirs, successors and assigns, the following property (hereinafter collectively referred to as the ***"Mortgaged Property"***):

(a) The real property lying and being in the County of Haywood North Carolina, and described below in the legal description attached as Exhibit A hereto (hereinafter referred to as the ***"Real Property"***):

> SEE EXHIBIT A ATTACHED HERETO FOR THE REAL PROPERTY DESCRIPTION, WHICH EXHIBIT A IS SPECIFICALLY INCORPORATED HEREIN BY REFERENCE.

(b) All buildings, structures, additions and improvements of every nature whatsoever now or hereafter situated on or about the Real Property (the ***"Improvements"***).

(c) All gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes and other machinery, equipment or other tangible personal property, which are or shall be so attached to the Improvements, including all extensions, additions, improvements, betterments, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, as to be deemed to be fixtures under North Carolina law (collectively, the ***"Fixtures"***) and accessions to the Real Property and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness. The location of the collateral described in this paragraph is also the location of the Real Property, and the record owner of the Real Property is the Grantor.

(d) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Real Property or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Grantor.

(e) All leases affecting the Mortgaged Property or any part thereof and all income, rents and issues of the Mortgaged Property and the Improvements now or hereafter located thereon from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by the Grantor or in a trust account, and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Grantor of, in and to the same; reserving only the right to the Grantor to collect and apply the same (other than insurance proceeds and condemnation payments) so long as the Grantor is not in Default hereunder.

TO HAVE AND TO HOLD, the Mortgaged Property unto the Trustee, its heirs, successors and assigns, in fee simple forever, upon the trusts, terms and conditions and for the uses and purposes hereinafter set out;

And the Grantor covenants with the Trustee that the Grantor is lawfully seized of the Mortgaged Property in fee simple and has the right to convey the same in fee simple; that, except for Permitted Encumbrances (as defined in Exhibit B attached hereto and specifically incorporated herein by reference), the same are free and clear of all encumbrances, and that the Grantor will warrant and defend the title to the same against the claims of all persons whomsoever arising by, under or through the Grantor.

THIS CONVEYANCE IS MADE UPON THIS SPECIAL TRUST, that if the Grantor shall pay the Indebtedness in accordance with the terms of the Installment Financing Contract, together with interest thereon, and any renewals or extensions thereof in whole or in part, and shall comply with all the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be cancelled of record at the request and at the cost of the Grantor.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, the Grantor hereby further covenants and agrees as follows:

ARTICLE I

Section 1.1. ***Payment of Indebtedness.*** The Grantor will pay the Indebtedness and all other sums now or hereafter secured hereby promptly as the same shall become due.

Section 1.2. ***Taxes, Liens and Other Charges.***

(a) The Grantor will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character including all utility charges, whether public or private, already levied or assessed or that may hereafter be levied or assessed upon or against the Mortgaged Property; and will furnish the Beneficiary, on or before the final date whereon the same can be paid without penalty, evidence of the due and punctual payment of all such taxes, assessments and other fees and charges. Nothing contained herein shall require the payment or discharge of any such tax, lien, assessment or charge by the Grantor for so long as the Grantor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings provided that such proceedings shall prevent (1) the collection thereof or other realization thereof and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same or (2) the enforcement thereof, against the Grantor, the Trustee, the Beneficiary and the Mortgaged Property and so long as the Grantor first deposits with the Beneficiary in escrow such sums or other security as the Beneficiary may reasonably require to assure Beneficiary of the availability of sufficient monies to pay such tax, lien, assessment or charge if and when the same is finally determined to be due.

(b) The Grantor will not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be created and to remain outstanding upon all or any part of the Mortgaged Property. The Grantor shall be entitled to discharge such liens by bonds or to contest any such liens pursuant to the same procedure as the Grantor is entitled to contest taxes in the preceding Subsection 1.2(a).

Section 1.3. ***Insurance.***

(a) The Grantor shall procure for, deliver to and maintain for the benefit of the Beneficiary, during the term of this Deed of Trust, the insurance coverage required by the

Installment Financing Contract. Such insurance shall be noncancellable except upon at least thirty (30) days' prior written notice to the Beneficiary, and shall otherwise comply with the requirements of the Installment Financing Contract.

(b) The Beneficiary is hereby authorized and empowered and, at its option, with the participation of the Grantor, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section 1.3, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Grantor and the Beneficiary jointly. The net proceeds from any such policy or policies shall be applied as provided in the Installment Financing Contract. The Beneficiary shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) For the portion of such insurance which is not self-insurance, at least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.3, a renewal or replacement thereof satisfactory to the Beneficiary shall be delivered by the Grantor to the Beneficiary, if requested. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Mortgaged Property in extinguishment of the Indebtedness secured hereby, all right, title and interest of the Grantor in and to all insurance policies then in force shall pass to the purchaser or Beneficiary, as appropriate.

Section 1.4. ***Condemnation.*** In the event there hereafter occurs a condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental authority or other entity having the power of eminent domain, and any transfer by private sale in lieu thereof), resulting in any damage or taking, either temporarily or permanently, of (1) the entire Mortgaged Property, (2) so much of the Mortgaged Property as causes the remainder of the Mortgaged Property to be in violation of any zoning laws, restrictive covenants or similar laws, regulations or restrictions affecting the Mortgaged Property, and the Grantor fails to cure such violation within thirty (30) days of the condemnation or such violation does not prevent the Grantor's continued use of the Mortgaged Property in the ordinary course of its business or (3) so much of the Mortgaged Property that, in the sole reasonable opinion of the Beneficiary, the value of the Mortgaged Property is materially and adversely affected, then, and in any one of said events, the Grantor shall repay the Indebtedness in accordance with Article VIII of the Installment Financing Contract. To the extent permitted by law, the Beneficiary shall be entitled to receive all compensation, awards and other payments or relief thereof. The Beneficiary is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in the Grantor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Grantor to the Beneficiary. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Beneficiary shall apply the net proceeds as provided in the Installment Financing Contract, subject to the terms of Article VIII of the Installment Financing Contract. Any balance of such monies then remaining shall be paid to the Grantor. The Grantor hereby agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as the Beneficiary may require.

Section 1.5. ***Care of Mortgaged Property.***

(a) The Grantor will keep the buildings, parking areas, roads and walkways, recreational facilities, landscaping and all other improvements of any kind now or hereafter erected on the Real Property or any part thereof in good condition and repair, will not commit or suffer any waste, and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except for structures existing on the date of this Deed of Trust, the Grantor will not remove or demolish nor alter the structural character of any improvement located on the Real Property without the prior written consent of the Beneficiary.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Grantor will give immediate written notice thereof to the Beneficiary and the Trustee.

(d) Upon reasonable notice to the Grantor, the Beneficiary or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours. The Beneficiary agrees that any confidential information about the Grantor obtained in the exercise of its rights under this subparagraph (d) shall, except as otherwise required by law or regulation applicable to the Beneficiary, be maintained in a confidential manner and shall be used by the Beneficiary only for the protection of its rights and interests hereunder.

(e) The Grantor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority (including, but not limited to, all environmental and ecological laws and regulations) affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged or destroyed as described in Section 8.1 of the Contract, the Grantor will promptly repair, restore, modify, improve or replace the Mortgaged Property or any remaining portions in accordance with Section 8.2 of the Contract or, under certain circumstances described in Section 8.3 of the Contract, apply any Net Proceeds (as defined in the Contract) as provided for in Section 8.3 of the Contract.

Section 1.6. ***Leases and Other Agreements Affecting Property.*** The Grantor will duly and punctually perform all terms, covenants, conditions and agreements binding upon the Grantor under any lease or any other agreement of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof. The Grantor will furnish the Beneficiary with executed copies of all leases now or hereafter created upon the Mortgaged Property or any part thereof, and all leases now or hereafter entered into will be in form and substance subject to the prior written approval of the Beneficiary. The Grantor will not, without the express written approval of the Beneficiary (which approval will not be unreasonably withheld or delayed), modify, surrender or terminate, either orally or in writing, any lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor will the Grantor permit an assignment or a subletting by any tenant without the prior express written approval of the Beneficiary. The Grantor will not accept payment of rent more than one (1) month in advance without the prior express written approval of the Beneficiary.

Section 1.7. ***Security Agreement and Fixture Filing.*** With respect to the Fixtures, this Deed of Trust is hereby made and declared to be a security agreement in favor of the Beneficiary encumbering each and every item of such property included herein as a part of the Mortgaged Property, in compliance

with the provisions of the Uniform Commercial Code as enacted in the State of North Carolina, and the Grantor hereby grants a security interest to the Beneficiary in and to all of such Fixtures. This Deed of Trust shall constitute a financing statement filed as a fixture filing in accordance with N.C. Gen. Stat. §25-9-402 (or any amendment thereto). For purposes of complying with the requirements of N.C. Gen. Stat. §25-9-402, the name of Grantor, as Debtor, and Beneficiary, as Secured Party, and the respective addresses of Grantor, as Debtor, and Beneficiary, as Secured Party, are set forth on the first page of this Deed of Trust. Grantor authorizes Beneficiary to effect any filing or recording of any additional financing statements relating to the Fixtures or amendments thereto where appropriate to perfect and continue the security interest in, and to protect and preserve, the Fixtures. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall be (1) as prescribed herein, or (2) as prescribed by general law, or (3) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Beneficiary's sole election. The mention in any such financing statement or statements of the rights in and to (1) the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Grantor's interest as lessor in any present or future lease or rights to rents, issues or awards growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of the Beneficiary as determined by this Deed of Trust or affect the priority of the Beneficiary's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of the Beneficiary in the event any court shall at any time hold with respect to the foregoing clauses (1), (2) or (3) of this sentence, that notice of the Beneficiary's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

Section 1.8. ***Further Assurances; After Acquired Property.*** At any time, and from time to time, upon request by the Beneficiary, the Grantor will make, execute and deliver or cause to be made, executed and delivered, to the Beneficiary and/or the Trustee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Beneficiary, any and all such other and further deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of the Beneficiary, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (1) the obligations of the Grantor under the Installment Financing Contract or this Deed of Trust and (2) the status as first and prior lien upon and security title in and to, subject to Permitted Encumbrances, all of the Mortgaged Property, whether now owned or hereafter acquired by the Grantor, created under this Deed of Trust.

Section 1.9. ***Expenses.*** The Grantor will pay or reimburse the Beneficiary and the Trustee, upon demand therefor, for all reasonable attorneys' fees, costs and expenses actually incurred by the Beneficiary and the Trustee in any suit, action, legal proceeding or dispute of any kind in which the Beneficiary and/or the Trustee is made a party or appears as party plaintiff or defendant, affecting the Indebtedness secured hereby, this Deed of Trust or the interest created herein, or the Mortgaged Property, including, but not limited to, the exercise of the power of sale contained in this Deed of Trust, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, but excepting therefrom any negligence or willful misconduct by the Beneficiary or any breach of this Deed of Trust by the Beneficiary; and all such amounts paid by the Beneficiary shall be added to the Indebtedness.

Section 1.10. ***Estoppel Affidavits.*** The Grantor, upon ten (10) days' prior written notice, shall furnish the Beneficiary a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness and whether or not any offsets or defenses exist against such principal and interest.

Section 1.11. ***Subrogation.*** The Beneficiary shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Indebtedness.

Section 1.12. ***Books, Records, Accounts and Annual Reports.*** The Grantor will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts relating to the Mortgaged Property. The Beneficiary shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of the Grantor or such other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as the Beneficiary shall desire.

Section 1.13. ***Limit of Validity.*** If from any circumstances whatsoever fulfillment of any provision of this Deed of Trust or the Installment Financing Contract at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then *ipso facto* the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Deed of Trust or the Installment Financing Contract that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

Section 1.14. ***Changes in Ownership.*** The Grantor hereby acknowledges to the Beneficiary that (1) the identity and expertise of the Grantor were and continue to be material circumstances upon which the Beneficiary has relied in connection with, and which constitute valuable consideration to the Beneficiary for, the extending to the Grantor of the Indebtedness and (2) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness granted to the Beneficiary by this Deed of Trust. The Grantor therefore covenants and agrees with the Beneficiary, as part of the consideration for the extending to the Grantor of the Indebtedness, that the entire Indebtedness shall, at the option of the Beneficiary, become immediately due and payable, should the Grantor further encumber, pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property or any portion thereof without the prior written consent of the Beneficiary or except as otherwise permitted herein.

Section 1.15. ***Use and Management of the Mortgaged Property.*** The Grantor shall not alter or change the use of the Mortgaged Property or abandon the Mortgaged Property without the prior written consent of the Beneficiary.

Section 1.16. ***Acquisition of Collateral.*** The Grantor shall not acquire any portion of the personal property, if any, covered by this Deed of Trust, subject to any security interest, conditional sales contract, title retention arrangement or other charge or lien taking precedence over the security title and lien of this Deed of Trust without the prior written consent of the Beneficiary.

Section 1.17. ***Hazardous Material.***

(a) The Grantor represents, warrants and agrees that, except as previously disclosed to the Bank in writing: (1) the Grantor has not used or installed any Hazardous Material (as hereinafter defined) in violation of applicable Environmental Laws on, from or in the Mortgaged Property and to the Grantor's actual knowledge no other person has used or installed any Hazardous Material on, from or in the Mortgaged Property; (2) to the Grantor's knowledge, no other person has violated any applicable Environmental Laws (as hereinafter defined) relating to or affecting the Mortgaged Property or any other property owned by the Grantor except as previously disclosed to the Beneficiary; (3) to the best of the Grantor's knowledge the Mortgaged Property are presently in compliance with all applicable Environmental Laws, and there are no facts or circumstances presently existing upon or under the Mortgaged Property, or relating to the Mortgaged Property, which may violate any applicable Environmental Laws, and there is not now pending or, to the best knowledge of the Grantor, threatened any action, suit, investigation or proceeding against the Grantor or the Mortgaged Property (or against any other party relating to the Mortgaged Property) seeking to enforce any right or remedy against the Grantor or the Mortgaged Property under any of the Environmental Laws; (4) the Mortgaged Property shall be kept free of Hazardous Materials to the extent required by applicable Environmental Laws, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Materials other than the processing of materials in the ordinary course of the Grantor's business as of the date hereof; (5) the Grantor shall not cause or permit the installation of Hazardous Materials in, on, over or under the Mortgaged Property or a Release (as hereinafter defined) of Hazardous Materials unto or from the Mortgaged Property or suffer the presence of Hazardous Materials in, on, over or under the Mortgaged Property in violation of applicable Environmental Laws; (6) the Grantor shall comply with Environmental Laws applicable to the Mortgaged Property, all at no cost or expense to the Beneficiary or the Trustee; (7) the Grantor has obtained and will at all times continue to obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary for the Mortgaged Property to comply with applicable Environmental Laws (the ***"Permits"***) and the Grantor will be and at all times remain in full compliance with the terms and provisions of the Permits; (8) to the best of the Grantor's knowledge there has been no Release of any Hazardous Materials on or from the Mortgaged Property in violation of applicable Environmental Laws, whether or not such Release emanated from the Mortgaged Property or any contiguous real estate which has not been abated and any resulting violation of applicable Environmental Laws abates; (9) the Grantor shall immediately give the Beneficiary oral and written notice in the event that the Grantor receives any notice from any governmental agency, entity, or any other party with regard to Hazardous Materials on, from or affecting the Mortgaged Property and the Grantor shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Mortgaged Property in accordance with all applicable Environmental Laws.

(b) The Grantor hereby agrees to indemnify the Beneficiary and the Trustee and hold the Beneficiary and the Trustee harmless from and against any and all liens, demands, defenses, suits, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by, or asserted against the Beneficiary, the Trustee and/or the Mortgaged Property for, with respect to, or as a direct or indirect result of: (1) the presence of Hazardous Materials in, on or under the Mortgaged Property, or the escape, seepage, leakage, spillage, discharge, emission or Release on or from the Mortgaged Property of any Hazardous Materials regardless of whether or not caused by or within

the control of the Grantor; (2) the violation of any Environmental Laws applicable to the Mortgaged Property or the Grantor, whether or not caused by or within the control of the Grantor; (3) the failure by the Grantor to comply fully with the terms and provisions of this Section 1.17; (4) the violation of any of the Environmental Laws in connection with any other property owned by the Grantor, which violation gives or may give rise to any rights whatsoever in any party with respect to the Mortgaged Property by virtue of any of the Environmental Laws, whether or not such violation is caused by or within the control of the Grantor; or (5) any warranty or representation made by the Grantor in subparagraph (a) of Section 1.17 being false or untrue in any material respect.

(c) In the event the Beneficiary has a reasonable basis to suspect that the Grantor has violated any of the covenants, warranties, or representations contained in this Section 1.17, or that the Mortgaged Property are not in compliance with the applicable Environmental Laws for any reason, the Grantor shall take such steps as the Beneficiary reasonably requires by written notice to the Grantor in order to confirm or deny such occurrences, including, without limitation, the preparation of environmental studies, surveys or reports. In the event that the Grantor fails to take such action, the Beneficiary may take such action as the Beneficiary reasonably believes necessary to protect its interest, and the cost and expenses of all such actions taken by the Beneficiary, including, without limitation, the Beneficiary's reasonable attorneys' fees, shall be added to the Indebtedness.

(d) For purposes of this Deed of Trust: (1) ***"Hazardous Material"*** or ***"Hazardous Materials"*** means and includes, without limitation, (A) solid or hazardous waste, as defined in the Resource Conservation and Recovery Act of 1980, as amended, or in any applicable state or local law or regulation, (B) hazardous substances, as defined in CERCLA, or in any applicable state or local law or regulation, (C) gasoline, or any other petroleum product or by-product, (D) toxic substances, as defined in the Toxic Substances Control Act of 1976, as amended, or in any applicable state or local law or regulation or (E) insecticides, fungicides, or rodenticides, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975, as amended, or in any applicable state or local law or regulation, as each such Act, statute or regulation may be amended from time to time; (2) ***"Release"*** shall have the meaning given such term, in the Environmental Laws, including, without limitation, Section 101(22) of CERCLA; and (3) ***"Environmental Law"*** or ***"Environmental Laws"*** shall mean any ***"Super Fund"*** or ***"Super Lien"*** law, or any other federal, state or local statute, law, ordinance or code, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials as may now or at any time hereafter be legally in effect, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated and officially adopted thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986, as amended (***"SARA"***); the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (***"CERCLA"***); The Clean Air Act, as amended (***"CAA"***); the Clean Water Act, as amended (***"CWA"***); The Toxic Substance Control Act, as amended (***"TSCA"***); the Solid Waste Disposal Act, as amended (***"SWDA"***), as amended by the Resource Conservation and Recovery Act, as amended (***"RCRA"***); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970, as amended (***"OSHA"***). The obligations and liabilities of the Grantor under this Section 1.17 which arise out of events or actions occurring prior to the satisfaction of this Deed of Trust shall survive the exercise of the power of sale under or foreclosure of this Deed of Trust, the delivery of a deed in lieu of foreclosure of this Deed of

Trust, the cancellation or release of record of this Deed of Trust, and/or the payment in full of the Indebtedness.

(e) The parties expressly agree that an event under the provisions of Section 1.17 which may be deemed to be a default under this Deed of Trust shall not be a default until the Grantor has received notice of such event. Further, in terms of compliance with future governmental laws, regulations or rulings applicable to environmental conditions, the Grantor shall be permitted to afford itself of any defense or other protection against the application or enforcement of any such law, regulation or ruling.

Section 1.18. ***Release of Mortgaged Property.*** The Trustee may release the Mortgaged Property or any part thereof from the lien and security interest of this Deed of Trust as may be agreed to between the Bank and the County.

ARTICLE II

Section 2.1. ***Events of Default.*** The terms ***"Default"***, ***"Event of Default"*** or ***"Events of Default"***, wherever used in this Deed of Trust, shall mean any one or more of the following events:

(a) Failure by the Grantor to pay any principal component or interest component of the Installment Payments when due as required by the Installment Financing Contract or by this Deed of Trust; or

(b) Failure by the Grantor to duly observe or perform after notice and lapse of any applicable grace period any other term, covenant, condition or agreement of this Deed of Trust; or

(c) Any warranty of the Grantor contained in this Deed of Trust, proves to be untrue or misleading in any material respect; or

(d) The occurrence of any ***"Event of Default"*** under the Installment Financing Contract.

Section 2.2. ***Acceleration upon Default, Additional Remedies.*** In the event an Event of Default shall have occurred and is continuing, the Beneficiary may declare all Indebtedness to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name or in the name of the Trustee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof, and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents and issues thereof, including those rents and issues past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorney's fees, upon any Indebtedness, all in such order as the Beneficiary may determine. The entering upon and taking possession of the Mortgaged

Property, the collection of such rents and issues and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Default or pursuant to such notice of Default and notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents and issues, the Trustee or the Beneficiary shall be entitled to exercise every right provided for in any instrument securing or relating to the Indebtedness or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, specially enforce any of the covenants hereof, or cause the Trustee to foreclose this Deed of Trust by power of sale; and

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of North Carolina or under any other applicable laws.

(d) Notwithstanding any provision to the contrary in this Deed of Trust, no deficiency judgment may be rendered against the Grantor in any action to collect any of the Indebtedness secured by this Deed of Trust and the taxing power of the Grantor is not and may not be pledged directly or indirectly or contingently to secure any monies due or secured under this Deed of Trust.

Section 2.3. ***Foreclosure by Power of Sale.*** Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall notify the Trustee and shall deposit with the Trustee this Deed of Trust and such receipts and evidence of expenditures made and secured hereby as the Trustee may require.

Upon application of the Beneficiary, it shall be lawful for and the duty of the Trustee, and the Trustee is hereby authorized and empowered to expose to sale and to sell the Mortgaged Property at public auction for cash, after having first complied with all applicable requirements of North Carolina law with respect to the exercise of powers of sale contained in deeds of trust and upon such sale, the Trustee shall convey title to the purchaser in fee simple. After retaining from the proceeds of such sale just compensation for the Trustee's services and all expenses incurred by the Trustee, including a the Trustee's commission not exceeding one percent (1%) of the bid and reasonable attorneys' fees for legal services actually performed, the Trustee shall apply the residue of the proceeds first to the payment of all sums expended by the Beneficiary under the terms of this Deed of Trust; second, to the payment of the Indebtedness and interest thereon secured hereby; and the balance, if any, shall be paid to the Grantor. The Grantor agrees that in the event of sale hereunder, the Beneficiary shall have the right to bid thereat. The Trustee may require the successful bidder at any sale to deposit immediately with the Trustee cash or certified check in an amount not to exceed twenty-five percent (25%) of the bid, provided notice of such requirement is contained in the advertisement of the sale. The bid may be rejected if the deposit is not immediately made and thereupon the next highest bidder may be declared to be the purchaser. Such deposit shall be refunded in case a resale is had; otherwise, it shall be applied to the purchase price.

Section 2.4. ***Performance by the Beneficiary on Defaults by the Grantor.*** If the Grantor shall Default in the payment, performance or observance of any term, covenant or condition of this Deed of Trust, the Beneficiary may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Beneficiary in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Grantor to the Beneficiary with interest thereon at the rate

provided in the Installment Financing Contract. The Beneficiary shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The Beneficiary is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Grantor or any person in possession holding under the Grantor.

Section 2.5. ***Receiver.*** If an Event of Default shall have occurred and is continuing and such Event of Default as to Events of Default occurring under Subsections 2.1(b), (c) and (d) hereof continues uncured for a period of thirty (30) days or more after written notice of such Event of Default is given by the Beneficiary to the Grantor, the Beneficiary, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the adequacy or value of any security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver or receivers to take possession of and to operate the Mortgaged Property and to collect and apply the rents and issues thereof. The Grantor hereby irrevocably consents to such appointment, provided the Grantor receives notice of any application therefor. Any such receiver or receivers shall have all of the rights and powers permitted under the laws of the State of North Carolina and all the powers and duties of the Beneficiary in case of entry as provided in Section 2.2(a), and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated. The Grantor will pay to the Beneficiary upon demand all reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section; and all such expenses shall be secured by this Deed of Trust.

Section 2.6. ***Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.*** The Grantor agrees to the full extent permitted by law, that in case of a Default hereunder, neither the Grantor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, or the absolute sale of the Mortgaged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and the Grantor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

Section 2.7. ***Leases.*** The Beneficiary and the Trustee , or either of them, at their option and to the extent permitted by law, are authorized to foreclose this Deed of Trust subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Grantor, a defense to any proceedings instituted by the Beneficiary and the Trustee to collect the sums secured hereby.

Section 2.8. ***Discontinuance of Proceedings and Restoration of the Parties.*** In case the Beneficiary and the Trustee, or either of them, shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Beneficiary and the Trustee, or either of them, then and in every such case the Grantor and the Beneficiary and the Trustee, and each of them, shall be restored to their former positions and rights hereunder, and all rights,

powers and remedies of the Beneficiary and the Trustee, and each of them, shall continue as if no such proceeding had been taken.

Section 2.9. ***Remedies Not Exclusive.*** Subject to Article XIII of the Installment Financing Contract, the Trustee and the Beneficiary, and each of them, shall be entitled to enforce payment and performance of any Indebtedness or obligations secured hereby and to exercise all rights and powers under this Deed of Trust or any other agreement securing or relating to the Indebtedness secured hereby or any laws now or hereafter in force, notwithstanding some of the Indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Trustee's or the Beneficiary's right to realize upon or enforce any other security now or hereafter held by the Trustee or the Beneficiary, it being agreed that the Trustee and the Beneficiary, and each of them, shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary or the Trustee in such order and manner as they or either of them may in their absolute discretion determine. No remedy herein conferred upon or reserved to the Trustee or the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or preclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any instrument securing or relating to the Indebtedness secured hereby to the Trustee or the Beneficiary or to which either of them may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Trustee or the Beneficiary and either of them may pursue inconsistent remedies.

Section 2.10. ***Waiver.*** No delay or omission of the Beneficiary or the Trustee to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary and the Trustee, and each of them, may be exercised from time to time and as often as may be deemed expedient by the Beneficiary and the Trustee, and each of them. No consent or waiver, expressed or implied, by the Beneficiary to or of any breach or Default by the Grantor in the performance of the obligations thereof hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same or any other obligations of the Grantor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by the Grantor.

Section 2.11. ***Suits to Protect the Mortgaged Property.*** The Beneficiary and the Trustee, and each of them, shall have the power (a) to institute and maintain such suits and proceedings as they may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Deed of Trust, with notice of commencement of such suits and proceedings to be given to the Grantor, (b) to preserve or protect their interest in the Mortgaged Property and in the rents and issues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Beneficiary.

Section 2.12. ***Beneficiary May File Proofs of Claim.*** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Grantor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings for the entire amount due and payable by the Grantor under this Deed of Trust at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Grantor hereunder after such date.

ARTICLE III

Section 3.1. ***Successors and Assigns.*** This Deed of Trust shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Deed of Trust to the Grantor, the Trustee or the Beneficiary such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of the Grantor, the Trustee or the Beneficiary, respectively.

Section 3.2. ***Terminology.*** All personal pronouns used in this Deed of Trust whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Deed of Trust itself, and all references herein to Articles, Sections or subsections thereof, shall refer to the corresponding Articles, Sections or subsections thereof, of this Deed of Trust unless specific reference is made to such Articles, Sections or subsections thereof of another document or instrument.

Section 3.3. ***Severability.*** If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 3.4. ***Applicable Law and Jurisdiction.*** This Deed of Trust shall be interpreted, construed and enforced according to the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of this Deed of Trust are with the North Carolina General Court of Justice in Haywood County, North Carolina or the U.S. District Court for the Western District of North Carolina. Any attempt to contravene this Section shall be an express violation of this Deed of Trust.

Section 3.5. ***Notices, Demands and Request.*** All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust must be in writing and shall be deemed to have been properly given or served by personal delivery or by depositing in the United States Mail, postpaid and registered or certified return receipt requested, and addressed to the addresses set forth in the Installment Financing Contract. All notices, demands and requests shall be effective upon personal delivery or upon being deposited in the United States Mail. However, the time period in which a response to any notice, demand or request must be given, if any, shall commence to run from the date of receipt of the notice, demand or request by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving at least thirty (30) days written notice thereof, the Grantor, the Trustee or the Beneficiary shall have the right from time to time and at any time during the term of this Deed of

Trust to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

Section 3.6. ***Appointment of Successor to the Trustee.*** The Beneficiary shall at any time have the irrevocable right to remove the Trustee herein named without notice or cause and to appoint a successor thereto by an instrument in writing, duly acknowledged, in such form as to entitle such written instrument to be recorded in this state, and in the event of the death or resignation of the Trustee named herein, The Beneficiary shall have the right to appoint a successor thereto by such written instrument, and any the Trustee so appointed shall be vested with the title to the Mortgaged Property and shall possess all the powers, duties and obligations herein conferred on the Trustee in the same manner and to the same extent as though such were named herein as the Trustee.

Section 3.7. ***Trustee's Powers.*** At any time, or from time to time, without liability therefor and without notice, upon written request of the Beneficiary and presentation of this Deed of Trust, and without affecting the personal liability of any person for payment of the Indebtedness secured hereby or the effect of this Deed of Trust upon the remainder of the Mortgaged Property, the Trustee may (1) reconvey any part of the Mortgaged Property, (2) consent in writing to the making of any map or plat thereof, (3) join in granting any easement therein, or (4) join in any extension agreement or any agreement subordinating the lien or charge hereof.

Section 3.8. ***Beneficiary's Powers.*** Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, the Beneficiary may, from time to time and without notice (1) release any person so liable, (2) extend the maturity or alter any of the terms of any such obligation, (3) grant other indulgences, (4) cause to be released or reconveyed at any time at the Beneficiary's option, any parcel, portion or all of the Mortgaged Property, (5) take or release any other or additional security for any obligation herein mentioned, or (6) make compositions or other arrangements with debtor in relation thereto. The provisions of Section 45-45.1 of the General Statutes of North Carolina, as amended, or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

Section 3.9. ***Acceptance by Trustee.*** The Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made of public record as provided by law.

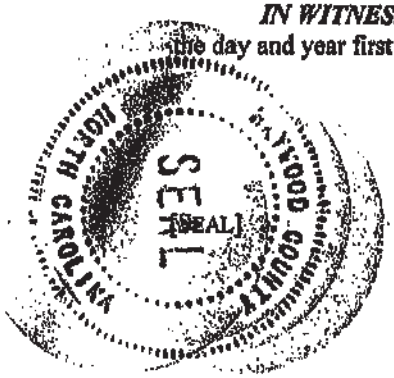
Section 3.10. ***Miscellaneous.*** The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, and the term ***"Beneficiary"*** shall include any payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise.

Section 3.11. ***Waiver of Rights.*** By execution of this Deed of Trust and to the extent permitted by law, the Grantor expressly: (1) acknowledges the right to accelerate the Indebtedness and the power of sale given herein to the Trustee to sell the Mortgaged Property by non-judicial foreclosure upon default by the Grantor and without any notice other than such notice (if any) as is specifically required to be given by law or under the provisions of this Deed of Trust; (2) waives any and all rights of the Grantor to appraisement, dower, curtsey and homestead rights to the extent permitted by applicable law; (3) acknowledges that the Grantor has read this Deed of Trust and any and all questions regarding the legal

effect of this Deed of Trust and its provisions have been explained fully to the Grantor and the Grantor has consulted with counsel or its choice prior to executing this Deed of Trust; and (4) acknowledges that all waivers of the aforesaid rights of the Grantor have been made knowingly, intentionally and willingly by the Grantor as part of a bargained for transaction:

[SIGNATURE PAGE BEGINS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Grantor has caused this Deed of Trust to be executed under seal the day and year first above written.



[SEAL]

COUNTY OF HAYWOOD, NORTH CAROLINA

By: _____
J.W. Kirkpatrick, III
Chairman
Board of Commissioners
County of Haywood, North Carolina

ATTEST:

_____
David B. Cotton
Clerk to the Board of Commissioners
County of Haywood, North Carolina

APPROVED AS TO FORM:

_____
Leon M. Killian, III, Esq.
County Attorney

[DEED OF TRUST FROM THE COUNTY OF HAYWOOD, NORTH CAROLINA TO RBC BANK (USA) DATED AS OF JULY 1, 2009]

PPAB 1556559v5

STATE OF NORTH CAROLINA)
)
COUNTY OF HAYWOOD)

I, a Notary Public of the County and State aforesaid, certify that David B. Cotton (the "Signatory") personally came before me this day and acknowledged that he is the Clerk to the Board of Commissioners for the County of Haywood, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners of the County of Haywood, North Carolina and attested by him as Clerk to said Board of Commissioners.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)
✓ (I have personal knowledge of the identity of the Signatory); or
_____(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
___ a driver's license *or*
___ in the form of _____); or
_____(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the 25th day of ~~July~~ June, 2009.

Rebecca Morgan
Notary Public

Print: Name: Rebecca Morgan
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: April 14, 2013

[NOTARY SEAL] **(MUST BE FULLY LEGIBLE)**

REBECCA MORGAN
NOTARY PUBLIC
HAYWOOD COUNTY
MY COMMISSION EXPIRES 04-14-2013
NORTH CAROLINA

PPAB 1556559v5

EXHIBIT A

REAL PROPERTY DESCRIPTION

All of that property described in Plat Cabinet C, Slot 5541 Haywood County Registry entitled "Haywood County Landfill", prepared from survey dated June 15, 2009 by Herron Associates, J. Randy Herron, RLS consisting of a 103.641 acre tract, a 57.409 acre tract, a 85.544 acre tract and a 22.106 acre tract, the total of which is 268.70 acres.

Together with and including and subject to that road right of way and easement recorded in Deed Book 388, Page 626 Haywood County Registry as well as any rights of way and easements pertaining to the 10 foot soil road; and easements in favor of Carolina Power & Light Co., all of which are specifically described or referred to upon the above referenced recorded plat.

EXHIBIT B

PERMITTED ENCUMBRANCES

The exceptions listed on Schedule B-II of the Title Insurance Policy No. RA09-0015485 issued in favor of RBC Bank (USA) by Chicago Title Insurance Company which are specifically incorporated herein by reference.

EXHIBIT G

[Proposed Service Area]

Avery County

Buncombe County

Burke County

Cherokee County

Clay County

Graham County

Haywood County

Henderson County

Jackson County

Macon County

Madison County

McDowell County

Mitchell County

Polk County

Rutherford County

Swain County

Transylvania County

Yancey County