

UPDATED
SUPPLEMENTAL INFORMATION DOCUMENT

APPLICATION

FOR
PERMIT TO CONSTRUCT

MIXED WASTE PROCESSING FACILITIES

AND

ENERGY GENERATION FACILITIES

CAROLINA ENERGY, L.P.

LENOIR COUNTY, NORTH CAROLINA

AND

WILSON RESOURCES, L.P.

WILSON COUNTY, NORTH CAROLINA

SUBMITTED TO:

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES
SOLID WASTE SECTION

P.O. BOX 27687
RALEIGH, NORTH CAROLINA 27611-7687

JANUARY 1995

Carmen Johnson
54-05
3/28/12
4/2/12 (98)

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WILSON COUNTY, NORTH CAROLINA

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JANUARY 1995



APPROVED
DIVISION OF SOLID WASTE MANAGEMENT
DATE _____ BY _____

Lenoir and Pitt Counties
Resource Recovery Agreements **1**

Resource Recovery and
Transportation Agreements:
Edgecombe County
Nash County
City of Rocky Mount
Wilson County **2**

Transfer Station Agreements:
Edgecombe County
Pitt County
Nash County and
City of Rocky Mount **3**

Ground Lease and Franchise
Agreement with Wilson County **4**

Cumberland County Residue
Disposal Agreement **5**



**AMENDED AND RESTATED
RESOURCE RECOVERY AGREEMENT**

BETWEEN

LENOIR AND PITT COUNTIES

AND

CAROLINA ENERGY, LIMITED PARTNERSHIP

DATED _____, 1994

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AMENDED AND RESTATED RESOURCE RECOVERY AGREEMENT

THIS AMENDED AND RESTATED RESOURCE RECOVERY AGREEMENT (the "Agreement") is made and dated as of _____, 1994, and amends and restates that certain Resource Recovery Agreement dated as of January 6, 1993 between LENOIR COUNTY and PITT COUNTY (collectively referred to herein as the "COUNTIES") and CAROLINA ENERGY, LIMITED PARTNERSHIP (referred to herein as the "CONTRACTOR"), a Delaware limited partnership, as amended by that certain Amendment No. 1 dated February 15, 1994, that certain Amendment No. 2 dated July 11, 1994, and that certain Amendment No. 3 dated July 12, 1994.

RECITALS

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

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

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

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

For this project, the Contractor has agreed to construct and operate a MRF in Wilson County, North Carolina on a site to be leased from Wilson County, North Carolina, which MRF would serve Wilson County, North Carolina, the Counties, and possibly other counties in North Carolina. The Contractor shall also construct and operate an alternate fuels boiler (the "AFB") on a site to be purchased or leased from E. I. Du Pont de Nemours in Lenoir County. The AFB will be designed to burn refuse-derived fuel ("RDF") prepared at the MRF.

The Counties, and private collectors doing business in those counties, will collect household and commercial solid waste including certain recyclables separated at their source, the further disposal of which is subject to agreements between sources and the collectors. Solid Waste, excluding privately recovered materials, shall be transported to a Transfer Station serving the County, where, after removal of non-combustible waste and Unacceptable Waste at the MRF, will be trucked by the Contractor to the AFB, finally processed into RDF and then burned to generate energy. Residues of soil, leaves and other materials not already being recycled may be processed to produce landfill cover and/or compost.

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

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

I. DEFINITIONS AND INTERPRETATIONS.

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

"Affiliate" means any person who would qualify as an affiliate under the definition thereof promulgated by the U.S. Securities & Exchange Commission, 17 C.F.R. §230.144(a)(1).

"Aggregate Minimum Commitment" shall mean 90,000 Tons from Pitt County and 40,000 Tons from Lenoir County, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

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

"Ash Disposal Site" shall mean a facility or location where Ash from the AFB may be disposed of in an Environmentally Acceptable manner.

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

"Compostables" means a mixture of items that can be used as a part of a soil supplement.

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

"Contractor" means Carolina Energy, Limited Partnership, a Delaware partnership, and its permitted successors and assigns.

"Counties" means the Counties of Lenoir and Pitt, North Carolina.

"County" means one of Lenoir or Pitt County.

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

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

"Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility to which Acceptable Waste, Residue or Ash is or may be delivered for ultimate disposal or use.

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

"Hazardous Waste" means any material defined as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), or applicable state laws and the rules, regulations, policies and guidelines promulgated thereunder, as each may be amended from time to time, or any waste which, by reason of its composition or characteristics is a toxic substance or hazardous waste as defined in the Resource Conservation and Recovery Act, (42 U.S.C. § 6901 et seq.), as amended, and related federal, state and county laws and regulations, or in any future additional or substitute federal, state or county laws and regulations pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; any source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and related regulations; low level radioactive waste, or any other material posing a threat to health or safety or causing injury to or adversely affecting the operation of the MRF or AFB, including, without limitation, pathological, medical or biological wastes, septic, cesspool or other human

wastes, human and animal remains, cleaning fluids, crankcase oils, cutting oils, paints, acids, caustics, poisons, explosives and drugs. If any governmental agency having appropriate jurisdiction shall determine that substances which are not, as of the date hereof, considered harmful, toxic, or dangerous, are in fact harmful, toxic, or dangerous, or are hazardous or harmful to health, then any such substance shall thereafter constitute Hazardous Waste for purposes of this Agreement. If all government agencies having appropriate jurisdiction shall determine that a given substance which, as of the Contract Date, was deemed to be a Hazardous Waste, is no longer harmful, toxic or dangerous, then any such substance shall thereafter no longer constitute Hazardous Waste for purposes of this Agreement.

"Letter of Credit" shall mean a Letter of Credit as defined in Section 7.02.

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

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

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

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

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

"Refuse Derived Fuel" or *"RDF"* shall mean combustible materials derived from processing operations of the MRF and AFB.

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

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

"Residue Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility to which Residue is delivered for ultimate disposal or use.

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

"State" means the State of North Carolina.

"Transfer Stations" shall mean transfer stations to be constructed and operated by each County pursuant to Agreements for Construction and Operation of Transfer Station between each County and Contractor. Any reference to a particular Transfer Station shall mean the Transfer Station then serving the particular County.

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

"Unacceptable Waste" means (i) explosives, Hazardous Waste, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such materials; (ii) any item either smoldering or on fire; (iii) non-combustible construction materials and demolition debris, including masonry, brick and stone, structural steel, re-bar, and structural shapes; (iv) all other items of waste which, at the time of delivery to the MRF or a Residue Disposal Site, would normally not be disposed of in a sanitary landfill, as set forth in the Solid Waste Management Ordinance and regulations of the County Solid Waste Management Department promulgated thereunder of each County (as may be in effect from time to time, subject to Section 16.02), and (v) any other items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any

other regulatory authority, or any applicable law or regulation, from being processed by the MRF or at the AFB.

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

II. ***DUTIES OF CONTRACTOR.***

2.01 ***Overview of Contractor's Duties.***

(a) The Contractor shall prepare the site for, construct and operate the MRF in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. The AFB shall be designed and constructed with a capacity to process no less than 160,000 Tons of RDF per year (based on an assumed BTU content of 6,000 BTUs per pound of RDF). The MRF will have a design capacity that will provide for the processing of at least 200% of the minimum Tons per year of Acceptable Waste stated for each County in Section 6.03. So long as and to the extent it is economically feasible to the Contractor and environmentally positive, the MRF and AFB shall recover Compostable Materials and Recyclable Materials present in the Solid Waste received from the Counties, their Designees and other sources permitted by this Agreement, including, but not limited to the following: aluminum cans, ferrous and bimetal products, corrugated paper, glass, plastics and newspaper. Notwithstanding the foregoing, the Contractor agrees not to dispose of aluminum and ferrous Recovered Materials by landfill deposit. For each Contract Year, in conjunction with the development of the annual Operating Plan provided for in Section 2.10, the Counties and the Contractor shall develop an annual recycling and composting plan. In developing such plan they shall consider market conditions for Recyclable Materials and the economic feasibility of recovering same in an environmentally positive manner and market conditions and other uses (such as landfill cover) for Compostable Materials, the current State goals for reduction of landfill disposal, the amount of recycling and composting being accomplished outside the purview of this Agreement that can be

counted against goal attainment, and the benefit of recovering Recyclable Materials and Compostable Materials at the MRF and AFB to meet such goals. The Contractor will participate with the Counties in seeking to adopt an annual recycling and composting plan that will permit the Counties to meet mandatory state recycling and composting goals. If it appears that due to market conditions for Recyclable Materials or Compostable Materials recovered at the MRF the State goals for the forthcoming Contract Year may not be met, the following actions shall be taken: (1) the Counties shall make a good faith, reasonable effort to increase the amount of recycling and composting accomplished outside the purview of the Agreement by voluntary or mandatory resource recovery programs; and (2) the Counties, supported by the Contractor, shall make a good faith best effort to obtain a waiver either of the State goals for such year to the extent of the estimated shortfall or of the imposition of penalties for failure to meet such goals.

(b) After the Commencement Date, the Contractor shall process and either recycle or otherwise dispose of all Acceptable Waste delivered to the Contractor at the Transfer Stations by the Counties or their Designees up to the maximum stated in Section 2.02 regardless of the mechanical status of the MRF or AFB, unless the MRF or the AFB is unable to operate due to factors constituting Uncontrollable Circumstances. The County shall use its best efforts to identify and reject, prior to unloading Unacceptable Waste delivered by each County or their Designees to the Transfer Station or the MRF; provided, however, that if undiscovered Unacceptable Waste is accepted and after unloading the Transfer Station or the MRF such Waste is identified as Unacceptable Waste, Contractor shall separate and dispose of such Unacceptable Waste in an Environmentally Acceptable manner subject to reimbursement by each County only to the extent set forth in Section 2.03(b)(iii)(A).

(c) The Contractor shall equip the MRF and AFB with emission controls designed to insure that the MRF and AFB each operate in an Environmentally

Acceptable manner and comply with all applicable laws and regulations governing water quality, air quality, Solid and Hazardous Waste, odor and noise emissions.

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

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

2.02 Acceptance of Acceptable Waste. It is the intent of the parties that sufficient Acceptable Waste be provided to allow the AFB to operate at full capacity, which, depending on BTU values, may be up to 192,000 Tons of RDF per year. Accordingly, the parties agree that the Contractor may accept at the AFB sufficient RDF from Acceptable Waste generated in North Carolina to enable the AFB to operate at full capacity; provided, however, that the Contractor may accept at the AFB RDF from Acceptable Waste from other sources in North Carolina only to the extent that such acceptance does not prevent the Contractor from processing at the AFB all of the RDF which results from processing at the MRF all of the Acceptable Waste that the Counties and their Designees are entitled to deliver pursuant to this Section 2.02. The Contractor shall accept and process at the MRF Acceptable Waste delivered to the Contractor at the Transfer Stations by the Counties or their Designees; provided, however, that the Contractor shall not be required to accept in any seven consecutive day period more than 2,850 Tons from Pitt County or 1,500 Tons from Lenoir County.

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

(a) The Contractor shall have the right to reject, and shall have no obligation to transport or dispose of, any of the following Solid Wastes (including Waste transported to the MRF from a Transfer Station by the Contractor):

(i) Unacceptable Waste, it being agreed that in the event the Contractor determines that a load of Solid Waste contains both Acceptable and Unacceptable Solid Waste, it shall be entitled to reject and prevent the loading at a Transfer Station and/or unloading at a MRF of the entire load unless the Unacceptable Waste can reasonably be segregated and handled pursuant to Section 2.03(b) below;

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

(iii) Solid Waste not reasonably transportable (because of size, consistency or other physical characteristics) in at least twenty (20) ton loads.

(b) Handling of Unacceptable Waste.

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

(ii) The Contractor shall, in an Environmentally Acceptable manner, separate, store, process and dispose of any Unacceptable Waste brought to the MRF (and not rejected by the Contractor) and not identified by the Contractor as such until after unloading from the delivery vehicle. Upon the request of any County, Contractor shall furnish evidence satisfactory to the requesting County of the Contractor's proper disposal of Unacceptable Waste delivered to the MRF.

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

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

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

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

2.05 Regulatory Requirements.

(a) **Permits and Licenses.** The Contractor shall be responsible, at its own expense, for obtaining and maintaining compliance under, and obtaining any necessary extensions of, all permits, licenses, zoning ordinances, and other federal, state and county approvals, including those related to air and water pollution, solid waste, siting, land use, wetlands, flood plain, noise, odor, and building, which may be necessary for transportation of Acceptable Waste from the Transfer Station to the MRF and for the construction, operation, maintenance and

repair of the MRF and the AFB. If an administrative agency, department, authority, political subdivision or other instrumentality to which an application for a permit required for the transportation of Acceptable Waste from the Transfer Station to the MRF or for the operation, maintenance or repair of the MRF or the AFB fails to take action, whether or not a specific time limitation for such action is prescribed by law, the failure to act shall be treated as an Uncontrollable Circumstance if the failure to act has a material adverse effect on the ability of the Contractor or the Counties to satisfy their obligations under this Agreement. Any applicable time limitation shall be deemed to have commenced on the date when the appropriate application and all related information called for by the application have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) ***Adherence to Law.*** The Contractor shall transport the Acceptable Waste from the Transfer Station to the MRF, and shall design, construct and operate the MRF and the AFB, in a manner which shall not violate any applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) ***Inspection by Counties.*** The Contractor shall permit duly appointed officials of each County to have access to and entry upon vehicles transporting Solid Waste from the Transfer Station to the MRF at any time within regular Transfer Station operating hours, and access to and entry upon the MRF at any time during regular MRF operating hours to inspect such vehicles and the MRF for the purpose of evaluating the Contractor's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the Contractor including those relating to the safety of persons operating the vehicles or present on the MRF and the protection of the Contractor's proprietary information but no such rule may be used to deny the inspectors reasonable access

to the vehicles or to the MRF unless such access would violate any applicable law, ordinance or regulation. Inspections shall be controlled by agreements between the MRF supervisor and the Department Director as set forth in the Annual Operating Plan. Such inspections by each County shall be for the purpose of verifying compliance with the terms of this Agreement only and shall not grant or permit any County to direct, control or supervise the operations of the Contractor. The exercise by any County of its right of inspection shall not be deemed to be the exercise by any County of any direction, control or power of control over the vehicles, the MRF, or the operations of the Contractor.

Upon written request from either the Pitt County or Lenoir County Manager, Contractor will make available the most recent AFB emissions report filed with Department of Environment, Health and Natural Resources. In addition, Contractor will provide access to its Continuous Emissions Monitoring (CEM) data. Such data will be made available to the Pitt County or Lenoir County Managers or their authorized designees during regular business hours upon reasonable notice and request. Either the Pitt County Manager or the Lenoir County Manager may also request that CEM data be provided to the Community Advisory Group of the County for dissemination to concerned citizens, and Contractor shall promptly provide same.

2.06 *Financial Responsibility.* Except as otherwise provided in this Agreement, the Contractor shall provide and pay for all of the labor, services, parts, supplies, utilities, and other resources other than Acceptable Waste required for the Contractor to transport Acceptable Waste from the Transfer Station to a MRF and to operate and maintain the MRF and the AFB in accordance with the requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals. Notwithstanding the foregoing, the requirements of Article VII may not be altered by ordinance or other legislation of the Counties.

2.07 *Maintenance.* Throughout the term of this Agreement, the Contractor shall take all action necessary to ensure that vehicles used by it to transport Acceptable Waste

from the Transfer Station to the MRF, the MRF, and the AFB at all times meet and conform to good engineering and operating practices. Maintenance shall include the performance of all necessary upkeep, repairs and replacement. The Contractor shall plan, schedule, and perform preventive maintenance to such vehicles, the MRF, and the AFB in accordance with the Annual Operating Plan to ensure minimum downtime to the extent practicable.

2.08 Safety Precautions. In compliance with applicable federal, state and county regulations, the Contractor shall initiate, maintain and supervise safety precautions and programs in connection with the operation and maintenance of the vehicles transporting Acceptable Waste from the Transfer Station to the MRF, and in connection with the operation and maintenance of the MRF and the AFB.

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

2.10 Annual Operating Plan. The Contractor, in conjunction with the Counties, shall establish at least thirty (30) days prior to the commencement of each Contract Year a detailed service plan (the "Annual Operating Plan") for the MRF. The Annual Operating Plan shall set forth the Contractor's estimates of planned down time, estimated scheduled and unscheduled outage time based on previous experience, and major equipment replacements. The Annual Operating Plan shall include, but not be limited to, scheduled maintenance and repair in accordance with Section 2.07, daily schedules of operations, specifications for delivery vehicles, fee schedules for the Contractor's handling of Unacceptable Wastes, staffing requirements, record keeping and scale operation procedures, and Solid Waste segregation and screening procedures. In the event that prior to the first day of any Contract Year, the Contractor and either County shall have been unable to develop a plan satisfactory to both parties, the Annual Operating Plan for the previous Contract Year shall remain in effect until such time as agreement is reached for that County. In the event that an agreement cannot be reached

within six (6) months after the beginning of the Contract Year, the dispute shall be subject to the dispute resolution procedures described in Section 8.05 hereof. The Contractor and either County may revise the Annual Operating Plan for the then current Contract Year at any time by mutual consent, which shall not be unreasonably withheld.

2.11 *Unscheduled Outages.*

(a) In the event of any unplanned cessation of the transportation of Acceptable Waste to a MRF or any unplanned outage of the MRF, the Contractor shall: (i) use all reasonable efforts to resume full normal transportation of Acceptable Waste to a MRF, or to resume full normal operations of the MRF, as the case may be, as quickly as possible, and (ii) arrange for interim transportation, processing, or disposal, as the case may be, of all Acceptable Waste in an Environmentally Acceptable manner. The Counties and their Designees shall, at the direction of the Contractor, divert all Acceptable Waste which the Contractor is unable to accept at the MRF to another materials recovery facility or another Disposal Site acceptable to the Counties. All fees payable pursuant to Article VI shall be payable with respect to such diverted Acceptable Waste only to the extent that such waste is processed by the Contractor, and the Counties shall receive credit toward its Aggregate Minimum commitment for such diverted Acceptable Waste. If such waste is disposed of without processing by the MRF due to an outage the Counties will not be billed for the disposal of such unprocessed Acceptable Waste, but the Counties will continue to receive credit toward their Aggregate Minimum Commitment for such diverted Acceptable Waste.

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

2.12 *Records.*

(a) The Contractor shall operate and maintain a motor truck scale at the MRF then serving the County, calibrated at least quarterly to the accuracy

required by the State for public weighing facilities and shall weigh all vehicles delivering Solid Waste to such MRF. Each vehicle will be weighed, with the date, time, truck identification and weights (loaded and unloaded) to be entered on a weight record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. If the weighing facility at the MRF is out of service, the Contractor shall, subject to any applicable state regulation, either obtain alternate temporary weighing capability or estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and estimated data based on pertinent historical information.

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

2.13 Indemnification. The Contractor will protect, indemnify and hold each County harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against such County including reasonable attorneys' fees, and will, if requested, defend the Counties in any suit,

including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property (including environmental damage), or civil or criminal fines or penalties, (i) to the extent caused by the wilful misconduct or negligent acts, errors or omissions of the Contractor, its agents, employees, contractors or subcontractors, or (ii) no matter how or by whom caused, occurring on the premises of the MRF or AFB and not caused by the wilful misconduct or negligent acts, errors or omissions of the County or its employees, agents or representatives. The Counties shall promptly notify the Contractor of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall, at their option, give the Contractor the opportunity to defend such claim; and shall not settle such claim without the approval of the Contractor, which approval shall not be unreasonably withheld. These indemnification provisions are for the protection of each County only, do not apply to claims of a County itself against the Contractor under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

2.14 **Insurance.** The Contractor shall maintain the insurance called for under Section 7.01 and shall name the Counties as additional insured parties as required under Section 7.04.

2.15 **Notification of Pending Amendment.** The Contractor shall notify the Counties as soon as practicable of any proposed amendment hereof, including any amendment related to the requirements of the Credit Institution under Section 4.04.

2.16 **MSW Reduction Guarantee.** In addition to the reports required under Section 2.12, the Contractor will provide a monthly recycling report to the Counties reporting the total Solid Waste reduction as defined under North Carolina solid waste management laws and regulations as adopted, amended and effective January 1, 1994. Such reduction, stated as a percentage of total Acceptable Waste delivered to the Contractor at the Transfer Stations by the Counties for that month (except as revised as provided below), is referred to herein as the "Reduction Percentage." The form of the report will be as mutually agreed by the Contractor and the Counties. The Contractor hereby guarantees that the Reduction Percentage from the recycling of paper, plastics,

metals, glass or materials beneficially used as ground cover or aggregate fill but excluding materials that are composted, stated on an annual basis for each Contract Year, shall be no less than 12.5%; provided, however, that if recyclable materials other than compostable materials are removed from MSW delivered to the Contractor prior to delivery thereto, then the amount of such recyclable materials removed from the Solid Waste shall be added to the total Solid Waste reduction in computing the Reduction Percentage. If the Contractor fails to meet the guaranteed Reduction Percentage, then (as the Counties' sole remedy) the Contractor shall pay the Counties fees equal to the per-Ton fees then in effect under Sections 6.01 and 6.02 hereof for each Ton by which the total Solid Waste reduction failed to meet the guaranteed Reduction Percentage; but in no event shall payments to the Counties exceed for any Contract Year an amount equal to ten percent (10%) of the fees paid by the Counties to the Contractor pursuant to Sections 6.01 and 6.02 below for such Contract Year. The parties hereto expect that beginning June 30, 2001, a 10% credit will be allowed in computing the total Solid Waste reduction for materials burned to generate energy; in such case and at such time as such increase comes into effect, the Contractor guarantees that the Reduction Percentage shall increase to 22.5%.

III. DUTIES OF THE COUNTIES.

3.01 Delivery of Acceptable Solid Waste; Aggregate Minimum Commitment. Commencing on the Commencement Date and continuing throughout the term of this Agreement, each County shall deliver or cause to be delivered to the Contractor at the Transfer Station its Aggregate Minimum Commitment during each Contract Year, plus, to the extent the MRF has the capacity to accept such Solid Waste, any additional Acceptable Waste collected for disposal by each County and its Designees during each Contract Year subject to the Contractor's right to reject the Counties' deliveries in excess of aggregate amounts stated in Section 2.02. For purposes of this Section 3.01, Acceptable Waste is deemed to be "collected for disposal" if it is presently being delivered to a landfill or to a general materials recovery facility.

3.02 *Computation of Aggregate Minimum Commitment.*

(a) *Amounts Included in Computation of Aggregate Minimum Commitment.* Each County shall receive credit toward meeting its Aggregate Minimum Commitments for all Acceptable Waste delivered by such County and its Designees and accepted by the Contractor at the Transfer Station, or to any other destination specified by the Contractor as described in Section 2.11.

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

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

3.04 *Reduction in Payment to Counties.* Each County agrees with the Contractor that it will allow the Contractor to recoup any liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses, or suits, including reasonable attorneys' fees, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of such County, its agents, or employees acting within the scope of their employment (herein the "Losses"). The Contractor shall promptly notify such County of the assertion of any claim against which it asserts a right of recoupment hereunder and shall not settle such claim without the approval of such County, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against any County under this Agreement or any related agreements, and shall not create any benefit or liability to third parties.

3.05 *Solid Waste Flow Ordinances.* On or prior to December 31, 1995, or at such later date permitted by the Contractor, unless the Counties are not the appropriate

authority therefor, the Counties shall each promulgate and enforce waste flow control ordinances mandating that all MSW, up to the maximum tonnages specified in Section 2.02 hereof, generated in each of the Counties after the Commencement Date and thereafter so long as this Agreement is not terminated, shall be delivered exclusively to the Contractor under this Agreement, excluding Unacceptable Waste and Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement. The Contractor shall notify the Counties that they are, or are not, the appropriate authority not less than forty-five (45) days prior to December 31, 1995, or such later date permitted by Contractor for the passage of such waste flow control ordinances. Such ordinances shall be consistent with law and court rulings.

3.06 *Contractor Permits and Licenses.* Subject to its obligations to provide for the health and safety of its citizens and to other limitations required by law, the Counties agree to use their best efforts to aid Contractor in obtaining the permits and licenses referenced in Section 2.05(a).

IV. *CONDITIONS PRECEDENT TO OPERATIONS.*

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

4.01 The Contractor shall have obtained a Steam Purchase Agreement satisfactory to it in its sole discretion for the sale of steam to be produced at the AFB to E. I. Du Pont de Nemours & Company ("Du Pont"), and shall have provided evidence thereof to the Counties.

4.02 The Contractor shall have obtained all environmental and other governmental permits, licenses and authorizations necessary for construction and operation of the MRF and the AFB.

4.03 The Contractor and each County shall have agreed upon an Annual Operating Plan, as described in Section 2.10.

4.04 If necessary and as reasonably required by either County, the Contractor shall have entered into contracts, and shall have provided the Counties with evidence

thereof, with one or more users or Residue Disposal Sites for the disposal, at no cost to any County, of Ash, unburned or unburnable Acceptable Waste, or Unacceptable Waste delivered to the Transfer Stations or the MRF. The Contractor shall have received an unconditional written commitment from a Credit Institution for a loan, bond or equity securities underwriting or other similar type of non-recourse financing, repayable over the term of this Contract and on such terms and conditions as are satisfactory to Contractor in its sole discretion. The Contractor shall make application for such financing and shall furnish any information and execute any instruments required in connection with such application. The Counties agree to negotiate any changes to this Agreement reasonably required by the Contractor to effect financing of the MRF and AFB, and such changes shall not be unreasonably refused; provided, however, that such changes (i) shall not violate any law or regulation of any federal, state or municipal government and (ii) shall not substantially increase the Counties' economic costs of performance of this Agreement.

4.05 The Counties shall have advised the Contractor that the Transfer Stations are ready to receive the Counties' Acceptable Waste, and the Contractor shall have advised the Counties that start-up operations and capacity testing have been completed satisfactorily, and that the MRF is ready to receive Acceptable Waste. The Contractor shall invite each County's officials to witness tests, review data and concur that the MRF is ready for use, with such concurrence not to be unreasonably withheld.

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

4.07 The Counties shall have adopted the Solid Waste Flow Ordinances that are the subject of Section 3.05, if required thereunder.

4.08 The Counties and the Contractor shall have agreed to an initial Annual Operating Plan as described in Section 2.10.

Section 9.02 shall apply if the conditions precedent in Article IV are not met and such conditions are not waived by the parties requiring satisfaction of such conditions.

V. UNCONTROLLABLE CIRCUMSTANCES.

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

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

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

(c) The failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused

by an Uncontrollable Circumstance and the affected party is not reasonably able to obtain substitute labor, services, materials or equipment on terms and conditions no less favorable to the affected party;

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

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

of the operation of either the MRF or AFB, shall qualify as an Uncontrollable Circumstance; or

(f) If (i) after a County has properly, and in timely manner, taken all necessary and appropriate actions to budget and appropriate sufficient funds to satisfy the obligations due under this Agreement in the next succeeding fiscal year and has diligently pursued and exercised all reasonable efforts to obtain such funds, funds have not been appropriated for the next succeeding fiscal year in an amount anticipated to be equal to the payments due hereunder during the fiscal year; and (ii) written notice thereof was given to the Contractor within ten (10) days of the adoption of the final budget for such fiscal year and the Contractor shall have received an opinion of counsel of a County verifying the occurrence of (i), above, then the County so notifying the Contractor shall be considered burdened by an Uncontrollable Circumstance to the extent, and only to the extent funds are unavailable when payment is due, subject to the further terms of this Article V.

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

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

VI. FEES.

6.01 *Fixed Fee.* Each County shall pay the Contractor a fixed fee of seventeen dollars and no cents (\$17.00) per Ton of Solid Waste delivered by each such County or its Designees to the Contractor at the Transfer Station and accepted by the Contractor (as provided in Article II). This fee shall be fixed for the term of this Agreement.

6.02 *Variable Fee.* In addition to the fixed fee set out in section 6.01, each County shall pay the Contractor a variable fee which initially shall be eighteen dollars and fifteen cents (\$18.15) per Ton of Solid Waste (including wood) delivered by each such County and its Designees to the Contractor at the Transfer Station and accepted by the Contractor. Each County and its Designees shall also pay a fee for whole tires in the amount of \$55.00 per ton. The variable fee and the fee for tires shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring effective January 1, 1995, using the year ended December 31, 1993, as the base year from which adjustment is made. Notwithstanding any other provision of this Section 6.02, the variable fee rate as so adjusted shall not exceed \$20.00 for the year in which the Commencement Date occurs. Further adjustments shall be made effective each July 1 thereafter for adjustments occurring during the preceding twelve months ended June 30.

6.03 *Minimum Total Fee.* In no event shall the total fee paid to the Contractor by each County for any Contract Year be less than the sum of the fees per Ton payable under Sections 6.01 and 6.02 for the applicable year, multiplied by the following tonnages for each County:

Lenoir County	40,000 Tons
Pitt County	90,000 Tons

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

6.04 Increase in Deductions and Fees Due to Increased Environmental Law Compliance. In the event that, after the Commencement Date because of a change in applicable environmental laws, regulations or ordinances, either (a) the operating costs of the MRF or AFB escalate or (b) the MRF or AFB must be reconfigured, upgraded or altered, then the Contractor shall be entitled to recoup a portion of the increased operating costs and/or the costs of such reconfiguration, upgrade or alteration from the Counties, as the case may be, after deduction of a portion of such costs, all as further provided herein. The Counties shall have the right to review and contest the need for any such upgrades or reconfigurations and the costs thereof prior to Contractor initiating any such upgrades or reconfigurations in excess of \$500,000 (which amount shall be subject to adjustments as described below) as calculated below. The Contractor shall first calculate the amount of increased operating and/or capital costs to be incurred over the full term of this Agreement. From this amount \$500,000 (which amount shall be subject to adjustment as described below) shall be deducted, prorated between operating and capital costs in proportion to the gross amount of costs in each category. The \$500,000 deducted amount (as adjusted below) shall represent costs to be absorbed by the Contractor. The Contractor shall next recalculate the annual increased operating costs incurred and/or the annual amortized capital costs of such improvements in both cases after deduction of such \$500,000 (as adjusted below) amount, similarly prorating the deductible amount among various capital items (referred to herein as the "annual net increased operating costs" or "annual net amortized operating costs"). Capital costs shall be amortized in accordance with generally accepted accounting principles based upon the estimated lives of such improvements. The Contractor shall furnish its calculations of the above costs to each of the Counties in sufficient detail for the Counties to confirm the basis and accuracy of the calculations of costs. Fifty percent (50%) of any annual net increased operating costs or annual net amortized capital costs, in the amounts originally submitted to the Counties, shall be added annually to the fees to be paid under Section 6.01, allocated per ton among the Counties on the basis of all Acceptable Waste processed by the Contractor for each County in the preceding Contract Year (and for the

first Contract Year based upon an assumed annual tonnage of Acceptable Waste of 120,000 tons). The Contractor shall not be permitted to charge actual operating costs incurred in excess of amounts forecast.

The \$500,000 amount shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonably adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1994 as the base year from which adjustment is made, to be in effect until December 31, 1995, and subsequent adjustments to be made effective each January 1 thereafter, using the calendar year 1994 as the base year from which adjustment is made in each instance.

6.05 Method of Payment.

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

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

(ii) any amount owed by each County to the Contractor pursuant to Sections 2.03(b)(iii) or 6.04, **plus**

(iii) any amounts deducted under Sections 3.04.

(b) Amounts due under Section 6.03, if any, shall be invoiced by the Contractor after the end of the applicable Contract Year, setting forth in detail the basis of the amount billed.

(c) All invoices shall be delivered by hand or mailed first class, postage prepaid to the Counties at the addresses set forth in Article XIII, and such invoices

shall be paid within thirty (30) days after the date of the invoice. The Counties may supply other addresses at their discretion at any time.

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

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

7.01 *Insurance.* The Contractor shall obtain at its own cost and expense the types of insurance listed herein from an insurer licensed and admitted in the State of North Carolina. The Contractor shall not commence construction of the MRF and the AFB until all Insurance Requirements applicable during construction are satisfied. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained, unless the Contractor's General Liability policy specifically provides Independent Contractor's Protective Coverage.

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

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

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

(i) **COMPREHENSIVE GENERAL LIABILITY OR COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, with

minimum Combined Single Limits of \$5,000,000 per Occurrence, and \$5,000,000 Aggregate including:

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

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

(ii) AUTOMOBILE LIABILITY, with minimum limits of \$1,000,000 for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. Code 1 "Any Auto" symbol is required for this liability coverage. This policy shall include the Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90), if hazardous waste is transported.

(iii) WORKERS' COMPENSATION: Statutory Limits.

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

(v) The minimum limits stated in (i), (ii) and (iv) above shall increase automatically at every five (5) year interval from the Commencement Date by ten percent (10%) of the original limits, for each occurrence and aggregate. The Contractor may incur such deductibles as

are standard in the industry, not to exceed 10% of the face amount of the coverage of the policy amount in question.

7.02 Letter of Credit. On or before the Commencement Date, the Contractor shall provide Letters of Credit (the "Letters of Credit") in a form reasonably acceptable to the Counties, which shall provide non-exclusive means of payment to the Counties for compensatory damages incurred as a result of a breach by the Contractor of this Agreement or such other obligations of the Contractor that may arise pursuant to Section 2.13. Each Letter of Credit shall be an irrevocable standby letter of credit issued by a bank or financial institution (the "Issuing Bank") with a credit rating on its senior unsecured debt of at least "AA3" from Moody's Investors Service and at least AA- from Standard & Poor's Corporation or otherwise acceptable to the Counties in their sole discretion, shall be in an amount of \$1,000,000, and shall be outstanding throughout the term of this Agreement. Beginning on the fifth anniversary of the Commencement Date, the Letter of Credit shall be adjusted annually, using the previous year as the base year, in increments of \$100,000 to reflect increases and decreases in the index referenced in Section 6.02. No adjustment shall be made for increases or decreases involving less than \$100,000. The Letter of Credit shall be arranged in such a manner that permits any County to draw upon the Letter of Credit under either of the following circumstances:

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

(2) Since a Letter of Credit will be outstanding throughout the term of this Agreement, the Letter of Credit posted as security under this Agreement will

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

The Escrow Agreement shall provide that an escrow account under the Escrow Agreement shall be maintained at the Escrow Bank bearing interest at current market rates. The Contractor shall not be entitled to obtain any amounts on deposit in said escrow account (except the right to receive interest as provided below) except upon (i) termination of this Agreement (other than as a result of an Event of Default by the Contractor, in which case the Counties may first make any claims to amounts in such account pursuant to Article VIII, releasing promptly any amounts to which they have no bona fide claim); or (ii) the posting by the Contractor of a new Letter of Credit pursuant to this Section which meets all the standards stated in this Section 7.02. The Escrow Agreement shall further provide that, upon written request of any County, the Escrow Bank shall make payments from the escrow account from time to time to the County for the amount of damages incurred by the Counties as a result of an Event of Default which shall be evidenced by either a written statement to such effect executed by both parties or a written finding by an arbitrator under the arbitration procedure described in Section 8.05.

The Contractor shall have the right to contest any request for the payment of damages to the Counties, or any amounts to be drawn down from the Letters of Credit

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

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

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

7.03 *Acceptability of Insurers.* Insurance shall be placed with insurance companies licensed and admitted in the State of North Carolina, with an A.M. Best rating of no less than "A," unless proper financial information relating to the company is submitted to and approved by the Counties prior to coverage being placed with such insurance company.

7.04 *Counties as Co-Insured; Notice to Counties Upon Cancellation and Non-Renewal.* The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the Counties duplicate copies of all policies, including applicable endorsements as well as the Certificates of Insurance as provided herein upon the commencement of construction. The insurance policies listed in Section 7.01(b)(i) and 7.01(b)(ii) shall name the Counties as additional insured parties with regard to the Contractor's operation of the MRF and AFB. The Certificates shall include provisions stating that the policies may not be cancelled (except for non-payment) or materially amended without the Counties having been provided at least thirty (230) days' written notice. The Certificates shall identify the contract to which they apply and shall include the name and address of the person executing the certificate as well as the person's

signature. The Contractor shall also have both the Commercial General Liability and Automobile Liability insurance policies specifically endorsed to state that the Counties will be given thirty (30) days advance notice of cancellation or nonrenewal of such policies, and forward such endorsement copies to the Counties. Since policies will expire before the completion of the contract, renewal certificates of insurance shall be furnished to the Counties by the Contractor before the expiration of each policy, for the term of the contract. Certificates will provide for a ten (10) day advance notification to the Counties if cancellation is to be made for failure of the Contractor to pay premiums.

7.05 Time for Furnishing Certificates and Copies of Policies. Certificates of Insurance and copies of all insurance policies as required herein shall be furnished no later than ten (10) days prior to commencement of construction of the MRF to the Counties at the addresses set forth in Article XIII.

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

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

7.08 Operations Performance Bond. In lieu of a Letter of Credit, the Contractor may, at its option, provide an Operations Performance Bond or other form of insurance acceptable to the Counties, which shall be posted by Contractor and shall provide a non-exclusive means of payment to the Counties in the event of a breach of this Agreement by the Contractor. Payments under the Operations Performance Bond shall be made pursuant to the same procedures for payment under the Letter of Credit, as set forth in Section 7.02(1).

7.09 Draw Down Under Letter of Credit or Operations Performance Bond. If any event or condition has occurred which but for applicable periods of notice, grace or

cure (including cure periods granted to the Credit Institution) would constitute an Event of Default, and such event or condition damages any County, such County may draw upon the Letter of Credit or Operations Performance Bond provided in Sections 7.02 and 7.06, respectively, during any such periods of grace or cure to compensate it for such damages incurred to the date of the claim in accordance with the procedures set forth therein as if such event or condition had matured into an Event of Default.

VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.

8.01 Remedies for Default.

(a) Default by Contractor.

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

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

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

(iv) Pending cure by the Credit Institution of an Event of Default, at the Counties' election, the Contractor shall assign to the Counties, subject to prior assignment to the Credit Institution, any or all of the Contractor's contracts with licensed landfills or other Ash or Residue Disposal Sites. The Contractor shall obtain consent to such assignment from Ash or Residue Disposal Site operators as part of any agreement it enters into subsequent to the date hereof.

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

(b) **Default by Counties.**

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

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

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

8.02 Events of Default by the Contractor.

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

(i) Contractor failure (which is not excused by Uncontrollable Circumstances) occurring at any time after completion of a 180-day shakedown period following the Commencement Date, to receive, recycle, process, or dispose of, in an Environmentally Acceptable manner, Acceptable Waste delivered by the Counties or their Designees (up to the limits set forth in Section 2.02), for a continuous period of fourteen (14) days.

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

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

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

(v) An express abandonment of the MRF or the AFB by the Contractor (which, for purposes of this Agreement, shall mean an express abandonment of the MRF or the AFB premises by all the employees and agents of the Contractor for a period of more than fourteen (14) consecutive days; an assumption of operation of the AFB by Du Pont shall not be deemed such an abandonment).

(vi) A failure by the Contractor to operate the AFB at a sufficient capacity consumption rate that results in the Contractor depositing in the County landfills more than 30% of the MSW delivered to the Contractor during any consecutive twelve month period.

(vii) A failure by the Contractor to initiate operations at the MRF and/or AFB by December 31, 1996.

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

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

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

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

(iii) Failure of the Contractor to indemnify the Counties in accordance with Section 2.13.

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

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

(ii) the circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Counties) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence, but in no event longer than nine (9) months from the date the default first occurred. For the purposes of this Section 8.02, "reasonable steps" shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Counties, the Credit Institution or other interested parties of the means by which the Event of Default may be cured. Notwithstanding the foregoing, if more than nine (9) months are necessary to remedy the Event of Default, the period during which the Contractor

may correct the Event of Default shall be reasonably extended by the Counties upon a showing by the Contractor of the necessity for more time, whereupon the Contractor shall continue to be obligated to seek to remedy the Event of Default with due diligence until same is cured. The provisions of this paragraph shall not prevent any County from obtaining compensatory damages under Section 7.10.

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

8.03 *Event of Default by the Counties.*

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

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

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

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

(i) The failure of a County to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i) or the delivery of less than the minimum tonnages set forth in Section 6.03 hereof), unless such failure shall be excused or justified as provided in Article V hereof. Notwithstanding the foregoing or any other provision of this Agreement, if the Counties in the aggregate meet the aggregate commitment of all the Counties under Section 6.03 (even though either of the Counties fails to meet its individual minimum commitment under Section 6.03) no Event of Default shall have occurred under this Agreement and no minimum payment shall be due under Section 6.03.

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

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

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

(ii) The circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days

from the date of the notice given pursuant to Subsection 8.03(c) (i)). If the defaulting County shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the defaulting County is continuing to take reasonable steps to correct such default, but in no event longer than nine (9) months from the date the default first occurred. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the defaulting County of actions or planning to remedy the Event of Default, such as communication with parties capable of aiding the defaulting County in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Contractor, the Credit Institution or other interested parties of the means by which the Event of Default may be cured. Notwithstanding the foregoing, if more than nine (9) months are necessary to remedy the Event of Default, the period during which the defaulting County may correct the Event of Default shall be reasonably extended by the Contractor upon a showing by the defaulting County of the necessity for more time.

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

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

8.04 Notice of Termination for Default. If any party shall have a right of termination for cause in accordance with this Article VIII by virtue of the fact that an Event of Default exists, after all periods of grace and cure have then expired (including any cure period granted to the Credit Institution) the right of termination may be

exercised by written notice of termination given to the party in default. The notice shall specify the termination date, which shall be no less than thirty (30) days from the date of such notice, except in the case of abandonment by the Contractor under Section 8.10 herein.

8.05 *Dispute Resolution.* In the event a party disagrees with a finding by the other that there has been an Event of Default giving rise to termination under the terms of this Agreement, or in the event of any other contract dispute that cannot be resolved between the parties (including under Section 7.02(1) or after attempting resolution pursuant to Section 8.08), either party shall immediately notify the other of such disagreement and may at its election, apply to the American Arbitration Association for appointment of a completely disinterested arbitrator with relevant business experience in the recycling, environmental and/or RDF industry and local government Solid Waste management, who will arbitrate such dispute pursuant to N.C.G.S. § 1-567.1 to 1-567.20 and will hear the parties at a location in North Carolina acceptable to both parties and render a decision within thirty (30) days after receipt of the notice of disagreement. If either party shall object in good faith to the arbitrator so named, the parties shall apply to a judge of the Superior Court of Wake County to appoint an arbitrator with the qualifications stipulated in this Section. The cost of such procedure shall be borne as decided by the arbitrator, and until such decision is rendered, no termination of this Agreement shall become effective. An election of arbitration shall be deemed an election of remedies by the parties to the dispute.

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

8.07 *Right of Termination Not Exclusive.* Any rights of termination, and any rights to purchase provided under this Agreement upon an Event of Default by the Contractor or the Counties, are not exclusive and may be exercised without prejudice to

any right provided by law to either party to bring appropriate action, subject to the preemptory requirements of Section 8.05, to recover actual damages for failure in the performance by the defaulting party of their obligations pursuant to this Agreement.

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

8.09 *Right to Cure by Credit Institution.*

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

(b) ***Cure Period.*** If the Credit Institution invokes its right to install a Replacement Contractor under Section 8.11(a), there shall be a period within

which the Replacement Contractor may be substituted and the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

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

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

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

(c) ***Operations During Cure Period.*** During the Cure Period, the Credit Institution or the Replacement Contractor shall cause the MRF and the AFB to be operated in accordance with this Agreement. During the Cure Period, except as to the indemnity provided to the Counties under Section 2.13 above, neither the Replacement Contractor nor the Credit Institution shall be liable to the Counties for damages caused by the Contractor in excess of cash available from the MRF and the AFB revenues after payment of debt service and operating costs. The provisions of this paragraph shall not prejudice the rights of the Counties under Section 7.02.

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

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

8.10 *Right of Counties to Operate Upon Abandonment.* In the event the Contractor abandons the operation of the MRF and/or the AFB, the Credit Institution may appoint and inform the Counties of a Replacement Contractor to assume the Contractor's duties under this Agreement as provided in Section 8.09. Until such time as Credit Institution provides a Replacement Contractor, Lenoir County shall have the immediate right to enter upon the property of the AFB located in Lenoir County (but subject to any prior right of Du Pont to enter into and operate the AFB in such event) to operate it in the manner contemplated by this Agreement. Such right of entry and right to operate shall continue indefinitely until intervention by the Credit Institution, the Replacement Contractor or Du Pont. By exercising this right, Lenoir County shall incur no liability to the Credit Institution for any payment on bonds used to finance the project or any other obligation of the Contractor, and this provision shall not be construed to limit the Counties' ability to terminate this Agreement.

8.11 *Purchase Option Upon Termination For Contractor Default.* If this Agreement is validly terminated by the Counties due to the occurrence of a Contractor Event of Default after all periods of grace and cure have expired, subject to any superior or prior rights of any Credit Institution or of Du Pont, whether created hereafter or existing on the date hereof, Lenoir County shall have the right to purchase the AFB for \$1,000, subject to any existing indebtedness and the mortgage or other rights, including security interests, of any Credit Institution. Lenoir County shall give the Contractor written notice of its decision to purchase within ninety (90) days after the termination, and the Contractor shall immediately execute instruments of conveyance of the AFB properties to Lenoir County.

IX. TERM.

9.01 *Term.* Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature of the parties and shall remain in effect (i) as to Lenoir County for a term of twenty (20) years from the Commencement Date, and (ii) as to Pitt County for a term of twenty-six (26) years from the Commencement Date, provided that the fixed fee payable by Pitt

County under Section 6.01 shall no longer be payable by Pitt County after the twentieth (20th) year of the term hereof.

9.02 Termination for Failure to Meet Conditions Precedent. In the event that:

(a) a Steam Purchase Agreement with E. I. Du Pont de Nemours providing for the sale of steam from the AFB is not entered into on or prior to December 31, 1994;

(b) Exhibits "A" and "B" have not been attached hereto by Contractor and approved by the Counties (which such approval shall not be unreasonably withheld) on or prior to December 31, 1994;

(c) construction financing for the facilities has not been obtained on or prior to December 31, 1994;

(d) the Contractor has not leased the land for the MRF on or prior to December 31, 1994;

(e) construction of the facilities has not begun on or prior to December 31, 1995; or

(f) all conditions precedent stated in Article IV are not satisfied by December 31, 1996, this Agreement may be terminated by any Party hereto upon thirty (30) days' prior written notice by such Party to all other Parties, unless such failure to satisfy such conditions precedent is caused by an Uncontrollable Circumstance as hereinafter provided, in which case the dates stipulated above shall be extended by that number of days during which an Uncontrollable Circumstance occurred.

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

X. REPRESENTATIONS AND WARRANTIES.

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

(a) The County is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The County has agreed to implement solid waste disposal and resource recovery systems and facilities, and to provide solid waste management services to the public.

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

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

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

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

Agreement, which have not been previously disclosed in a written communication from the County to the Contractor.

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

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the County to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the County to perform its obligations under this Agreement except for the license, permits and other approvals relating to the design, construction, start-up, testing and operation of the MRF and the AFB.

Notwithstanding the foregoing provisions of this section, the Contractor and the Counties agree that (i) the Contractor is responsible for (A) the license, permits and other approvals relating to the design, construction, start-up, testing and operation of the MRF and the AFB and (B) the construction, financing and operation of the MRF and the AFB and (ii) none of the Counties' representations or warranties herein shall be construed to relate to such matters.

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

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

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

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

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

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

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

(g) The execution, delivery and performance of this Agreement by the Contractor will not violate any provision of law applicable to the Contractor or

any order, writ, injunction, judgment or decree of any court or governmental authority by which the Contractor is bound.

(h) No further order, consent, approval, authorization of, or declaration or filing with, any governmental or public body, is required in order for the Contractor to execute and deliver this Agreement or perform its obligations hereunder, except for the licenses, permits, and other approvals relating to the design, construction, start-up, testing and operation of any facility which the Contractor is required to obtain hereunder.

XI. PARTIES TO AGREEMENT.

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

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

XII. ENTIRE AGREEMENT.

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

XIII. NOTIFICATION.

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

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

Lenoir County: Mr. Bob Snapp
 P. O. Drawer 3289
 Kinston, North Carolina 28502

with a copy to: Mr. Thomas B. Griffin
 Griffin & Griffin
 P. O. Box 3062
 Kinston, North Carolina 28501

Pitt County: Mr. Tom Robinson
1717 West Fifth Street
Greenville, North Carolina 27834

with a copy to: William Henley Watson
Speight, Watson and Brewer
Post Office Drawer 99
Greenville, North Carolina 27834

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

Carolina Energy Corp., General Partner
Attention: President
11757 Katy Freeway, Suite 940
Houston, TX 77079

with a copy to: Eddy J. Rogers, Jr.
Mayer, Brown & Platt
700 Louisiana, Suite 3600
Houston, Texas 77002

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

XIV. AUDIT.

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

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

(c) Accounting records of revenues received from the sale of substances derived from Acceptable Waste delivered to the MRF.

XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.

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

15.02 *Discrimination in Employment.* The Contractor agrees that in the performance of this Agreement with the Counties, it will not discriminate against any worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

XVI. MISCELLANEOUS PROVISIONS.

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

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

16.03 *Severability.* The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be

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

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

16.05 *Assignment.*

(a) The Contractor shall have the right at any time to assign this Agreement and the Contractor's rights hereunder to Wilson Resources, Limited Partnership, an Affiliate of the Contractor, provided that such assignment shall not relieve the Contractor of any of its liabilities hereunder. In addition to the foregoing, subject to the prior written consent of the Counties, which will not be unreasonably withheld, the Contractor shall have the right at any time to assign this Agreement and the Contractor's rights hereunder to any other Affiliate, including without limitation a corporation or general or limited partnership. Upon the Contractor's execution of any such assignment and delivery of notice of such assignment to the Counties, such assignee shall be deemed to be the "Contractor" for all purposes of this Agreement. The Contractor shall also have the right to collaterally assign this Agreement to a Credit Institution. In the event of any permitted assignment, the Counties shall certify, if required, that such assignment is permitted and accepted.

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

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

16.07 *Further Assurances.* The Counties and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other party to carry out the intent of this Agreement.

16.08 *Time of the Essence.* The parties hereto agree that time is of the essence in the performance of obligations stated hereunder.

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

LENOIR COUNTY

By: _____
Chairman of the Board of
Commissioners

DATE: _____

APPROVED AS TO FORM:

County Attorney

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

Director of Finance

PITT COUNTY

By: _____
Chairman of the Board of
Commissioners

DATE: _____

APPROVED AS TO FORM:

County Attorney

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

Director of Finance

CAROLINA ENERGY, LIMITED
PARTNERSHIP

By: Carolina Energy Corp.

George H. Armistead, President

DATE: _____

Attest: _____
Alan McDonald, Secretary

EXHIBIT "A"

Description of MRF

The Materials Recovery Facility (MRF) will be located in Wilson County on Old Black Creek Road near the Wilco Industrial Park on a site to be annexed by the City of Wilson, North Carolina. A new processing building with equipment and a MSW tipping floor will be constructed. MSW will be processed by two separate processing lines, each capable of processing up to 60 tons per hour of MSW, thereby providing sufficient redundancy for the overall project. MSW will be processed by the MRF into recyclables for sale, refuse derived fuel (RDF) which will be used to generate energy, and non-usable (principally non-combustible) materials to be landfilled. The MRF will additionally be equipped to receive and separate "blue bags" (that is, blue garbage bags into which local residents have placed recyclable materials) as part of the mixed MSW stream and recover recyclables utilizing the MRF's equipment.

Unprocessed MSW will be received at the tipping floor of the MRF six days per week. The facility is expected to receive between 900 and 1,300 tons per day of MSW. The MSW will be moved by front-end loader and deposited on either of two infeed pit apron conveyors. MSW will thus be removed from the tipping floor and moved onto one of the two processing lines. From the pit conveyors, MSW will pass onto one of two infeed sorting conveyors where bulky items unacceptable for processing, undesirable items such as batteries, recyclable corrugated paper (not in garbage bags) and blue bags are removed for separate processing. After passing through the infeed picking stations, the remaining MSW will enter either of two large trommels. The trommels are approximately 12' diameter drums about 60' long which serve two functions: (1) garbage bags are opened utilizing bag opening spikes permanently affixed to the walls in the front section of the trommel; and (2) the material is size-separated by screens in the walls of the trommels into fines (generally less than 2" in size), the 2" x 6" material (which contains most metal cans) and the over 6" material. The less than 2" material (about 20% of the incoming MSW stream) may be further processed. The 2" x 6" stream (about 30% of the incoming MSW stream) will be passed through eddy current separators to remove at least 85% of the aluminum cans and magnets to remove ferrous objects. The over 6" material (approximately 50% of incoming MSW stream) will pass through another series of picking stations to remove plastic bottles for recycling, some paper recovery, and magnets for ferrous removal. The remaining portion of the 2" x 6" material and over 6" material will be shredded to about a 4" size for consistency and either compacted into transfer trailers to be moved to the AFB to be located at the DuPont site or combusted at the MRF to generate power.

The above description is subject to change as the process of design and construction proceeds.

EXHIBIT "B"

Description of AFB

The Alternate Fuels Boiler (the AFB) will be located adjacent to the DuPont Kinston Plant in Lenoir County. The EGF will supply process steam to DuPont.

The EGF will receive RDF from the MRF in Wilson County. RDF will arrive at the facility in 24 ton compacted walking floor trailers. The RDF will be delivered through a series of receiving bins. The receiving bins will be designed to minimize dust and control odor. The RDF will then be conveyed to fuel storage bins which feed the circulating bed boilers. The entire system will be controlled by the distributive control system to ensure proper flow of RDF to the fluidized bed boilers.

Fluid bed combustion is the key technology in the Carolina Energy Project. One 249 MMBTU per hour Kvaerner circulating fluid bed boiler will be located at the EGF and will run 24 hours per day, creating 174 Mlb/hr of steam at 645 psia/710° F. The combustion process begins as the RDF is added to the combustion chamber and tons of heated sand "flow" in swirling currents created when air is injected through the bottom of the boiler. The sand acts as a scrubbing agent which constantly exposes a fresh new combustible surface on the burning material resulting in complete combustion. The many tons of sand act as a giant heat sink which greatly minimizes "hot spots" in the boiler even though the RDF is not of constant BTU content.

All of the combustion takes place at relatively low temperatures, which results in much lower formation of nitrous oxides (NOx). NOx levels are also minimized due to ammonia injection. In addition, calcium carbonate (limestone) is added to the bed of sand in an effort to tie up any oxides of sulfur (SOx) liberated during the combustion process. CO emissions are minimized by the quality of the combustion process. An air pollution control system will be provided for the circulating fluidized bed boiler to allow for the control of emissions in accordance with applicable state and federal air pollution control regulations.

After combustion takes place, the resultant hot air heats up water in the boiler tubes, converting it to steam which is then delivered to Du Pont as process steam. Finally, the gases pass through a fabric filter baghouse where fly ash and particulates are collected.

Most of the ash and calcium chloride are removed from the baghouse. Ash removed from the systems is non-toxic and recyclable. Plans call for using this material as a clay substitute in the production of portland cement and as a filler in asphalt.

The above description is subject to change as the process of design and construction proceeds.



RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

BETWEEN

EDGECOMBE COUNTY

AND

WILSON RESOURCES, LIMITED PARTNERSHIP

DATED AS OF NOVEMBER __, 1994

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RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

THIS RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT is made and dated as of _____, 1994, between EDGECOMBE COUNTY, NORTH CAROLINA (referred to herein as the "County"), and WILSON RESOURCES, LIMITED PARTNERSHIP (referred to herein as the "Contractor"), a Delaware limited partnership.

RECITALS

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

While the County shall continue to develop and implement plans for waste reduction at the sources of solid waste generation, primarily through voluntary recycling at such sources, the County estimates that such waste reduction at the source will not fully meet the aforementioned recycling, reuse, and composting goals and believes that the overall policy of reducing the waste stream will require the establishment of a materials recovery facility at which recyclables and reusables can be separated from the waste stream.

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

To assist the County to meet the State policy and goals for reduction of disposal into landfills and to reduce the costs of modifying and operating landfills, the Contractor

has made a proposal for a recycling and incineration for energy production program which will have the following benefits:

- * Reliability of technology for recycling and energy production
- * Quality of commitment from a local end user of energy
- * Cost to the County
- * Environmental benefits
- * Plan for disposal of residual materials
- * Quality of key and supervisory personnel for the project
- * Financial soundness of the Contractor
- * General quality of project plan in content and completeness

The Contractor and its affiliates intend to construct and operate materials recovery facilities (each a "MRF") and alternative fuel boilers (each an "AFB") in North Carolina. Each AFB will be designed to burn refuse-derived fuel ("RDF") prepared at a MRF. One of the Contractor's affiliates has begun construction on a MRF in Cumberland County, North Carolina and an AFB in Bladen County, North Carolina, with such MRF and AFB to commence operations in 1995. The Contractor intends to construct a MRF in Wilson County, North Carolina, and an AFB in Lenoir County, North Carolina, with such MRF and AFB to commence operations in 1996.

The County, and private collectors doing business in the County, will collect household and commercial solid waste including certain recyclables separated at their source, the further disposal of which is subject to agreements between sources and the collectors. Solid waste, excluding privately recovered recyclable materials, shall be hauled directly or through the Transfer Stations for subsequent hauling to a MRF, where, after removal of remaining recyclables, noncombustible and nonrecyclable waste and Unacceptable Waste, remaining waste will be processed into RDF, which will be trucked by the Contractor to an AFB and burned to generate energy. Residues of soil, leaves and other materials not already being recycled may be processed to produce landfill cover and/or compost. It is contemplated that the City of Rocky Mount, North Carolina will separately contract for the processing of solid waste generated within that portion of the County that is within the corporate limits of the City.

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

The County desires to utilize and the Contractor desires to provide solid waste processing and resource recovery facilities and services under the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

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

"Aggregate Maximum Commitment" shall mean the aggregate of the applicable Maximum Commitments for all of the Counties of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

"Aggregate Minimum Commitment" shall mean 230,000 Tons, being 35,000 Tons from the City or Rocky Mount, 15,000 Tons from the County, 90,000 Tons from Pitt County, 40,000 Tons from Lenoir County, 50,000 Tons from Wilson County, and 15,000 Tons from Nash County, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

"Alternate Fuels Boiler" or "AFB" shall mean a facility in which RDF is burned to produce thermal and/or electrical energy.

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

"Ash Disposal Site" shall mean a facility or location where Ash from the AFB may be disposed of in an Environmentally Acceptable manner.

"Commencement Date" means January 1, 1997 or such earlier date as may be determined as follows. The Contractor agrees that it will notify the County six (6) months prior to the date when start-up and capacity testing will be completed at a MRF which is capable of processing the County's Acceptable Waste. At any time thereafter, the County may change the definition of "Commencement Date" for the purposes of this

Agreement, upon six (6) months written notice to the Contractor, to any date later than such completion date and earlier than January 1, 1997.

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

"Contract Year" means the period from January 1 of any calendar year through December 31. The first Contract Year shall commence on the Commencement Date and end on the immediately following December 31, and the last Contract Year shall end on the last day of the term of this Agreement.

"Contractor" means Wilson Resources, Limited Partnership, a Delaware limited partnership, and its permitted successors and assigns.

"Counties" shall, for convenience of reference, mean the County and all other counties or municipalities that are or hereafter become parties to a Resource Recovery Agreement or similar agreement with the Contractor for solid waste processing and resource recovery facilities and services, including but not limited to Pitt, Lenoir, Nash, and Wilson Counties and the City of Rocky Mount, North Carolina.

"County" means the County of Edgecombe, North Carolina.

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

"Designee" or "Designees" shall mean a Person or Persons authorized or selected by the County at any time to collect Solid Waste generated within the County.

"Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility selected by the Contractor to which Residue or MSW is or may be delivered for ultimate disposal.

"Environmentally Acceptable" means meeting or exceeding all applicable federal government, State of North Carolina, and County laws, ordinances and regulations relating to the composition, control, disposal, monitoring, reporting and

transportation of Solid Waste, Hazardous Waste, recyclable materials, RDF, Ash, and other residues from a MRF and an AFB.

"Escalation Rate" shall mean an annual rate no greater than three percent (3.0%) that is proposed by the County and that is acceptable to the Contractor in its reasonable discretion by which the Maximum Commitment shall be increased for each Contract Year following the tenth Contract Year.

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

"Materials Recovery Facility" or "MRF" shall mean a facility which separates Recoverable Materials, Residue and Refuse-Derived Fuel.

"Maximum Commitment" shall mean (a) with respect to each of the first through the tenth Contract Years, 50,000 Tons of Acceptable Waste per Contract Year; (b) with respect to the eleventh Contract Year the greater of (i) 50,000 Tons or (ii) the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year, *plus* the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year multiplied by the Escalation Rate; and (c) with respect to each of the twelfth Contract Year and each Contract Year thereafter, the Maximum Commitment for the immediately preceding Contract Year *plus* the Maximum Commitment for the immediately preceding Contract Year multiplied by the Escalation Rate.

"Minimum Commitment" shall mean 15,000 Tons of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

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

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

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

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

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

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

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

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

"State" means the State of North Carolina.

"Transfer Station" shall mean a transfer station referred to in Section 2.01(c) of this Agreement. Unless the context otherwise requires, any reference to a Transfer Station shall mean any Transfer Station then serving the County.

"Tri-Party Minimum Commitment" shall mean 65,000 Tons, being 15,000 Tons from the County, 15,000 Tons from Nash County, and 35,000 Tons from the City of Rocky Mount, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

"Unacceptable Waste" means (i) explosives, Hazardous Waste, other hazardous chemicals or materials, radioactive materials, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such materials; (ii) any item either smoldering or on fire; (iii) non-combustible construction materials and demolition debris, including masonry, brick and stone, structural steel, rebar, and structural shapes; (iv) all other items of waste (other than Recyclable Materials) which, at the time of delivery to a MRF or a Residue Disposal Site, would normally not be disposed of in a sanitary landfill, and (v) any other items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any other regulatory authority, or any applicable law or regulation, from being processed by a MRF or burned in an AFB.

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

II. DUTIES OF CONTRACTOR.

2.01 Overview of Contractor's Duties.

(a) Beginning on the Commencement Date, the Contractor shall transport (or cause to be transported) at its sole expense the Acceptable Waste of the County delivered to the Transfer Stations from such Transfer Stations to a MRF; provided, however, that in any particular Contract Year the Contractor shall not be required to transport more than 1,000 Tons in any seven (7) consecutive days or, except as provided in Section 2.02, the Maximum Commitment for such Contract Year. Such 1,000 Ton amount will increase after the tenth Contract Year at the Escalation Rate. The Contractor shall transport the Acceptable Waste in an Environmentally Acceptable manner.

(b) The Contractor, through its representatives and agents, shall prepare the site for, construct and operate any MRF which serves the County in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. So long as and to the extent it is economically feasible to the Contractor and environmentally positive, the Contractor shall recover Compostable Materials and Recyclable Materials present in the Solid Waste received at such MRF from the County, its Designees and other sources, including, but not limited to the following: aluminum cans, ferrous and bimetal products, corrugated paper, glass, plastics, newspaper and Compostable Materials. For each Contract Year, the County and the Contractor shall develop an annual recycling and composting plan. In developing such plan they shall consider market conditions for Recyclable Materials and the economic feasibility of recovering same in an environmentally positive manner and market conditions and other uses for Compostable Materials, the current State goals for reduction of landfill disposal, the amount of recycling and composting being accomplished outside the purview of this Agreement that can be counted against goal attainment, and the benefit of recovering Recyclable Materials and

Compostable Materials at a MRF to meet such goals. The Contractor will participate with the County in seeking to adopt an annual recycling and composting plan that will permit the County to meet mandatory State recycling and composting goals. If it appears that due to market conditions for Recyclable Materials or Compostable Materials recovered at a MRF the State goals for the forthcoming Contract Year may not be met, the following actions shall be taken: (1) the County shall make a good faith, reasonable effort, to increase the amount of recycling and composting accomplished outside the purview of the Agreement by voluntary or mandatory resource recovery programs; and (2) the County, supported by the Contractor, shall make a good faith reasonable effort to obtain a waiver either of the State goals for such year to the extent of the estimated shortfall or of the imposition of penalties for failure to meet such goals, which penalties, if any, shall be the responsibility of the County.

(c) The County shall deliver Acceptable Waste to the MRF in Wilson County or to one or more Transfer Stations, any or all of which shall be located at sites that are mutually agreeable to the parties within or without the geographic borders of the County. The Contractor and the County presently contemplate that one of the Transfer Stations may be constructed near the City of Tarboro, North Carolina. The Contractor and the County are contemporaneously herewith entering into an Agreement for Construction and Operation of Transfer Station pursuant to which, among other things, the County has agreed to construct a Transfer Station and Contractor has agreed to pay a portion of its construction and operating costs.

(d) After the Commencement Date, the Contractor shall process and either recycle or otherwise dispose of all Acceptable Waste delivered by the County or its Designees to a Transfer Station or to the MRF then serving the County, up to the applicable Maximum Commitment, regardless of the mechanical status of the MRF and AFB then serving the County, unless neither facility is able to operate due to factors constituting Uncontrollable Circumstances. The Contractor shall identify and reject or separate and dispose

of Unacceptable Waste delivered by the County or its Designees to the MRF then serving the County and shall do so in an Environmentally Acceptable manner subject to reimbursement by the County to the extent set forth in Section 2.03(b)(iii)(A).

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

(f) The Contractor shall equip each MRF and AFB then serving the County with emission controls designed to insure that each such MRF and AFB complies with all applicable laws and regulations governing air quality and odor and noise emissions.

2.02 Acceptance of Acceptable Waste. Except as otherwise set forth in this Section 2.02, the Contractor shall accept and process at a MRF all Acceptable Waste delivered by the County or its Designees to a Transfer Station or to the MRF then serving the County; provided, however, that the Contractor shall not be required to accept more than 1,000 Tons in any seven consecutive days or the applicable Maximum Commitment. Such 1,000 Ton amount will increase after the tenth Contract Year at the Escalation Rate.

Notwithstanding the foregoing, however, the County may deliver Acceptable Waste to the Contractor in excess of its Maximum Commitment (i) in the event that the Counties have not delivered Acceptable Waste to the Contractor in excess of the Aggregate Maximum Commitment, or (ii) notwithstanding that the Counties have delivered Acceptable Waste to the Contractor in excess of the Aggregate Maximum Commitment, Contractor agrees that the MRF and AFB have sufficient excess capacity to accept such Waste in excess of the Aggregate Maximum Commitment.

The Contractor may accept, either under contract or on a spot market basis, Acceptable Waste for processing at any MRF from any source, but only to the extent that such acceptance does not prevent the Contractor from accepting and processing all of the

Acceptable Waste which the County and its Designees are entitled to deliver pursuant to this Section 2.02.

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

(a) The Contractor shall have the right to reject, and shall have no obligation to dispose of, any of the following Solid Wastes brought by any Person to a Transfer Station (even if such Solid Wastes are not discovered until they reach the MRF at which the County's Acceptable Waste is being processed) or to the MRF then serving the County, and shall have the right to prevent the unloading of any vehicle bringing such Solid Waste if such Solid Waste is properly rejected:

(i) Unacceptable Waste (it being agreed that in the event the Contractor determines that a load of Solid Waste contains both Acceptable Waste and Unacceptable Waste, it shall be entitled to reject and prevent the unloading of the entire load);

(ii) Solid Waste brought to a Transfer Station or to the MRF then serving the County at times other than the hours designated for delivery by the Contractor;

(iii) Solid Waste brought to a Transfer Station or to the MRF then serving the County in excess of the limits set forth in Section 2.02, if the MRF then serving the County is unable for any reason to receive and process such amounts;

(iv) Solid Waste brought to a Transfer Station or to the MRF then serving the County in vehicles not conforming with the requirements established by the Contractor; and

(v) Solid Waste brought to a Transfer Station or to the MRF then serving the County by a Person who is not the County or its Designee.

(b) Unacceptable Waste.

(i) The Contractor and the County shall adhere to the Solid Waste segregation and screening procedures established by the Contractor.

(ii) The Contractor shall, as agent for, and on behalf of, the County, separate, store, process and dispose of in an Environmentally Acceptable manner, any Unacceptable Waste brought to a Transfer Station or to the MRF then serving the County and not identified by the Contractor as such until after unloading from the delivery vehicle, it being agreed that the Contractor shall not be deemed to have accepted any such Unacceptable Waste.

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

(A) If such Unacceptable Waste was delivered by the County or its Designee to a Transfer Station or to the MRF then serving the County and was detected at such time or at any time prior to the time such Unacceptable Waste left the tipping floor of such MRF, the Contractor shall be entitled to require the County or its Designee to reload the entire load which contained such Unacceptable Waste onto its vehicle and remove such load from a Transfer Station or such MRF, or, in the event the Contractor does not require such removal, the County shall reimburse, or shall cause its Designee to reimburse, the Contractor for such removal and disposal costs. Notwithstanding the foregoing, if, after leaving the tipping floor, Unacceptable Waste is identified and the source is identified to the reasonable satisfaction of the Contractor and the County (or its Designee), then the County shall reimburse, or cause its Designee to reimburse, the Contractor for such

removal and disposal costs. The Contractor may invoice the County not more frequently than monthly for reimbursement of such costs.

(B) In all other cases, except as otherwise provided in Section 3.03, the County shall have no responsibility for such costs.

2.04 Delivery by Other Persons. The Contractor is not required under this Agreement to accept deliveries of Solid Waste from any Person other than the County or its Designees.

2.05 Regulatory Requirements.

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

(b) Adherence to Law. The Contractor shall (i) design, construct and operate each MRF and AFB which is to serve the County and (ii) transport

Acceptable Waste in a manner which complies in all material respects with any applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) Inspection by County. The Contractor shall permit duly appointed officials of the County to have access to and entry upon the site of the MRF then serving the County at any time within regular MRF operating hours, upon advance telephonic notice to the Contractor's Transfer Station or MRF supervisor of not less than four hours, to inspect such facility for the purpose of evaluating the Contractor's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the Contractor including those relating to the safety of persons present on such site and the protection of the Contractor's proprietary information.

2.06 Financial Responsibility. Except as otherwise provided in this Agreement, the Contractor shall provide and pay for all of the labor, services, parts, supplies, utilities, and other resources other than Acceptable Waste required for the Contractor to (i) operate and maintain each MRF and AFB and (ii) transport Acceptable Waste in accordance with the requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals. Notwithstanding the foregoing, the requirements of Article VII may not be altered by ordinance or other legislation of the County.

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

2.08 Safety Precautions. In compliance with applicable federal, state and county regulations, the Contractor shall initiate, maintain and supervise safety

precautions and programs in connection with the operation and maintenance of the MRF and AFB then serving the County.

2.09 Transportation. The Contractor shall arrange for transportation of all Acceptable Waste accepted by the Contractor at a Transfer Station or at a MRF then serving the County and all products of Solid Waste separation and processing from each MRF then serving the County to recyclables purchasers, to an AFB, or to Disposal Sites, as appropriate, in an Environmentally Acceptable Manner.

2.10 Unplanned Outages.

(a) In the event of any unplanned outage of the MRF then serving the County, the Contractor shall: (i) use all reasonable efforts to resume normal operations of such MRF as quickly as possible and, (ii) arrange for interim processing or disposal of all Acceptable Waste in an Environmentally Acceptable manner.

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

2.11 Records.

(a) The Contractor or its designee shall operate and maintain a motor truck scale at each MRF then serving the County, calibrated to the accuracy required by the State for public weighing facilities, to weigh all vehicles delivering Solid Waste to such MRF. The County shall cause its vehicles, and those of any Designees, to have identification permanently indicated and conspicuously displayed thereon. Each vehicle will be weighed before entering and after leaving such MRF, with the date, time, truck identification and weights (loaded and unloaded) to be entered on a weight record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. If the weighing facility at such MRF is out of service, the Contractor shall, subject to any applicable state regulation, either obtain alternate temporary weighing capability or estimate the quantity

of Acceptable Waste delivered on the basis of truck volumes and data based on pertinent historical information.

(b) The Contractor or its designee shall maintain daily records of the total Acceptable Waste tonnage delivered by the County to a Transfer Station or to a MRF then serving the County and its Designees and of all materials leaving each MRF then serving the County. Such daily records shall include detailed and summary listings of tonnage delivered by the County and its Designees to such MRF, the estimated amount of such Solid Waste rejected as being other than Acceptable Waste, and such other records as are necessary to implement the provisions of this Agreement. Summary information for each month shall be provided to the County within five (5) business days after the end of such month. Copies of all daily records and weight tickets shall be maintained by the Contractor for a period of at least three (3) years, or for such longer period required by law, and shall be made available for inspection by the County during normal business hours upon reasonable notice. In the event the County is required by applicable law or regulation to file reports pertaining to the operation of any such MRF or equipment or facilities thereof, the Contractor shall provide the County with the information required to compile such reports.

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

withheld. These indemnification provisions are for the protection of the County only, do not apply to claims of the County itself against the Contractor under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

2.13 MSW Reduction Guarantee. In addition to the reports required under Section 2.11, the Contractor will provide a monthly recycling report to the County reporting the total Solid Waste reduction as defined under North Carolina solid waste management laws and regulations as adopted, amended and effective January 1, 1994. Such reduction, stated as a percentage of total Acceptable Waste delivered to the Contractor at the MRF then serving the County by the County for that month (except as revised as provided below), is referred to herein as the "Reduction Percentage." The form of the report will be as mutually agreed by the Contractor and the County. The Contractor hereby guarantees that the Reduction Percentage from the recycling of paper, plastics, metals, glass or materials beneficially used as ground cover or aggregate fill but excluding materials that are composted, stated on an annual basis for each Contract Year, shall be no less than 12.5%; provided, however, that if recyclable materials other than compostable materials are removed from MSW delivered to the Contractor prior to delivery thereto, then the amount of such recyclable materials removed from the Solid Waste shall be added to the total Solid Waste reduction in computing the Reduction Percentage. If the Contractor fails to meet the guaranteed Reduction Percentage, then (as the County's sole remedy) the Contractor shall pay the County a fee that is equal to the per-Ton fees then in effect under Sections 6.01 and 6.02 hereof for each Ton by which the total Solid Waste reduction failed to meet the guaranteed Reduction Percentage; but in no event shall payments to the County exceed for any Contract Year an amount equal to ten percent (10%) of the fees paid by the County to the Contractor pursuant to Sections 6.01 and 6.02 below for such Contract Year. The parties hereto expect that beginning June 30, 2001, a 10% credit will be allowed in computing the total Solid Waste reduction for materials burned to generate energy; in such case and at such time as such increase comes into effect, the Contractor guarantees that the Reduction Percentage shall increase to 22.5%.

III. DUTIES OF THE COUNTY.

3.01 Delivery of Acceptable Solid Waste; Minimum Commitment.

Commencing on the Commencement Date and continuing throughout the term of this Agreement, the County shall deliver or cause to be delivered to the Contractor at a Transfer Station or at the MRF then serving the County (as directed by the Contractor based upon transportation considerations applicable to both parties hereto and the receipt of any applicable third party permits or consents) its Minimum Commitment during each Contract Year plus all additional Acceptable Waste collected for disposal by the County and its Designees during each Contract Year subject to the Contractor's right to reject the County's deliveries in excess of aggregate amounts stated in Section 2.02. The parties intend that all Acceptable Waste collected for disposal by the County and its Designees be delivered to the Contractor at a Transfer Station or at the MRF then serving the County, and, accordingly, unless the Contractor otherwise elects, the County and its Designees shall not deliver any such Acceptable Waste (except for source separated recyclables, yard waste, tobacco dust, and other compostable materials, and construction and demolition debris) to any other disposal sites. For purposes of this Section 3.01, Acceptable Waste is deemed to be "collected for disposal" if it is presently being or would in the ordinary course be delivered to a landfill, transfer station or to a general materials recovery facility.

3.02 Computation of Minimum Commitment.

(a) Amounts Included in Computation of Minimum Commitment.

The County shall receive credit toward meeting its Minimum Commitment for all Acceptable Waste delivered by such County and its Designees (other than Waste generated in the City of Rocky Mount) and accepted by the Contractor at a Transfer Station, to the MRF then serving the County or to any other destination in the County reasonably designated by the Contractor.

(b) Amounts Not Included in Computation of Minimum Commitment. The County shall receive no credit toward meeting its Minimum Commitment for any (i) Waste properly rejected by the Contractor in accordance with Section 2.03 hereof or (ii) Waste generated in the City of Rocky Mount.

3.03 Indemnification. The County will, to the extent permitted by applicable law, protect, indemnify and hold the Contractor harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the Contractor including reasonable attorneys' fees, and will defend the Contractor, at the Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the County, its agents or employees acting within the scope of their employment or caused by or resulting from the handling or disposal of Unacceptable Waste by the Contractor in the performance of its duties hereunder (except as otherwise provided in Section 2.03(b)(iii)) (herein, the "Losses"). The Contractor shall promptly notify the County of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall give the County the opportunity to defend such claim; and shall not settle such claim without the approval of the County, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against the County under this Agreement or any related agreements, and shall not create any benefit or liability to third parties. The parties mutually agree that the term "to the extent permitted by applicable law," expresses the legal uncertainty as to whether the promise to indemnify herein is subject to the provisions of N.C.G.S., § 159-28, other applicable laws and the constitution of the State of North Carolina. The parties acknowledge and understand that this promise to indemnify has not been supported by a current appropriation of the governing body of the County. Consequently, if a court of competent jurisdiction determines that this promise to indemnify constitutes incurring an obligation within the meaning of N.C.G.S., § 159-28 or violates other applicable laws or the constitution of the State of North Carolina, then this promise to indemnify is void ab initio. This promise to indemnify shall not constitute a waiver of governmental immunity.

3.04 Solid Waste Flow Ordinances. The County shall, if and when authorized by applicable law, promulgate and enforce flow ordinances mandating that all MSW generated in the County (excluding Unacceptable Waste, Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement

and MSW which is to be disposed of at or transferred to a site or facility outside the State) after the Commencement Date and thereafter so long as this Agreement is not terminated, shall be delivered exclusively to the Contractor under this Agreement. Subject to its obligations to provide for the health and safety of its citizens and to other limitations required by law, the County agrees to use its best efforts to aid Contractor in obtaining the permits, licenses and other authorizations and approvals referenced in Section 2.05(a). In addition, the County shall encourage each municipality located within the boundaries of the County to enter into a binding agreement with the Contractor, or take other action acceptable to the Contractor, which provides that all MSW generated in such municipality (excluding Unacceptable Waste and Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement) after the Commencement Date and thereafter so long as this Agreement is not terminated shall be delivered to the Contractor under this Agreement.

IV. CONDITIONS PRECEDENT TO OPERATIONS.

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

4.01 The Contractor shall have advised the County that start-up operations and capacity testing have been completed satisfactorily, and that the MRF then serving the County is ready to receive the County's Acceptable Waste. The Contractor shall invite the County's officials to witness tests, review data and concur that such MRF is ready for use, with such concurrence not to be unreasonably withheld.

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

4.03 The County shall have advised the Contractor that a Transfer Station is operational for processing and delivery of Acceptable Waste to the Contractor for transportation to the MRF then serving the County. The County shall invite the Contractor's officials to witness tests, review data and concur that such Transfer Station is ready for use, with such concurrence not unreasonably withheld.

4.04 The Contractor shall have received a written commitment from a Credit Institution for a loan, bond or equity securities underwriting or other similar type of non-recourse financing (or credit support for such financing), repayable during the term of this Agreement and on such terms and conditions as are satisfactory to the Contractor in its sole discretion. The Contractor shall make application for such financing and shall furnish any information and execute any instruments required in connection with such application. The County agrees to negotiate any changes to this Agreement reasonably required by the Credit Institution and such changes shall not be unreasonably refused; provided, however, that such changes shall not violate any law or regulation of any federal, state or municipal government.

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

V. UNCONTROLLABLE CIRCUMSTANCES.

5.01 Any act, event or condition, whether affecting a MRF, an AFB, the Transfer Stations, the vehicles used by the Contractor to transport RDF to an AFB, the County, the Contractor or any of the Contractor's respective subcontractors shall be deemed an Uncontrollable Circumstance to the extent that it materially and adversely affects the ability of any party to perform its obligations hereunder, if such act, event, or condition is beyond the reasonable control of and is not also the result of the willful or negligent action or inaction, principally of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. The good faith contesting of, or the failure to contest, action or inaction of a third party, shall not be construed as willful or negligent action or lack of reasonable diligence by the party claiming that such third party action or inaction constitutes Uncontrollable Circumstances. Acts or events constituting Uncontrollable Circumstances include, but shall not be limited to, the following:

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

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

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

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

(e) Any change in law which is (i) legally binding with respect to the design, construction, testing, utilization, operation or maintenance of a Transfer Station or a MRF or an AFB, (ii) occurs subsequent to the date hereof, and (iii) has the effect of temporarily or permanently preventing a party from performing any of its obligations hereunder including the following: any change in, or adoption of, any constitution, charter, act, statute, law, ordinance, code, rule, regulation or order; or any change in the standards or criteria contained in a permit, which standards or criteria must be met in order for a Transfer Station or a MRF or an AFB to be operated lawfully at the levels specified in this Agreement; any denial of an application for, delay in the review, issuance or renewal of or suspension, termination, interruption, imposition of a new condition in connection with the renewal of or failure of renewal, on or after the date hereof of any governmental permit, license, consent, authorization or approval, or any other legislative or administrative action or refusal to act of the United States of America or the State of North Carolina or any agency, department, authority, political subdivision or other instrumentality thereof

(except that no action of the County or any instrumentality thereof shall excuse the performance of the County under this Agreement); or any decree, judgment or order of a court. Any change of law which requires a Transfer Station or a MRF or an AFB to install or upgrade equipment shall qualify hereunder as a change of law, and the time required to install or upgrade equipment, if it requires a shutdown or slowdown of the operation of a Transfer Station, a MRF or an AFB, shall qualify as an Uncontrollable Circumstance.

5.02 Any party shall be excused from performance hereunder when its nonperformance was caused directly or indirectly by Uncontrollable Circumstances. The party whose performance is affected shall give to the other parties prompt written notice of the Uncontrollable Circumstances, and thereupon the obligations of the party giving the notice, so far as such obligations are affected by the Uncontrollable Circumstances, shall be suspended during such Uncontrollable Circumstances and for a reasonable time thereafter as required to remedy any physical damage or otherwise overcome the effect of such Uncontrollable Circumstances.

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

VI. FEES.

6.01 Fixed Fee. The County shall pay the Contractor a fixed fee of seventeen dollars and no cents (\$17.00) per Ton of Solid Waste delivered by the County or its Designees to a Transfer Station or MRF then serving the County and accepted by the Contractor (as provided in Article II). This fee shall not be payable by the County following the first twenty-one (21) years of the term of this Agreement.

6.02 Variable Fee. In addition to the fixed fee set out in section 6.01, the County shall pay the Contractor a variable fee which initially shall be twenty dollars and fifteen cents (\$20.15) per Ton of Solid Waste (including wood) delivered by the County and its Designees to a Transfer Station or MRF then serving the County and accepted by the Contractor. The County and its Designees shall pay an alternate fee (in lieu of the fixed and variable fees) for tires not incidentally included in the municipal waste stream

in the amount of \$55.00 per Ton. The variable fee and the fee for tires shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1993 as the base year from which adjustment is made, to be in effect until December 31, 1995, and then a further adjustment effective January 1, 1996, using the year ended December 31, 1994, as the base year from which adjustment is made. Further adjustments shall be made effective each January 1 thereafter for adjustments occurring during the preceding twelve months ended December 31.

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

accepted accounting principles based upon the estimated lives of such improvements. The Contractor shall furnish its calculations of the above costs to the County in sufficient detail for the County to confirm the basis and accuracy of the calculations of costs. Fifty per cent (50%) of any annual net increased operating costs or annual net amortized capital costs shall be added annually to the fees to be paid under Section 6.01, allocated per Ton on the basis of the Acceptable Waste processed by the Contractor in the preceding Contract Year (and for the first full Contract Year based upon an assumed annual tonnage of Acceptable Waste of 15,000 Tons).

The \$500,000 amount shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonably adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1994 as the base year from which adjustment is made, to be in effect until December 31, 1995, and subsequent adjustments to be made effective each January 1 thereafter, using the calendar year 1994 as the base year from which adjustment is made in each instance.

6.04 Method of Payment.

(a) In accordance with Article VI, not earlier than the tenth day of each month after the Commencement Date, the Contractor shall invoice the County for services rendered by the Contractor under this Agreement during the preceding month. The total amount of the invoice shall be the sum of the following:

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

(ii) any amount owed by each County to the Contractor pursuant to Section 2.03 (b) (iii).

(b) All invoices shall be delivered by hand, by commercial delivery service (such as Federal Express) or mailed first class, postage prepaid to the County at the address set forth in Article XIII, and such invoices shall be paid

within thirty (30) days after the date of the invoice. The County may supply other addresses at its discretion at any time.

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

6.06 Failure to Deliver Minimum Commitment. In the event that (i) the County shall fail to deliver to the Contractor its Minimum Commitment for any Contract Year (unless such failure was due to Uncontrollable Circumstances and subject to Section 8.03(b)(i)), and (ii) the County, Nash County, and the City of Rocky Mount shall in the aggregate fail to deliver to the Contractor the Tri-Party Minimum Commitment for such Contract Year, and (iii) the Counties shall in the aggregate fail to deliver to the Contractor the Aggregate Minimum Commitment for such Contract Year, then at the end of such Contract Year the County shall pay the Contractor a fee equal to (i) the sum of the fixed and variable fees then in effect pursuant to Section 6.01 and 6.02 above (excluding any amounts paid by such County in such Contract Year for tires delivered) multiplied by (ii) the amount, in Tons, by which the County's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor during such year, but only to the extent that the amount in (ii) does not exceed the amount by which the County's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the County and does not exceed the amount by which the Aggregate Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the Counties.

VII. INSURANCE AND LETTER OF CREDIT REQUIREMENTS.

7.01 Insurance. The Contractor shall obtain at its own cost and expense the types of insurance listed herein. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the County shall have the right to approve such insurer based on its financial soundness, and subject to its being

on the North Carolina Department of Insurance approved list, which approval shall not be unreasonably withheld.

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

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

- (i) Premises - Operations Coverage
- (ii) Completed Operations
- (iii) Contractual Liability
- (iv) Broad Form Property Damage
- (v) Independent Contractors' Protective Liability

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

(b) **AUTOMOBILE LIABILITY**, with minimum limits of \$1,000,000 for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. Code 1 "Any Auto" symbol is required for this liability coverage. This policy shall include the Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90), if hazardous waste is transported. The County shall be named as additional insureds on such policy.

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

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

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

The parties acknowledge that during the term of this Agreement certain Forms and types of coverage described in this Section 7.01 may change or may cease to be available on a commercially reasonable basis. In such event, the Contractor shall use reasonable efforts to obtain such closest equivalent Form or type of coverage then available.

7.02 Acceptability of Insurers. Insurance shall be placed with insurance companies with an A.M. Best rating of no less than "A," unless proper financial information relating to the company is submitted to and approved by the County prior to coverage being placed with such insurance company. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the County shall have the right to approve such insurer based on its financial soundness, and subject to its being on the North Carolina Department of Insurance approved list, which approval shall not be unreasonably withheld.

7.03 Evidence of Insurance. The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the County duplicate copies of all policies, including applicable endorsements. Since policies will expire before the completion of this Agreement, renewal certificates of insurance shall be furnished to the County by the Contractor before the expiration date of each policy, for the term of this Agreement.

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

7.05 Letter of Credit. On or before the Commencement Date, the Contractor shall provide a Letter of Credit (the "Letter of Credit") in a form reasonably acceptable to the County, which shall provide payment to the County for compensatory damages incurred as a result of a breach by the Contractor of this Agreement. The Letter of Credit shall be an irrevocable standby letter of credit issued by a bank or financial institution (the "Issuing Bank") with a credit rating on its senior unsecured debt of at least "AA3" from Moody's Investors Service or at least AA- from Standard & Poor's Corporation or otherwise acceptable to the County in its sole discretion, shall be in an amount of \$500,000, and shall be outstanding for a period of five (5) years from and after the Commencement Date. The Letter of Credit shall be arranged in such a manner that permits the County to draw upon the Letter of Credit from time to time for any liquidated amount owed to the County under this Agreement after the Contractor has committed a breach of this Agreement in a manner that has caused monetary damage to the County. The Letter of Credit shall provide that the County may draw upon the Letter of Credit immediately upon the submission of a written agreement signed by the County and the Contractor authorizing such payment or thirty (30) days after submission to the Issuing Bank of a written finding by an arbitrator pursuant to an arbitration proceeding under Section 8.05 certifying the amount owed by the Contractor to the County. The Contractor shall have the right to contest any request for the payment of damages to the County or any amounts to be drawn down from the Letter of Credit in any arbitration proceeding pursuant to Section 8.05. If the County agrees to the Contractor's objections, or if the Contractor prevails in contesting any such payment or payments of damage and the County has been permitted to receive moneys under the Letter of Credit, the County shall repay the Contractor the amount of such payment or payments plus interest from the date of the payment or payments to the County to the date of such payment or payments to the Contractor at the then existing prime rate established by the largest commercial bank operating in North Carolina. All costs and expenses for the Letter of Credit whether fees, assessments, reimbursements, or otherwise, shall be solely payable by the Contractor, and the County shall have no liability arising therefrom.

7.06 Operations Performance Bond. In lieu of a Letter of Credit, the Contractor may, at its option, provide an Operations Performance Bond or other form of

insurance acceptable to the County, which shall be posted by Contractor and shall provide payment to the County in the event of a breach of this Agreement by the Contractor. Payments under the Operations Performance Bond shall be made pursuant to the same procedures for payment under the Letter of Credit, as set forth in Section 7.05.

7.07 Drawing Upon Letter of Credit or Operations Performance Bond. If any event or condition has occurred which but for applicable periods of notice, grace or cure (including cure periods granted by the County to the Credit Institution) would constitute an Event of Default, and such event or condition damages the County, the County may draw upon the Letter of Credit or Operations Performance Bond provided in Sections 7.05 and 7.06, respectively, during any such periods of grace or cure to compensate it for such damages incurred to the date of the claim in accordance with the procedures set forth therein as if such event or condition had matured into an Event of Default.

VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.

8.01 Remedies for Default.

(a) Default by Contractor.

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

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

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

(iv) Any amounts of Acceptable Waste delivered by the County to a landfill or other Residue Disposal site following an Event of Default by the Contractor under Section 8.02, shall be credited toward the County's delivery of its Minimum Commitment under Section 3.01.

(b) Default by County.

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

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

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

8.02 Events of Default by the Contractor.

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

(i) Contractor failure (which is not excused by Uncontrollable Circumstances), occurring at any time after the Commencement Date, to receive, recycle, process, or dispose of in an Environmentally Acceptable manner, Acceptable Waste delivered by the County or its Designee (up to the limits set forth in Section 2.02), for a continuous period of fourteen (14) days.

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

(iii) Contractor failure to obtain and maintain the insurance required by Article VII.

(iv) A failure to pay or credit any amount of monies due by the Contractor to the County under this Agreement when such amount becomes due and payable, and when such amount remains unpaid for thirty (30) days after written notice to the Contractor that such

payment is past due; provided, however, that if the payment or credit is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

(v) A failure by the Contractor to initiate operations at a MRF and AFB by the Commencement Date.

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

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

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

(iii) Failure of the Contractor to indemnify the County in accordance with Section 2.12.

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

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

(ii) the circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the County) shall not have been corrected nor shall reasonable steps have been initiated to correct the same

within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence. For the purposes of this Section 8.02, "reasonable steps" shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the County, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

8.03 Event of Default by the County.

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

(i) The failure by the County to pay any amount of monies due to the Contractor under this Agreement when such amount becomes due and payable, and such amount remains unpaid for thirty (30) days after written notice to such County, with copies to the non-defaulting County that such payment is past due; provided, however,

that if the payment demanded is disputed, such thirty (30) day period shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

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

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

(i) The failure of a County to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i)), unless such failure shall be excused or justified as provided in Article V hereof.

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

(iii) Failure of the County to indemnify the Contractor in accordance with Section 3.03; provided, however, that if such indemnification is prohibited by applicable law, such failure shall not constitute an Event of Default hereunder.

(iv) The County's failure to have a Transfer Station operational for processing and delivery of Acceptable Waste to the Contractor for transportation to a MRF on the Commencement Date.

(v) At any time after a one hundred eighty (180) day shakedown period following the Commencement Date, a Transfer

Station is not operational for a continuous period of fourteen (14) days (unless excused by Uncontrollable Circumstances).

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

(i) The Contractor shall have given prior written notice to the County, describing such default in reasonable detail; and

(ii) The circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.03(c)(i)). If the County shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the County is continuing to take reasonable steps to correct such default. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the County of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the County in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Contractor, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

8.04 Notice of Termination for Default. If any party shall have a right of termination for cause in accordance with this Article VIII by virtue of the fact that an

Event of Default exists, after all periods of grace and cure have then expired (including any cure period granted to the Credit Institution) the right of termination may be exercised by written notice of termination given to the party in default. The notice shall specify the termination date, which shall be no less than thirty (30) days from the date of such notice, except in the case of abandonment by the Contractor under Section 8.10 herein.

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

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

8.07 Right of Termination Not Exclusive. Any rights of termination, and any rights to purchase provided under this Agreement upon an Event of Default by the

Contractor or the County, are not exclusive and may be exercised without prejudice to any right provided by law to any party to bring appropriate action, subject to the preemptory requirements of Section 8.05, to recover actual damages for failure in the performance by the defaulting party of its obligations pursuant to this Agreement.

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

8.09 Right to Cure by Credit Institution.

(a) Right to Cure. If the County alleges an Event of Default under this Agreement, then, provided the Contractor has provided the County notice of the name and address of the Credit Institution, the County shall give written notice of the Event of Default to the Credit Institution at the same time that it gives written notice to the Contractor as required under Section 8.02(c)(i). The Credit Institution shall have the same right as the Contractor to arrange for the cure of the Event of Default and shall also have the right (if and when granted to the Credit Institution pursuant to the agreements between it and the Contractor) to substitute for the Contractor a responsible new operator acceptable to the County and to the North Carolina Department of Environment, Health, and Natural Resources (referred to herein as the "Replacement Contractor"), which right the Credit Institution may invoke upon fourteen (14) days written notice at any time during the period stipulated under Section 8.09(b) to the County and the Contractor. While the Credit Institution shall be entitled to appoint a Replacement Contractor, its right to cure an Event of Default shall apply regardless of whether a Replacement Contractor is appointed. Any Replacement Contractor shall use its best efforts to effect a Successful Cure as soon as possible, but in no event shall such substitute

performance by the Replacement Contractor exceed the cure period set forth in Section 8.09(b)(i).

(b) Cure Period. If the Credit Institution invokes its right to cure an Event of Default under Section 8.09(a), there shall be a period within which the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

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

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

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

(c) Operations During Cure Period. During the Cure Period, the Credit Institution or the Replacement Contractor, if any, shall cause any MRF and AFB then serving the County to be operated in accordance with this Agreement. During the Cure Period, neither the Replacement Contractor, if any, nor the Credit Institution shall be liable to the County for damages caused by the Contractor in excess of cash available from revenues from such MRF and AFB after payment of debt service and operating costs.

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

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

8.10 Notification to County Upon Abandonment. In the event the Contractor abandons the operation of any MRF and/or the AFB then serving the County, the Credit Institution may appoint and inform the County of a Replacement Contractor to assume the Contractor's duties under this Agreement as provided in Section 8.09.

IX. TERM.

9.01 Term. Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature by the parties and shall remain in effect for a term of twenty-six (26) years from the Commencement Date.

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

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

X. REPRESENTATIONS AND WARRANTIES.

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

(a) The County is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The County has agreed to implement solid waste disposal and resource recovery systems and facilities, and to provide solid waste management services to the public.

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

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

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

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

could materially and adversely affect the performance of any of the obligations of such County under this Agreement.

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

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the County to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the County to perform its obligations under this Agreement, except for the licenses, permits and other approvals relating to the design, construction, start-up, testing and operation of the Transfer Stations.

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

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

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

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

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

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

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

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

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

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

XI. PARTIES TO AGREEMENT.

The parties to this Agreement are Edgecombe County and the Contractor. The County and the Contractor are independent parties under this Agreement and no party is the servant, agent or employee of the other, nor are they partners or coventurers and none shall share with the others in any risk or liability which arises out of any act of commission or omission in carrying out the provisions of this Agreement or the transactions arising therefrom; provided, however, that each party shall be entitled to enforce this Agreement against the others and seek remedies available at law or in equity and each shall be responsible for its own negligence in carrying out or for breach of the provisions of this Agreement.

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

XII. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding between the County and the Contractor, and there are no other terms, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever, except as to related documents referred to herein or which are Exhibits hereto. No extension or indulgence granted by either the County or the Contractor; no alteration, change or modification of this Agreement consented to or agreed to by any party; and no act or omission of any party or its agents shall constitute an amendment to, or

modification of, this Agreement (nor shall same be interposed as a defense against the enforcement of any party's rights under this Agreement or give rise to an implied waiver of any rights or any equitable estoppel); rather, this Agreement may be modified or amended only by a document in writing which is duly executed by the County and the Contractor. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

XIII. NOTIFICATION.

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

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

County Manager
P.O. Box 10
Tarboro, North Carolina 27886

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

Wilson Resources, Limited Partnership
Attention: George Armistead
11757 Katy Freeway
Suite 1420
Houston, TX 77079

with a copy to:

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

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

XIV. AUDIT.

The Contractor shall maintain during the time this Agreement is effective and retain not less than two years after completion thereof, or for such longer period as may be required by law, complete and accurate records of wastes processed by the Contractor

at the MRF and AFB then serving the County under this Agreement, and the County shall have the right, at any reasonable time, to inspect and audit project records by authorized representatives of its own, or of any public accounting firm it selects. The records to be thus maintained and retained by the Contractor shall include, without limitation:

(a) Accounting records of the amounts of all Solid Waste and Hazardous Waste, identified by source, delivered to the MRF then serving the County; and

(b) Accounting records of the amounts of each type of substance derived from Acceptable Waste delivered to the MRF then serving the County.

XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.

15.01 Affirmative Action. The Contractor shall have an affirmative action plan at the facilities operated by it pursuant to this Agreement.

15.02 Discrimination in Employment. The Contractor agrees that in the performance of this Agreement with the County, it will not discriminate against any worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

XVI. MISCELLANEOUS PROVISIONS.

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

16.02 Governing Law; Interpretation. This Agreement shall be governed, construed, interpreted and enforced, in all respects, in accord with the laws of the State of North Carolina. Any approval, consent or affirmation required by any party under the terms of this Agreement shall not be unreasonably withheld. The parties hereto agree that each party will perform its obligations and enforce its rights hereunder in good faith. No right, benefit or obligation of the Contractor under this Agreement may be materially and adversely affected by ordinance, regulation or other legislation of the County unless

(a) such regulation involves the health and safety of its residents, or (b) the economic effect of such legislation is, as part of such legislation, reflected in an amendment hereto that makes the Contractor whole.

16.03 Severability. The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect. Without limiting the foregoing provision, the parties agree that in the event this Agreement is determined by a court of law to be a franchise, then the term of the Agreement shall be deemed to be the maximum franchise term legally permissible.

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

16.05 Assignment.

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

(b) Except as set forth in paragraph (a), the Contractor may not assign this Agreement without the prior written consent of the County. This

Agreement may not be assigned by the County without the prior written consent of the Contractor. No assignment shall relieve any party of any of its obligations under any provision of this Agreement.

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

16.07 Further Assurances. The County and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other parties to carry out the intent of this Agreement.

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

EDGECOMBE COUNTY

By: _____

Chairman of the Board of
Commissioners

APPROVED AS TO FORM:

County Attorney

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

Director of Finance

**WILSON RESOURCES, LIMITED
PARTNERSHIP, a Delaware Limited
Partnership**

By its General Partner:

**Carolina Energy, Limited Partnership
a Delaware Limited Partnership**

By its General Partner:

**Carolina Energy Corp., a
Delaware corporation**

ATTEST:

By: _____
Steve Bobo, Secretary

By: _____
Alan McDonald, President

RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

BETWEEN

NASH COUNTY

AND

WILSON RESOURCES, LIMITED PARTNERSHIP

DATED AS OF NOVEMBER __, 1994

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RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

THIS RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT is made and dated as of November ____, 1994, between NASH COUNTY, NORTH CAROLINA (referred to herein as the "County"), and WILSON RESOURCES, LIMITED PARTNERSHIP (referred to herein as the "Contractor"), a Delaware limited partnership.

RECITALS

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

While the County shall continue to develop and implement plans for waste reduction at the sources of solid waste generation, primarily through voluntary recycling at such sources, the County estimates that such waste reduction at the source will not fully meet the aforementioned recycling, reuse, and composting goals and believes that the overall policy of reducing the waste stream will require the establishment of a materials recovery facility at which recyclables and reusables can be separated from the waste stream.

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

To assist the County to meet the State policy and goals for reduction of disposal into landfills and to reduce the costs of modifying and operating landfills, the Contractor

has made a proposal for a recycling and incineration for energy production program which will have the following benefits:

- * Reliability of technology for recycling and energy production
- * Quality of commitment from a local end user of energy
- * Cost to the County
- * Environmental benefits
- * Plan for disposal of residual materials
- * Quality of key and supervisory personnel for the project
- * Financial soundness of the Contractor
- * General quality of project plan in content and completeness

The Contractor and its affiliates intend to construct and operate materials recovery facilities (each a "MRF") and alternative fuel boilers (each an "AFB") in North Carolina. Each AFB will be designed to burn refuse-derived fuel ("RDF") prepared at a MRF. An affiliate of the Contractor, BCH Energy, Limited Partnership ("BCH"), has begun construction on a MRF in Cumberland County, North Carolina and an AFB in Bladen County, North Carolina, with such MRF and AFB to commence operations in 1995. The Contractor intends to construct a MRF in Wilson County, North Carolina, and an AFB in Lenoir County, North Carolina, with such MRF and AFB to commence operations in 1996 or 1997. It is contemplated that Contractor may cause BCH to provide services to the County prior to the completion of the Wilson County MRF and Lenoir County AFB.

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

separately contract for the processing of solid waste generated within that portion of the County that is within the corporate limits of the city.

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

The County desires to utilize and the Contractor desires to provide solid waste processing and resource recovery facilities and services under the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

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

"Aggregate Maximum Commitment" shall mean the aggregate of the applicable Maximum Commitments for all of the Counties for any full Contract Year and a prorated amount for any Contract Year having less than 365 days.

"Aggregate Minimum Commitment" shall mean 230,000 Tons, being 35,000 Tons from the City of Rocky Mount, 15,000 Tons from the County, 90,000 Tons from Pitt County, 40,000 Tons from Lenoir County, 50,000 Tons from Wilson County, and 15,000 Tons from Edgecombe County, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

"Alternate Fuels Boiler" or "AFB" shall mean a facility in which RDF is burned to produce thermal and/or electrical energy.

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

"Ash Disposal Site" shall mean a facility or location where Ash from the AFB may be disposed of in an Environmentally Acceptable manner.

"Commencement Date" means January 1, 1997 or such earlier date as may be determined as follows. The Contractor agrees that it will notify the County six (6) months prior to the date when start-up and capacity testing will be completed at a MRF which is capable of processing the County's Acceptable Waste. At any time thereafter,

the County may change the definition of "Commencement Date" for the purpose of this Agreement, upon six (6) months written notice to the Contractor, to any date later than such Completion Date and earlier than January 1, 1997.

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

"Contract Year" means the period from January 1 of any calendar year through December 31. The first Contract Year shall commence on the Commencement Date and end on the immediately following December 31, and the last Contract Year shall end on the last day of the term of this Agreement.

"Contractor" means Wilson Resources, Limited Partnership, a Delaware limited partnership, and its permitted successors and assigns.

"Counties" shall, for convenience of reference, mean the County and all other counties or municipalities that are or hereafter become parties to a Resource Recovery Agreement or similar agreement with the Contractor for solid waste processing and resource recovery facilities and services, including but not limited to Pitt, Lenoir, Edgecombe, and Wilson Counties and the City of Rocky Mount, North Carolina.

"County" means the County of Nash, North Carolina.

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

"Designee" or "Designees" shall mean a Person or Persons authorized or selected by the County at any time to collect Solid Waste generated within the County.

"Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility selected by the Contractor to which Residue or MSW is or may be delivered for ultimate disposal.

"Escalation Rate" shall mean an annual rate no greater than three percent (3.0%) that is proposed by the County and that is acceptable to the Contractor in its

reasonable discretion by which the Maximum Commitment shall be increased for each Contract Year following the tenth Contract Year.

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

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

"Materials Recovery Facility" or "MRF" shall mean a facility which separates Recoverable Materials, Residue and Refuse-Derived Fuel.

"Maximum Commitment" shall mean (a) with respect to each of the first through the tenth Contract Years, 50,000 Tons of Acceptable Waste per Contract Year; (b) with respect to the eleventh Contract Year the greater of (i) 50,000 Tons or (ii) the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year, *plus* the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year multiplied by the Escalation Rate; and (c) with respect to each of the twelfth Contract Year and each Contract Year thereafter, the Maximum Commitment for the immediately preceding Contract Year *plus* the Maximum Commitment for the immediately preceding Contract Year multiplied by the Escalation Rate.

"Minimum Commitment" shall mean 15,000 Tons of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

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

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

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

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

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

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

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

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

"State" means the State of North Carolina.

"Transfer Station" shall mean a transfer station referred to in Section 2.01(c) of this Agreement. Unless the context otherwise requires, any reference to a Transfer Station shall mean any Transfer Station then serving the County.

"Tri-Party Minimum Commitment" shall mean 65,000 Tons, being 15,000 Tons from the County, 15,000 Tons from Edgecombe County, and 35,000 Tons from the City of Rocky Mount, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

"Unacceptable Waste" means (i) explosives, Hazardous Waste, other hazardous chemicals or materials, radioactive materials, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such materials; (ii) any item either smoldering or on fire; (iii) non-combustible construction materials and demolition debris, including masonry, brick and stone, structural steel, rebar, and structural shapes; (iv) all other items of waste (other than Recyclable Materials) which, at the time of delivery to a MRF or a Residue Disposal Site, would normally not be disposed of in a sanitary landfill, and (v) any other items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any other regulatory authority, or any applicable law or regulation, from being processed by a MRF or burned in an AFB.

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

II. DUTIES OF CONTRACTOR.

2.01 Overview of Contractor's Duties.

(a) Beginning on the Commencement Date, the Contractor shall transport (or cause to be transported) at its sole expense the Acceptable Waste of the County delivered to the Transfer Stations from such Transfer Stations to a MRF; provided, however, that in any particular Contract Year the Contractor shall not be required to transport more than 1,000 Tons in any seven (7) consecutive days or, except as provided in Section 2.02, the Maximum Commitment for such Contract Year. Such 1,000 ton amount will increase after the tenth Contract Year at the Escalation Rate. The Contractor shall transport the Acceptable Waste in an Environmentally Acceptable manner.

(b) The Contractor, through its representatives and agents, shall prepare the site for, construct and operate any MRF which serves the County in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. So long as and to the extent it is economically feasible to the Contractor and environmentally positive, the Contractor shall recover Compostable Materials and Recyclable Materials present in the Solid Waste received at such MRF from the County, its Designees and other sources, including, but not limited to the following: aluminum cans, ferrous and bimetal products, corrugated paper, glass, plastics, newspaper and Compostable Materials. For each Contract Year, the County and the Contractor shall develop an annual recycling and composting plan. In developing such plan they shall consider market conditions for Recyclable Materials and the economic feasibility of recovering same in an environmentally positive manner and market conditions and other uses for Compostable Materials, the current State goals for reduction of landfill disposal, the amount of recycling and composting being accomplished outside the purview of this Agreement that can be counted against goal attainment, and the benefit of recovering Recyclable Materials and

Compostable Materials at a MRF to meet such goals. The Contractor will participate with the County in seeking to adopt an annual recycling and composting plan that will permit the County to meet mandatory State recycling and composting goals. If it appears that due to market conditions for Recyclable Materials or Compostable Materials recovered at a MRF the State goals for the forthcoming Contract Year may not be met, the following actions shall be taken: (1) the County shall make a good faith, reasonable effort, to increase the amount of recycling and composting accomplished outside the purview of the Agreement by voluntary or mandatory resource recovery programs; and (2) the County, supported by the Contractor, shall make a good faith reasonable effort to obtain a waiver either of the State goals for such year to the extent of the estimated shortfall or of the imposition of penalties for failure to meet such goals, which penalties, if any, shall be the responsibility of the County.

(c) The County shall deliver Acceptable Waste to the MRF in Wilson County or to one or more Transfer Stations, any or all of which shall be located at sites that are mutually agreeable to the parties within or without the geographic borders of the County. The Contractor and the County presently contemplate that one of the Transfer Stations shall be the transfer station presently owned and operated by the City of Rocky Mount, North Carolina, and the Contractor, the County and the City of Rocky Mount are contemporaneously herewith entering into an Agreement for Construction and Operation of Transfer Station pursuant to which, among other things, the City of Rocky Mount has agreed to modify its existing Transfer Station so as to accept and transfer Acceptable Waste generated in portions of the County outside the corporate limits of the City, and Contractor has agreed to pay a portion of its construction and operating costs.

(d) After the Commencement Date, the Contractor shall process and either recycle or otherwise dispose of all Acceptable Waste delivered by the County or its Designees to a Transfer Station or to the MRF then serving the County, up to the applicable Maximum Commitment, regardless of the

mechanical status of the MRF and AFB then serving the County, unless neither facility is able to operate due to factors constituting Uncontrollable Circumstances. The Contractor shall identify and reject or separate and dispose of Unacceptable Waste delivered by the County or its Designees to the MRF then serving the County and shall do so in an Environmentally Acceptable manner subject to reimbursement by the County to the extent set forth in Section 2.03(b)(iii)(A).

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

(f) The Contractor shall equip each MRF and AFB then serving the County with emission controls designed to insure that each such MRF and AFB complies with all applicable laws and regulations governing air quality and odor and noise emissions.

2.02 Acceptance of Acceptable Waste. Except as otherwise set forth in this Section 2.02, the Contractor shall accept and process at a MRF all Acceptable Waste delivered by the County or its Designees to a Transfer Station or to the MRF then serving the County; provided, however, that the Contractor shall not be required to accept more than 1,000 Tons in any seven consecutive days nor more than the applicable Maximum Commitment. Such 1,000 Ton amount will increase after the tenth Contract Year at the Escalation Rate.

Notwithstanding the foregoing, however, the County may deliver Acceptable Waste to the Contractor in excess of its Maximum Commitment (i) in the event that the Counties have not delivered Acceptable Waste to the Contractor in excess of the Aggregate Maximum Commitment, or (ii) notwithstanding that the Counties have delivered Acceptable Waste to the Contractor in excess of the Aggregate Maximum

Commitment, Contractor agrees that the MRF and AFB have sufficient excess capacity to accept such Waste in excess of the Aggregate Maximum Commitment.

The Contractor may accept, either under contract or on a spot market basis, Acceptable Waste for processing at any MRF from any source, but only to the extent that such acceptance does not prevent the Contractor from accepting and processing all of the Acceptable Waste which the County and its Designees are entitled to deliver pursuant to this Section 2.02.

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

(a) The Contractor shall have the right to reject, and shall have no obligation to dispose of, any of the following Solid Wastes brought by any Person to a Transfer Station (even if such Solid Wastes are not discovered until they reach the MRF at which the County's Acceptable Waste is being processed) or to the MRF then serving the County, and shall have the right to prevent the unloading of any vehicle bringing such Solid Waste if such Solid Waste is properly rejected:

(i) Unacceptable Waste (it being agreed that in the event the Contractor determines that a load of Solid Waste contains both Acceptable Waste and Unacceptable Waste, it shall be entitled to reject and prevent the unloading of the entire load);

(ii) Solid Waste brought to a Transfer Station or to the MRF then serving the County at times other than the hours designated for delivery by the Contractor;

(iii) Solid Waste brought to a Transfer Station or to the MRF then serving the County in excess of the limits set forth in Section 2.02, if the MRF then serving the County is unable for any reason to receive and process such amounts;

(iv) Solid Waste brought to a Transfer Station or to the MRF then serving the County in vehicles not conforming with the requirements established by the Contractor; and

(v) Solid Waste brought to a Transfer Station or to the MRF then serving the County by a Person who is not the County or its Designee.

(b) Unacceptable Waste.

(i) The Contractor and the County shall adhere to the Solid Waste segregation and screening procedures established by the Contractor.

(ii) The Contractor shall, as agent for, and on behalf of, the County, separate, store, process and dispose of in an Environmentally Acceptable manner, any Unacceptable Waste brought to a Transfer Station or to the MRF then serving the County and not identified by the Contractor as such until after unloading from the delivery vehicle, it being agreed that the Contractor shall not be deemed to have accepted any such Unacceptable Waste.

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

(A) If such Unacceptable Waste was delivered by the County or its Designee to a Transfer Station or to the MRF then serving the County and was detected at such time or at any time prior to the time such Unacceptable Waste left the tipping floor of such MRF, the Contractor shall be entitled to require the County or its Designee to reload the entire load which contained such Unacceptable Waste onto its vehicle and remove such load from a Transfer Station or such MRF, or, in the event the Contractor does not require such removal, the County shall reimburse, or shall cause its Designee to reimburse, the Contractor for such removal and disposal costs. Notwithstanding the foregoing, if, after leaving the tipping floor, Unacceptable Waste is identified and the source is

identified to the reasonable satisfaction of the Contractor and the County (or its Designee), then the County shall reimburse, or cause its Designee to reimburse, the Contractor for such removal and disposal costs. The Contractor may invoice the County not more frequently than monthly for reimbursement of such costs.

(B) In all other cases, except as otherwise provided in Section 3.03, the County shall have no responsibility for such costs.

2.04 Delivery by Other Persons. The Contractor is not required under this Agreement to accept deliveries of Solid Waste from any Person other than the County or its Designees.

2.05 Regulatory Requirements.

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

application have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) Adherence to Law. The Contractor shall (i) design, construct and operate each MRF and AFB which is to serve the County and (ii) transport Acceptable Waste in a manner which complies in all material respects with any applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) Inspection by County. The Contractor shall permit duly appointed officials of the County to have access to and entry upon the site of the MRF then serving the County at any time within regular MRF operating hours, upon advance telephonic notice to the Contractor's Transfer Station or MRF supervisor of not less than four hours, to inspect such facility for the purpose of evaluating the Contractor's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the Contractor including those relating to the safety of persons present on such site and the protection of the Contractor's proprietary information.

2.06 Financial Responsibility. Except as otherwise provided in this Agreement, the Contractor shall provide and pay for all of the labor, services, parts, supplies, utilities, and other resources other than Acceptable Waste required for the Contractor to (i) operate and maintain each MRF and AFB and (ii) transport Acceptable Waste in accordance with the requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals. Notwithstanding the foregoing, the requirements of Article VII may not be altered by ordinance or other legislation of the County.

2.07 Maintenance. Throughout the term of this Agreement, the Contractor shall take all action necessary to ensure that each MRF and AFB then serving the County at all times meet and conform to good engineering and operating practices. Maintenance shall include the performance of all necessary repairs and replacement. The Contractor

shall plan, schedule, and control preventive maintenance to ensure minimum downtime to the extent practicable.

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

2.09 Transportation. The Contractor shall arrange for transportation of all Acceptable Waste accepted by the Contractor at a Transfer Station or at a MRF then serving the County and all products of Solid Waste separation and processing from each MRF then serving the County to recyclables purchasers, to an AFB, or to Disposal Sites, as appropriate, in an Environmentally Acceptable Manner.

2.10 Unplanned Outages.

(a) In the event of any unplanned outage of the MRF then serving the County, the Contractor shall: (i) use all reasonable efforts to resume normal operations of such MRF as quickly as possible and, (ii) arrange for interim processing or disposal of all Acceptable Waste in an Environmentally Acceptable manner.

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

2.11 Records.

(a) The Contractor or its designee shall operate and maintain a motor truck scale at each MRF then serving the County, calibrated to the accuracy required by the State for public weighing facilities, to weigh all vehicles delivering Solid Waste to such MRF. The County shall cause its vehicles, and those of any Designees, to have identification permanently indicated and conspicuously displayed thereon. Each vehicle will be weighed before entering and after leaving such MRF, with the date, time, truck identification and weights (loaded and unloaded) to be entered on a weight

record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. If the weighing facility at such MRF is out of service, the Contractor shall, subject to any applicable state regulation, either obtain alternate temporary weighing capability or estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and data based on pertinent historical information.

(b) The Contractor or its designee shall maintain daily records of the total Acceptable Waste tonnage delivered to a Transfer Station or to a MRF then serving the County by the County and its Designees and of all materials leaving each MRF then serving the County. Such daily records shall include detailed and summary listings of tonnage delivered by the County and its Designees to such MRF, the estimated amount of such Solid Waste rejected as being other than Acceptable Waste, and such other records as are necessary to implement the provisions of this Agreement. Summary information for each month shall be provided to the County within five (5) business days after the end of such month. Copies of all daily records and weight tickets shall be maintained by the Contractor for a period of at least three (3) years, or for such longer period required by law, and shall be made available for inspection by the County during normal business hours upon reasonable notice. In the event the County is required by applicable law or regulation to file reports pertaining to the operation of any such MRF or equipment or facilities thereof, the Contractor shall provide the County with the information required to compile such reports.

2.12 Indemnification. The Contractor will protect, indemnify and hold the County harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the County including reasonable attorneys' fees, and will, if requested, defend the County in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property (including environmental damage), or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the Contractor, its agents or employees acting within the scope of their

employment. The County shall promptly notify the Contractor of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall, at its option, give the Contractor the opportunity to defend such claim; and shall not settle such claim without the approval of the Contractor, which approval shall not be unreasonably withheld. These indemnification provisions are for the protection of the County only, do not apply to claims of the County itself against the Contractor under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

2.13 MSW Reduction Guarantee. In addition to the reports required under Section 2.11, the Contractor will provide a monthly recycling report to the County reporting the total Solid Waste reduction as defined under North Carolina solid waste management laws and regulations as adopted, amended, and effective January 1, 1994. Such reduction, stated as a percentage of total Acceptable Waste delivered to the Contractor at the MRF then serving the County by the County for that month (except as revised as provided below), is referred to herein as the "Reduction Percentage." The form of the report will be as mutually agreed by the Contractor and the County. The Contractor hereby guarantees that the Reduction Percentage from the recycling of paper, plastics, metals, glass or materials beneficially used as ground cover or aggregate fill but excluding materials that are composted, stated on an annual basis for each Contract Year, shall be no less than 12.5%; provided, however, that if recyclable materials other than compostable materials are removed from MSW delivered to the Contractor prior to delivery thereto, then the amount of such recyclable materials removed from the Solid Waste shall be added to the total Solid Waste reduction in computing the Reduction Percentage. If the Contractor fails to meet the guaranteed Reduction Percentage, then (as the County's sole remedy) the Contractor shall pay the County a fee that is equal to the per-Ton fees then in effect under Sections 6.01 and 6.02 hereof for each Ton by which the total Solid Waste reduction failed to meet the guaranteed Reduction Percentage; but in no event shall payments to the County exceed for any Contract Year an amount equal to ten percent (10%) of the fees paid by the County to the Contractor pursuant to Sections 6.01 and 6.02 below for such Contract Year. The parties hereto expect that beginning June 30, 2001, a 10% credit will be allowed in computing the total Solid Waste reduction for materials burned to generate energy; in such case and at such

time as such increase comes into effect, the Contractor guarantees that the Reduction Percentage shall increase to 22.5%.

III. DUTIES OF THE COUNTY.

3.01 Delivery of Acceptable Solid Waste; Minimum Commitment.

Commencing on the Commencement Date and continuing throughout the term of this Agreement, the County shall deliver or cause to be delivered to the Contractor at the Transfer Station or at the MRF then serving the County (as directed by the Contractor based upon transportation considerations applicable to both parties hereto and the receipt of any applicable third party permits or consents) its Minimum Commitment during each Contract Year, plus all additional Acceptable Waste collected for disposal by the County and its Designees during each Contract Year subject to the Contractor's right to reject the County's deliveries in excess of aggregate amounts stated in Section 2.02. The County and the Contractor contemplate, however, that during the time the County is being served by BCH at its MRF located at the Ann Street Landfill in Cumberland County, the County shall deliver its Acceptable Waste to a Transfer Station referred to in Paragraph 2.01(c) and during such time the County shall be solely responsible for obtaining the use of and operating such Transfer Station (or any alternative Transfer Station agreed upon by the parties). The parties intend that all Acceptable Waste collected for disposal by the County and its Designees be delivered to the Contractor at a Transfer Station or at the MRF then serving the County, and, accordingly, unless the Contractor otherwise elects, the County and its Designees shall not deliver any such Acceptable Waste (except for source separated recyclables, yard waste, tobacco dust, and other compostable materials, and construction and demolition debris) to any other disposal sites. For purposes of this Section 3.01, Acceptable Waste is deemed to be "collected for disposal" if it is presently being or would in the ordinary course be delivered to a landfill, transfer station or to a general materials recovery facility.

3.02 Computation of Minimum Commitment.

(a) Amounts Included in Computation of Minimum Commitment.

The County shall receive credit toward meeting its Minimum Commitment for all Acceptable Waste delivered by such County and its Designees (other than

Waste generated in the City of Rocky Mount) and accepted by the Contractor at a Transfer Station, to the MRF then serving the County or to any other destination in the County reasonably designated by the Contractor.

(b) Amounts Not Included in Computation of Minimum Commitment. The County shall receive no credit toward meeting its Minimum Commitment for any (i) Solid Waste properly rejected by the Contractor in accordance with Section 2.03 hereof or (ii) Solid Waste generated in the City of Rocky Mount.

3.03 Indemnification. The County will, to the extent permitted by applicable law, protect, indemnify and hold the Contractor harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the Contractor including reasonable attorneys' fees, and will defend the Contractor, at the Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the County, its agents or employees acting within the scope of their employment or caused by or resulting from the handling or disposal of Unacceptable Waste by the Contractor in the performance of its duties hereunder (except as otherwise provided in Section 2.03(b)(iii)) (herein, the "Losses"). The Contractor shall promptly notify the County of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall give the County the opportunity to defend such claim; and shall not settle such claim without the approval of the County, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against the County under this Agreement or any related agreements, and shall not create any benefit or liability to third parties. The parties mutually agree that the term "to the extent permitted by applicable law," expresses the legal uncertainty as to whether the promise to indemnify herein is subject to the provisions of N.C.G.S., § 159-28, other applicable laws and the constitution of the State of North Carolina. The parties acknowledge and understand that this promise to indemnify has not been supported by a current appropriation of the governing body of the County. Consequently, if a court of competent jurisdiction

determines that this promise to indemnify constitutes incurring an obligation within the meaning of N.C.G.S., § 159-28 or violates other applicable laws or the constitution of the State of North Carolina, then this promise to indemnify is void ab initio. This promise to indemnify shall not constitute a waiver of governmental immunity.

3.04 Solid Waste Flow Ordinances. The County, if and when authorized by applicable law, shall promulgate and enforce flow ordinances mandating that all MSW generated in the County (excluding Unacceptable Waste, Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement and MSW which is to be disposed of at or transferred to a site or facility outside the State) after the Commencement Date and thereafter so long as this Agreement is not terminated, shall be delivered exclusively to the Contractor under this Agreement. Subject to its obligations to provide for the health and safety of its citizens and to other limitations required by law, the County agrees to use its best efforts to aid Contractor in obtaining the permits, licenses and other authorizations and approvals referenced in Section 2.05(a). In addition, the County shall encourage each municipality located within the boundaries of the County to enter into a binding agreement with the Contractor, or take other action acceptable to the Contractor, which provides that all MSW generated in such municipality (excluding Unacceptable Waste and Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement) after the Commencement Date and thereafter so long as this Agreement is not terminated shall be delivered to the Contractor under this Agreement.

IV. CONDITIONS PRECEDENT TO OPERATIONS.

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

4.01 The Contractor shall have advised the County that start-up operations and capacity testing have been completed satisfactorily, and that the MRF then serving the County is ready to receive the County's Acceptable Waste. The Contractor shall invite the County's officials to witness tests, review data and concur that such MRF is ready for use, with such concurrence not to be unreasonably withheld.

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

4.03 The County shall have advised the Contractor that a Transfer Station is operational for processing and delivery of Acceptable Waste to the Contractor for transportation to the MRF then serving the County. The County shall invite the Contractor's officials to witness tests, review data and concur that such Transfer Station is ready for use, with such concurrence not to be unreasonably withheld.

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

V. UNCONTROLLABLE CIRCUMSTANCES.

5.01 Any act, event or condition, whether affecting a MRF, an AFB, the Transfer Stations, the vehicles used by the Contractor to transport RDF to an AFB, the County, the Contractor or any of the Contractor's respective subcontractors shall be deemed an Uncontrollable Circumstance to the extent that it materially and adversely affects the ability of any party to perform its obligations hereunder, if such act, event, or condition is beyond the reasonable control of and is not also the result of the willful or negligent action or inaction, principally of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. The good faith contesting of, or the failure to contest, action or inaction of a third party, shall not be construed as willful or negligent action or lack of reasonable diligence by the party claiming that such third party action or inaction constitutes Uncontrollable Circumstances. Acts or events constituting Uncontrollable Circumstances include, but shall not be limited to, the following:

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

(b) The failure of any federal, state, county or city public agency or private utility having jurisdiction in the area in which a Transfer Station or a MRF or an AFB is located to provide and maintain utilities, services, water and sewer lines and power transmission lines to the sites, which are required

for the construction, start-up, testing, operation or maintenance of such facilities;

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

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

(e) Any change in law which is (i) legally binding with respect to the design, construction, testing, utilization, operation or maintenance of a Transfer Station or a MRF or an AFB, (ii) occurs subsequent to the date hereof, and (iii) has the effect of temporarily or permanently preventing a party from performing any of its obligations hereunder including the following: any change in, or adoption of, any constitution, charter, act, statute, law, ordinance, code, rule, regulation or order; or any change in the standards or criteria contained in a permit, which standards or criteria must be met in order for a Transfer Station or a MRF or an AFB to be operated lawfully at the levels specified in this Agreement; any denial of an application for, delay in the review, issuance or renewal of or suspension, termination, interruption, imposition of a new condition in connection with the renewal of or failure of renewal, on or after the date hereof of any governmental permit, license, consent, authorization or approval, or any other legislative or administrative action or refusal to act of the United States of America or the State of North Carolina or any agency, department, authority, political subdivision or other instrumentality thereof (except that no action of the County or any instrumentality thereof shall excuse the performance of the County under this Agreement); or any decree, judgment or order of a court. Any change of law which requires a Transfer Station or a MRF or an AFB to install or upgrade equipment shall qualify hereunder as a

change of law, and the time required to install or upgrade equipment, if it requires a shutdown or slowdown of the operation of a Transfer Station, a MRF or an AFB, shall qualify as an Uncontrollable Circumstance.

5.02 Any party shall be excused from performance hereunder when its nonperformance was caused directly or indirectly by Uncontrollable Circumstances. The party whose performance is affected shall give to the other parties prompt written notice of the Uncontrollable Circumstances, and thereupon the obligations of the party giving the notice, so far as such obligations are affected by the Uncontrollable Circumstances, shall be suspended during such Uncontrollable Circumstances and for a reasonable time thereafter as required to remedy any physical damage or otherwise overcome the effect of such Uncontrollable Circumstances.

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

VI. FEES.

6.01 Fixed Fee. The County shall pay the Contractor a fixed fee of seventeen dollars and no cents (\$17.00) per Ton of Solid Waste delivered by the County or its Designees to a Transfer Station or MRF then serving the County and accepted by the Contractor (as provided in Article II). This fee shall not be payable by the County following the first twenty-one (21) years of the term of this Agreement.

6.02 Variable Fee. In addition to the fixed fee set out in section 6.01, the County shall pay the Contractor a variable fee which initially shall be twenty dollars and fifteen cents (\$20.15) per Ton of Solid Waste (including wood) delivered by the County and its Designees to a Transfer Station or MRF then serving the County and accepted by the Contractor. The County and its Designees shall pay an alternate fee (in lieu of the fixed and variable fees) for tires in the amount of \$55.00 per Ton. The variable fee and the fee for tires not incidentally included in the municipal waste stream shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published,

an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1993 as the base year from which adjustment is made, to be in effect until December 31, 1995, and then a further adjustment effective January 1, 1996, using the year ended December 31, 1994, as the base year from which adjustment is made. Further adjustments shall be made effective each January 1 thereafter for adjustments occurring during the preceding twelve months ended December 31.

6.03 Increase in Deductions and Fees Due to Increased Environmental Law Compliance. In the event that, from time to time after the Commencement Date, because of a change in applicable environmental laws, regulations or ordinances (a) the operating costs of a MRF or an AFB then serving the County escalate and/or (b) a MRF or an AFB then serving the County must be reconfigured, upgraded or altered, then the Contractor shall be entitled to recoup a portion of the increased operating costs and/or the costs of such reconfiguration, upgrade or alteration from the County, as the case may be, after deduction of a portion of such costs, all as further provided herein. Upon each occurrence of the circumstances described in clauses (a) or (b) of the immediately preceding sentence, the Contractor shall first calculate the amount of increased operating and/or capital costs to be incurred over the full term of this Agreement. From this amount \$500,000 (which amount shall be subject to adjustment as described below) shall be deducted, prorated between operating and capital costs in proportion to the gross amount of costs in each category. The \$500,000 deducted amount (as adjusted below) shall represent costs to be absorbed by the Contractor. The Contractor shall next recalculate the annual increased operating costs incurred and/or the annual amortized capital costs of such improvements in both cases after deduction of such \$500,000 amount (as adjusted below), similarly prorating the deductible amount among various capital items (referred to herein as the "annual net increased operating costs" or "annual net amortized capital costs"). Capital costs shall be amortized in accordance with generally accepted accounting principles based upon the estimated lives of such improvements. The Contractor shall furnish its calculations of the above costs to the County in sufficient detail for the County to confirm the basis and accuracy of the calculations of costs. Fifty per cent (50%) of any annual net increased operating costs or annual net amortized

capital costs shall be added annually to the fees to be paid under Section 6.01, allocated per Ton on the basis of the Acceptable Waste processed by the Contractor in the preceding Contract Year (and for the first full Contract Year based upon an assumed annual tonnage of Acceptable Waste of 15,000 Tons).

The \$500,000 amount shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonably adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1994 as the base year from which adjustment is made, to be in effect until December 31, 1995, and subsequent adjustments to be made effective each January 1 thereafter, using the calendar year 1994 as the base year from which adjustment is made in each instance.

6.04 Method of Payment.

(a) In accordance with Article VI, not earlier than the tenth day of each month after the Commencement Date, the Contractor shall invoice the County for services rendered by the Contractor under this Agreement during the preceding month. The total amount of the invoice shall be the sum of the following:

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

(ii) any amount owed by each County to the Contractor pursuant to Section 2.03 (b) (iii).

(b) All invoices shall be delivered by hand, by commercial delivery service (such as Federal Express) or mailed first class, postage prepaid to the County at the address set forth in Article XIII, and such invoices shall be paid within thirty (30) days after the date of the invoice. The County may supply other addresses at its discretion at any time.

6.05 Alternate Disposal Costs. In the event that, for any reason, the Contractor is unable to perform services in the manner contemplated by this Agreement,

and the Contractor is forced to use alternate disposal methods for Acceptable Waste delivered and paid for by the County, any resulting increase in the Contractor's costs shall be borne by the Contractor.

6.06 Failure to Deliver Minimum Commitment. In the event that (i) the County shall fail to deliver to the Contractor its Minimum Commitment for any Contract Year (unless such failure was due to Uncontrollable Circumstances and subject to Section 8.03(b)(i)), and (ii) the County, Nash County, and the City of Rocky Mount shall in the aggregate fail to deliver to the Contractor the Tri-Party Minimum Commitment for such Contract Year, and (iii) the Counties shall in the aggregate fail to deliver to the Contractor the Aggregate Minimum Commitment for such Contract Year, then at the end of such Contract Year the County shall pay the Contractor a fee equal to (i) the sum of the fixed and variable fees then in effect pursuant to Section 6.01 and 6.02 above (excluding any amounts paid by such County in such Contract Year for tires delivered) multiplied by (ii) the amount, in Tons, by which the County's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor during such year, but only to the extent that the amount in (ii) does not exceed the amount by which the County's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the County and does not exceed the amount by which the Aggregate Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the Counties.

VII. INSURANCE AND LETTER OF CREDIT REQUIREMENTS.

7.01 Insurance. The Contractor shall obtain at its own cost and expense the types of insurance listed herein. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the County shall have the right to approve such insurer based on its financial soundness, and subject to its being on the North Carolina Department of Insurance approved list, which approval shall not be unreasonably withheld.

Without limiting the Contractor's indemnification requirements, it is agreed that the Contractor accepts the following conditions and shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance

covering its operations, and require subcontractors to procure and maintain these same policies:

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

- (i) Premises - Operations Coverage
- (ii) Completed Operations
- (iii) Contractual Liability
- (iv) Broad Form Property Damage
- (v) Independent Contractors' Protective Liability

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

(b) AUTOMOBILE LIABILITY, with minimum limits of \$1,000,000 for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. Code 1 "Any Auto" symbol is required for this liability coverage. This policy shall include the Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90), if hazardous waste is transported. The County shall be named as additional insureds on such policy.

(c) WORKERS' COMPENSATION: Statutory Limits.

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

(e) The minimum limits stated in (i), (ii) and (iv) above shall increase automatically at every five (5) year interval from the Commencement Date by ten percent (10%) of the original limits, for each occurrence and aggregate. The Contractor may incur such deductibles as are standard in the

industry, not to exceed 10% of the face amount of the coverage of the policy amount in question.

The parties acknowledge that during the term of this Agreement certain Forms and types of coverage described in this Section 7.01 may change or may cease to be available on a commercially reasonable basis. In such event, the Contractor shall use reasonable efforts to obtain the closest equivalent Form or type of coverage then available.

7.02 Acceptability of Insurers. Insurance shall be placed with insurance companies with an A.M. Best rating of no less than "A," unless proper financial information relating to the company is submitted to and approved by the County prior to coverage being placed with such insurance company. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the County shall have the right to approve such insurer based on its financial soundness, and subject to its being on the North Carolina Department of Insurance approved list, which approval shall not be unreasonably withheld.

7.03 Evidence of Insurance. The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the County duplicate copies of all policies, including applicable endorsements. Since policies will expire before the completion of this Agreement, renewal certificates of insurance shall be furnished to the County by the Contractor before the expiration date of each policy, for the term of this Agreement.

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

7.05 Letter of Credit. On or before the Commencement Date, the Contractor shall provide a Letter of Credit (the "Letter of Credit") in a form reasonably acceptable to the County, which shall provide payment to the County for compensatory damages incurred as a result of a breach by the Contractor of this Agreement. The Letter of Credit shall be an irrevocable standby letter of credit issued by a bank or financial

institution (the "Issuing Bank") with a credit rating on its senior unsecured debt of at least "AA3" from Moody's Investors Service or at least AA- from Standard & Poor's Corporation or otherwise acceptable to the County in its sole discretion, shall be in an amount of \$500,000, and shall be outstanding for a period of five (5) years from and after the Commencement Date. The Letter of Credit shall be arranged in such a manner that permits the County to draw upon the Letter of Credit from time to time for any liquidated amount owed to the County under this Agreement after the Contractor has committed a breach of this Agreement in a manner that has caused monetary damage to the County. The Letter of Credit shall provide that the County may draw upon the Letter of Credit immediately upon the submission of a written agreement signed by the County and the Contractor authorizing such payment or thirty (30) days after submission to the Issuing Bank of a written finding by an arbitrator pursuant to an arbitration proceeding under Section 8.05 certifying the amount owed by the Contractor to the County. The Contractor shall have the right to contest any request for the payment of damages to the County or any amounts to be drawn down from the Letter of Credit in any arbitration proceeding pursuant to Section 8.05. If the County agrees to the Contractor's objections, or if the Contractor prevails in contesting any such payment or payments of damage and the County has been permitted to receive moneys under the Letter of Credit, the County shall repay the Contractor the amount of such payment or payments plus interest from the date of the payment or payments to the County to the date of such payment or payments to the Contractor at the then existing prime rate established by the largest commercial bank operating in North Carolina. All costs and expenses for the Letter of Credit whether fees, assessments, reimbursements, or otherwise, shall be solely payable by the Contractor, and the County shall have no liability arising therefrom.

7.06 Operations Performance Bond. In lieu of a Letter of Credit, the Contractor may, at its option, provide an Operations Performance Bond or other form of insurance acceptable to the County, which shall be posted by Contractor and shall provide payment to the County in the event of a breach of this Agreement by the Contractor. Payments under the Operations Performance Bond shall be made pursuant to the same procedures for payment under the Letter of Credit, as set forth in Section 7.05.

7.07 Drawing Upon Letter of Credit or Operations Performance Bond. If any event or condition has occurred which but for applicable periods of notice, grace or cure (including cure periods granted by the County to the Credit Institution) would constitute an Event of Default, and such event or condition damages the County, the County may draw upon the Letter of Credit or Operations Performance Bond provided in Sections 7.05 and 7.06, respectively, during any such periods of grace or cure to compensate it for such damages incurred to the date of the claim in accordance with the procedures set forth therein as if such event or condition had matured into an Event of Default.

VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.

8.01 Remedies for Default.

(a) Default by Contractor.

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

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

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

(iv) Any amounts of Acceptable Waste delivered by the County to a landfill or other Residue Disposal site following an Event of Default by the Contractor under Section 8.02, shall be credited toward the County's delivery of its Minimum Commitment under Section 3.01.

(b) Default by County.

(i) Upon the occurrence of an Event of Default by the County under this Agreement, the remedies of the Contractor shall be

compensatory damages, specific performance or termination of this Agreement.

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

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

8.02 Events of Default by the Contractor.

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

(i) Contractor failure (which is not excused by Uncontrollable Circumstances), occurring at any time after the Commencement Date, to receive, recycle, process, or dispose of in an Environmentally Acceptable manner, Acceptable Waste delivered by the County or its Designee (up to the limits set forth in Section 2.02), for a continuous period of fourteen (14) days.

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

(iii) Contractor failure to obtain and maintain the insurance required by Article VII.

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

written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

(v) A failure by the Contractor to initiate operations at a MRF and AFB by the Commencement Date.

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

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

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

(iii) Failure of the Contractor to indemnify the County in accordance with Section 2.12.

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

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

(ii) the circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the County) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to

Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence. For the purposes of this Section 8.02, "reasonable steps" shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the County, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

8.03 Event of Default by the County.

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

(i) The failure by the County to pay any amount of monies due to the Contractor under this Agreement when such amount becomes due and payable, and such amount remains unpaid for thirty (30) days after written notice to such County, with copies to the non-defaulting County that such payment is past due; provided, however, that if the payment demanded is disputed, such thirty (30) day period

shall begin at such time as a written finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

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

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

(i) The failure of a County to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i)), unless such failure shall be excused or justified as provided in Article V hereof.

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

(iii) Failure of the County to indemnify the Contractor in accordance with Section 3.03; provided, however, that if such indemnification is prohibited by applicable law, such failure shall not constitute an Event of Default hereunder.

(iv) The County's failure to have a Transfer Station operational for processing and delivery of Acceptable Waste to the Contractor for transportation to a MRF on the Commencement Date.

(v) At any time after a one hundred eighty (180) day shakedown period following the Commencement Date, a Transfer Station is not operational for a continuous period of fourteen (14) days (unless excused by Uncontrollable Circumstances).

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

(i) The Contractor shall have given prior written notice to the County, describing such default in reasonable detail; and

(ii) The circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.03(c)(i)). If the County shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the County is continuing to take reasonable steps to correct such default. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the County of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the County in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Contractor, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

8.04 Notice of Termination for Default. If any party shall have a right of termination for cause in accordance with this Article VIII by virtue of the fact that an Event of Default exists, after all periods of grace and cure have then expired (including any cure period granted to the Credit Institution) the right of termination may be

exercised by written notice of termination given to the party in default. The notice shall specify the termination date, which shall be no less than thirty (30) days from the date of such notice, except in the case of abandonment by the Contractor under Section 8.10 herein.

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

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

8.07 Right of Termination Not Exclusive. Any rights of termination, and any rights to purchase provided under this Agreement upon an Event of Default by the Contractor or the County, are not exclusive and may be exercised without prejudice to any right provided by law to any party to bring appropriate action, subject to the

preemptory requirements of Section 8.05, to recover actual damages for failure in the performance by the defaulting party of its obligations pursuant to this Agreement.

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

8.09 Right to Cure by Credit Institution.

(a) Right to Cure. If the County alleges an Event of Default under this Agreement, then, provided the Contractor has provided the County notice of the name and address of the Credit Institution, the County shall give written notice of the Event of Default to the Credit Institution at the same time that it gives written notice to the Contractor as required under Section 8.02(c)(i). The Credit Institution shall have the same right as the Contractor to arrange for the cure of the Event of Default and shall also have the right (if and when granted to the Credit Institution pursuant to the agreements between it and the Contractor) to substitute for the Contractor a responsible new operator acceptable to the County and to the North Carolina Department of Environment, Health, and Natural Resources (referred to herein as the "Replacement Contractor"), which right the Credit Institution may invoke upon fourteen (14) days written notice at any time during the period stipulated under Section 8.09(b) to the County and the Contractor. While the Credit Institution shall be entitled to appoint a Replacement Contractor, its right to cure an Event of Default shall apply regardless of whether a Replacement Contractor is appointed. Any Replacement Contractor shall use its best efforts to effect a Successful Cure as soon as possible, but in no event shall such substitute performance by the Replacement Contractor exceed the cure period set forth in Section 8.09(b)(i).

(b) Cure Period. If the Credit Institution invokes its right to cure an Event of Default under Section 8.09(a), there shall be a period within which the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

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

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

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

(c) Operations During Cure Period. During the Cure Period, the Credit Institution or the Replacement Contractor, if any, shall cause any MRF and AFB then serving the County to be operated in accordance with this Agreement. During the Cure Period, neither the Replacement Contractor, if any, nor the Credit Institution shall be liable to the County for damages caused by the Contractor in excess of cash available from revenues from such MRF and AFB after payment of debt service and operating costs.

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

(e) Subsequent to Cure Period. If a Successful Cure is achieved, upon termination of the Cure Period, the Replacement Contractor, in the event

a Replacement Contractor is appointed, shall be subject to all the terms and conditions of this Agreement from the end of the Cure Period to the expiration of the Agreement.

8.10 Notification to County Upon Abandonment. In the event the Contractor abandons the operation of any MRF and/or the AFB then serving the County, the Credit Institution may appoint and inform the County of a Replacement Contractor to assume the Contractor's duties under this Agreement as provided in Section 8.09.

IX. TERM.

9.01 Term. Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature by the parties and shall remain in effect for a term of twenty-six (26) years from the Commencement Date.

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

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

X. REPRESENTATIONS AND WARRANTIES.

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

(a) The County is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The County has agreed to implement solid waste disposal and resource recovery systems and facilities, and to provide solid waste management services to the public.

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

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

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

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

could materially and adversely affect the performance of any of the obligations of such County under this Agreement.

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

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the County to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the County to perform its obligations under this Agreement, except for the licenses, permits and other approvals relating to the design, construction, start-up, testing and operation of the Transfer Stations.

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

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

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

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

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

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

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

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

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

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

XI. PARTIES TO AGREEMENT:

The parties to this Agreement are Nash County and the Contractor. The County and the Contractor are independent parties under this Agreement and no party is the servant, agent or employee of the other, nor are they partners or coventurers and none shall share with the others in any risk or liability which arises out of any act of commission or omission in carrying out the provisions of this Agreement or the transactions arising therefrom; provided, however, that each party shall be entitled to enforce this Agreement against the others and seek remedies available at law or in equity and each shall be responsible for its own negligence in carrying out or for breach of the provisions of this Agreement.

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

XII. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding between the County and the Contractor, and there are no other terms, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever, except as to related documents referred to herein or which are Exhibits hereto. No extension or indulgence granted by either the County or the Contractor; no alteration, change or modification of this Agreement consented to or agreed to by any party; and no act or omission of any party or its agents shall constitute an amendment to, or

modification of, this Agreement (nor shall same be interposed as a defense against the enforcement of any party's rights under this Agreement or give rise to an implied waiver of any rights or any equitable estoppel); rather, this Agreement may be modified or amended only by a document in writing which is duly executed by the County and the Contractor. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

XIII. NOTIFICATION.

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

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

County Manager
Room 104 - County Courthouse
Nash County
Nashville, North Carolina 27856

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

Wilson Resources, Limited Partnership
Attention: George Armistead
11757 Katy Freeway
Suite 1420
Houston, TX 77079

with a copy to:

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

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

XIV. AUDIT.

The Contractor shall maintain during the time this Agreement is effective and retain not less than two years after completion thereof, or for such longer period as may be required by law, complete and accurate records of wastes processed by the Contractor

at the MRF and AFB then serving the County under this Agreement, and the County shall have the right, at any reasonable time, to inspect and audit project records by authorized representatives of its own, or of any public accounting firm it selects. The records to be thus maintained and retained by the Contractor shall include, without limitation:

(a) Accounting records of the amounts of all Solid Waste and Hazardous Waste, identified by source, delivered to the MRF then serving the County; and

(b) Accounting records of the amounts of each type of substance derived from Acceptable Waste delivered to the MRF then serving the County.

XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.

15.01 Affirmative Action. The Contractor shall have an affirmative action plan at the facilities operated by it pursuant to this Agreement.

15.02 Discrimination in Employment. The Contractor agrees that in the performance of this Agreement with the County, it will not discriminate against any worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

XVI. MISCELLANEOUS PROVISIONS.

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

16.02 Governing Law; Interpretation. This Agreement shall be governed, construed, interpreted and enforced, in all respects, in accord with the laws of the State of North Carolina. Any approval, consent or affirmation required by any party under the terms of this Agreement shall not be unreasonably withheld. The parties hereto agree that each party will perform its obligations and enforce its rights hereunder in good faith. No right, benefit or obligation of the Contractor under this Agreement may be materially and adversely affected by ordinance, regulation or other legislation of the County unless

(a) such regulation involves the health and safety of its residents, or (b) the economic effect of such legislation is, as part of such legislation, reflected in an amendment hereto that makes the Contractor whole.

16.03 Severability. The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect. Without limiting the foregoing provision, the parties agree that in the event this Agreement is determined by a court of law to be a franchise, then the term of the Agreement shall be deemed to be the maximum franchise term legally permissible.

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

16.05 Assignment.

(a) The Contractor shall have the right at any time to assign this Agreement and the Contractor's rights and obligations hereunder to an affiliated entity, including without limitation a corporation or general or limited partnership whose general partners include the Contractor, its partners or other entities affiliated with the Contractor. Similarly, Contractor may contract with any such affiliate to accept and process MSW delivered by the County. In particular, as mentioned in the recitals, the parties contemplate that Contractor shall contract with BCH to process the MSW of the County prior to the time that Contractor's MRF and AFB are operational and the County hereby consents thereto. Upon the Contractor's execution of any such assignment and delivery of notice of such assignment to the County, such assignee shall be deemed to be the "Contractor" for all purposes of this Agreement. The Contractor shall also have the right to collaterally assign this Agreement to a Credit Institution.

In the event of any permitted assignment, the County shall certify, if required, that such assignment is permitted and accepted.

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

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

16.07 Further Assurances. The County and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other parties to carry out the intent of this Agreement.

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

ATTEST:

NASH COUNTY

By: _____
Clerk of the Board

By: _____
Chairman of the Board of
Commissioners

APPROVED AS TO FORM:

County Attorney

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

Director of Finance

**WILSON RESOURCES, LIMITED
PARTNERSHIP, a Delaware Limited
Partnership**

By its General Partner:

**Carolina Energy, Limited Partnership, a
Delaware Limited Partnership**

By its General Partner:

**Carolina Energy Corp., a Delaware
corporation**

ATTEST:

By: _____
Steve Bobo, Secretary

By: _____
Alan McDonald, President

RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

BETWEEN

THE CITY OF ROCKY MOUNT, NORTH CAROLINA

AND

WILSON RESOURCES, LIMITED PARTNERSHIP

DATED AS OF NOVEMBER __, 1994

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RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

THIS RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT is made and dated as of _____, 1994, between THE CITY OF ROCKY MOUNT, NORTH CAROLINA (referred to herein as the "City"), and WILSON RESOURCES, LIMITED PARTNERSHIP (referred to herein as the "Contractor"), a Delaware limited partnership.

RECITALS

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

While the City shall continue to develop and implement plans for waste reduction at the sources of solid waste generation, primarily through voluntary recycling at such sources, the City estimates that such waste reduction at the source will not fully meet the aforementioned recycling, reuse, and composting goals and believes that the overall policy of reducing the waste stream will require the establishment of a materials recovery facility at which recyclables and reusables can be separated from the waste stream.

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

To assist the City to meet the State policy and goals for reduction of disposal into landfills and to reduce the costs of modifying and operating landfills, the Contractor has

made a proposal for a recycling and incineration for energy production program which will have the following benefits:

- * Reliability of technology for recycling and energy production
- * Quality of commitment from a local end user of energy
- * Cost to the City
- * Environmental benefits
- * Plan for disposal of residual materials
- * Quality of key and supervisory personnel for the project
- * Financial soundness of the Contractor
- * General quality of project plan in content and completeness

The Contractor and its affiliates intend to construct and operate materials recovery facilities (each a "MRF") and alternative fuel boilers (each an "AFB") in North Carolina. Each AFB will be designed to burn refuse-derived fuel ("RDF") prepared at a MRF. One of the Contractor's affiliates has begun construction on a MRF in Cumberland County, North Carolina and an AFB in Bladen County, North Carolina, with such MRF and AFB to commence operations in 1995. The Contractor intends to construct a MRF in Wilson County, North Carolina, and an AFB in Lenoir County, North Carolina, with such MRF and AFB to commence operations in 1996.

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

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

The City desires to utilize and the Contractor desires to provide solid waste processing and resource recovery facilities and services under the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

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

"Aggregate Maximum Commitment" shall mean the aggregate of the applicable Maximum Commitments for all of the Counties for any full Contract Year and a prorated amount for any Contract Year having less than 365 days.

"Aggregate Minimum Commitment" shall mean 230,000 Tons, being 35,000 Tons from the City, 15,000 Tons from Edgecombe County, 90,000 Tons from Pitt County, 40,000 Tons from Lenoir County, 50,000 Tons from Wilson County, and 15,000 Tons from Nash County, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

"Alternate Fuels Boiler" or "AFB" shall mean a facility in which RDF is burned to produce thermal and/or electrical energy.

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

"Ash Disposal Site" shall mean a facility or location where Ash from the AFB may be disposed of in an Environmentally Acceptable manner.

"City" means the City of Rocky Mount, North Carolina.

"Commencement Date" means January 1, 1997 or such earlier date as may be determined as follows. The Contractor agrees that it will notify the City six (6) months prior to the date when start-up and capacity testing will be completed at a MRF which is capable of processing the City's Acceptable Waste. At any time thereafter, the City may change the definition of "Commencement Date" for the purposes of this Agreement, upon six (6) months written notice to the Contractor, to any date later than such completion date and earlier than January 1, 1997.

"Compostable Materials" means the component of Solid Waste that can be composted, including putrescible materials, yard waste and other humus and organic

materials. Compostable Materials may include inert materials, such as broken glass, grit and rubble normally less than 2" in diameter.

"Contract Year" means the period from January 1 of any calendar year through December 31. The first Contract Year shall commence on the Commencement Date and end on the immediately following December 31, and the last Contract Year shall end on the last day of the term of this Agreement.

"Contractor" means Wilson Resources, Limited Partnership, a Delaware limited partnership, and its permitted successors and assigns.

"Counties" shall, for convenience of reference, mean the City and all other counties or municipalities that are or hereafter become parties to a Resource Recovery Agreement or similar agreement with the Contractor for solid waste processing and resource recovery facilities and services, including but not limited to Pitt, Lenoir, Nash, Edgecombe and Wilson Counties.

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

"Designee" or "Designees" shall mean a Person or Persons authorized or selected by the City at any time to collect Solid Waste generated within the City.

"Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility selected by the Contractor to which Residue or MSW is or may be delivered for ultimate disposal.

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

"Escalation Rate" shall mean an annual rate no greater than three percent (3.0%) that is proposed by the City and that is acceptable to the Contractor in its reasonable discretion by which the Maximum Commitment shall be increased for each Contract Year following the tenth Contract Year.

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

"Materials Recovery Facility" or "MRF" shall mean a facility which separates Recoverable Materials, Residue and Refuse-Derived Fuel.

"Maximum Commitment" shall mean (a) with respect to each of the first through the tenth Contract Years, 100,000 Tons of Acceptable Waste per Contract Year; (b) with respect to the eleventh Contract Year the greater of (i) 50,000 Tons or (ii) the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year, *plus* the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year

multiplied by the Escalation Rate; and (c) with respect to each of the twelfth Contract Year and each Contract Year thereafter, the Maximum Commitment for the immediately preceding Contract Year *plus* the Maximum Commitment for the immediately preceding Contract Year multiplied by the Escalation Rate.

"Minimum Commitment" shall mean 35,000 Tons of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

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

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

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

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

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

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

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

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

N.C.G.S. § 130A-290(35), and (iii) Recovered Materials that have been obtained from the source of Solid Waste and disposed of outside the purview of this Agreement.

"State" means the State of North Carolina.

"Transfer Station" shall mean a transfer station referred to in Section 2.01(c) of this Agreement. Unless the context otherwise requires, any reference to a Transfer Station shall mean any Transfer Station then serving the City.

"Tri-Party Minimum Commitment" shall mean 65,000 Tons, being 15,000 Tons from Edgecombe County, 15,000 Tons from Nash County, and 35,000 Tons from the City, of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

"Unacceptable Waste" means (i) explosives, Hazardous Waste, other hazardous chemicals or materials, radioactive materials, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such materials; (ii) any item either smoldering or on fire; (iii) non-combustible construction materials and demolition debris, including masonry, brick and stone, structural steel, rebar, and structural shapes; (iv) all other items of waste (other than Recyclable Materials) which, at the time of delivery to a MRF or a Residue Disposal Site, would normally not be disposed of in a sanitary landfill, and (v) any other items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any other regulatory authority, or any applicable law or regulation, from being processed by a MRF or burned in an AFB.

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

II. DUTIES OF CONTRACTOR.

2.01 Overview of Contractor's Duties.

(a) Beginning on the Commencement Date, the Contractor shall transport (or cause to be transported) at its sole expense the Acceptable Waste of the City delivered to the Transfer Stations from such Transfer Stations to a MRF; provided, however, that in any particular Contract Year the Contractor shall not be required to transport more than 2,000 Tons in any seven (7) consecutive days or, except as provided in Section 2.02, the Maximum Commitment for such Contract Year. Such 2,000 Ton amount will increase after the tenth Contract Year at the Escalation Rate. The Contractor shall transport the Acceptable Waste in an Environmentally Acceptable manner.

(b) The Contractor, through its representatives and agents, shall prepare the site for, construct and operate any MRF which serves the City in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. So long as and to the extent it is economically feasible to the Contractor and environmentally positive, the Contractor shall recover Compostable Materials and Recyclable Materials present in the Solid Waste received at such MRF from the City, its Designees and other sources, including, but not limited to the following: aluminum cans, ferrous and bimetal products, corrugated paper, glass, plastics, newspaper and Compostable Materials. For each Contract Year, the City and the Contractor shall develop an annual recycling and composting plan. In developing such plan they shall consider market conditions for Recyclable Materials and the economic feasibility of recovering same in an environmentally positive manner and market conditions and other uses for Compostable Materials, the current State goals for reduction of landfill disposal, the amount of recycling and composting being accomplished outside the purview of this Agreement that can be counted against goal attainment, and the benefit of recovering Recyclable Materials and Compostable Materials at a MRF to meet such goals. The Contractor will participate with the City in seeking to adopt an annual recycling and composting plan that will permit the City to meet mandatory State recycling and composting

goals. If it appears that due to market conditions for Recyclable Materials or Compostable Materials recovered at a MRF the State goals for the forthcoming Contract Year may not be met, the following actions shall be taken: (1) the City shall make a good faith, reasonable effort, to increase the amount of recycling and composting accomplished outside the purview of the Agreement by voluntary or mandatory resource recovery programs; and (2) the City, supported by the Contractor, shall make a good faith reasonable effort to obtain a waiver either of the State goals for such year to the extent of the estimated shortfall or of the imposition of penalties for failure to meet such goals, which penalties, if any, shall be the responsibility of the City.

(c) The City shall deliver Acceptable Waste to the MRF in Wilson City or to one or more Transfer Stations, any or all of which shall be located at sites that are mutually agreeable to the parties within or without the geographic borders of the City. The Contractor and the City presently contemplate that one of the Transfer Stations shall be the City's existing Transfer Station, and the Contractor, the City and Nash County are contemporaneously herewith entering into an Agreement for Construction and Operation of Transfer Station pursuant to which, among other things, the City has agreed to modify its existing Transfer Station and Contractor has agreed to pay a portion of its modification and operating costs.

(d) After the Commencement Date, the Contractor shall process and either recycle or otherwise dispose of all Acceptable Waste delivered by the City or its Designees to a Transfer Station or to the MRF then serving the City, up to the applicable Maximum Commitment, regardless of the mechanical status of the MRF and AFB then serving the City, unless neither facility is able to operate due to factors constituting Uncontrollable Circumstances. The Contractor shall identify and reject or separate and dispose of Unacceptable Waste delivered by the City or its Designees to the MRF then serving the City and shall do so in an Environmentally Acceptable manner subject to reimbursement by the City to the extent set forth in Section 2.03(b)(iii)(A).

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

(f) The Contractor shall equip each MRF and AFB then serving the City with emission controls designed to insure that each such MRF and AFB complies with all applicable laws and regulations governing air quality and odor and noise emissions.

2.02 Acceptance of Acceptable Waste. Except as otherwise set forth in this Section 2.02, the Contractor shall accept and process at a MRF all Acceptable Waste delivered by the City or its Designees to a Transfer Station or to the MRF then serving the City; provided, however, that the Contractor shall not be required to accept more than 2,000 Tons in any seven consecutive days or the applicable Maximum Commitment. Such 2,000 Ton amount will increase after the tenth Contract Year at the Escalation Rate.

Notwithstanding the foregoing, however, the City may deliver Acceptable Waste to the Contractor in excess of its Maximum Commitment (i) in the event that the Counties have not delivered Acceptable Waste to the Contractor in excess of the Aggregate Maximum Commitment, or (ii) notwithstanding that the Counties have delivered Acceptable Waste to the Contractor in excess of the Aggregate Maximum Commitment, Contractor agrees that the MRF and AFB have sufficient excess capacity to accept such Waste in excess of the Aggregate Maximum Commitment.

The Contractor may accept, either under contract or on a spot market basis, Acceptable Waste for processing at any MRF from any source, but only to the extent that such acceptance does not prevent the Contractor from accepting and processing all of the Acceptable Waste which the City and its Designees are entitled to deliver pursuant to this Section 2.02.

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

(a) The Contractor shall have the right to reject, and shall have no obligation to dispose of, any of the following Solid Wastes brought by any Person to a Transfer Station (even if such Solid Wastes are not discovered until they reach the MRF at which the City's Acceptable Waste is being processed) or to the MRF then serving the City, and shall have the right to prevent the unloading of any vehicle bringing such Solid Waste if such Solid Waste is properly rejected:

(i) Unacceptable Waste (it being agreed that in the event the Contractor determines that a load of Solid Waste contains both Acceptable Waste and Unacceptable Waste, it shall be entitled to reject and prevent the unloading of the entire load);

(ii) Solid Waste brought to a Transfer Station or to the MRF then serving the City at times other than the hours designated for delivery by the Contractor;

(iii) Solid Waste brought to a Transfer Station or to the MRF then serving the City in excess of the limits set forth in Section 2.02, if the MRF then serving the City is unable for any reason to receive and process such amounts;

(iv) Solid Waste brought to a Transfer Station or to the MRF then serving the City in vehicles not conforming with the requirements established by the Contractor; and

(v) Solid Waste brought to a Transfer Station or to the MRF then serving the City by a Person who is not the City or its Designee.

(b) Unacceptable Waste.

(i) The Contractor and the City shall adhere to the Solid Waste segregation and screening procedures established by the Contractor.

(ii) The Contractor shall, as agent for, and on behalf of, the City, separate, store, process and dispose of in an Environmentally Acceptable manner, any Unacceptable Waste brought

to a Transfer Station or to the MRF then serving the City and not identified by the Contractor as such until after unloading from the delivery vehicle, it being agreed that the Contractor shall not be deemed to have accepted any such Unacceptable Waste.

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

(A) If such Unacceptable Waste was delivered by the City or its Designee to a Transfer Station or to the MRF then serving the City and was detected at such time or at any time prior to the time such Unacceptable Waste left the tipping floor of such MRF, the Contractor shall be entitled to require the City or its Designee to reload the entire load which contained such Unacceptable Waste onto its vehicle and remove such load from a Transfer Station or such MRF, or, in the event the Contractor does not require such removal, the City shall reimburse, or shall cause its Designee to reimburse, the Contractor for such removal and disposal costs. Notwithstanding the foregoing, if, after leaving the tipping floor, Unacceptable Waste is identified and the source is identified to the reasonable satisfaction of the Contractor and the City (or its Designee), then the City shall reimburse, or cause its Designee to reimburse, the Contractor for such removal and disposal costs. The Contractor may invoice the City not more frequently than monthly for reimbursement of such costs.

(B) In all other cases, except as otherwise provided in Section 3.03, the City shall have no responsibility for such costs.

2.04 Delivery by Other Persons. The Contractor is not required under this Agreement to accept deliveries of Solid Waste from any Person other than the City or its Designees.

2.05 Regulatory Requirements.

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

(b) Adherence to Law. The Contractor shall (i) design, construct and operate each MRF and AFB which is to serve the City and (ii) transport Acceptable Waste in a manner which complies in all material respects with any applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) Inspection by City. The Contractor shall permit duly appointed officials of the City to have access to and entry upon the site of the MRF then serving the City at any time within regular MRF operating hours, upon advance telephonic notice to the Contractor's Transfer Station or MRF supervisor of not less than four hours, to inspect such facility for the purpose of evaluating the Contractor's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the Contractor including those relating to the safety of persons present on such site and the protection of the Contractor's proprietary information.

2.06 Financial Responsibility. Except as otherwise provided in this Agreement, the Contractor shall provide and pay for all of the labor, services, parts, supplies, utilities, and other resources other than Acceptable Waste required for the Contractor to (i) operate and maintain each MRF and AFB and (ii) transport Acceptable Waste in accordance with the requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals. Notwithstanding the foregoing, the requirements of Article VII may not be altered by ordinance or other legislation of the City.

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

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

2.09 Transportation. The Contractor shall arrange for transportation of all Acceptable Waste accepted by the Contractor at a Transfer Station or at a MRF then serving the City and all products of Solid Waste separation and processing from each

MRF then serving the City to recyclables purchasers, to an AFB, or to Disposal Sites, as appropriate, in an Environmentally Acceptable Manner.

2.10 Unplanned Outages.

(a) In the event of any unplanned outage of the MRF then serving the City, the Contractor shall: (i) use all reasonable efforts to resume normal operations of such MRF as quickly as possible and, (ii) arrange for interim processing or disposal of all Acceptable Waste in an Environmentally Acceptable manner.

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

2.11 Records.

(a) The Contractor or its designee shall operate and maintain a motor truck scale at each MRF then serving the City, calibrated to the accuracy required by the State for public weighing facilities, to weigh all vehicles delivering Solid Waste to such MRF. The City shall cause its vehicles, and those of any Designees, to have identification permanently indicated and conspicuously displayed thereon. Each vehicle will be weighed before entering and after leaving such MRF, with the date, time, truck identification and weights (loaded and unloaded) to be entered on a weight record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. If the weighing facility at such MRF is out of service, the Contractor shall, subject to any applicable state regulation, either obtain alternate temporary weighing capability or estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and data based on pertinent historical information.

(b) The Contractor or its designee shall maintain daily records of the total Acceptable Waste tonnage delivered by the City to a Transfer Station or to a MRF then serving the City and its Designees and of all materials leaving

each MRF then serving the City. Such daily records shall include detailed and summary listings of tonnage delivered by the City and its Designees to such MRF, the estimated amount of such Solid Waste rejected as being other than Acceptable Waste, and such other records as are necessary to implement the provisions of this Agreement. Summary information for each month shall be provided to the City within five (5) business days after the end of such month. Copies of all daily records and weight tickets shall be maintained by the Contractor for a period of at least three (3) years, or for such longer period required by law, and shall be made available for inspection by the City during normal business hours upon reasonable notice. In the event the City is required by applicable law or regulation to file reports pertaining to the operation of any such MRF or equipment or facilities thereof, the Contractor shall provide the City with the information required to compile such reports.

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

2.13 MSW Reduction Guarantee. In addition to the reports required under Section 2.11, the Contractor will provide a monthly recycling report to the City reporting the total Solid Waste reduction as defined under North Carolina solid waste management

laws and regulations as adopted, amended and effective January 1, 1994. Such reduction, stated as a percentage of total Acceptable Waste delivered to the Contractor at the MRF then serving the City by the City for that month (except as revised as provided below), is referred to herein as the "Reduction Percentage." The form of the report will be as mutually agreed by the Contractor and the City. The Contractor hereby guarantees that the Reduction Percentage from the recycling of paper, plastics, metals, glass or materials beneficially used as ground cover or aggregate fill but excluding materials that are composted, stated on an annual basis for each Contract Year, shall be no less than 12.5%; provided, however, that if recyclable materials other than compostable materials are removed from MSW delivered to the Contractor prior to delivery thereto, then the amount of such recyclable materials removed from the Solid Waste shall be added to the total Solid Waste reduction in computing the Reduction Percentage. If the Contractor fails to meet the guaranteed Reduction Percentage, then (as the City's sole remedy) the Contractor shall pay the City a fee that is equal to the per-Ton fees then in effect under Sections 6.01 and 6.02 hereof for each Ton by which the total Solid Waste reduction failed to meet the guaranteed Reduction Percentage; but in no event shall payments to the City exceed for any Contract Year an amount equal to ten percent (10%) of the fees paid by the City to the Contractor pursuant to Sections 6.01 and 6.02 below for such Contract Year. The parties hereto expect that beginning June 30, 2001, a 10% credit will be allowed in computing the total Solid Waste reduction for materials burned to generate energy; in such case and at such time as such increase comes into effect, the Contractor guarantees that the Reduction Percentage shall increase to 22.5%.

III. DUTIES OF THE CITY.

3.01 Delivery of Acceptable Solid Waste; Minimum Commitment.

Commencing on the Commencement Date and continuing throughout the term of this Agreement, the City shall deliver or cause to be delivered to the Contractor at a Transfer Station or at the MRF then serving the City (as directed by the Contractor based upon transportation considerations applicable to both parties hereto and the receipt of any applicable third party permits or consents) its Minimum Commitment during each Contract Year plus all additional Acceptable Waste collected for disposal by the City and

its Designees during each Contract Year subject to the Contractor's right to reject the City's deliveries in excess of aggregate amounts stated in Section 2.02. The parties intend that all Acceptable Waste collected for disposal by the City and its Designees be delivered to the Contractor at a Transfer Station or at the MRF then serving the City, and, accordingly, unless the Contractor otherwise elects, the City and its Designees shall not deliver any such Acceptable Waste (except for source separated recyclables, yard waste, tobacco dust, and other compostable materials, and construction and demolition debris) to any other disposal sites. For purposes of this Section 3.01, Acceptable Waste is deemed to be "collected for disposal" if it is presently being or would in the ordinary course be delivered to a landfill, transfer station or to a general materials recovery facility.

3.02 Computation of Minimum Commitment.

(a) Amounts Included in Computation of Minimum Commitment.

The City shall receive credit toward meeting its Minimum Commitment for all Acceptable Waste delivered by such City and its Designees (other than Waste generated in portions of Nash and Edgecombe Counties that are not within the geographical boundaries of the City of Rocky Mount) and accepted by the Contractor at a Transfer Station, to the MRF then serving the City or to any other destination in the City reasonably designated by the Contractor.

(b) Amounts Not Included in Computation of Minimum Commitment. The City shall receive no credit toward meeting its Minimum Commitment for any (i) Waste properly rejected by the Contractor in accordance with Section 2.03 hereof or (ii) Waste generated in portions of Nash and Edgecombe Counties that are not within the geographical boundaries of the City of Rocky Mount.

3.03 Indemnification. The City will, to the extent permitted by applicable law, protect, indemnify and hold the Contractor harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the Contractor including reasonable attorneys' fees, and will defend the Contractor, at the Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil

or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the City, its agents or employees acting within the scope of their employment or caused by or resulting from the handling or disposal of Unacceptable Waste by the Contractor in the performance of its duties hereunder (except as otherwise provided in Section 2.03(b)(iii)) (herein, the "Losses"). The Contractor shall promptly notify the City of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall give the City the opportunity to defend such claim; and shall not settle such claim without the approval of the City, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against the City under this Agreement or any related agreements, and shall not create any benefit or liability to third parties. The parties mutually agree that the term "to the extent permitted by applicable law," expresses the legal uncertainty as to whether the promise to indemnify herein is subject to the provisions of N.C.G.S., § 159-28, other applicable laws and the constitution of the State of North Carolina. The parties acknowledge and understand that this promise to indemnify has not been supported by a current appropriation of the governing body of the City. Consequently, if a court of competent jurisdiction determines that this promise to indemnify constitutes incurring an obligation within the meaning of N.C.G.S., § 159-28 or violates other applicable laws or the constitution of the State of North Carolina, then this promise to indemnify is void ab initio. This promise to indemnify shall not constitute a waiver of governmental immunity.

3.04 Solid Waste Flow Ordinances. The City shall, if and when authorized by applicable law, promulgate and enforce flow ordinances mandating that all MSW generated in the City (excluding Unacceptable Waste, Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement and MSW which is to be disposed of at or transferred to a site or facility outside the State) after the Commencement Date and thereafter so long as this Agreement is not terminated, shall be delivered exclusively to the Contractor under this Agreement. Subject to its obligations to provide for the health and safety of its citizens and to other limitations required by law, the City agrees to use its best efforts to aid Contractor in obtaining the permits, licenses and other authorizations and approvals referenced in Section 2.05(a). In

addition, the City shall encourage each municipality located within the boundaries of the City to enter into a binding agreement with the Contractor, or take other action acceptable to the Contractor, which provides that all MSW generated in such municipality (excluding Unacceptable Waste and Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement) after the Commencement Date and thereafter so long as this Agreement is not terminated shall be delivered to the Contractor under this Agreement.

IV. CONDITIONS PRECEDENT TO OPERATIONS.

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

4.01 The Contractor shall have advised the City that start-up operations and capacity testing have been completed satisfactorily, and that the MRF then serving the City is ready to receive the City's Acceptable Waste. The Contractor shall invite the City's officials to witness tests, review data and concur that such MRF is ready for use, with such concurrence not to be unreasonably withheld.

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

4.03 The City shall have advised the Contractor that a Transfer Station is operational for processing and delivery of Acceptable Waste to the Contractor for transportation to the MRF then serving the City. The City shall invite the Contractor's officials to witness tests, review data and concur that such Transfer Station is ready for use, with such concurrence not unreasonably withheld.

4.04 The Contractor shall have received a written commitment from a Credit Institution for a loan, bond or equity securities underwriting or other similar type of non-recourse financing (or credit support for such financing), repayable during the term of this Agreement and on such terms and conditions as are satisfactory to the Contractor in its sole discretion. The Contractor shall make application for such financing and shall furnish any information and execute any instruments required in connection with such application. The City agrees to negotiate any changes to this

Agreement reasonably required by the Credit Institution and such changes shall not be unreasonably refused; provided, however, that such changes shall not violate any law or regulation of any federal, state or municipal government.

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

V. UNCONTROLLABLE CIRCUMSTANCES.

5.01 Any act, event or condition, whether affecting a MRF, an AFB, the Transfer Stations, the vehicles used by the Contractor to transport RDF to an AFB, the City, the Contractor or any of the Contractor's respective subcontractors shall be deemed an Uncontrollable Circumstance to the extent that it materially and adversely affects the ability of any party to perform its obligations hereunder, if such act, event, or condition is beyond the reasonable control of and is not also the result of the willful or negligent action or inaction, principally of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. The good faith contesting of, or the failure to contest, action or inaction of a third party, shall not be construed as willful or negligent action or lack of reasonable diligence by the party claiming that such third party action or inaction constitutes Uncontrollable Circumstances. Acts or events constituting Uncontrollable Circumstances include, but shall not be limited to, the following:

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

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

(c) The failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused

by an Uncontrollable Circumstance and the affected party is not reasonably able to obtain substitute labor, services, materials or equipment on terms and conditions no less favorable to the affected party;

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

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

5.02 Any party shall be excused from performance hereunder when its nonperformance was caused directly or indirectly by Uncontrollable Circumstances. The party whose performance is affected shall give to the other parties prompt written notice of the Uncontrollable Circumstances, and thereupon the obligations of the party giving the notice, so far as such obligations are affected by the Uncontrollable Circumstances, shall be suspended during such Uncontrollable Circumstances and for a reasonable time thereafter as required to remedy any physical damage or otherwise overcome the effect of such Uncontrollable Circumstances.

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

VI. FEES.

6.01 Fixed Fee. The City shall pay the Contractor a fixed fee of seventeen dollars and no cents (\$17.00) per Ton of Solid Waste delivered by the City or its Designees to a Transfer Station or MRF then serving the City and accepted by the Contractor (as provided in Article II). This fee shall not be payable by the City following the first twenty-one (21) years of the term of this Agreement.

6.02 Variable Fee. In addition to the fixed fee set out in section 6.01, the City shall pay the Contractor a variable fee which initially shall be twenty dollars and fifteen cents (\$20.15) per Ton of Solid Waste (including wood) delivered by the City and its Designees to a Transfer Station or MRF then serving the City and accepted by the Contractor. The City and its Designees shall pay an alternate fee (in lieu of the fixed and variable fees) for tires not incidentally included in the municipal waste stream in the amount of \$55.00 per Ton. The variable fee and the fee for tires shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1993 as the base year from which adjustment is made, to be in effect until December 31, 1995, and then a further

adjustment effective January 1, 1996, using the year ended December 31, 1994, as the base year from which adjustment is made. Further adjustments shall be made effective each January 1 thereafter for adjustments occurring during the preceding twelve months ended December 31.

6.03 Increase in Deductions and Fees Due to Increased Environmental Law Compliance. In the event that, from time to time after the Commencement Date, because of a change in applicable environmental laws, regulations or ordinances (a) the operating costs of a MRF or an AFB then serving the City escalate and/or (b) a MRF or an AFB then serving the City must be reconfigured, upgraded or altered, then the Contractor shall be entitled to recoup a portion of the increased operating costs and/or the costs of such reconfiguration, upgrade or alteration from the City, as the case may be, after deduction of a portion of such costs, all as further provided herein. Upon each occurrence of the circumstances described in clauses (a) or (b) of the immediately preceding sentence, the Contractor shall first calculate the amount of increased operating and/or capital costs to be incurred over the full term of this Agreement. From this amount \$500,000 (which amount shall be subject to adjustment as described below) shall be deducted, prorated between operating and capital costs in proportion to the gross amount of costs in each category. The \$500,000 deducted amount (as adjusted below) shall represent costs to be absorbed by the Contractor. The Contractor shall next recalculate the annual increased operating costs incurred and/or the annual amortized capital costs of such improvements in both cases after deduction of such \$500,000 amount (as adjusted below), similarly prorating the deductible amount among various capital items (referred to herein as the "annual net increased operating costs" or "annual net amortized capital costs"). Capital costs shall be amortized in accordance with generally accepted accounting principles based upon the estimated lives of such improvements. The Contractor shall furnish its calculations of the above costs to the City in sufficient detail for the City to confirm the basis and accuracy of the calculations of costs. Fifty per cent (50%) of any annual net increased operating costs or annual net amortized capital costs shall be added annually to the fees to be paid under Section 6.01, allocated per Ton on the basis of the Acceptable Waste processed by the Contractor in the preceding Contract Year (and for

the first full Contract Year based upon an assumed annual tonnage of Acceptable Waste of 35,000 Tons).

The \$500,000 amount shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonably adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1994 as the base year from which adjustment is made, to be in effect until December 31, 1995, and subsequent adjustments to be made effective each January 1 thereafter, using the calendar year 1994 as the base year from which adjustment is made in each instance.

6.04 Method of Payment.

(a) In accordance with Article VI, not earlier than the tenth day of each month after the Commencement Date, the Contractor shall invoice the City for services rendered by the Contractor under this Agreement during the preceding month. The total amount of the invoice shall be the sum of the following:

(i) the number of Tons of Solid Waste delivered by the City and its Designees and accepted by the Contractor during such month, multiplied by the then applicable fee per Ton, plus

(ii) any amount owed by each City to the Contractor pursuant to Section 2.03 (b) (iii).

(b) All invoices shall be delivered by hand, by commercial delivery service (such as Federal Express) or mailed first class, postage prepaid to the City at the address set forth in Article XIII, and such invoices shall be paid within thirty (30) days after the date of the invoice. The City may supply other addresses at its discretion at any time.

6.05 Alternate Disposal Costs. In the event that, for any reason, the Contractor is unable to perform services in the manner contemplated by this Agreement, and the Contractor is forced to use alternate disposal methods for Acceptable Waste

delivered and paid for by the City, any resulting increase in the Contractor's costs shall be borne by the Contractor.

6.06 Failure to Deliver Minimum Commitment. In the event that (i) the City shall fail to deliver to the Contractor its Minimum Commitment for any Contract Year (unless such failure was due to Uncontrollable Circumstances and subject to Section 8.03(b)(i)), and (ii) the City, Nash County, and Edgecombe County shall in the aggregate fail to deliver to the Contractor the Tri-Party Minimum Commitment for such Contract Year, and (iii) the Counties shall in the aggregate fail to deliver to the Contractor the Aggregate Minimum Commitment for such Contract Year, then at the end of such Contract Year the City shall pay the Contractor a fee equal to (i) the sum of the fixed and variable fees then in effect pursuant to Section 6.01 and 6.02 above (excluding any amounts paid by such City in such Contract Year for tires delivered) multiplied by (ii) the amount, in Tons, by which the City's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor during such year, but only to the extent that the amount in (ii) does not exceed the amount by which the City's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the City and does not exceed the amount by which the Aggregate Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the Counties.

VII. INSURANCE AND LETTER OF CREDIT REQUIREMENTS.

7.01 Insurance. The Contractor shall obtain at its own cost and expense the types of insurance listed herein. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the City shall have the right to approve such insurer based on its financial soundness, and subject to its being on the North Carolina Department of Insurance approved list, which approval shall not be unreasonably withheld.

Without limiting the Contractor's indemnification requirements, it is agreed that the Contractor accepts the following conditions and shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance

covering its operations, and require subcontractors to procure and maintain these same policies:

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

- (i) Premises - Operations Coverage
- (ii) Completed Operations
- (iii) Contractual Liability
- (iv) Broad Form Property Damage
- (v) Independent Contractors' Protective Liability

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

(b) **AUTOMOBILE LIABILITY**, with minimum limits of \$1,000,000 for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. Code 1 "Any Auto" symbol is required for this liability coverage. This policy shall include the Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90), if hazardous waste is transported. The City shall be named as additional insureds on such policy.

- (c) **WORKERS' COMPENSATION: Statutory Limits.**
- (d) **EMPLOYERS' LIABILITY: \$500,000 each accident or disease.**
- (e) The minimum limits stated in (i), (ii) and (iv) above shall increase automatically at every five (5) year interval from the Commencement Date by ten percent (10%) of the original limits, for each occurrence and aggregate. The Contractor may incur such deductibles as are standard in the

industry, not to exceed 10% of the face amount of the coverage of the policy amount in question.

The parties acknowledge that during the term of this Agreement certain Forms and types of coverage described in this Section 7.01 may change or may cease to be available on a commercially reasonable basis. In such event, the Contractor shall use reasonable efforts to obtain such closest equivalent Form or type of coverage then available.

7.02 Acceptability of Insurers. Insurance shall be placed with insurance companies with an A.M. Best rating of no less than "A," unless proper financial information relating to the company is submitted to and approved by the City prior to coverage being placed with such insurance company. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the City shall have the right to approve such insurer based on its financial soundness, and subject to its being on the North Carolina Department of Insurance approved list, which approval shall not be unreasonably withheld.

7.03 Evidence of Insurance. The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the City duplicate copies of all policies, including applicable endorsements. Since policies will expire before the completion of this Agreement, renewal certificates of insurance shall be furnished to the City by the Contractor before the expiration date of each policy, for the term of this Agreement.

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

7.05 Letter of Credit. On or before the Commencement Date, the Contractor shall provide a Letter of Credit (the "Letter of Credit") in a form reasonably acceptable to the City, which shall provide payment to the City for compensatory damages incurred as a result of a breach by the Contractor of this Agreement. The Letter of Credit shall be an irrevocable standby letter of credit issued by a bank or financial

institution (the "Issuing Bank") with a credit rating on its senior unsecured debt of at least "AA3" from Moody's Investors Service or at least AA- from Standard & Poor's Corporation or otherwise acceptable to the City in its sole discretion, shall be in an amount of \$500,000, and shall be outstanding for a period of five (5) years from and after the Commencement Date. The Letter of Credit shall be arranged in such a manner that permits the City to draw upon the Letter of Credit from time to time for any liquidated amount owed to the City under this Agreement after the Contractor has committed a breach of this Agreement in a manner that has caused monetary damage to the City. The Letter of Credit shall provide that the City may draw upon the Letter of Credit immediately upon the submission of a written agreement signed by the City and the Contractor authorizing such payment or thirty (30) days after submission to the Issuing Bank of a written finding by an arbitrator pursuant to an arbitration proceeding under Section 8.05 certifying the amount owed by the Contractor to the City. The Contractor shall have the right to contest any request for the payment of damages to the City or any amounts to be drawn down from the Letter of Credit in any arbitration proceeding pursuant to Section 8.05. If the City agrees to the Contractor's objections, or if the Contractor prevails in contesting any such payment or payments of damage and the City has been permitted to receive moneys under the Letter of Credit, the City shall repay the Contractor the amount of such payment or payments plus interest from the date of the payment or payments to the City to the date of such payment or payments to the Contractor at the then existing prime rate established by the largest commercial bank operating in North Carolina. All costs and expenses for the Letter of Credit whether fees, assessments, reimbursements, or otherwise, shall be solely payable by the Contractor, and the City shall have no liability arising therefrom.

7.06 Operations Performance Bond. In lieu of a Letter of Credit, the Contractor may, at its option, provide an Operations Performance Bond or other form of insurance acceptable to the City, which shall be posted by Contractor and shall provide payment to the City in the event of a breach of this Agreement by the Contractor. Payments under the Operations Performance Bond shall be made pursuant to the same procedures for payment under the Letter of Credit, as set forth in Section 7.05.

7.07 Drawing Upon Letter of Credit or Operations Performance Bond. If any event or condition has occurred which but for applicable periods of notice, grace or cure (including cure periods granted by the City to the Credit Institution) would constitute an Event of Default, and such event or condition damages the City, the City may draw upon the Letter of Credit or Operations Performance Bond provided in Sections 7.05 and 7.06, respectively, during any such periods of grace or cure to compensate it for such damages incurred to the date of the claim in accordance with the procedures set forth therein as if such event or condition had matured into an Event of Default.

VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.

8.01 Remedies for Default.

(a) Default by Contractor.

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

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

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

(iv) Any amounts of Acceptable Waste delivered by the City to a landfill or other Residue Disposal site following an Event of Default by the Contractor under Section 8.02, shall be credited toward the City's delivery of its Minimum Commitment under Section 3.01.

(b) Default by City.

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

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

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

8.02 Events of Default by the Contractor.

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

(i) Contractor failure (which is not excused by Uncontrollable Circumstances), occurring at any time after the Commencement Date, to receive, recycle, process, or dispose of in an Environmentally Acceptable manner, Acceptable Waste delivered by the City or its Designee (up to the limits set forth in Section 2.02), for a continuous period of fourteen (14) days.

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

(iii) Contractor failure to obtain and maintain the insurance required by Article VII.

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

(v) A failure by the Contractor to initiate operations at a MRF and AFB by the Commencement Date.

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

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

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

(iii) Failure of the Contractor to indemnify the City in accordance with Section 2.12.

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

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

(ii) the circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the City) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the

same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence. For the purposes of this Section 8.02, "reasonable steps" shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the City, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

8.03 Event of Default by the City.

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

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

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

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

(i) The failure of a City to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i)), unless such failure shall be excused or justified as provided in Article V hereof.

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

(iii) Failure of the City to indemnify the Contractor in accordance with Section 3.03; provided, however, that if such indemnification is prohibited by applicable law, such failure shall not constitute an Event of Default hereunder.

(iv) The City's failure to have a Transfer Station operational for processing and delivery of Acceptable Waste to the Contractor for transportation to a MRF on the Commencement Date.

(v) At any time after a one hundred eighty (180) day shakedown period following the Commencement Date, a Transfer Station is not operational for a continuous period of fourteen (14) days (unless excused by Uncontrollable Circumstances).

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

(i) The Contractor shall have given prior written notice to the City, describing such default in reasonable detail; and

(ii) The circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.03(c)(i)). If the City shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the City is continuing to take reasonable steps to correct such default. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the City of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the City in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the Contractor, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

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

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

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

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

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

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

8.09 Right to Cure by Credit Institution.

(a) Right to Cure. If the City alleges an Event of Default under this Agreement, then, provided the Contractor has provided the City notice of the name and address of the Credit Institution, the City shall give written notice of the Event of Default to the Credit Institution at the same time that it gives written notice to the Contractor as required under Section 8.02(c)(i). The Credit Institution shall have the same right as the Contractor to arrange for the cure of the Event of Default and shall also have the right (if and when granted to the Credit Institution pursuant to the agreements between it and the Contractor) to substitute for the Contractor a responsible new operator acceptable to the City and to the North Carolina Department of Environment, Health, and Natural Resources (referred to herein as the "Replacement Contractor"), which right the Credit Institution may invoke upon fourteen (14) days written notice at any time during the period stipulated under Section 8.09(b) to the City and the Contractor. While the Credit Institution shall be entitled to appoint a Replacement Contractor, its right to cure an Event of Default shall apply regardless of whether a Replacement Contractor is appointed. Any Replacement Contractor shall use its best efforts to effect a Successful Cure as soon as possible, but in no event shall such substitute performance by the Replacement Contractor exceed the cure period set forth in Section 8.09(b)(i).

(b) Cure Period. If the Credit Institution invokes its right to cure an Event of Default under Section 8.09(a), there shall be a period within which

the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

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

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

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

(c) Operations During Cure Period. During the Cure Period, the Credit Institution or the Replacement Contractor, if any, shall cause any MRF and AFB then serving the City to be operated in accordance with this Agreement. During the Cure Period, neither the Replacement Contractor, if any, nor the Credit Institution shall be liable to the City for damages caused by the Contractor in excess of cash available from revenues from such MRF and AFB after payment of debt service and operating costs.

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

(e) Subsequent to Cure Period. If a Successful Cure is achieved, upon termination of the Cure Period, the Replacement Contractor, in the event a Replacement Contractor is appointed, shall be subject to all the terms and

conditions of this Agreement from the end of the Cure Period to the expiration of the Agreement.

8.10 Notification to City Upon Abandonment. In the event the Contractor abandons the operation of any MRF and/or the AFB then serving the City, the Credit Institution may appoint and inform the City of a Replacement Contractor to assume the Contractor's duties under this Agreement as provided in Section 8.09.

IX. TERM.

9.01 Term. Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature by the parties and shall remain in effect for a term of twenty-six (26) years from the Commencement Date.

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

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

X. REPRESENTATIONS AND WARRANTIES.

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

(a) The City is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The City has agreed to implement solid waste disposal and resource recovery systems and facilities, and to provide solid waste management services to the public.

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

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

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

(e) There is no action, proceeding or governmental investigation pending or, to the knowledge of the City, threatened against such City which could materially and adversely affect the design, construction, start-up, testing, performance requirements, maintenance, management or operation of a MRF and an AFB or which could materially and adversely affect consummation of any of the transactions contemplated hereunder, or which could materially and

adversely affect the performance of any of the obligations of such City under this Agreement.

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

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the City to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the City to perform its obligations under this Agreement, except for the licenses, permits and other approvals relating to the design, construction, start-up, testing and operation of the Transfer Stations.

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

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

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

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

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

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

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

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

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

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

XI. PARTIES TO AGREEMENT.

The parties to this Agreement are the City of Rocky Mount and the Contractor. The City and the Contractor are independent parties under this Agreement and no party is the servant, agent or employee of the other, nor are they partners or coventurers and none shall share with the others in any risk or liability which arises out of any act of commission or omission in carrying out the provisions of this Agreement or the transactions arising therefrom; provided, however, that each party shall be entitled to enforce this Agreement against the others and seek remedies available at law or in equity and each shall be responsible for its own negligence in carrying out or for breach of the provisions of this Agreement.

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

XII. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding between the City and the Contractor, and there are no other terms, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever, except as to related documents referred to herein or which are Exhibits hereto. No extension or indulgence granted by either the City or the Contractor; no alteration, change or modification of this Agreement consented to or agreed to by any party; and no act or omission of any party or its agents shall constitute an amendment to, or

modification of, this Agreement (nor shall same be interposed as a defense against the enforcement of any party's rights under this Agreement or give rise to an implied waiver of any rights or any equitable estoppel); rather, this Agreement may be modified or amended only by a document in writing which is duly executed by the City and the Contractor. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective legal representatives, successors and permitted assigns.

XIII. NOTIFICATION.

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

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

City Manager

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

Wilson Resources, Limited Partnership
Attention: George Armistead
11757 Katy Freeway
Suite 1420
Houston, TX 77079

with a copy to:

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

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

XIV. AUDIT.

The Contractor shall maintain during the time this Agreement is effective and retain not less than two years after completion thereof, or for such longer period as may be required by law, complete and accurate records of wastes processed by the Contractor

at the MRF and AFB then serving the City under this Agreement, and the City shall have the right, at any reasonable time, to inspect and audit project records by authorized representatives of its own, or of any public accounting firm it selects. The records to be thus maintained and retained by the Contractor shall include, without limitation:

(a) Accounting records of the amounts of all Solid Waste and Hazardous Waste, identified by source, delivered to the MRF then serving the City; and

(b) Accounting records of the amounts of each type of substance derived from Acceptable Waste delivered to the MRF then serving the City.

XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.

15.01 Affirmative Action. The Contractor shall have an affirmative action plan at the facilities operated by it pursuant to this Agreement.

15.02 Discrimination in Employment. The Contractor agrees that in the performance of this Agreement with the City, it will not discriminate against any worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

XVI. MISCELLANEOUS PROVISIONS.

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

16.02 Governing Law; Interpretation. This Agreement shall be governed, construed, interpreted and enforced, in all respects, in accord with the laws of the State of North Carolina. Any approval, consent or affirmation required by any party under the terms of this Agreement shall not be unreasonably withheld. The parties hereto agree that each party will perform its obligations and enforce its rights hereunder in good faith. No right, benefit or obligation of the Contractor under this Agreement may be materially and adversely affected by ordinance, regulation or other legislation of the City unless (a)

such regulation involves the health and safety of its residents, or (b) the economic effect of such legislation is, as part of such legislation, reflected in an amendment hereto that makes the Contractor whole.

16.03 Severability. The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect. Without limiting the foregoing provision, the parties agree that in the event this Agreement is determined by a court of law to be a franchise, then the term of the Agreement shall be deemed to be the maximum franchise term legally permissible.

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

16.05 Assignment.

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

(b) Except as set forth in paragraph (a), the Contractor may not assign this Agreement without the prior written consent of the City. This Agreement may not be assigned by the City without the prior written consent

of the Contractor. No assignment shall relieve any party of any of its obligations under any provision of this Agreement.

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

16.07 Further Assurances. The City and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other parties to carry out the intent of this Agreement.

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

CITY OF ROCKY MOUNT

By: _____
[City Manager]

APPROVED AS TO FORM:

City Attorney

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

Director of Finance

**WILSON RESOURCES, LIMITED
PARTNERSHIP, a Delaware Limited
Partnership**

By its General Partner:

Carolina Energy, Limited Partnership,
a Delaware Limited Partnership

By its General Partner:

Carolina Energy Corp., a
Delaware corporation

ATTEST:

By: _____
Steve Bobo, Secretary

By: _____
Alan McDonald, President

RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

BETWEEN

WILSON COUNTY

AND

WILSON RESOURCES, LIMITED PARTNERSHIP

DATED AS OF NOVEMBER 2, 1994

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RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT

THIS RESOURCE RECOVERY AND TRANSPORTATION AGREEMENT is made and dated as of November 2, 1994, between WILSON COUNTY, NORTH CAROLINA (referred to herein as the "COUNTY"), and WILSON RESOURCES, LIMITED PARTNERSHIP (referred to herein as the "CONTRACTOR"), a Delaware limited partnership.

RECITALS

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

While the County shall continue to develop and implement plans for waste reduction at the sources of solid waste generation, primarily through voluntary recycling at such sources, the County estimates that such waste reduction at the source will not fully meet the aforementioned recycling, reuse, and composting goals and believes that the overall policy of reducing the waste stream will require the establishment of a

materials recovery facility at which recyclables and reusables can be separated from the waste stream.

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

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

- * Reliability of technology for recycling and energy production
- * Quality of commitment from a local end user of energy
- * Cost to the County
- * Environmental benefits
- * Plan for disposal of residual materials
- * Quality of key and supervisory personnel for the project
- * Financial soundness of the Contractor
- * General quality of project plan in content and completeness

The Contractor and its affiliates intend to construct and operate materials recovery facilities (each a "MRF") and alternative fuel boilers (each an "AFB") in North Carolina. Each AFB will be designed to burn refuse-derived fuel ("RDF") prepared at a MRF. One of the Contractor's affiliates has begun construction on a MRF in

Cumberland County, North Carolina and an AFB in Bladen County, North Carolina, with such MRF and AFB to commence operations in 1995. The Contractor intends to construct a MRF in Wilson County, North Carolina, and an AFB in Lenoir County, North Carolina, with such MRFs and AFB to commence operations in 1996.

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

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

The County desires to utilize and the Contractor desires to provide such solid waste processing and resource recovery facilities and services pursuant to the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

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

"Aggregate Minimum Commitment" shall mean the aggregate of the amounts of Acceptable Waste that all of the Counties agree or have agreed to provide to Contractor for any Contract Year (and a prorated amount of Acceptable Waste for any Contract Year covering less than 365 days).

"Alternate Fuels Boiler" or "AFB" shall mean a facility in which RDF is burned to produce thermal and/or electrical energy.

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

"Ash Disposal Site" shall mean a facility or location where Ash from the AFB may be disposed of in an Environmentally Acceptable manner.

"Commencement Date" means January 1, 1997 or such earlier date as may be determined as follows. The Contractor agrees that it will notify the County six (6) months prior to the date when start-up and capacity testing will be completed at a MRF which is capable of processing the County's Acceptable Waste. At any time thereafter, the County may change the definition of "Commencement Date" for the purposes of this Agreement, upon six (6) months written notice to the Contractor, to any date later than such completion date and earlier than January 1, 1997.

"Compostable Materials" means the component of Solid Waste that can be composted, including putrescible materials, yard waste and other humus and organic

materials. Compostable Materials may include inert materials, such as broken glass, grit and rubble normally less than 2" in diameter.

"Contract Year" means the period from January 1 of any calendar year through December 31. The first Contract Year shall commence on the Commencement Date and end on the immediately following December 31, and the last Contract Year shall end on the last day of the term of this Agreement.

"Contractor" means Wilson Resources, Limited Partnership, a Delaware limited partnership, and its permitted successors and assigns.

"County" means the County of Wilson, North Carolina.

"Counties" shall mean the County and all other counties that are or hereafter become parties to a Resource Recovery Agreement or similar agreement with the Contractor for solid waste processing and resource recovery facilities and services, including but not limited to Pitt and Lenoir Counties, North Carolina.

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

"Designee" or "Designees" shall mean a Person or Persons authorized by the County at any time to collect Solid Waste generated within the County.

"Disposal Site" means a lawfully permitted and operated landfill or other Environmentally Acceptable facility selected by the Contractor to which Residue or MSW is or may be delivered for ultimate disposal.

"Escalation Rate" shall mean an annual rate no greater than three percent (3.0%) that is proposed by the County and that is acceptable to the Contractor in its reasonable discretion by which the Maximum Commitment shall be increased for each Contract Year following the tenth Contract Year.

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

"Hazardous Waste" means any material defined as a hazardous substance pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), or applicable state laws and the rules, regulations, policies and guidelines promulgated thereunder, as each may be amended from time to time, or any waste which, by reason of its composition or characteristics is a toxic substance or hazardous waste as defined in the Resource Conservation and Recovery Act, (42 U.S.C. § 6901 et seq.), as amended, and related federal, state and county laws and regulations, or in any future additional or substitute federal, state or county laws and regulations pertaining to the identification, treatment, storage or disposal of toxic substances or hazardous wastes; any source, special nuclear or by-product material within the meaning of the Atomic Energy Act of 1954, as amended, and related regulations; low level radioactive waste, or any other regulated material posing a threat to health or safety or causing injury to or adversely affecting the operation of a MRF or an AFB, including, without limitation, regulated pathological, medical or biological wastes, septic, cesspool

or other human wastes, human and animal remains, cleaning fluids, crankcase oils, cutting oils, paints, acids, caustics, poisons, explosives and drugs. If any governmental agency having appropriate jurisdiction shall determine that substances which are not, as of the date hereof, considered harmful, toxic, or dangerous, are in fact harmful, toxic, or dangerous, or are hazardous or harmful to health, then any such substance shall thereafter constitute Hazardous Waste for purposes of this Agreement. If all government agencies having appropriate jurisdiction shall determine that a given substance which, as of the date hereof, was deemed to be a Hazardous Waste, is no longer harmful, toxic or dangerous, then any such substance shall thereafter no longer constitute Hazardous Waste for purposes of this Agreement.

"Materials Recovery Facility" or "MRF" shall mean a facility which separates Recoverable Materials, Residue and Refuse-Derived Fuel.

"Maximum Commitment" shall mean (a) with respect to each of the first through the tenth Contract Years, 150,000 Tons of Acceptable Waste per Contract Year; (b) with respect to the eleventh Contract Year the greater of (i) 150,000 Tons or (ii) the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year, *plus* the actual Tons of Acceptable Waste delivered to Contractor in the Tenth Contract Year multiplied by the Escalation Rate; and (c) with respect to each of the twelfth Contract Year and each Contract Year thereafter, the Maximum Commitment for the immediately preceding Contract Year *plus* the Maximum Commitment for the immediately preceding Contract Year multiplied by the Escalation Rate, it being understood that the Maximum Commitment shall not, in any event, be less than 150,000 Tons.

"Minimum Commitment" shall mean 50,000 Tons of Acceptable Waste for any full Contract Year and a prorated amount of Acceptable Waste for any Contract Year having less than 365 days.

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

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

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

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

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

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

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

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

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

"State" means the State of North Carolina.

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

"Unacceptable Waste" means (i) explosives, Hazardous Waste, other hazardous chemicals or materials, radioactive materials, motor vehicles, liquid and semi-liquid wastes, other than such insignificant quantities of the foregoing as are customarily found and are incidentally included in normal household and commercial waste and as are permitted by law to be treated and disposed of in facilities not specifically permitted or licensed to treat or dispose of such materials; (ii) any item either smoldering or on fire; (iii) non-combustible construction materials and demolition debris, including masonry, brick and stone; (iv) all other items of waste (other than Recyclable Materials) which, at the time of delivery to a MRF or a Residue Disposal Site, would normally not be disposed of in a sanitary landfill, and (v) any other items of waste which are prohibited by any judicial decision, order or action of any federal, State or county government or any agency thereof, or any other regulatory authority, or any applicable law or regulation, from being processed by a MRF or burned in an AFB.

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

II. DUTIES OF CONTRACTOR.

2.01 Overview of Contractor's Duties.

(a) The Contractor shall prepare the site for, construct and operate any MRF which serves the County in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. So long as and to the extent it is economically feasible to the Contractor and environmentally positive, the Contractor shall recover Compostable Materials and Recyclable Materials present in the Solid Waste received at any MRF from the County, its Designees and other sources, including, but not limited to the following: aluminum cans, ferrous and bimetal products, corrugated paper, glass, plastics, newspaper and Compostable Materials. For each Contract Year, the County and the Contractor shall develop an annual recycling and composting plan. In developing such plan they shall consider market conditions for Recyclable Materials and the economic feasibility of recovering same in an environmentally positive manner and market conditions and other uses for Compostable Materials, the current State goals for reduction of landfill disposal, the amount of recycling and composting being accomplished outside the purview of this Agreement that can be counted against goal attainment, and the benefit of recovering Recyclable Materials and Compostable Materials at a MRF to meet such goals. The Contractor will participate with the County in seeking to adopt an annual recycling and composting plan that will permit the County to meet mandatory State recycling and composting goals. If it appears that due to market conditions for Recyclable Materials or Compostable Materials recovered

at a MRF the State goals for the forthcoming Contract Year may not be met, the following actions shall be taken: (1) the County shall make a good faith, reasonable effort, to increase the amount of recycling and composting accomplished outside the purview of the Agreement by voluntary or mandatory resource recovery programs; and (2) the County, supported by the Contractor, shall make a good faith reasonable effort to obtain a waiver either of the State goals for such year to the extent of the estimated shortfall or of the imposition of penalties for failure to meet such goals, which penalties, if any, shall be the responsibility of the County.

(b) The Contractor shall design and operate the transportation system used to convey RDF from each MRF then serving the County to an AFB in a manner which is Environmentally Acceptable.

(c) After the Commencement Date, the Contractor shall process and either recycle or otherwise dispose of all Acceptable Waste delivered by the County or its Designees to the MRF the Contractor intends to construct in the County or to such other location mutually agreed upon by the Contractor and the County (such MRF or such other location being referred to herein as the "Wilson MRF") up to the applicable Maximum Commitment, regardless of the mechanical status of the MRF and AFB then serving the County, unless neither facility is able to operate due to factors constituting Uncontrollable Circumstances. The Contractor shall identify and reject or separate and dispose of Unacceptable Waste delivered by the County or its Designees to the MRF then serving the County and shall do so in an Environmentally Acceptable

manner subject to reimbursement by the County to the extent set forth in Section 2.03(b)(iii)(A).

(d) The Contractor shall, directly or indirectly, obtain a site for, construct and operate one or more AFBs. The Contractor shall assure proper use or disposal of Ash from each such AFB at an Ash Disposal Site or otherwise in an Environmentally Acceptable place and manner.

(e) The Contractor shall equip each MRF and AFB then serving the County with emission controls designed to insure that each such MRF and AFB complies with all applicable laws and regulations governing air quality and odor and noise emissions.

2.02 Acceptance of Acceptable Waste. The Contractor shall accept and process all Acceptable Waste delivered to the Wilson MRF by the County or its Designees, provided, however, that in any particular Contract Year the Contractor shall not be required to accept more than 5,000 Tons in any seven consecutive days or the Maximum Commitment for such Contract Year. Such 5,000 Ton amount will increase after the tenth Contract Year at the Escalation Rate. The Contractor may accept, either under contract or on a spot market basis, Acceptable Waste for processing at any MRF from any source in North Carolina, but only to the extent that such acceptance does not prevent the Contractor from accepting and processing all of the Acceptable Waste which the County and its Designees are entitled to deliver pursuant to this Section 2.02.

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

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

(i) Unacceptable Waste (it being agreed that in the event the Contractor determines that a load of Solid Waste contains both Acceptable Waste and Unacceptable Waste, it shall be entitled to reject and prevent the unloading of the entire load);

(ii) Solid Waste brought to the Wilson MRF at times other than the hours designated for delivery by the Contractor;

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

(iv) Solid Waste brought to the Wilson MRF by a Person who is not the County or its Designee.

(b) Unacceptable Waste.

(i) The Contractor and the County shall adhere to the Solid Waste segregation and screening procedures established by the Contractor.

(ii) The Contractor shall, as agent for, and on behalf of, the County, separate, store, process and dispose of in an Environmentally Acceptable manner, any Unacceptable Waste brought to the Wilson MRF (and not rejected by the Contractor) and not identified by the Contractor as such until after unloading from the delivery vehicle, it being agreed that the Contractor shall not be deemed to have accepted any such Unacceptable Waste.

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

(A) If such Unacceptable Waste was delivered by the County or its Designee to the Wilson MRF and was detected at such time or at any time prior to the time such Unacceptable Waste left the tipping floor of the MRF then serving the County, the Contractor shall be entitled to require the County or its Designee to reload the entire load which contained such Unacceptable Waste onto its vehicle and remove such load from the MRF, or, in the event the Contractor does not require such removal, the County shall reimburse, or shall cause its Designee to reimburse, the Contractor for such removal and disposal costs. Notwithstanding the foregoing, if, after leaving the tipping floor, Unacceptable Waste is identified and the

source is identified to the reasonable satisfaction of the Contractor and the County (or its Designee), then the County shall reimburse, or cause its Designee to reimburse, the Contractor for such removal and disposal costs. The Contractor may invoice the County not more frequently than monthly for reimbursement of such costs.

(B) In all other cases, except as otherwise provided in Section 3.03, the County shall have no responsibility for such costs.

2.04 Delivery by Other Persons. The Contractor is not required under this Agreement to accept deliveries of Solid Waste from any Person other than the County or its Designees.

2.05 Regulatory Requirements.

(a) Permits and Licenses. The Contractor shall be responsible, at its own expense, for obtaining and maintaining compliance under, and obtaining any necessary extensions of, all permits, licenses, zoning ordinances, and other federal, state and county approvals, including those related to air and water pollution, solid waste, siting, land use, wetlands, flood plain, noise, odor, and building, which may be necessary for the construction, operation, maintenance and repair of each MRF and AFB then serving the County or for the transportation of Acceptable Waste to a MRF. If an administrative agency, department, authority, political subdivision or other instrumentality to which an application for a permit required for the operation, maintenance or repair of

a MRF or an AFB or for the transportation of Acceptable Waste to a MRF fails to take action, whether or not a specific time limitation for such action is prescribed by law, the failure to act shall, so long as the application therefor has been timely filed and is being diligently pursued, be treated as an Uncontrollable Circumstance if the failure to act has a material adverse effect on the ability of the Contractor or the County to satisfy their obligations under this Agreement. Any applicable time limitation shall be deemed to have commenced on the date when the appropriate application and all related information called for by the application and/or permitting agency have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) Adherence to Law. The Contractor shall (i) design, construct and operate each MRF and AFB which is to serve the County and (ii) transport Acceptable Waste in a manner which complies in all material respects with any applicable law, ordinance, rule, regulation, order, permit, or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) Inspection by County. The Contractor shall permit duly appointed officials of the County to have access to and entry upon the site of the MRF then serving the County at any time within regular MRF operating hours, upon advance telephonic notice to the Contractor's MRF supervisor of not less than four hours, to inspect such MRF for the purpose of evaluating the

Contractor's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the Contractor including those relating to the safety of persons present on such MRF site and the protection of the Contractor's proprietary information.

2.06 Financial Responsibility. Except as otherwise provided in this Agreement, the Contractor shall provide and pay for all of the labor, services, parts, supplies, utilities, and other resources other than Acceptable Waste required for the Contractor to (i) operate and maintain each MRF and AFB and (ii) transport Acceptable Waste in accordance with the requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals. Notwithstanding the foregoing, the requirements of Article VII may not be altered by ordinance or other legislation of the County.

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

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

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

2.10 Unplanned Outages.

(a) In the event of any unplanned outage of the MRF then serving the County, the Contractor shall: (i) use all reasonable efforts to resume normal operations of such MRF as quickly as possible and, (ii) arrange for interim processing or disposal of all Acceptable Waste in an Environmentally Acceptable manner.

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

2.11 Records.

(a) The Contractor or its designee shall operate and maintain a motor truck scale at each MRF then serving the County, calibrated to the accuracy required by the State for public weighing facilities, to weigh all vehicles delivering Solid Waste to such MRF. The County shall cause its vehicles, and those of any Designees, to have identification permanently indicated and conspicuously displayed thereon. Each vehicle will be weighed before entering and after leaving such MRF, with the date, time, truck

identification and weights (loaded and unloaded) to be entered on a weight record. The scale records will be used as a basis for calculating fees, charges and credits under this Agreement. If the weighing facility at such MRF is out of service, the Contractor shall, subject to any applicable state regulation, either obtain alternate temporary weighing capability or estimate the quantity of Acceptable Waste delivered on the basis of truck volumes and data based on pertinent historical information.

(b) The Contractor or its designee shall maintain daily records of the total Acceptable Waste tonnage delivered by the County and its Designees and of all materials leaving each MRF then serving the County. Such daily records shall include detailed and summary listings of tonnage delivered by the County and its Designees to such MRF, the estimated amount of such Solid Waste rejected as being other than Acceptable Waste, and such other records as are necessary to implement the provisions of this Agreement. Summary information for each month shall be provided to the County within five (5) business days after the end of such month. Copies of all daily records and weight tickets shall be maintained by the Contractor for a period of at least three (3) years, or for such longer period required by law, and shall be made available for inspection by the County during normal business hours upon reasonable notice. In the event the County is required by applicable law or regulation to file reports pertaining to the operation of any such MRF or equipment or facilities thereof, the Contractor shall provide the County with the information required to compile such reports.

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

2.13 MSW Reduction Guarantee. In addition to the reports required under Section 2.11, the Contractor will provide a monthly recycling report to the County reporting the total Solid Waste reduction as defined under North Carolina solid waste management laws and regulations as adopted, amended and effective January 1, 1994. Such reduction, stated as a percentage of total Acceptable Waste delivered to the Contractor at the MRF then serving the County by the County for that month (except as revised as provided below), is referred to herein as the "Reduction Percentage." The form of the report will be as mutually agreed by the Contractor and the County. The

Contractor hereby guarantees that the Reduction Percentage from the recycling of paper, plastics, metals, glass or materials beneficially used as ground cover or aggregate fill but excluding materials that are composted, stated on an annual basis for each Contract Year, shall be no less than 12.5%; provided, however, that if recyclable materials other than compostable materials are removed from MSW delivered to the Contractor prior to delivery thereto, then the amount of such recyclable materials removed from the Solid Waste shall be added to the total Solid Waste reduction in computing the Reduction Percentage. If the Contractor fails to meet the guaranteed Reduction Percentage, then the Contractor shall pay the County a fee that is equal to the per-Ton fees then in effect under Sections 6.01 and 6.02 hereof for each Ton by which the total Solid Waste reduction failed to meet the guaranteed Reduction Percentage; but in no event shall payments to the County exceed for any Contract Year an amount equal to ten percent (10%) of the fees paid by the County to the Contractor pursuant to Sections 6.01 and 6.02 below for such Contract Year. The parties hereto expect that beginning June 30, 2001, a 10% credit will be allowed in computing the total Solid Waste reduction for materials burned to generate energy; in such case and at such time as such increase comes into effect, the Contractor guarantees that the Reduction Percentage shall increase to 22.5%.

III. DUTIES OF THE COUNTY.

3.01 Delivery of Acceptable Solid Waste; Minimum Commitment.

Commencing on the Commencement Date and continuing throughout the term of this Agreement, the County shall deliver or cause to be delivered to the Contractor at the

Wilson MRF its Minimum Commitment during each Contract Year, plus all additional Acceptable Waste collected for disposal by the County during each Contract Year subject to the Contractor's right to reject the County's deliveries in excess of aggregate amounts stated in Section 2.02. The parties intend that all Acceptable Waste collected for disposal by the County be delivered to the Contractor at the Wilson MRF, and, accordingly, unless the Contractor otherwise elects, the County shall not deliver any such Acceptable Waste (except for source separated recyclables, yard waste, tobacco dust, and other compostable materials, and construction and demolition debris) to any other disposal sites. For purposes of this Section 3.01, Acceptable Waste is deemed to be "collected for disposal" if it is presently being or would in the ordinary course be delivered to a landfill, transfer station or to a general materials recovery facility. The County shall, subject to availability, deliver Acceptable Waste to Contractor at the Wilson MRF prior to the Commencement Date for facility and equipment testing purposes as and when requested by Contractor.

3.02 Computation of Minimum Commitment.

(a) Amounts Included in Computation of Minimum Commitment.

The County shall receive credit toward meeting its Minimum Commitment for all Acceptable Waste delivered by such County and its Designees and accepted by the Contractor at the Wilson MRF or to any other destination reasonably designated by the Contractor.

(b) Amounts Not Included in Computation of Minimum Commitment. The County shall receive no credit toward meeting its Minimum

Commitment for any Solid Waste properly rejected by the Contractor in accordance with Section 2.03 hereof.

3.03 Indemnification; Reduction in Payment to the County. The County will, to the extent permitted by applicable law, protect, indemnify and hold the Contractor harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against the Contractor including reasonable attorneys' fees, and will defend the Contractor, at the Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the County, its agents or employees acting within the scope of their employment or caused by or resulting from the handling or disposal of Unacceptable Waste by the Contractor in the performance of its duties hereunder (except as otherwise provided in Section 2.03(b)(iii)) (herein, the "Losses"). The Contractor shall promptly notify the County of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall give the County the opportunity to defend such claim; and shall not settle such claim without the approval of the County, which approval shall not be unreasonably withheld. The above provisions are for the protection of the Contractor only, do not apply to claims of the Contractor against the County under this Agreement or any related agreements, and shall not create any benefit or liability to third parties. The parties mutually agree that the term "to the extent permitted by applicable law," expresses the legal uncertainty as to whether the promise to indemnify herein is subject to the provisions of N.C.G.S., § 159-28, other applicable laws and the constitution of the State of North Carolina. The parties

acknowledge and understand that this promise to indemnify has not been supported by a current appropriation of the governing body of the County. Consequently, if a court of competent jurisdiction determines that this promise to indemnify constitutes incurring an obligation within the meaning of N.C.G.S., § 159-28 or violates other applicable laws or the constitution of the State of North Carolina, then this promise to indemnify is void ab initio. This promise to indemnify shall not constitute a waiver of governmental immunity.

3.04 Solid Waste Flow Ordinances. The County, if and when authorized by applicable law, shall promulgate and enforce flow ordinances mandating that all MSW generated in the County (excluding Unacceptable Waste, Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement and MSW which is to be disposed of at or transferred to a site or facility outside the State) after the Commencement Date and thereafter so long as this Agreement is not terminated, shall be delivered exclusively to the Contractor under this Agreement, provided that such ordinances shall be consistent with law and court rulings. Subject to its obligations to provide for the health and safety of its citizens and to other limitations required by law, the County agrees to use its best efforts to aid Contractor in obtaining the permits, licenses and other authorizations and approvals referenced in Section 2.05(a). In addition, the County shall encourage each municipality located within the boundaries of the County to enter into a binding agreement with the County, or take other action acceptable to the Contractor, which provides that all MSW generated in such municipality (excluding Unacceptable Waste and Recovered Materials that have been separated at the source and disposed of outside the purview of this Agreement and MSW that is to be

disposed of at or transported to a site outside the State) after the Commencement Date and thereafter so long as this Agreement is not terminated shall be delivered to the Contractor under this Agreement.

IV. CONDITIONS PRECEDENT TO OPERATIONS.

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

4.01 The Contractor shall have advised the County that a MRF is ready to receive the County's Acceptable Waste. The Contractor shall invite the County's officials to witness tests, review data and concur that such MRF is ready for use, with such concurrence not to be unreasonably withheld.

4.02 The Contractor shall have provided evidence of having satisfied all Insurance, Letter of Credit and Bond Requirements as set out in Article VII of this Agreement.

4.03 The Contractor shall have received a written commitment from a Credit Institution for a loan, bond or equity securities underwriting or other similar type of non-recourse financing (or credit support for such financing), repayable during the term of this Agreement and on such terms and conditions as are satisfactory to the Contractor in its sole discretion. The Contractor shall make application for such financing and shall furnish any information and execute any instruments required in connection with such application. The County agrees to negotiate any changes to this Agreement reasonably required by the Credit Institution and such changes shall not be

unreasonably refused; provided, however, that such changes shall not violate any law or regulation of any federal, state or municipal government.

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

V. UNCONTROLLABLE CIRCUMSTANCES.

5.01 Any act, event or condition, whether affecting a MRF, an AFB, the vehicles used by the Contractor to transport RDF to an AFB, the County, the Contractor or any of the Contractor's respective subcontractors shall be deemed an Uncontrollable Circumstance to the extent that it materially and adversely affects the ability of any party to perform its obligations hereunder, if such act, event, or condition is beyond the reasonable control of and is not also the result of the willful or negligent action or inaction, principally of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. The good faith contesting of, or the failure to contest, action or inaction of a third party, shall not be construed as willful or negligent action or lack of reasonable diligence by the party claiming that such third party action or inaction constitutes Uncontrollable Circumstances. Acts or events constituting Uncontrollable Circumstances include, but shall not be limited to, the following:

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

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

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

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

(e) Any change in law which is (i) legally binding with respect to the design, construction, testing, utilization, operation or maintenance of a MRF or an AFB, (ii) occurs subsequent to the date hereof, and (iii) has the effect of temporarily or permanently preventing a party from performing any of its obligations hereunder including the following: any change in, or adoption of, any constitution, charter, act, statute, law, ordinance, code, rule, regulation or order; or any change in the standards or criteria contained in a permit, which standards or criteria must be met in order for a MRF or an AFB to be operated lawfully at the levels specified in this Agreement; any denial of an application

for, delay in the review, issuance or renewal of or suspension, termination, interruption, imposition of a new condition in connection with the renewal of or failure of renewal, on or after the date hereof of any governmental permit, license, consent, authorization or approval, or any other legislative or administrative action or refusal to act of the United States of America or the State of North Carolina or any agency, department, authority, political subdivision or other instrumentality thereof (except that no action of the County or any instrumentality thereof shall excuse the performance of the County under this Agreement); or any decree, judgment or order of a court. Any change of law which requires a MRF or an AFB to install or upgrade equipment shall qualify hereunder as a change of law, and the time required to install or upgrade equipment, if it requires a shutdown or slowdown of the operation of either a MRF or an AFB, shall qualify as an Uncontrollable Circumstance.

5.02 Any party shall be excused from performance hereunder when its nonperformance was caused directly or indirectly by Uncontrollable Circumstances. The party whose performance is affected shall give to the other parties prompt written notice of the Uncontrollable Circumstances, and thereupon the obligations of the party giving the notice, so far as such obligations are affected by the Uncontrollable Circumstances, shall be suspended during such Uncontrollable Circumstances and for a reasonable time thereafter as required to remedy any physical damage or otherwise overcome the effect of such Uncontrollable Circumstances.

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

VI. FEES.

6.01 Fixed Fee. The County shall pay the Contractor a fixed fee of seventeen dollars and no cents (\$17.00) per Ton of Solid Waste delivered by the County or its Designees to the Wilson MRF and accepted by the Contractor (as provided in Article II). This fee shall not be payable by the County following the first twenty-one (21) years of the term of this Agreement.

6.02 Variable Fee. In addition to the fixed fee set out in section 6.01, the County shall pay the Contractor a variable fee which initially shall be nineteen dollars and fifteen cents (\$19.15) per Ton of Solid Waste delivered by the County and its Designees to the Wilson MRF and accepted by the Contractor. The County and its Designees shall pay an alternate fee (in lieu of the fixed and variable fees) for tires not incidentally included in the municipal waste stream in the amount of \$55.00 per Ton. The variable fee and the fee for tires shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1993 as the base year from which adjustment is made, to be in effect until December 31, 1995, and then a further adjustment effective January 1, 1996, using the

year ended December 31, 1994, as the base year from which adjustment is made. Further adjustments shall be made effective each January 1 thereafter for adjustments occurring during the preceding twelve months ended December 31.

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

accepted accounting principles based upon the estimated lives of such improvements. The Contractor shall furnish its calculations of the above costs to the County in sufficient detail for the County to confirm the basis and accuracy of the calculations of costs. Fifty per cent (50%) of any annual net increased operating costs or annual net amortized capital costs shall be added annually to the fees to be paid under Section 6.01, allocated per Ton on the basis of the Acceptable Waste processed by the Contractor in the preceding Contract Year (and for the first full Contract Year based upon an assumed annual tonnage of Acceptable Waste of 50,000 Tons).

The \$500,000 amount shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonably adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published an equivalent index mutually agreed to by the parties hereto) with the first adjustment occurring on January 1, 1995, using calendar year 1994 as the base year from which adjustment is made, to be in effect until December 31, 1995, and subsequent adjustments to be made effective each January 1 thereafter, using the calendar year 1994 as the base year from which adjustment is made in each instance.

6.04 Method of Payment.

(a) In accordance with Article VI, not earlier than the tenth day of each month after the Commencement Date, the Contractor shall invoice the County for services rendered by the Contractor under this Agreement during the preceding month. The total amount of the invoice shall be the sum of the following:

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

(ii) any amount owed by each County to the Contractor pursuant to Section 2.03 (b) (iii).

(b) All invoices shall be delivered by hand, by commercial delivery service (such as Federal Express) or mailed first class, postage prepaid to the County at the address set forth in Article XIII, and such invoices shall be paid within thirty (30) days after the date of the invoice.

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

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

6.06 Failure to Deliver Minimum Commitment. In the event that the County shall fail to deliver to the Contractor its Minimum Commitment for any Contract Year, and the Counties shall in the aggregate fail to deliver to the Contractor the Aggregate Minimum Commitment for such Contract Year, then at the end of such Contract Year the County shall pay the Contractor an fee equal to (i) the sum of the fixed and variable fees then in effect pursuant to Section 6.01 and 6.02 above multiplied by (ii) the amount, in Tons, by which the County's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor during such year, but only to the

extent that the amount in (ii) does not exceed the amount by which the County's Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the County and does not exceed the amount by which the Aggregate Minimum Commitment exceeded the amount of Solid Waste actually delivered to the Contractor by the Counties.

VII. INSURANCE, LETTER OF CREDIT BOND REQUIREMENTS.

7.01 Insurance. The Contractor shall obtain at its own cost and expense the types of insurance listed herein. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the County shall have the right, if it is not on the North Carolina Department of Insurance approved list, to approve such insurer based on its financial soundness, which approval shall not be unreasonably withheld.

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

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

(i) Premises - Operations Coverage

- (ii) Completed Operations
- (iii) Contractual Liability
- (iv) Broad Form Property Damage
- (v) Independent Contractors' Protective Liability

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

(b) AUTOMOBILE LIABILITY, with minimum limits of \$1,000,000 for any one accident, including all Owned, Non-Owned and Hired Motor Vehicles. Code 1 "Any Auto" symbol is required for this liability coverage. This policy shall include the Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980 (Form MCS-90), if hazardous waste is transported. The County shall be named as additional insureds on such policy.

(c) WORKERS' COMPENSATION: Statutory Limits.

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

(e) The minimum limits stated in (i), (ii) and (iv) above shall increase automatically at every five (5) year interval from the Commencement Date by ten percent (10%) of the original limits, for each occurrence and

aggregate. The Contractor may incur such deductibles as are standard in the industry, not to exceed 10% of the face amount of the coverage of the policy amount in question.

The parties acknowledge that during the term of this Agreement certain Forms and types of coverage described in this Section 7.01 may change or may cease to be available on a commercially reasonable basis. In such event, the Contractor shall use reasonable efforts to obtain the closest equivalent Form or type of coverage then available.

7.02 Acceptability of Insurers. Insurance shall be placed with insurance companies with an A.M. Best rating of no less than "A," unless proper financial information relating to the company is submitted to and approved by the County prior to coverage being placed with such insurance company. If the insurer issuing any policy required by this Section is not licensed and admitted in the State of North Carolina, the County shall have the right, if it is not on the North Carolina Department of Insurance approved list, to approve such insurer based on its financial soundness, which approval shall not be unreasonably withheld.

7.03 Evidence of Insurance. The Contractor shall procure and maintain insurance policies as described herein and shall furnish to the County duplicate copies of all policies, including applicable endorsements. Since policies will expire before the completion of this Agreement, renewal certificates of insurance shall be furnished to the County by the Contractor before the expiration date of each policy, for the term of this Agreement.

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

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

7.06 Letter of Credit. On or before the Commencement Date, the Contractor shall provide a Letter of Credit (the "Letter of Credit") in a form reasonably acceptable to the County, which shall provide payment to the County for compensatory damages incurred as a result of a breach by the Contractor of this Agreement. The Letter of Credit shall be an irrevocable standby letter of credit issued by a bank or financial institution (the "Issuing Bank") with a credit rating on its senior unsecured debt of at least "AA3" from Moody's Investors Service or at least AA- from Standard & Poor's Corporation or otherwise acceptable to the County, shall be in an amount of \$1,500,000, and shall be outstanding for a period of five (5) years from and after the Commencement

Date. The Letter of Credit shall be arranged in such a manner that permits the County to draw upon the Letter of Credit from time to time for any liquidated amount owed to the County under this Agreement after the Contractor has committed a breach of this Agreement in a manner that has caused monetary damage to the County. The Letter of Credit shall provide that the County may draw upon the Letter of Credit immediately upon the submission of a written agreement signed by the County and the Contractor authorizing such payment or thirty (30) days after submission to the Issuing Bank of a written finding by an arbitrator pursuant to an arbitration proceeding under Section 8.05 certifying the amount owed by the Contractor to the County. The Contractor shall have the right to contest any request for the payment of damages to the County or any amounts to be drawn down from the Letter of Credit in any arbitration proceeding pursuant to Section 8.05. If the County agrees to the Contractor's objections, or if the Contractor prevails in contesting any such payment or payments of damage and the County has been permitted to receive moneys under the Letter of Credit, the County shall repay the Contractor the amount of such payment or payments plus interest from the date of the payment or payments to the County to the date of such payment or payments to the Contractor at the then existing prime rate established by the largest commercial bank operating in North Carolina. All costs and expenses for the Letter of Credit whether fees, assessments, reimbursements, or otherwise, shall be solely payable by the Contractor, and the County shall have no liability arising therefrom.

7.07 Operations Performance Bond. In lieu of a Letter of Credit, the Contractor may, at its option, provide an Operations Performance Bond or other form of insurance acceptable to the County, which shall be posted by Contractor and shall provide

payment to the County in the event of a breach of this Agreement by the Contractor. Payments under the Operations Performance Bond shall be made pursuant to the same procedures for payment under the Letter of Credit, as set forth in Section 7.06.

7.08 Drawing Upon Letter of Credit or Operations Performance Bond. If any event or condition has occurred which but for applicable periods of notice, grace or cure (including cure periods granted by the County to the Credit Institution) would constitute an Event of Default, and such event or condition damages the County, the County may draw upon the Letter of Credit or Operations Performance Bond provided in Sections 7.06 and 7.07, respectively, during any such periods of grace or cure to compensate it for such damages incurred to the date of the claim in accordance with the procedures set forth therein as if such event or condition had matured into an Event of Default.

VIII. DEFAULT, DISPUTE RESOLUTION AND TERMINATION.

8.01 Remedies for Default.

(a) Default by Contractor.

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

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

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

(iv) Any amounts of Acceptable Waste delivered by the County to a landfill or other Residue Disposal site following an Event of Default by the Contractor under Section 8.02, shall be credited toward the County's delivery of its Minimum Commitment under Section 3.01.

(b) Default by County.

(i) Upon the occurrence of an Event of Default by the County under this Agreement, the remedies of the Contractor shall be compensatory damages, specific performance or termination of this Agreement; provided, however, in the event the County fails to deliver its Minimum Commitment in any Contract Year (unless such failure was due to Uncontrollable Circumstances and subject to Section 8.03(b)(i)), the Contractor shall be entitled to receive from such County damages in an amount equal to the difference between (x) the total of the payments which would have been payable by the County pursuant to Sections 6.01 and 6.02 if the County had delivered its Minimum Commitment in such Contract Year and (y) the amount paid by the County pursuant to Sections 6.01 and 6.02 with respect to the Solid Waste actually delivered by the County in such Contract

Year, excluding any amounts paid by such County in such Contract Year for tires delivered.

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

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

8.02 Events of Default by the Contractor.

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

(i) Contractor failure (which is not excused by Uncontrollable Circumstances), occurring at any time after the Commencement Date, to receive, recycle, process, or dispose of in an Environmentally Acceptable manner, Acceptable Waste delivered by the County or its Designee (up to the limits set forth in Section 2.02), for a continuous period of fourteen (14) days.

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

(iii) Contractor failure to obtain and maintain the insurance required by Article VII.

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

(v) A failure by the Contractor to initiate operations at a MRF and AFB by the Commencement Date.

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

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

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

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

(iii) Failure of the Contractor to indemnify the County in accordance with Section 2.12.

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

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

(ii) the circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the County) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.02(c)). If reasonable steps shall have been commenced to correct such default within such reasonable period of time, the same shall not constitute an Event of Default for as long as reasonable steps are continuing to correct such default with due diligence. For the purposes of this Section 8.02, "reasonable steps" shall be deemed to include the initiation by the Contractor of actions or planning (followed within a reasonable time with action) to remedy the Event

of Default, such as communication with parties capable of aiding the Contractor in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions with the County, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

8.03 Event of Default by the County.

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

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

finding of the amount due is issued by an arbitrator under the procedures set forth in Section 8.05.

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

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

(i) The failure of a County to fulfill any material obligation under this Agreement (other than the payment of monies governed by Section 8.03(a)(i)), unless such failure shall be excused or justified as provided in Article V hereof.

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

(iii) Failure of the County to indemnify the Contractor in accordance with Section 3.03; provided, however, that if such

indemnification is prohibited by applicable law, such failure shall not constitute an Event of Default hereunder.

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

(i) The Contractor shall have given prior written notice to the County, describing such default in reasonable detail; and

(ii) The circumstance creating the potential default (if it is a default involving other than a failure to pay a liquidated and undisputed sum payable to the Contractor) shall not have been corrected nor shall reasonable steps have been initiated to correct the same within a reasonable period of time (which shall, in any event, be not less than seven (7) days from the date of the notice given pursuant to Subsection 8.03(c)(i)). If the County shall have commenced to take reasonable steps to correct such default within such reasonable period of time, the same shall not constitute an Event of Default as long as the County is continuing to take reasonable steps to correct such default. For the purposes of this Section 8.03, "reasonable steps" shall be deemed to include the initiation by the County of actions or planning (followed within a reasonable time with action) to remedy the Event of Default, such as communication with parties capable of aiding the County in remedying the Event of Default, securing assessment of costs to remedy the Event of Default, and discussions

with the Contractor, the Credit Institution or other interested parties of the means by which the Event of Default may be cured.

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

8.04 Notice of Termination for Default. If any party shall have a right of termination for cause in accordance with this Article VIII by virtue of the fact that an Event of Default exists, after all periods of grace and cure have then expired (including any cure period granted to the Credit Institution) the right of termination may be exercised by written notice of termination given to the party in default. The notice shall specify the termination date, which shall be no less than thirty (30) days from the date of such notice, except in the case of abandonment by the Contractor under Section 8.10 herein.

8.05 Dispute Resolution. In the event a party disagrees with a finding by the other party that there has been an Event of Default giving rise to termination under the terms of this Agreement, or in the event of any other contract dispute that cannot be resolved between the parties (including resolution pursuant to Section 8.08), any party shall immediately notify the other of such disagreement and shall apply to the American Arbitration Association for appointment of a completely disinterested arbitrator with relevant business experience in the recycling or RDF industry and local government Solid Waste management, who will arbitrate such dispute pursuant to N.C.G.S. § 1-567.1 to

1-567.20 and will hear the parties at a location in North Carolina acceptable to all involved parties and render a decision within thirty (30) days after receipt of the notice of disagreement. If any party shall object in good faith to the arbitrator so named, the parties shall apply to a judge of the Superior Court of Wake County to appoint an arbitrator with the qualifications stipulated in this Section. The cost of such procedure shall be borne as decided by the arbitrator, and until such decision is rendered, no termination of this Agreement shall become effective. The provisions of this Section shall be exclusive.

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

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

8.08 Non-Binding Mediation. Except for matters which are referred for arbitration hereunder, any party hereto may give the other written notice of any dispute

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

8.09 Right to Cure by Credit Institution.

(a) Right to Cure. If the County alleges an Event of Default under this Agreement, then, provided the Contractor has provided the County notice of the name and address of the Credit Institution, the County shall give written notice of the Event of Default to the Credit Institution at the same time that it gives written notice to the Contractor as required under Section 8.02(c)(i). The Credit Institution shall have the same right as the Contractor to arrange for the cure of the Event of Default and shall also have the right (if and when granted to the Credit Institution pursuant to the agreements between it and the Contractor) to substitute for the Contractor a responsible new operator acceptable to the County and to the North Carolina Department of Environment, Health, and Natural Resources (referred to herein as the "Replacement Contractor"), which right the Credit Institution may invoke upon fourteen (14) days written notice at any time during the period stipulated under Section 8.09(b) to the County and the Contractor. While the Credit Institution shall be entitled to appoint a Replacement Contractor, its right to cure an Event of Default shall apply regardless of whether a Replacement Contractor is

appointed. Any Replacement Contractor shall use its best efforts to effect a Successful Cure as soon as possible, but in no event shall such substitute performance by the Replacement Contractor exceed the cure period set forth in Section 8.09(b)(i).

(b) Cure Period. If the Credit Institution invokes its right to cure an Event of Default under Section 8.09(a), there shall be a period within which the Event or Events of Default may be cured (referred to herein as the "Cure Period"), which shall end upon the earliest of:

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

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

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

(c) Operations During Cure Period. During the Cure Period, the Credit Institution or the Replacement Contractor, if any, shall cause any MRF and AFB then serving the County to be operated in accordance with this Agreement. During the Cure Period, neither the Replacement Contractor, if

any, nor the Credit Institution shall be liable to the County for damages caused by the Contractor in excess of cash available from revenues from such MRF and AFB after payment of debt service and operating costs.

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

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

8.10 Notification to County Upon Abandonment. In the event the Contractor abandons the operation of any MRF and/or the AFB then serving the County, the Credit Institution may appoint and inform the County of a Replacement Contractor to assume the Contractor's duties under this Agreement as provided in Section 8.09.

IX. TERM.

9.01 Term. Subject to the further provisions of this Article IX and the provisions of Article VIII, the term of this Agreement shall commence upon signature by

the parties and shall remain in effect for a term of twenty-six (26) years from the Commencement Date.

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

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

X. REPRESENTATIONS AND WARRANTIES.

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

(a) The County is a body politic and corporate, constituting a public instrumentality and political subdivision of the State. The County has agreed to implement solid waste disposal and resource recovery systems and facilities, and to provide solid waste management services to the public.

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

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

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

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

testing, performance requirements, maintenance, management or operation of a MRF and an AFB or which could materially and adversely affect consummation of any of the transactions contemplated hereunder, or which could materially and adversely affect the performance of any of the obligations of such County under this Agreement.

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

(g) No further order, consent, approval, authorization of, or declaration or filing with any governmental or public body is required in order for the County to execute and deliver this Agreement. No such further order, consent, approval, authorization, declaration or filing is required in order for the County to perform its obligations under this Agreement.

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

(a) The Contractor is a limited partnership duly organized, validly existing and in good standing under and by virtue of the laws of the State of

Delaware and is duly authorized to do business in and is in good standing in the State of North Carolina. The copies of its organizational documents heretofore furnished to the County are true, correct and complete copies of such documents.

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

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

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

(e) This Agreement has been duly and validly executed and delivered on behalf of the Contractor and assuming due authorization, execution and delivery of this Agreement by the County, this Agreement constitutes the

valid and legally binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of the parties hereto generally.

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

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

(h) No further order, consent, approval, authorization of, or declaration or filing with, any governmental or public body, is required in order for the Contractor to execute and deliver this Agreement or perform its obligations hereunder, except for the licenses, permits, and other approvals which the Contractor is required to obtain hereunder relating to the design, construction, start-up, testing and operation of any facility.

XI. PARTIES TO AGREEMENT.

The parties to this Agreement are Wilson County and the Contractor. The County and the Contractor are independent parties under this Agreement and no party is the servant, agent or employee of the other, nor are they partners or coventurers and none shall share with the others in any risk or liability which arises out of any act of commission or omission in carrying out the provisions of this Agreement or the transactions arising therefrom; provided, however, that each party shall be entitled to enforce this Agreement against the others and seek remedies available at law or in equity and each shall be responsible for its own negligence in carrying out or for breach of the provisions of this Agreement.

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

XII. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding between the County and the Contractor, and there are no other terms, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever,

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

XIII. NOTIFICATION.

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

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

County Manager
P.O. Box 1728
101 N. Goldsboro
Wilson, NC 27894-1728

with a copy to:

George A. Weaver
P.O. Box 2047
Wilson, NC 27894-2047

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

Wilson Resources, Limited Partnership
Attention: George Armistead
11757 Katy Freeway
Suite 1420
Houston, TX 77079

with a copy to:

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

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

XIV. AUDIT.

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

(a) Accounting records of the amounts of all Solid Waste and Hazardous Waste, identified by source, delivered to the MRF then serving the County; and

(b) Accounting records of the amounts of each type of substance derived from Acceptable Waste delivered to the MRF then serving the County.

XV. AFFIRMATIVE ACTION, EMPLOYMENT POLICY.

15.01 Affirmative Action. The Contractor shall have an affirmative action plan at the facilities operated by it pursuant to this Agreement.

15.02 Discrimination in Employment. The Contractor agrees that in the performance of this Agreement with the County, it will not discriminate against any worker because of race, creed, color, religion, national origin, handicap or sex, in violation of any applicable federal, state and local laws and regulations.

XVI. MISCELLANEOUS PROVISIONS.

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

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

effect of such legislation is, as part of such legislation, reflected in an amendment hereto that makes the Contractor whole.

16.03 Severability. The headings used in this Agreement are solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect. Without limiting the foregoing provision, the parties agree that in the event this Agreement is determined by a court of law to be a franchise, then the term of the Agreement shall be deemed to be the maximum franchise term legally permissible.

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

16.05 Assignment.

(a) The Contractor shall have the right at any time to assign this Agreement and the Contractor's rights hereunder to an affiliated entity, including, without limitation, to a corporation whose shareholders include the Contractor, its partners or other entities affiliated with the Contractor or to a general or limited partnership whose general partners include the Contractor, its partners or other entities affiliated with the Contractor. Upon the

Contractor's execution of any such assignment and delivery of notice of such assignment to the County, such assignee shall be deemed to be the "Contractor" for all purposes of this Agreement. The Contractor shall also have the right to collaterally assign this Agreement to a Credit Institution. In the event of any permitted assignment, the County shall certify, if required, that such assignment is permitted and accepted.

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

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

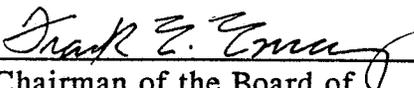
statute or otherwise, except as expressly limited in this Agreement. The exercise of any right, power or remedy by any party shall not in any way constitute a cure or waiver of any Event of Default by the other parties, or prejudice such party in the exercise of any of its rights, powers or remedies.

16.07 Further Assurances. The County and the Contractor each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions, not inconsistent with the provisions of this Agreement and not involving the assumption of obligations or liabilities in excess of or in addition to those expressly provided for in this Agreement, as may be reasonably requested by the other parties to carry out the intent of this Agreement.

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

WILSON COUNTY

By:



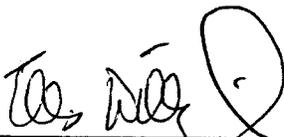
Chairman of the Board of
Commissioners

APPROVED AS TO FORM:



County Attorney

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



Director of Finance

**WILSON RESOURCES, LIMITED
PARTNERSHIP, a Delaware Limited Partnership**

By its General Partner:

**Carolina Energy, Limited Partnership,
a Delaware Limited Partnership**

By its General Partner:

**Carolina Energy Corp., a Delaware
corporation**

By: 

Alan McDonald, President

DATE: November 2, 1994



**AGREEMENT FOR CONSTRUCTION AND OPERATION
OF TRANSFER STATION**

BETWEEN

EDGECOMBE COUNTY, NORTH CAROLINA

AND

WILSON RESOURCES, LIMITED PARTNERSHIP

Dated as of November ____, 1994

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**AGREEMENT FOR CONSTRUCTION AND OPERATION
OF TRANSFER STATION
BETWEEN EDGECOMBE COUNTY, NORTH CAROLINA AND
WILSON RESOURCES, LIMITED PARTNERSHIP**

THIS AGREEMENT FOR CONSTRUCTION AND OPERATION OF TRANSFER STATION BETWEEN EDGECOMBE COUNTY, NORTH CAROLINA AND WILSON RESOURCES, LIMITED PARTNERSHIP is made and dated as of November _____, 1994, between EDGECOMBE COUNTY (referred to herein as the "County") and WILSON RESOURCES, LIMITED PARTNERSHIP (referred to herein as "Contractor"), a Delaware limited partnership.

RECITALS

The parties have entered into that certain Resource Recovery and Transportation Agreement dated as of November ____, 1994 (and as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Resource Recovery Agreement") whereby Contractor has agreed to provide the County with solid waste processing and recovery services and facilities and the County has agreed to utilize such services. In connection with their respective agreements set forth in the Resource Recovery Agreement, the County has agreed, *inter alia*, to prepare the site for and construct a transfer station (the "Transfer Station"), and the Contractor has agreed to pay a portion of the construction and operating expenses of the Transfer Station, pursuant to the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Resource Recovery Agreement. In the event that any term or provision hereof shall be inconsistent with any term or provision of the Resource Recovery Agreement, the terms and provision of this Agreement shall govern.

II. DUTIES OF THE PARTIES.

2.01 **Construction of Transfer Station.** The County shall design and construct the Transfer Station in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. The Transfer Station shall be constructed at a site (referred to herein as the "Transfer Station Site") and according to specifications that shall be mutually agreeable to the County and to the Contractor. The Transfer Station shall be operational on or before the Commencement Date. In consideration of the design and construction of the Transfer Station by the County, Contractor agrees to pay the County a fee (the "Building Fee") in an aggregate amount equal to the lesser of (i) \$400,000 and (ii) the total of all costs incurred by the County in the design, siting and construction of the Transfer Station. The County may invoice Contractor for costs on the Commencement Date. Contractor will reimburse the County for such costs within thirty (30) days following receipt by Contractor of an invoice therefor, attached to which shall be copies of receipts for all such costs. All such payments shall be applied to the Building Fee. Anything contained herein to the contrary notwithstanding, Contractor shall not be obligated to make any payments with respect to the Building Fee prior to the date on which Contractor receives funds from a financing with respect to the construction of the MRF.

2.02 **Regulatory Requirements.**

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

(b) **Adherence to Law.** The County shall design and construct the Transfer Station in a manner which complies in all material respects with any applicable material law, ordinance, rule, regulation, order, permit or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) **Inspection by Contractor.** The County shall permit Contractor to have access to and entry upon the Transfer Station Site at any time, upon advance

telephonic notice to the County of not less than 4 hours, to inspect the Transfer Station for the purpose of evaluating the County's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the County including those relating to the safety of persons present on the Transfer Station Site and the protection of the County's proprietary information but no such rule may be used to deny the inspectors reasonable access to the Transfer Station Site unless such access would violate any applicable law, ordinance or regulation.

2.03 **Financial Responsibility.** Except as otherwise provided in this Agreement, the County shall provide and pay for all of the labor services, parts, supplies, utilities and other resources required for the County to design and construct the Transfer Station in accordance with the requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals.

2.04 **Safety Precautions.** In compliance with applicable federal, state and county regulations, the County shall initiate, maintain and supervise safety precautions and programs in connection with the construction of the Transfer Station.

2.05 **Right of Recoupment.**

(a) The County will allow Contractor to recoup all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against Contractor including reasonable attorneys' fees, and will defend Contractor, at Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property (including environmental damage), or civil or criminal fines or penalties, to the extent caused by the willful

misconduct or negligent acts, errors or omissions of the County, its agents or employees acting within the scope of their employment (the "Losses"). Contractor shall promptly notify the County of the assertion of any claim against which it asserts a right of recoupment or defense hereunder; shall give the County the opportunity to defend such claim; and shall not settle such claim without the approval of the County, which approval shall not be unreasonably withheld. The above provisions are for the protection of Contractor only, do not apply to claims of Contractor itself against the County under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

(b) The County agrees that Contractor shall be permitted to obtain and pay for a policy or policies of insurance (with Contractor named as owner and loss payee of such policy or policies) to indemnify Contractor against any of the Losses for which Contractor might otherwise have a right of recoupment under this Section 2.05.

2.06 **Operating Fee.** In consideration of the operation of the Transfer Station by the County, pursuant to this Agreement, Contractor agrees to pay the County, during the term of this Agreement, an annual fee (the "Operating Fee") in an aggregate amount of up to \$40,000, which shall consist of an amount of up to \$30,000 in respect of payroll expenses and up to \$10,000 in respect of equipment, operations and maintenance expenses associated with the operations of the Transfer Station (such Operating Fee being the extent of Contractor's required financial contribution to the operation of the Transfer Station and such Operating Fee being limited by the payroll expenses and equipment, operations and maintenance expenses actually incurred by operation of the Transfer Station). The Operating Fee shall be adjusted annually in

accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto), with the first adjustment occurring on the first day of July immediately following the Commencement Date, using the year ended on the thirtieth day of June of such year as the base year from which adjustment is made. The Operating Fee shall be payable quarterly, in arrears, with the first such payment being due and payable ninety (90) days following the Commencement Date.

III. EFFECTIVENESS.

The obligation of the County to commence construction of the Transfer Station shall be effective on the first date on which Contractor receives funds from a financial institution with respect to the construction of the MRF.

IV. UNCONTROLLABLE CIRCUMSTANCES.

Acts or events constituting Uncontrollable Circumstances shall include the acts or events described in Section 5.01 of the Resource Recovery Agreement, provided that any reference in said Section to the MRF or the AFB shall be modified, as appropriate, to apply or refer to the Transfer Station. The obligations of a party in the event of an Uncontrollable Circumstance shall be as set forth in Sections 4.02 and 4.03 of the Resource Recovery Agreement, as if the parties' agreements set forth herein were incorporated in and governed thereby.

V. TERMINATION, DEFAULT AND DISPUTE RESOLUTION.

Each and every provision of Article VIII of the Resource Recovery Agreement is incorporated herein by reference as if each and every section were set forth verbatim herein, except that every reference to "this Agreement" shall be deemed to be a reference to this Agreement, and every cross-reference shall be deemed to be a cross-reference to the appropriate section of this Agreement, where applicable, it being the intent of the parties to provide each non-defaulting party with those rights and remedies that would be available to it, and to provide for notices and rights to cure, as if the obligations of the parties hereunder were set forth in the Resource Recovery Agreement.

VI. TERM.

The term of this Agreement shall commence upon signature by the parties, and shall remain in effect so long as the Resource Recovery Agreement remains in effect.

VII. REPRESENTATIONS AND WARRANTIES.

7.01 **Representations and Warranties of the County.** As of the date of this Agreement, the County represents and warrants to Contractor as set forth in Section 10.01 of the Resource Recovery Agreement, the provisions of which are incorporated by reference as if set forth in full herein, except that any reference to the Resource Recovery Agreement contained in said Section 10.01 shall be deemed a reference to this Agreement, and any reference to the MRF or the AFB shall be deemed a reference to the Transfer Station and to include, as appropriate, the transportation of Acceptable Waste.

7.02 **Representations and Warranties of Contractor.** As of the date of this Agreement, Contractor represents and warrants to the County as set forth in Section 10.02 of the Resource Recovery Agreement, the provisions of which are incorporated by

reference as if set forth in full herein, except that any reference to the Resource Recovery Agreement contained in said Section 10.02 shall be deemed a reference to this Agreement, and any reference to the MRF or the AFB shall be deemed a reference to the Transfer Station and to include, as appropriate, the transportation of Acceptable Waste.

VIII. OTHER INCORPORATION BY REFERENCE.

Each and every provision of Articles XI, XII, XIII, XIV, XV, and XVI of the Resource Recovery Agreement are deemed to be incorporated by reference herein as if set forth verbatim, except that any reference to "this Agreement" shall be deemed to be a reference to this Agreement, it being the intention of the parties that each and every provision therein apply to this Agreement as if it were set forth verbatim in the Resource Recovery Agreement.

**AGREEMENT FOR CONSTRUCTION
AND OPERATION OF TRANSFER STATION**

BETWEEN

PITT COUNTY, NORTH CAROLINA

AND

CAROLINA ENERGY, LIMITED PARTNERSHIP

Dated as of December _____, 1994

**AGREEMENT FOR CONSTRUCTION
AND OPERATION OF TRANSFER STATION
BETWEEN PITT COUNTY, NORTH CAROLINA AND
CAROLINA ENERGY, LIMITED PARTNERSHIP**

THIS AGREEMENT FOR CONSTRUCTION AND OPERATION OF TRANSFER STATION BETWEEN PITT COUNTY, NORTH CAROLINA AND CAROLINA ENERGY, LIMITED PARTNERSHIP is made and dated as of December _____, 1994, between PITT COUNTY (referred to herein as the "County") and CAROLINA ENERGY, LIMITED PARTNERSHIP (f/k/a CAROLINA ENERGY, L.P.) (referred to herein as "Contractor"), a Delaware limited partnership.

RECITALS

The parties have entered into that certain Amended and Restated Resource Recovery Agreement dated as of December ____, 1994 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Resource Recovery Agreement") whereby Contractor has agreed to provide the County with solid waste processing and recovery services and facilities and the County has agreed to utilize such services.

In connection with its agreements set forth in the Resource Recovery Agreement, the County has agreed, inter alia, to prepare the site for and construct a transfer station (the "Transfer Station") and the Contractor has agreed to pay certain construction and operating expenses of the Transfer Station, pursuant to the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Resource Recovery Agreement. In the event that any term or provision hereof shall be inconsistent with any term or provision of the Resource Recovery Agreement, the terms and provision of this Agreement shall govern.

II. DUTIES OF THE PARTIES.

2.01 **Construction and Operation of Transfer Station.** The County shall design, construct and operate the Transfer Station in an Environmentally Acceptable manner, obtaining all necessary permits, at its sole expense. The Transfer Station shall be constructed at a site at or near the County's landfill (referred to herein as the "Transfer Station Site") and according to specifications that shall be mutually agreeable to the County and to the Contractor, but with equipment and compaction capacity (accomplished by a single model TP-150 AMFAB Resources compactor or its equivalent) acceptable to the Contractor. The Transfer Station shall be operational on or before the Commencement Date.

In consideration of the design and construction of the Transfer Station by the County, Contractor agrees to pay the County a fee (the "Building Fee") of \$1,250,000. The Contractor will fund the Building Fee at the time that the County contracts for the construction of the Transfer Station; provided, however, that the Contractor will fund any portions of the Building Fee to be expended by the County for pre-construction costs (i.e., for engineering studies, design and architecture fees) as those costs are incurred (or as contracted for) by the County. Anything contained herein to the contrary notwithstanding, Contractor shall not be required to fund any portion of the Building Fee prior to the closing of a construction or term loan or other financing transaction for the construction of the MRF.

2.02 **Regulatory Requirements.**

(a) **Permits and Licenses.** The County shall be responsible, at its own expense, for obtaining and maintaining compliance under, and obtaining any necessary extensions of, all permits, licenses, zoning ordinances, and other federal, state and county approvals, including those related to air and water pollution, solid waste, siting, land use, wetlands, flood plain, noise, odor, and building, which may be necessary for the design, construction and operation of the Transfer Station. If an administrative agency, department, authority, political subdivision or other instrumentality to which an application for a permit required for the design, construction and operation of the Transfer Station fails to take action, whether or not a specific time limitation for such action is prescribed by law, the failure to act shall be treated as an Uncontrollable

Circumstance if the failure to act has a material effect on the ability of Contractor or the County to satisfy its obligations under this Agreement. Any applicable time limitation shall be deemed to have commenced on the date when the appropriate application and all related information called for by the application have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) **Adherence to Law.** The County shall design, construct and operate the Transfer Station in a manner which complies in all material respects with any applicable material law, ordinance, rule, regulation, order, permit or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) **Inspection by Contractor.** The County shall permit Contractor to have access to and entry upon the Transfer Station Site at any time, upon advance telephonic notice to the County of not less than 4 hours, to inspect the Transfer Station for the purpose of evaluating the County's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the County including those relating to the safety of persons present on the Transfer Station Site and the protection of the County's proprietary information but no such rule may be used to deny the inspectors reasonable access to the Transfer Station Site unless such access would violate any applicable law, ordinance or regulation.

2.03 **Financial Responsibility.** Except as otherwise provided in this Agreement, the County shall provide and pay for all of the labor, services, parts, supplies, utilities and other resources required for the County to design, construct and operate the Transfer Station in accordance with the requirements of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals.

2.04 **Safety Precautions.** In compliance with applicable federal, state and county regulations, the County shall initiate, maintain and supervise safety precautions and programs in connection with the construction and operation of the Transfer Station.

2.05 **Right of Recoupment.**

(a) The County will allow Contractor to recoup all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against Contractor including reasonable attorneys' fees, for personal and bodily injury to, or death of, any person or persons, loss or damage to property or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the County, its agents or employees acting within the scope of their employment (the "Losses"). Contractor shall promptly notify the County of the assertion of any claim against which it asserts a right of recoupment hereunder and shall not settle such claim without the approval of the County, which approval shall not be unreasonably withheld. The above provisions are for the protection of Contractor only, do not apply to claims of Contractor itself against the County under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

(b) The County agrees that Contractor shall be permitted to obtain and pay for a policy or policies of insurance (with Contractor named as owner and loss payee of such policy or policies) to indemnify Contractor against any of the Losses for which Contractor might otherwise have a right of indemnification under this Section 2.05.

(c) The Contractor will protect, indemnify and hold County harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against County, including reasonable attorneys' fees, and will, if requested, defend the County in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property (including environmental damage), or civil or criminal fines or penalties, (i) to the extent caused by the wilful misconduct or negligent acts, errors or omissions of the Contractor, its agents, employees, contractors or subcontractors, or (ii) no matter how or by whom caused, occurring on the premises of the MRF or AFB and not caused by the wilful misconduct or negligent acts, errors or omissions of the County or its employees, agents or representatives. The County shall promptly notify the Contractor of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall, at its option, give the Contractor the opportunity to defend such claim; and shall not settle such claim without the approval of the Contractor, which approval shall not be unreasonably

withheld. These indemnification provisions are for the protection of the County only, do not apply to claims of a County itself against the Contractor under this Agreement or any related agreement, and shall not create any benefit or liability to third parties.

2.06 **Operating Fee.** In consideration of the operation of the Transfer Station by the County pursuant to this Agreement, Contractor agrees to pay the County, during the term of this Agreement, an annual fee (the "Operating Fee") in an aggregate amount of up to \$154,000 for payroll, equipment, operations, maintenance and other expenses associated with the operations of the Transfer Station (such Operating Fee being the extent of Contractor's required financial contribution to the operation of the Transfer Station). The Operating Fee shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto), with the first adjustment to be effective on the January 1 immediately following the Commencement Date, using the year ended on the December 31 of the year in which the Commencement Date occurred as the base year from which adjustment is made. The Operating Fee shall be payable quarterly, in arrears, with the first such payment being due and payable ninety (90) days following the Commencement Date.

III. EFFECTIVENESS.

The obligation of the County to commence construction of the Transfer Station shall be effective on the first date on which Contractor receives funds from a financial institution with respect to the construction of the MRF.

IV. UNCONTROLLABLE CIRCUMSTANCES.

Acts or events constituting Uncontrollable Circumstances shall include the acts or events described in Section 5.01 of the Resource Recovery Agreement, provided that any reference in said Section to the MRF or the AFB shall be modified, as appropriate, to apply or refer to the Transfer Station. The obligations of a party in the event of an Uncontrollable Circumstance shall be as set forth in Sections 5.02 and 5.03 of the Resource Recovery Agreement, as if the parties' agreements set forth herein were incorporated in and governed thereby.

V. TERMINATION, DEFAULT AND DISPUTE RESOLUTION.

Each and every provision of Article VIII of the Resource Recovery Agreement is incorporated herein by reference as if each and every section were set forth verbatim herein, except that every reference to "this Agreement" shall be deemed to be a reference to this Agreement, and every cross-reference shall be deemed to be a cross-reference to the appropriate section of this Agreement, where applicable, it being the intent of the parties to provide each non-defaulting party with those rights and remedies that would be available to it, and to provide for notices and rights to cure, as if the obligations of the parties hereunder were set forth in the Resource Recovery Agreement.

VI. TERM.

The term of this Agreement shall commence upon signature by the parties, and shall remain in effect so long as the Resource Recovery Agreement remains in effect.

VII. REPRESENTATIONS AND WARRANTIES.

7.01 Representations and Warranties of the County. As of the date of this Agreement, the County represents and warrants to Contractor as set forth in Section 10.01 of the Resource Recovery Agreement, the provisions of which are incorporated by reference as if set forth in full herein, except that any reference to the Resource Recovery Agreement contained in said Section 10.01 shall be deemed a reference to this Agreement, any reference to Counties shall be deemed a reference to the County, and any reference to the MRF or the AFB shall be deemed a reference to the Transfer Station and to include, as appropriate, the transportation of Acceptable Waste.

7.02 Representations and Warranties of Contractor. As of the date of this Agreement, Contractor represents and warrants to the County as set forth in Section 10.02 of the Resource Recovery Agreement, the provisions of which are incorporated by reference as if set forth in full herein, except that any reference to the Resource Recovery Agreement contained in said Section 10.02 shall be deemed a reference to this Agreement, any reference to Counties shall be deemed a reference to the County, and any reference to the MRF or the AFB shall be deemed a reference to the Transfer Station and to include, as appropriate, the transportation of Acceptable Waste.

VIII. OTHER INCORPORATION BY REFERENCE.

Each and every provision of Articles XI, XII, XIII, XIV, XV, and XVI of the Resource Recovery Agreement is deemed to be incorporated by reference herein as if set forth verbatim, except that any reference to "this Agreement" shall be deemed to be a reference to this Agreement, it being the intention of the parties that each and every provision therein apply to this Agreement as if it were set forth verbatim in the Resource Recovery Agreement.

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

PITT COUNTY

Date: _____

By: _____
Chairman of the Board of
Commissioners

APPROVED AS TO FORM:

By: _____
County Attorney

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

By: _____
Director of Finance

CAROLINA ENERGY, LIMITED PARTNERSHIP

By: CAROLINA ENERGY CORP.,
its General Partner

By: _____
Alan McDonald
President

AGREEMENT FOR CONSTRUCTION AND OPERATION
OF TRANSFER STATION

AMONG

THE CITY OF ROCKY MOUNT, NORTH CAROLINA,
NASH COUNTY, NORTH CAROLINA

AND

WILSON RESOURCES, LIMITED PARTNERSHIP

Dated as of November __, 1994

**AGREEMENT FOR CONSTRUCTION AND OPERATION
OF TRANSFER STATION
AMONG THE CITY OF ROCKY MOUNT, NORTH CAROLINA,
NASH COUNTY, NORTH CAROLINA,
AND WILSON RESOURCES, LIMITED PARTNERSHIP**

THIS AGREEMENT FOR CONSTRUCTION AND OPERATION OF TRANSFER STATION AMONG THE CITY OF ROCKY MOUNT, NORTH CAROLINA, NASH COUNTY, NORTH CAROLINA, AND WILSON RESOURCES, LIMITED PARTNERSHIP is made and dated as of November __, 1994, between THE CITY OF ROCKY MOUNT, NORTH CAROLINA (referred to herein as the "City"), NASH COUNTY, NORTH CAROLINA (referred to herein as the "County"), and WILSON RESOURCES, LIMITED PARTNERSHIP (referred to herein as "Contractor"), a Delaware limited partnership.

RECITALS

The Contractor and the City have entered into that certain Resource Recovery and Transportation Agreement dated as of November __, 1994 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "City Resource Recovery Agreement"), and the Contractor and the County have entered into that certain Resource Recovery and Transportation Agreement dated as of November __, 1994 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "County Resource Recovery Agreement"), whereby Contractor has agreed to provide the City and the County, as the case may be, with solid waste processing and recovery services and facilities, and the City and the County, as the case may be, has agreed to utilize such services.

In connection with the Resource Recovery Agreements, the City has agreed, inter alia, to modify its existing transfer station (the "Transfer Station") as necessary to accept and deliver to Contractor Acceptable Waste generated in the City and in those portions of the County that are outside the corporate limits of the City, and the Contractor has agreed to pay a portion of the construction and operating expenses of the Transfer Station, pursuant to the terms of this Agreement.

I. DEFINITIONS AND INTERPRETATIONS.

Except as otherwise set forth herein, capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the City Resource Recovery Agreement. In the event that any term or provision hereof shall be inconsistent with any term or provision of the City Resource Recovery Agreement, the terms and provision of this Agreement shall govern.

II. DUTIES OF THE PARTIES.

2.01 Construction of Transfer Station. The City shall design and construct the necessary modifications and additions to the Transfer Station in an Environmentally Acceptable manner, obtaining all necessary permits at its sole expense, according to specifications that shall be mutually agreeable to the City and to the Contractor. The Transfer Station shall be operational on or before the first to occur of (and the term "Commencement Date" as used in this Agreement shall mean the date that is the first to occur of) (i) the Commencement Date as such term is used in the City Agreement, or (ii) the Commencement Date as such term is used in the County Agreement. In consideration of the design and construction of the Transfer Station by the City, Contractor agrees to pay the City a fee (the "Building Fee") of One Million Dollars (\$1,000,000). The City may invoice Contractor for costs on the Commencement Date. Contractor will reimburse the City for such costs within thirty (30) days following receipt by Contractor of an invoice therefor, attached to which shall be copies of receipts for all such costs. Anything contained herein to the contrary notwithstanding, Contractor shall not be obligated to make any payments with respect to the Building Fee prior to the date on which Contractor receives funds from a financing with respect to the construction of the MRF.

2.02 Regulatory Requirements.

(a) **Permits and Licenses.** The City shall be responsible, at its own expense, for obtaining and maintaining compliance under, and obtaining any necessary extensions of, all permits, licenses, zoning ordinances, and other federal, state and county approvals, including those related to air and water pollution, solid waste, siting, land use, wetlands, flood plain, noise, odor, and building, which may be necessary for

the design and construction of modifications and additions to the Transfer Station. If an administrative agency, department, authority, political subdivision or other instrumentality to which an application for a permit required for the design and construction of the modifications and additions to the Transfer Station fails to take action, whether or not a specific time limitation for such action is prescribed by law, the failure to act shall be treated as an Uncontrollable Circumstance if the failure to act has a material effect on the ability of Contractor or the City to satisfy its obligations under this Agreement. Any applicable time limitation shall be deemed to have commenced on the date when the appropriate application and all related information called for by the application have been filed and any other prerequisites established by the applicable statutes and regulations have been met.

(b) **Adherence to Law.** The City shall design and construct all modifications and additions to the Transfer Station in a manner which complies in all material respects with any applicable material law, ordinance, rule, regulation, order, permit or license of any federal, state or county agency, court or other governmental body, notwithstanding any change in law, and shall be responsible for any fines or penalties resulting from any failure to do so.

(c) **Inspection by Contractor.** The City shall permit Contractor and/or the County to have access to and entry upon the Transfer Station Site at any time, upon advance telephonic notice to the City of not less than 4 hours, to inspect the Transfer Station for the purpose of evaluating the City's compliance with the terms of this Agreement. Such inspectors shall comply with the reasonable rules adopted by the City including those relating to the safety of persons present on the Transfer Station Site and the protection of the City's proprietary information but no such rule may be used to deny the inspectors reasonable access to the Transfer Station Site unless such access would violate any applicable law, ordinance or regulation.

2.03 **Financial Responsibility.** Except as otherwise provided in this Agreement, the City shall provide and pay for all of the labor, services, parts, supplies, utilities and other resources required for the City to design and construct the modifications and additions to the Transfer Station in accordance with the requirements

of this Agreement and all applicable laws, ordinances, rules, regulations, orders, permits, licenses and governmental approvals.

2.04 **Safety Precautions.** In compliance with applicable federal, state and county regulations, the City shall initiate, maintain and supervise safety precautions and programs in connection with the modification of the Transfer Station.

2.05 **Indemnification.**

(a) The City will, to the extent permitted by applicable law, protect, indemnify and hold Contractor harmless from and against all liabilities, actions, damages, claims, demands, judgments, losses, defense costs, expenses or suits against Contractor including reasonable attorneys' fees, and will defend Contractor, at Contractor's option, in any suit, including appeals, for personal and bodily injury to, or death of, any person or persons, loss or damage to property, or civil or criminal fines or penalties, to the extent caused by the willful misconduct or negligent acts, errors or omissions of the City, its agents or employees acting within the scope of their employment (herein, the "Losses"). Contractor shall promptly notify the City of the assertion of any claim against which it asserts a right to be indemnified hereunder; shall give the City the opportunity to defend such claim; and shall not settle such claim without the approval of the City, which approval shall not be unreasonably withheld. The above provisions are for the protection of Contractor only, do not apply to claims of Contractor against the City under this Agreement or any related agreements, and shall not create any benefit or liability to third parties. The parties mutually agree that the term "to the extent permitted by applicable law," expresses the legal uncertainty as to whether the promise to indemnify herein is subject to the provisions of N.C.G.S., § 159-28, other applicable laws and the constitution of the State of North Carolina. The parties acknowledge and understand that this promise to indemnify has not been supported by a current appropriation of the governing body of the City. Consequently, if a court of competent jurisdiction determines that this promise to indemnify constitutes incurring an obligation within the meaning of N.C.G.S., § 159-28 or violates other applicable laws or the constitution of the State of North Carolina, then this promise to indemnify is void ab initio. This promise to indemnify shall not constitute a waiver of governmental immunity.

(b) The City agrees that Contractor shall be permitted to obtain and pay for a policy or policies of insurance (with Contractor named as owner and loss payee of such policy or policies) to indemnify Contractor against any of the Losses for which Contractor might otherwise have a right of indemnity under this Section 2.05.

2.06 Operating Fee. In consideration of the operation of the Transfer Station by the City pursuant to this Agreement, Contractor agrees to pay the City, during the term of this Agreement, an annual fee (the "Operating Fee") in the amount of One Hundred Twenty Thousand Dollars (\$120,000) in respect of payroll, equipment, operations and maintenance expenses associated with the operations of the Transfer Station (such Operating Fee being the extent of Contractor's required financial contribution to the operation of the Transfer Station and such Operating Fee being limited by the payroll, equipment, operations and maintenance expenses actually incurred by operation of the Transfer Station). The Operating Fee shall be adjusted annually in accordance with the percentage increase or decrease in the Consumer Price Index for south urban size C, not seasonally adjusted, as published by the U.S. Department of Labor, Bureau of Labor Statistics (or if such index is no longer published, an equivalent index mutually agreed to by the parties hereto), with the first adjustment occurring on the first day of July immediately following the Commencement Date, using the year ended on the thirtieth day of June of such year as the base year from which adjustment is made. The Operating Fee shall be payable quarterly, in arrears, with the first such payment being due and payable ninety (90) days following the Commencement Date.

2.07 Agreement to Purchase Equipment; Hiring Practices. On the Commencement Date, Contractor shall purchase, at fair market value on such date, the four tractors and five trailers owned by the City and used for waste management services. In addition, but only to the extent permitted by applicable law and only where such employees will fill substantially equivalent positions, Contractor shall give preferential consideration to those employees of the City whose positions are eliminated as a result of the Contractor's purchase and subsequent operation of the City's hauling operations.

III. EFFECTIVENESS.

The obligation of the City to commence the modification of the Transfer Station as contemplated by this Agreement shall be effective on the first date on which Contractor receives funds from a financial institution with respect to the construction of the MRF.

IV. UNCONTROLLABLE CIRCUMSTANCES.

Acts or events constituting Uncontrollable Circumstances shall include the acts or events described in Section 5.01 of the City Resource Recovery Agreement, provided that any reference in said Section to the MRF or the AFB shall be modified, as appropriate, to apply or refer to the Transfer Station. The obligations of a party in the event of an Uncontrollable Circumstance shall be as set forth in Sections 4.02 and 4.03 of the City Resource Recovery Agreement, as if the parties' agreements set forth herein were incorporated in and governed thereby.

V. TERMINATION, DEFAULT AND DISPUTE RESOLUTION.

Each and every provision of Article VIII of the City Resource Recovery Agreement is incorporated herein by reference as if each and every section were set forth verbatim herein, except that every reference to "this Agreement" shall be deemed to be a reference to this Agreement, and every cross-reference shall be deemed to be a cross-reference to the appropriate section of this Agreement, where applicable, it being the intent of the parties to provide each non-defaulting party with those rights and remedies that would be available to it, and to provide for notices and rights to cure, as if the obligations of the parties hereunder were set forth in the City Resource Recovery Agreement.

VI. TERM.

The term of this Agreement shall commence upon signature by the parties, and shall remain in effect so long as either of the City Resource Recovery Agreement or the County Resource Recovery Agreement remains in effect.

VII. REPRESENTATIONS AND WARRANTIES.

7.01 Representations and Warranties of the City and the County. As of the date of this Agreement, each of the City and the County represents and warrants to Contractor as set forth in Section 10.01 of the City Resource Recovery Agreement or the County Resource Recovery Agreement, as the case may be, the provisions of each of which are incorporated by reference as if set forth in full herein, except that any reference to the Resource Recovery Agreement contained in said Section 10.01 shall be deemed a reference to this Agreement, and any reference to the MRF or the AFB shall be deemed a reference to the Transfer Station and to include, as appropriate, the transportation of Acceptable Waste.

7.02 Representations and Warranties of Contractor. As of the date of this Agreement, Contractor represents and warrants to each of the City and the County as set forth in Section 10.02 of the City Resource Recovery Agreement or the County Resource Recovery Agreement, as the case may be, the provisions of which are incorporated by reference as if set forth in full herein, except that any reference to the Resource Recovery Agreement contained in said Section 10.02 of either Resource Recovery Agreement shall be deemed a reference to this Agreement, and any reference to the MRF or the AFB in either Resource Recovery Agreement shall be deemed a reference to the Transfer Station and to include, as appropriate, the transportation of Acceptable Waste.

VIII. OTHER INCORPORATION BY REFERENCE.

As this Agreement applies to the City, each and every provision of Articles XI, XII, XIII, XIV, XV, and XVI of the City Resource Recovery Agreement are deemed to be incorporated by reference herein as if set forth verbatim, and as this Agreement applies to the County, each and every provision of Articles XI, XII, XIII, XIV, XV, and XVI of the County Resource Recovery Agreement are deemed to be incorporated by reference herein as if set forth verbatim, except that any reference to "this Agreement" in either Resource Recovery Agreement shall be deemed to be a reference to this Agreement, it being the intention of the parties that each and every provision therein

apply to this Agreement as if it were set forth verbatim in the such Resource Recovery Agreement.

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

CITY OF ROCKY MOUNT

Date: _____

By: _____
[City Manager]

APPROVED AS TO FORM:

By: _____
City Attorney

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

By: _____
Director of Finance

NASH COUNTY

Date: _____

By: _____
Chairman of the Board of
Commissioners

APPROVED AS TO FORM:

By: _____
County Attorney

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

By: _____
Director of Finance

WILSON RESOURCES, LIMITED PARTNERSHIP,
a Delaware Limited Partnership

By its General Partner:

Carolina Energy, Limited Partnership,
a Delaware Limited Partnership

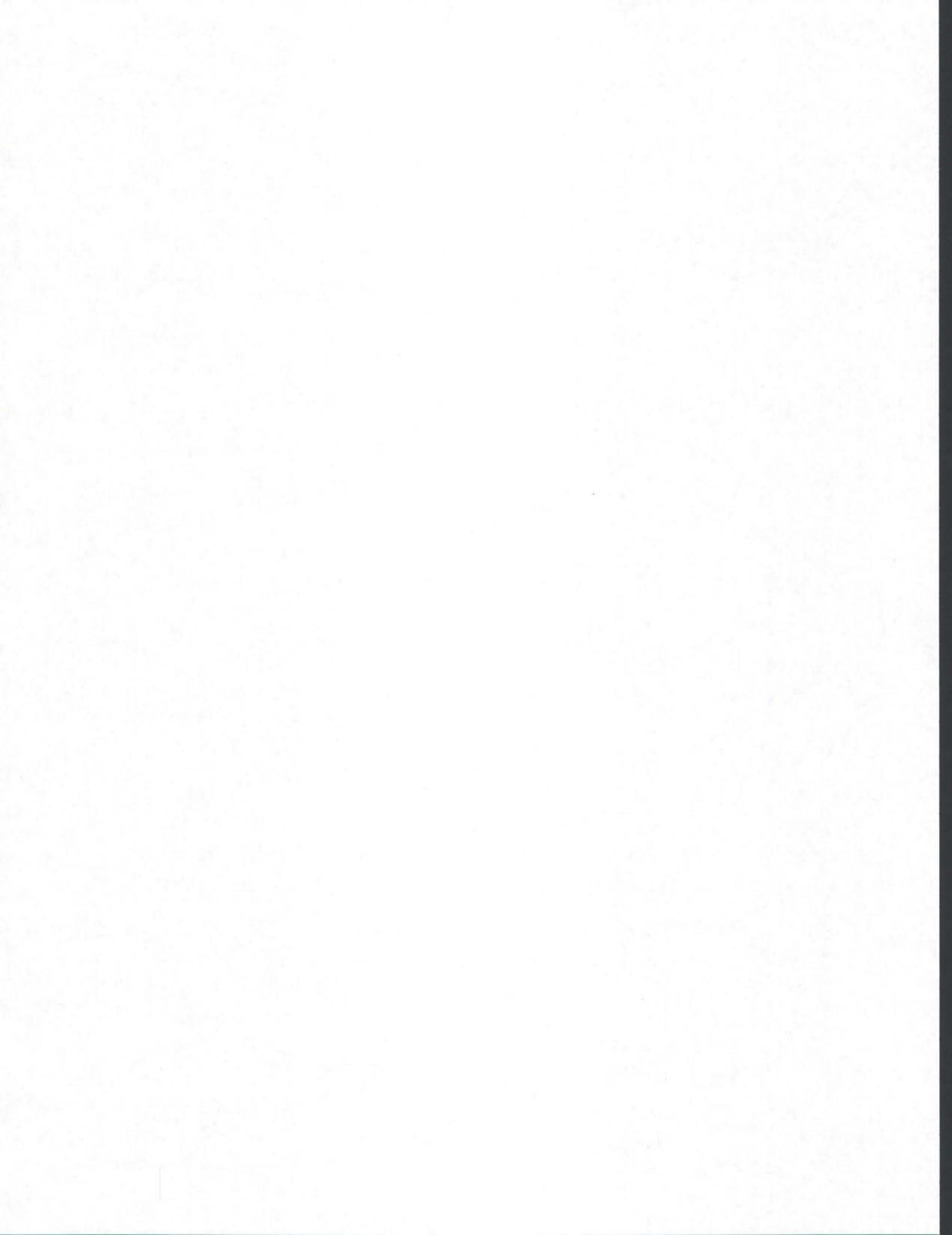
By its General Partner:

Carolina Energy Corp., a Delaware
corporation

ATTEST:

By: _____

By: _____
Alan McDonald, President



GROUND LEASE
AND
FRANCHISE AGREEMENT

by and between

WILSON RESOURCES, Limited Partnership
a Delaware Limited Partnership

and

THE COUNTY OF WILSON
State of North Carolina

November 2, 1994

THIS GROUND LEASE AND FRANCHISE AGREEMENT ("Agreement"), executed this 2nd day of November, 1994, by and between WILSON RESOURCES, LIMITED PARTNERSHIP, a Delaware limited partnership (hereinafter referred to as "Lessee"), and the COUNTY OF WILSON, North Carolina (hereinafter referred to as "Lessor").

STATEMENT OF PURPOSE

LESSOR is the owner of a parcel of land located in Wilson County, North Carolina, which parcel is more particularly described on Exhibit A attached hereto and incorporated herein by reference, together with all easements and other property rights appurtenant thereto (the "Leased Premises"). Lessee and Lessor intend that lessee shall lease the Leased Premises under a long term ground lease to construct and then operate on the Leased Premises a facility for solid waste processing, materials recovery services, refuse-derived fuel ("RDF") preparation, and for the combustion of RDF and the production of steam and/or electricity (such facility to be referred to herein as a "MRF"), and other facilities related to the processing or recycling of municipal solid waste. The MRF will be designed to have an energy generating capacity of 8 megawatts or less. Lessor and Lessee have entered into this Agreement in order to document their respective understandings and obligations concerning the leasing, the franchise and matters relating thereto.

AGREEMENT

NOW, THEREFORE, subject to the terms and conditions precedent hereof, and in consideration of the grants and assignments and covenants and promises hereinafter made and set forth, and the mutual benefits to be derived therefrom, the receipt and sufficiency of which are hereby acknowledged, the parties hereto grant, lease and otherwise agree as follows:

ARTICLE I.

GRANT OF FRANCHISE RIGHTS AND LEASEHOLD INTEREST

Section 1.1. The Lessor hereby demises and leases unto Lessee the Leased Premises, for and subject to the terms and conditions set forth below, for the purpose of providing a specific location on which to exercise the franchise rights herein granted.

Section 1.2. The Lessor hereby grants to Lessee the exclusive right, license and franchise to install and operate the MRF and related facilities as set forth in the Statement of Purpose on, within and from the Leased Premises pursuant to a resource recovery agreement dated the 2nd day of November, 1994, by and among Lessee and Lessor (the "Resource Recovery Agreement").

Section 1.3. The Board of Commissioners of Lessor has found and determined that granting such franchise and lease will benefit the public health, safety and welfare, and, in particular, materially promote and expedite accomplishment of the purpose and goals of the State of North Carolina with respect to solid waste management as set forth in N.C.G.S., Section 130A - 309.01 et seq.

ARTICLE II.

TERM

Section 2.1. Term. The term of this Agreement shall commence upon the execution hereof by the last necessary party to execute this Agreement and shall remain in effect for a term of twenty-six (26) years from the Commencement Date (the "Term"). For the purpose of this Agreement, "Commencement Date" and "Contract Year" shall be as defined in the Resource Recovery Agreement, which definitions and descriptions are incorporated herein as if fully set out herein.

ARTICLE III.

RENTAL

Section 3.1. Lessee shall pay an annual minimum total combined franchise fee and rent (collectively "Annual Rental") in an amount equal to (i) Seventy-Eight Thousand Dollars (\$78,000), plus (ii) the amount, if any, by which the sum of One Hundred Thirty-Two Thousand Dollars (\$132,000) exceeds the amount of all real and personal property taxes paid to the County on the Leased Premises and the facilities and equipment located thereon for the year for which the Annual Rental is paid, *i.e.* the preceding tax year (with no amount included in Annual Rental if such taxes exceed such amount), plus (iii) the amount, if any, by which the sum of Eighty-Five Thousand Dollars (\$85,000) exceeds the amount of all real and personal property taxes paid to the City of Wilson, North Carolina on the Leased Premises and the facilities and equipment located thereon for the year for which the Annual Rental is paid, *i.e.* the preceding tax year (with no amount included in Annual Rental if such taxes exceed such amount); such that, for instance, in

the event that the amount of such taxes paid to the County equals or exceeds \$132,000 and the amount of such taxes paid to the City of Wilson equals or exceeds \$85,000, the Annual Rental shall be \$78,000.

Section 3.2. The Annual Rental shall be paid by Lessee to Lessor in one annual installment, in arrears. Each annual installment is due and payable on or before the first day of each Contract Year following the first Contract Year during the Term of this Agreement. In the event the Term of this Agreement begins on a day other than the first day of a Contract Year, the Annual Rental for the partial Contract Year shall be prorated, and should the Term end on a day other than the last day of a quarter, the Annual Rental for the partial Contract Year shall be similarly prorated and paid on the first day after the end of the Term.

ARTICLE IV.

USES

Uses of the Leased Premises under the franchises and leases herein granted shall be limited to those uses that are permitted by the Resource Recovery Agreement, those described in the Statement of Purpose, and any other lawful purpose under the laws of North Carolina. For the purpose of interpreting this Section, the provisions of the Resource Recovery Agreement pertaining to uses of the Leased Premises are incorporated by reference into this Agreement as though fully set forth herein.

ARTICLE V.

PROPERTY RIGHTS, REMOVAL AND RESTORATION

Section 5.1. The parties agree that prior to the expiration of the term of this Agreement, should this Agreement not have been terminated as the result of an Event of Default by the Lessee, subject to the provisions of applicable law, before entering into negotiations with any third party for the provision of waste processing services then being provided on and from the Leased Premises, the Lessor will first negotiate in good faith with the Lessee for the provision of such services at the Leased Premises. The Lessee agrees, upon expiration of this agreement, to negotiate in good faith with the Lessor to provide such waste processing services.

If, at the expiration of the term of this Agreement, the parties have been unable to reach an agreement as described in the preceding paragraph, Lessor may purchase the real and personal property and fixtures used in the MRF which the Lessee owns, on an "as is" basis and subject to the mortgage and other rights of the Credit Institution, at fair market value. Upon such purchase, the Lessee shall convey to the purchasing Lessor good and indefeasible title to any real property conveyed and good and marketable title to any personal property used in the MRF and so purchased, subject to all encumbrances, which in no event shall exceed the fair market value of the property so purchased. At least six (6) months prior to the expiration of the term hereof, the parties hereto will enter into good faith negotiations to determine the fair market value of the Lessee's equity interest pursuant to this Agreement. If the Lessor elects to exercise its option to purchase the MRF, the Lessor shall give the Lessee at least three (3) months irrevocable written notice of its intention to do so. If Lessor does not elect to exercise its option to

purchase the MRF, the Lessee, upon the termination of this Agreement, shall be entitled to remove from the Leased Premises all of Lessee's personal property and fixtures, notwithstanding that fixtures become property of Lessor under applicable law; provided, however, that Lessee may remove fixtures only to the extent that damages to the Leased Premises caused by such removal are cured.

Section 5.2. If, pursuant to any provision of this Agreement, the fair market value of the MRF is to be determined, such value shall be the value which would be obtained for such facility in an arm's length transaction between an informed and willing buyer under no compulsion to buy, and an informed and willing seller, under no compulsion to sell, taking into account all encumbrances (i.e., on the assumption that the buyer is assuming all indebtedness secured by any encumbrance and that the facility remains subject to any other encumbrances) and based upon the then current condition of such facility, and further assuming the continuing operation of such facility at the most recent price in effect under this Agreement. If the Lessor and Lessee are unable to agree on the fair market value of a facility within 60 days from the commencement of negotiations, and if either party shall give written notice to the other requesting determination of such fair market value by appraisal, the appraisal shall be made by two independent appraisers who shall be qualified, nationally recognized appraisers of industrial property or investment bankers familiar with MSW disposal and with facilities similar to a MRF, one of whom shall be chosen by the Lessee and one of whom shall be chosen by the purchasing Lessor, or, if two such appraisers cannot agree, by a third appraiser chosen by the mutual consent of such two appraisers. If either party shall fail to appoint an appraiser within 10 days from written notice from the other party requesting such

appointment, or if such two appraisers cannot agree upon the amount of such appraisal and fail to appoint a third appraiser within 10 days, then either party may pursue the dispute resolution procedures set forth in the Resource Recovery Agreement.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF THE LESSOR

Section 6.1. The Lessor represents and warrants that no agreement currently exists, either verbal or written, that grants or assigns any or all of the franchise rights, demises or leases the leasehold interest hereinabove granted and leased to Lessee to any party, grants any other rights to any party with respect to the Leased Premises other than to Lessee, or grants any right to any third party with respect to the portion of the Property subject to the easements granted hereunder which are inconsistent with or which will interfere with the easements granted hereunder.

Section 6.2. Lessee and its employees, assigns, agents, and contractors shall have freedom of access to the Leased Premises at all times. The Lessor warrants that Lessee will enjoy quiet possession of the Leased Premises, limited only to the extent of the residual rights of the Lessor to exercise the police powers of the Lessor to protect the public health, safety and welfare and as set forth in the Resource Recovery Agreement.

Section 6.3. The Lessor hereby represents that it has title to and possession of the Property, subject to existing easements and encumbrances of record and the rights and easements herein granted, and warrants that it has the full right and authority to grant the rights set forth in this Agreement.

Section 6.4. The parties understand and agree that neither the Leased Premises nor the use of the Leased Premises contemplated in this Agreement constitutes a "landfill" or the operation of a "landfill" as the word is defined in N.C.G.S., Section 130A-290(a)(16), and that Lessee is not an "owner" or "operator" of a "landfill" as so defined. Notwithstanding the foregoing, the parties understand and agree that the MRF on the Leased Premises may be designated by the State of North Carolina as a "resource recovery" facility, as the term is defined in N.C. G. S., Section 130A-290(a)(29), or a solid waste management facility other than a "landfill," for which a permit may be required, in which case the provisions of Article VII below apply.

Section 6.5. The Lessor hereby warrants and represents that, to its best knowledge and belief (which knowledge and belief includes the knowledge and belief of the County Manager and the County Director-Solid Waste), the present condition of the Leased Premises does not violate any federal, state, or local environmental laws and that it does not contain toxic or Hazardous Waste and agrees to indemnify Lessee, the Credit Institution, and its successors and assigns, to the extent permitted by law, from any and all claims of every type and nature arising out of any actions brought against Lessee, the Credit Institution, or its successors and assigns as a result of the Leased Premises currently or at any time hereafter being in violation or alleged violation of any environmental law or regulation as a result of any condition created by or attributable to any person or entity other than Lessee prior to the date of execution hereof. For purposes hereof, "Hazardous Waste" shall have the meaning set out in the Resource Recovery Agreement, which meaning is incorporated herein as if fully set out. If Lessee or the Leased Premises are subject to any environmental clean-up order by any court or

governmental authority or Lessee is required to clean-up any Hazardous Waste pursuant to an action by an individual or other non-governmental party or to any environmental clean-up responsibility act enacted by the State of North Carolina or any other government or governmental authority, or otherwise, the Lessor agrees that it will, to the extent permitted by law as defined in the Resource Recovery Agreement, pay any and all costs incurred in connection with such cleanup, except to the extent that all or part of the clean-up costs have resulted from materials transported to or placed upon the Leased Premises by Lessee or its successors and assigns (as distinct from any cause created by or attributable to any other entity or person whether or not related to the Lessor). Any environmental clean-up required as a result of Lessee's operations on the Leased Premises will be paid for by the Lessee, and this covenant shall survive the termination of this Agreement.

Section 6.6. The Lessor hereby agrees to indemnify Lessee and its successors and assigns, to the extent permitted by applicable law as defined in the Resource Recovery Agreement, for any losses suffered as a result of the failure of any representation or warranty made by the Lessor herein to be true and correct or the failure of the Lessor to perform any of its obligations hereunder.

Section 6.7. The Lessor hereby agrees that any payments required to be made to Lessee hereunder, whether with regard to the Lessor's obligations to indemnify Lessee hereunder or otherwise, shall be made directly to the Credit Institution or to an escrow agent mutually agreed to by the Lessor and the Credit Institution, unless the Credit Institution is no longer involved in which case such payments shall be made directly to the Lessee.

ARTICLE VII.

REPRESENTATIONS AND COVENANTS OF LESSEE

Section 7.1. Lessee shall, at its own expense, install and operate a MRF on the Leased Premises and for that purpose shall construct, acquire and otherwise provide such structures and improvements other than those acquired under this Agreement and such equipment, materials, supplies and other personal property necessary for such operation, all pursuant to the Resource Recovery Agreement.

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

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

Section 7.4. Subject to Article XIV herein, Lessee shall not suffer or permit the Leased Premises to become subject to any lien or encumbrance securing any debt of any kind owed by Lessee; provided, however, that Lessee, pursuant to Section 9.1, may assign the rights granted to it hereunder in the Leased Premises, the easements created under this Agreement and any improvements or other equipment placed from time to time upon the Leased Premises by Lessee.

Section 7.5. Lessee shall be responsible for maintaining in a good state of repair its facilities on the Leased Premises.

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

Section 7.7. Lessee shall maintain insurance contracts, as required in the Resource Recovery Agreement, the terms and conditions of which are incorporated herein as if fully set forth.

Section 7.8. Lessee shall install and operate monitoring wells, in such numbers, manners and placements as Lessee shall consider necessary and appropriate, for the purpose of monitoring and evaluating the quality of ground water on the Leased Premises and its compliance with applicable environmental standards.

Section 7.9. Lessee hereby agrees to indemnify the Lessor and its successors and assigns for any losses suffered as a result of the failure of any representation or warranty made by Lessee herein to be true and correct or the failure by Lessee to perform any of its obligations hereunder.

ARTICLE VIII.

DEFAULT

Section 8.1. If there is a default in a provision of the Resource Recovery Agreement, or if there is a default in any provision of this Agreement other than the payment of the Annual Rental called for under Section 3.1, the default provisions of the Resource Recovery Agreement shall govern what constitutes a default, who is entitled to notice of a default, what periods of grace and cure exist, by when and by whom cure may be effected, and the remedies agreed upon in the event of default. For such purpose the default and remedy provisions of the Resource Recovery Agreement are incorporated into

this Section as though fully set forth herein. A default under the Resource Recovery Agreement is a default under this Agreement and termination of the Resource Recovery Agreement shall constitute a termination of this Agreement.

Section 8.2. In the event that Lessee fails to pay the Annual Rental called for by Section 3.1, the Lessor shall notify the breaching party and the Credit Institution, in writing, of the non-receipt of payment. Lessee, if in default, shall have sixty (60) days after receipt of such notice in which to make full payment. Full payment shall consist of payment of all arrearages, plus interest of 1.0% per month, or a prorated portion thereof, after the due date. Should Lessee fail to make full payment within said sixty (60) days, the Lessor shall have the right to terminate this Agreement, subject to the rights of the Credit Institution granted under Article XIV.

ARTICLE IX.

ASSIGNMENT

Section 9.1. This Agreement shall inure to the benefit of the Credit Institution and Lessee's successors, assigns and/or delegates, and be binding upon all parties hereto and their successors, assigns and/or delegates. Lessee shall have the right to assign all rights granted herein, subject to the approval of the Lessor, which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, Lessee shall have the absolute right to sublet, assign or otherwise transfer its interest in this Lease of any parent, subsidiary or other affiliate of Lessee, or a subsidiary or Lessee's parent, or to a corporation with which Lessee may merge or consolidate, without Lessor's approval, written or otherwise.

ARTICLE X.

NOTICES

Section 10.1. Any notice to be given under this Agreement shall be in writing and shall be deemed to have been properly given and received (i) when delivered in person to the authorized representative of the party to whom the notice is addressed, or (ii) on the date received as indicated on the return receipt when sent by prepaid registered mail, return receipt requested, or (iii) one day after delivery to Federal Express or a comparable next-day delivery service marked appropriately, to the party to be notified at the address indicated as follows:

To Lessee: Wilson Resources, Limited Partnership
Attn: Mr. George Armistead
11757 Katy Freeway, Suite 1420
Houston, Texas 77079

To Lessor: County of Wilson
Attn: County Manager
P. O. Box 1728
101 N. Goldsboro
Wilson, North Carolina 27894-1728

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

ARTICLE XI.

PROPERTY TAXES

Section 11.1. Lessee shall, during the term of this Agreement, pay all ad valorem property taxes that may be levied lawfully upon or assessed against personal property that it owns and is located within the taxing jurisdiction of the Lessor or municipality in the

Lessor pursuant to this Agreement, including its leasehold and franchise interests in real and personal property hereunder.

ARTICLE XII.

TERMINATION

Section 12.1. The parties agree that this Agreement and the grants and assignments of franchises and leases and the terms thereof set forth above are and shall be subject to the conditions that if the Resource Recovery Agreement is terminated for any cause or reason following execution, this Agreement and the grants and assignments of franchises and leases made hereunder shall terminate effective the day and year of the termination of the Resource Recovery Agreement.

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

ARTICLE XIII.

EMINENT DOMAIN

Section 13.1. If the whole or any part of the Leased Premises shall be taken by any public authority under the power of eminent domain or any like power (or by deed in lieu thereof), the following provisions shall apply.

(a) If, in the reasonable discretion of Lessee, the portion of the Leased Premises so taken renders the Leased Premises, in part or entirely, unsuitable for Lessee's intended use, Lessee may terminate this Agreement by written notice given within thirty (30) days after the date possession of the Property so taken has been delivered to the taking authority.

(b) If the taking of any portion of the Leased Premises does not result in the termination of this Agreement under Section 13.1(a) above, this Agreement shall continue in full force and effect, except that the rent shall be reduced equitably, in proportion to the loss of beneficial use of the property. After any such taking and provided the Agreement is not terminated as provided in Section 13.1(a) above, Lessee, at its sole cost and expense, shall make all necessary restorations, repairs, and alterations to the buildings and improvements remaining on the Leased Premises; provided, however, if any such taking or conveyance in lieu thereof occurs within the last three (3) years of the Term or during any renewal term Lessee shall have the option to terminate this Agreement upon ninety (90) days written notice to Lessor following such taking or conveyance in lieu thereof, without any obligation to repair, restore or reconstruct any improvements, buildings or structures on the Leased Premises.

Section 13.2. Lessor and Lessee hereby agree to cooperate in applying for and prosecuting any claim against the condemning authority for the taking of the Leased Premises. If the Agreement is terminated as herein provided the aggregate net award, after deducting all expenses and costs, including attorneys' fees reasonably incurred in connection therewith, shall be distributed as follows: Lessee shall be entitled to that portion of such award representing the fair market value of its leasehold estate in the buildings, structures, improvements and trade fixtures so taken, reasonable relocation expenses and such additional relief as may be permitted by law or equity, and Lessor shall be entitled to the remainder of the award, representing Lessor's interest in the fair market value of the Leased Premises so taken. In the event of a taking under the terms of this paragraph which does not result in the termination of this Lease, the aggregate net award, after payment of all expenses and costs, including attorneys' fees reasonably incurred in connection therewith, shall be distributed as follows: Lessee shall be entitled to the portion of such award necessary to reimburse Lessee for the reasonable expenses and costs actually incurred in the restoration, repair, or alteration of the building and improvements remaining on the Leased Premises; and Lessor shall be entitled to the remainder of such award.

(a) If this Lease is terminated as provided in this paragraph, Lessee shall pay all Annual Rental and perform all other covenants up to the date that possession of the Leased Premises shall be required to be delivered to the appropriate authority and Lessor shall make a proportionate refund of any Annual Rental paid by Lessee in advance.

ARTICLE XIV.

MORTGAGING

Section 14.1. Lessee may obtain financing for the construction of the improvements to be located on the Leased Premises and permanent financing and refinancing thereafter and may grant its mortgagee(s) a security interest in Lessee's interest in the Leased Premises, including this Agreement, buildings, improvements, fixtures, equipment, inventory and any other personal property located thereon. Nothing in this Section shall be construed as Lessor's consent to subordinate its fee simple interest in the Leased Premises to Lessee's financing. Nothing in this Section shall prevent Lessor from mortgaging or otherwise encumbering its fee interest in the Leased Premises, however, Lessor agrees that this Agreement is to remain in force and effect in the event of any foreclosure against the Lessor's interest in the Leased Premises, and any mortgage or other incumbrance shall so reflect. Further, nothing in this paragraph shall affect the property rights of Lessor upon the termination of the Lease.

Section 14.2. Subject to the terms of the Resource Recovery Agreement relating to the right to notice and right to cure of the Credit Institution, Lessor agrees to provide the owner or holder of any mortgage or security interest granted by Lessee (a "Mortgage") with written notice of any defaults hereunder, and agrees that any such mortgagee (a "Mortgagee") shall be provided the right to cure any such default within applicable cure periods.

Section 14.3. Lessor shall not exercise any right, power or remedy with respect to any default or termination hereunder until the expiration of any cure period provided

to Lessee or to the Credit Institution in the Resource Recovery Agreement or in this Agreement.

Section 14.4. Mortgagee may, after default hereunder, make any payment or perform any act required hereunder or by the Mortgage to be made or performed by Lessee with the same effect as if made or performed by Lessee; provided that no entry by the Mortgagee upon the Leased Premises for such purpose (by itself) shall constitute or be deemed to be an eviction of Lessee and shall not waive or release Lessee from any obligation or default hereunder (except any obligation or default which shall have been fully performed or corrected by such payment or performance by a Mortgagee).

Section 14.5. In the event (i) Lessee's interest hereunder shall be sold, assigned or otherwise transferred pursuant to the exercise of any right, power or remedy of a Mortgagee under a Mortgage or pursuant to judicial proceedings or Mortgagee shall have arranged for the correction of any default hereunder by any new Lessee under the new lease referred to below, or (ii) this Agreement shall not have been terminated by reason of default pursuant to the terms hereof, Lessor, upon receipt of a written request therefor and upon payment by Mortgagee of all unpaid rent and expenses (including, without limitation, attorneys' fees and expenses) incident thereto, will execute and deliver a new lease to the Mortgagee or its nominee, for the remainder of the term or any renewal term of this Agreement, with the same terms as are contained herein and with equal priority hereto. Upon the execution and delivery of such new lease, Lessor, at the expense of the new tenant, will cooperate with the new tenant to cancel and discharge this Agreement of record and remove Lessee from the Leased Premises. If the Mortgagee shall become the Lessee under this Agreement or a new lease as provided for above, Mortgagee shall,

notwithstanding any other provision of this Lease, have the right to transfer, sell or assign its interest in this Agreement or such new lease with the consent of Lessor which shall not be unreasonably withheld (and the financial ability of the new tenant must be reasonably acceptable to Lessor), provided that Mortgagee is not then in default under any of its obligations under this Agreement or such new lease. Upon such transfer, sale or assignment and provided all Rental and all other sums payable hereunder and under the new lease to the date of such transfer, sale or assignment are paid by Mortgagee, Mortgagee shall, notwithstanding any other provision of this Agreement, be released from all further liability under this Agreement or any such new lease. Upon written request therefor and upon payment by Mortgagee of all expenses (including, without limitation, attorneys' fees and expenses) incident thereto, Lessor will execute and deliver a new lease to any such transferee or assignee for the remainder of the Term (including renewal periods) of this Agreement or any such new lease given to such Mortgagee as provided above, with the same terms as are contained in this Agreement and with equal priority hereto. Notwithstanding anything herein to the contrary, however, Lessor shall not grant a new lease unless and until this Agreement shall have been terminated.

ARTICLE XV.

CONDITIONS PRECEDENT TO OBLIGATIONS OF LESSEE

Section 15.1. The obligations of the Lessee hereunder are subject to the fulfillment, or waiver by the Lessee, prior to or on January 31, 1995, of each of the following conditions:

(a) Lessee shall have received evidence, satisfactory to it in its reasonable discretion, that no portion of the Leased Premises constitutes or includes "wetlands" under any federal or State Statute.

(b) Lessee shall have received evidence, satisfactory to it in its reasonable discretion, that municipal water and sanitary sewer facilities and electrical services shall be readily accessible from the Leased Premises, without expense, delay, or inconvenience to Lessee.

In the event of the failure of (a) or (b) to occur on or before January 31, 1995, or waiver thereof by the Lessee, this Agreement shall be of no further force or effect, and Lessee shall have no obligations hereunder.

ARTICLE XVI.

GENERAL PROVISIONS

Section 16.1. This Agreement sets forth all understandings between the parties respecting the subject matter of this contract and all prior agreements, understandings, and representations, whether written or oral, representing this subject matter, are merged into and superseded by this written Agreement.

Section 16.2. No modification, amendment, or surrender by Lessee of this Agreement shall be binding on the other party unless in writing and executed by both parties.

Section 16.3. The waiver of either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement

shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar thereto.

Section 16.4. This Agreement is not intended to be recorded, but the parties shall contemporaneously execute and acknowledge a memorandum of this Agreement for recording purposes in the form acceptable under North Carolina law to the Lessor's Register of Deeds.

Section 16.5. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity.

Section 16.6. Nothing in this Agreement shall be construed as creating a joint enterprise between the parties hereto nor as being for the benefit of third parties for any purpose, including, without limitation, establishment of any type of duty, standard of care, or liability with respect to third parties.

Section 16.7. It is not the intention of the parties entering into this Agreement to create, nor shall this Agreement be construed as creating any partnership, joint venture, or agency relationship between the Lessor and Lessee.

Section 16.8. This Agreement shall be binding on the successors, and assigns of the parties hereto with reference to the subject matter of this Agreement.

Section 16.9. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

Section 16.10. This Agreement shall be governed by the law of the State of North Carolina.

Section 16.11. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and it shall not be necessary in making proof of the Agreement or the terms hereof to produce or account for more than one such counterpart provided that the counterpart produced bears the signature of the party sought to be bound.

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

ATTEST:

COUNTY OF WILSON,
North Carolina

By: William A. Best
Clerk to the Board

By: Jack E. Emery
Chairman, Board of County
Commissioners

WILSON RESOURCES, LIMITED
PARTNERSHIP, a Delaware Limited
Partnership

By its General Partner:

Carolina Energy, Limited
Partnership, a Delaware Limited
Partnership

By its General Partner:

Carolina Energy Corp., a Delaware
corporation

ATTEST:

By: Steven A. Bobo
STEVEN A. BOBO
Secretary

By: Alan McDonald
Alan McDonald
President

"EXHIBIT A"

Description of Leased Premises

E X H I B I T "A"

November 1, 1994

LEASE DESCRIPTION
FOR
WILSON RESOURCES LIMITED PARTNERSHIP

BEGINNING at a point in the easterly right-of-way of Old Black Creek Road (SR 1606), said point being located N 19° 30' 51" E 722.63 feet, S 81° 45' 00" E 30.99 feet, N 22° 46' 33" E 32.18 feet and N 22° 14' 04" E 62.50 feet from the intersection of the centerline of Old Black Creek Road (SR 1606) with the centerline of SR 1692; Thence running from said point of BEGINNING and along the easterly right-of-way of Old Black Creek Road (SR 1606) N 22° 14' 04" E 38.29 feet, N 19° 47' 23" E 101.41 feet, N 16° 49' 10" E 101.52 feet, N 14° 04' 52" E 101.57 feet, N 10° 51' 46" E 101.33 feet and N 08° 58' 45" E 23.26 feet to a point, cornering; Thence running along the traverse of the centerline of a ditch with said ditch being the southerly property line of Robert Lee Scott the following courses and distances S 60° 33' 40" E 15.18 feet, S 57° 29' 17" E 60.64 feet, N 86° 01' 41" E 24.60 feet, N 81° 45' 00" E 283.47 feet, N 84° 29' 23" E 279.83 feet, N 79° 04' 20" E 139.90 feet, N 81° 29' 41" E 191.59 feet, S 84° 06' 30" E 52.47 feet, S 88° 27' 30" E 127.14 feet, N 50° 40' 21" E 113.91 feet, N 39° 51' 11" E 192.38 feet, N 39° 49' 54" E 12.00 feet, S 54° 11' 50" E 29.69 feet and N 87° 03' 35" E 38.40 feet to a point, cornering; Thence running the following courses and distances S 01° 26' 32" E 134.75 feet, S 02° 34' 08" E 24.14 feet, S 68° 50' 17" E 28.20 feet, S 17° 18' 52" E 23.96 feet, S 59° 41' 10" E 34.71 feet, S 53° 01' 28" E 31.02 feet, S 42° 07' 45" E 38.64 feet, S 17° 53' 48" E 39.70 feet, S 20° 39' 29" E 40.99 feet, S 22° 33' 24" E 34.24 feet, S 16° 20' 19" E 40.51 feet, N 88° 53' 04" E 10.25 feet, S 32° 36' 20" E 29.78 feet, S 23° 53' 45" E 32.80 feet, S 09° 21' 10" W 25.60 feet, S 65° 51' 50" E 33.80 feet, S 18° 41' 28" E 29.57 feet, S 32° 22' 06" E 39.28 feet, S 45° 36' 05" E 46.59 feet, S 12° 13' 03" E 23.39 feet, S 13° 04' 26" E 19.38 feet, S 23° 24' 12" E 47.08 feet, S 10° 11' 12" E 44.77 feet, S 29° 56' 13" E 15.35 feet, S 38° 16' 55" E 22.22 feet, S 29° 14' 11" E 37.95 feet, S 12° 35' 42" E 20.73 feet, S 61° 11' 08" E 22.11 feet, S 57° 29' 40" E 28.50 feet, S 04° 46' 28" W 14.78 feet, S 19° 38' 29" W 14.00 feet, S 34° 45' 51" E 24.11 feet, S 13° 38' 46" E 16.95 feet, S 29° 49' 53" E 23.82 feet, S 87° 51' 28" E 26.21 feet, S 45° 51' 41" E 29.92 feet, S 40° 08' 10" W 18.23 feet, S 26° 20' 22" E 35.10 feet, S 68° 51' 56" E 26.04 feet, N 66° 33' 47" E 15.49 feet, S 64° 25' 51" E 24.28 feet, S 71° 26' 24" E 43.94 feet, S 86° 10' 26" E 23.73 feet S 51° 36' 52" E 18.40 feet, S 68° 42' 34" E 23.08 feet, S 39° 56' 55" E 44.66 feet, S 85° 20' 29" E 27.23 feet, S 14° 14' 47" E 25.32 feet, S 43° 59' 56" E 46.57 feet,

S 67° 45' 13" E 13.00 feet and S 52° 23' 31" E 75.90 feet to a point in the northerly property line of Seth T. Wooten, cornering; Thence running with the northerly property line of Seth T. Wooten N 81° 45' 00" W 2327.41 feet to a point, cornering; Thence running N 08° 15' 00" E 91.80 feet to a point, cornering; Thence running N 81° 45' 00" W 99.13 feet to a point in the easterly right-of-way of Old Black Creek Road (SR 1606) the point of BEGINNING and containing 31.66 acres.



AGREEMENT

THIS AGREEMENT is made and dated as of April 13, 1994, among Cumberland County (the "County"), BCH Energy, Limited Partnership, a Delaware limited partnership ("BCH") and Carolina Energy, Limited Partnership, a Delaware limited partnership.

R E C I T A L S

A. BCH and the County, as well as Hoke County and Bladen County, are parties to an Amended and Restated Resource Recovery Agreement, dated as of April 24, 1992, as amended by Amendment No. 1 to Amended and Restated Resource Recovery Agreement, dated as of November 9, 1993 (as so amended, the "Resource Recovery Agreement"). In addition, BCH and the County are parties to an Amended and Restated Landfill Lease and Franchise Agreement, dated as of April 24, 1992, as amended by Amendment No. 1 to Amended and Restated Landfill Lease and Franchise Agreement, dated as of November 9, 1993, and by Amendment No. 2 to Amended and Restated Landfill Lease and Franchise Agreement, dated as of April 13, 1994 (as so amended, the "Landfill Lease").

B. Pursuant to the Resource Recovery Agreement and the Landfill Lease, BCH is constructing a materials recovery facility (the "BCH MRF") at the County's Ann Street Landfill (the "Landfill"). Pursuant to the Resource Recovery Agreement and the Landfill Lease, BCH is permitted to dispose of certain solid waste received at and processed by the BCH MRF in the Landfill.

C. Carolina, which is an affiliate of BCH, and certain other affiliates of BCH or Carolina intend to construct other materials recovery facilities (collectively, the "Other MRFs") in North Carolina.

D. BCH, Carolina and the County wish to provide that up to 60,000 tons per year of Ash and Residue (each as defined in the Resource Recovery Agreement) that will pass through a two inch trammel screen ("Fines") may be disposed of in the Landfill.

A G R E E M E N T

1. Disposal of Fines. After the Commencement Date (as defined in the Resource Recovery Agreement) and throughout the term of the Resource Recovery Agreement, so long as the Landfill is operating, Carolina and each other affiliate of BCH or Carolina owning or operating an Other MRF shall be permitted to dispose of up to 60,000 Tons (as defined in the Resource Recovery Agreement) of Fines produced at Other MRFs in the Landfill; provided, however, that the County shall not be required to accept for disposal at the Landfill any Fines

that have not been determined to be Environmentally Acceptable (as defined in the Resource Recovery Agreement) in accordance with pertinent state and federal laws and regulations. Such Tonnage shall be in addition to any solid waste that BCH is permitted to dispose of at the Landfill pursuant to the Resource Recovery Agreement and the Landfill Lease.

2. Disposal Fee. For each Ton of Fines disposed of at the Landfill pursuant to this Agreement, BCH, Carolina or an affiliate of BCH or Carolina shall pay the County a disposal fee equal to the Ash and Residue disposal fee then in effect under Section 6.08 of the Resource Recovery Agreement, plus five dollars (\$5.00).

3. Method of Payment. The County shall invoice BCH, not later than the tenth day of each month after the Commencement Date, for the amount of fines disposed of at the Landfill pursuant to this Agreement during the preceding month. Such invoices shall be paid within thirty (30) days after the date of the invoice.

4. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties regarding the subject matter of this Agreement, and there are no other terms, conditions, obligations, covenants, representations, or statements or conditions, oral or otherwise, of any kind whatsoever, pertaining to such subject matter.

5. Counterparts. This Agreement may be executed in three or more counterparts, each of which shall be deemed an original.

6. Governing Law. This Agreement shall be governed, construed, interpreted and enforced, in all respects, in accordance with the laws of the State of North Carolina.

7. Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intention of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

8. Assignment. BCH and Carolina shall have the right at any time to assign this Agreement and their rights hereunder to an affiliated entity, including without limitation a corporation or general or limited partnership whose general partners include BCH or Carolina or their respective shareholders or other entities affiliated with BCH or Carolina. BCH and Carolina shall also have the right to collaterally assign this Agreement to a bank or other financial institution, or a group of banks or financial institutions, acting through an agent, severally, or otherwise, providing debt and/or equity financing, or credit support for debt financing, for the BCH MRF or any Other MRF. In the event of any permitted assignment, the County shall certify, if required, that such assignment is permitted and accepted. Except as set

forth in this paragraph, BCH and Carolina may not assign this Agreement without the prior written consent of the County.

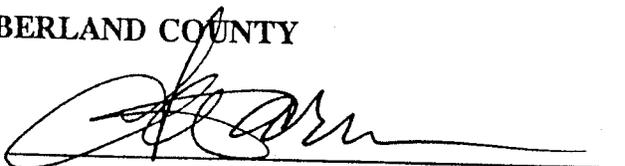
This Agreement may not be assigned by the County without the prior written consent of BCH and Carolina.

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

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

CUMBERLAND COUNTY

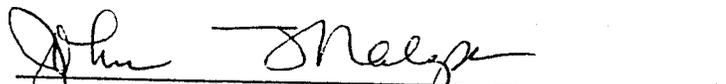
By:


Chairman of the Board of Commissioners

APPROVED AS TO FORM:


County Attorney

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


Director of Finance

BCH ENERGY, LIMITED PARTNERSHIP

By: BCH Energy Corp., its general partner

By: 
Alan McDonald, President

CAROLINA ENERGY, LIMITED PARTNERSHIP

By: Carolina Energy Corp., a managing general partner

By: George Armistead
Name: George H. Armistead, Jr.
Title: Chairman & Chief Executive Officer



ITEM NO. 5

COUNTY OF CUMBERLAND OFFICE OF THE COUNTY MANAGER

CLIFFORD G. STRASSENBURG
COUNTY MANAGER

P.O. BOX 1829 • FAYETTEVILLE, NORTH CAROLINA 28302-1829
TELEPHONE: 919-678-7723 • 678-7726
FAX: 919-678-7717

JUANITA PILGRIM
ASSISTANT COUNTY MANAGER
CLIFF SPILLER
ASSISTANT COUNTY MANAGER

April 13, 1994

MEMORANDUM

TO: BOARD OF COUNTY COMMISSIONERS
FROM: CLIFFORD G. STRASSENBURG, COUNTY MANAGER (60)
SUBJECT: REVISED PROPOSED GENERAL RELOCATION PLAN FOR THE
EUFAULA STREET RELOCATION PROJECT

BACKGROUND

At the January 18, 1994 Board meeting management presented a proposed General Relocation Plan for the Eufaula Street Relocation Project. The plan was developed based on management's understanding of the objectives the Board wishes to achieve -- namely to acquire all properties within 500 feet of the Baling Plant and to relocate the affected residents. The plan was also based on information developed from interviews of area residents conducted by county staff. Three unresolved issues were identified that served as impediments to the implementation of the plan: adequate funding; the lack of clear legal authority for the county to provide financial assistance for the relocation of displaced persons and businesses; and five unresolved policy issues. Although no action was taken on the proposed relocation plan, the Board did decide to ask the General Assembly to provide funding for the project and to give the county authority to expend funds for the relocation of displaced persons and businesses.

Since January two new developments have arisen that have a significant positive bearing on the relocation project. First, the Deputy County Attorney has found the legal authority we previously thought the county did not have to expend funds for the relocation of displaced Eufaula Street residents. The authority is not contained in the statutes applying to county government, but rather in state public works statutes that were apparently enacted to facilitate relocation needs resulting from state highway projects. Fortunately the statutes, entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act", extend the relocation

authority to local units of government. This seems to clear the way for the county to undertake the Eufaula Street Relocation Project without seeking additional authority from the General Assembly. The proposed General Relocation Plan for the Eufaula Street Relocation Project has been revised to incorporate the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (see Attachment "A").

The second development is that management has been able to work out a proposed arrangement with VEDCO that will result in VEDCO providing up to \$1,250,000 to assist with the Eufaula Street Relocation Project (see Attachment "B"). The VEDCO funds will be in the form of a grant (not a loan or advance requiring repayment) and will be provided on a dollar-for-dollar matching basis with county expenditures. In other words, the VEDCO funds will constitute a fifty percent matching grant up to a potential total project cost of \$2.5 million. A sum of \$500,000 will be available immediately to match the \$500,000 the county has budgeted for the Eufaula Street project. The balance of up to \$750,000 will be available when VEDCO's other North Carolina projects are approved which is expected to be toward the end of this calendar year. In return for the grant funds the county (as well as Bladen and Hoke Counties) must agree to allow VEDCO to process municipal waste from Nash County at the Ann Street Materials Recovery Facility (MRF). In addition, the county must also agree to accept for disposal at the Ann Street Landfill up to 60,000 tons per year of fines (inorganic residue material) from VEDCO's other North Carolina projects. The county will incur no cost for the municipal solid waste processed through the Ann Street MRF and, additionally, the county will be paid a disposal fee for any fines that VEDCO delivers for disposal in the Ann Street Landfill.

These two developments plus the actions the Board has taken resolve four of the five policy issues identified in January. The remaining policy issue is -- what would be the county's policy in the event a property owner declined to sell to the county? During the area survey several Eufaula Street residents told county staff they did not wish to sell their property or be relocated. Would the county exercise its power of condemnation, or would the property be allowed to remain in private ownership? If the property was left in private ownership, would this contradict the Board's finding that the area within 500 feet of the Baling Plant is not suitable for habitation? This policy issue needs to be resolved by the Board prior to implementing the relocation project.

RECOMMENDATION/PROPOSED ACTION

Management recommends the Board consider the following actions:

1. Approve the revised General Relocation Plan in principle.
2. Authorize management to negotiate an agreement with the Fayetteville Community Development Department, or another appropriate organization or private firm, to administer the Eufaula Street Relocation Project. The services

should include preparation of the detailed final relocation plan for the Board's approval; development of a refined project schedule and budget; and supervision of project implementation including the provision of relocation assistance advisory services.

3. Approve the proposed agreement with VEDCO in principle (Attachment "B") and authorize the Deputy County Attorney to prepare the appropriate legal documents for subsequent approval by the Board.
4. Resolve the policy issue regarding property owners who may decline to sell their Eufaula Street property to the county. The Board may wish to refer this matter to the Policy Committee for further study and recommendation.
5. Modify the county's request to the General Assembly to just ask for state funds to assist with the Eufaula Street Relocation Project. It is no longer necessary to request authority to expend county funds for relocation of displaced persons and businesses.

/md

Attachments

ATTACHMENT "A"

PROPOSED GENERAL RELOCATION PLAN
FOR THE
EUFAULA STREET RELOCATION PROJECT

Revised April 12, 1994

Outlined below is a proposed general plan for the Eufaula Street Relocation Project. After approval of the general plan, specific policies, cost caps and procedures will be developed and modifications made as necessary to guide the refinements and actual implementation of the plan.

I. Project Description

The Eufaula Street Relocation Project consists of the acquisition by the County of Cumberland of all properties within 500 feet of the Baling Plant situated near the western boundary of the Ann Street Landfill. The basis for the project is a finding by the Board of County Commissioners that the area within 500 feet of the Baling Plant is not suitable for habitation due to noise, odor, and fly and mosquito infestation caused by the operation of the Baling Plant. The project area includes 31 parcels totalling 5.72 acres exclusive of street rights-of-way (see Exhibit "A"). The area is primarily residential in character consisting of 25 residences including 17 owner-occupied dwellings and eight renter-occupied dwellings. Other land uses include a church, rest home and two vacant lots (one owned by the county).

After acquisition all structures will be removed. A portion of the area will be used for entrance and parking areas for the BCH Energy Project Materials Recovery Facility (converted Baling Plant). The balance of the area will be maintained as an open space buffer for the landfill and Materials Recovery Facility.

II. Acquisition

All properties will be acquired by the county based on appraisals prepared by professional fee appraisers to be retained by the county. Displaced property owners and occupants will receive additional financial assistance as described below.

III. Moving and Related Expenses

- A. Homeowners and renters: Displaced homeowners and renters will be reimbursed for the actual reasonable expenses for moving their families and personal property. As an alternative displaced homeowners and renters may elect to

receive a standard expense and dislocation allowance which will be determined according to a schedule based upon the number of rooms.

- B. Businesses: Owners of displaced businesses will receive reimbursement for:
- (1) Actual reasonable expenses for moving.
 - (2) Actual direct losses of tangible personal property as a result of moving the business.
 - (3) Actual reasonable expenses in searching for a replacement business in an amount not to exceed \$1,000.
 - (4) Actual reasonable expenses necessary to reestablish the business at its new site in an amount not to exceed \$10,000.

As an alternative owners of businesses may elect to receive a fixed payment computed according to criteria to be established by the county in an amount of not less than \$1,000 nor more than \$20,000.

- C. Non-profit organizations: Non-profit organizations will receive reimbursement for:
- (1) Actual reasonable expenses for moving.
 - (2) Actual reasonable expenses to reestablish the non-profit organization at a new site in an amount not to exceed \$10,000.

IV. Replacement Housing for Homeowners

Displaced homeowners will receive a payment in an amount not to exceed \$22,500 to assist in the acquisition of comparable replacement housing. The payment will consist of the following elements:

- A. The amount, if any, which when added to the acquisition cost of the dwelling acquired by the county, equals the reasonable cost of a comparable replacement dwelling.
- B. The amount, if any, which will compensate the displaced homeowner for any increased interest costs and other debt service costs which the displaced homeowner will be required to pay for financing the acquisition of the comparable replacement dwelling.
- C. Reasonable expenses incurred by the displaced homeowner for evidence of title, recording fees and other closing

costs incidental to the purchase of the replacement dwelling.

To qualify for this payment the displaced homeowner must have owned and occupied the dwelling acquired by the county for at least 180 days prior to the initiation of negotiations for the acquisition of the property and must acquire and occupy the replacement dwelling within one year after the date on which the displaced person received final payment from the county for the acquired dwelling.

V. Replacement Housing for Renters

Renters who have occupied a rental dwelling for at least 90 days prior to the initiation of negotiations for acquisition of such dwelling will receive a payment consisting of the amount necessary to enable the displaced renter to lease or rent for a period not to exceed 42 months a comparable replacement dwelling. The payment will not exceed \$5,250 and may be paid by the county in periodic installments.

As an alternative a displaced renter may elect to apply the \$5,250 to a down payment on the purchase of a comparable replacement dwelling.

VI. Expenses Incidental to the Transfer of Property

The county will reimburse or will pay on behalf of the owners of real property acquired for the project the reasonable and necessary expenses incurred for:

- A. Recording fees, transfer fees, and similar expenses incidental to conveying property.
- B. Penalty costs for pre-payment of any pre-existing mortgages recorded and entered into in good faith encumbering such real property.
- C. The pro-rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the county, or the effective date of possession of the real property by the county, whichever is earlier.

VII. Relocation Assistance Advisory Services

The county will ensure that relocation assistance advisory services are made available to all persons displaced by the project. The relocation assistance advisory services will consist of such measures, facilities or services as may be necessary or appropriate in order to:

- A. Determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance.

- UNCLASSIFIED
- B. Provide current and continuing information on the availability, sale prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and non-profit organizations.
 - C. Assist a person displaced from a business in obtaining and becoming established in a suitable replacement location.
 - D. Supply information concerning federal, state and local programs which may be of assistance to displaced persons and technical assistance to such displaced persons in applying for assistance under such programs.
 - E. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.
 - F. Relocation activities will be coordinated with other federal, state or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

VIII. Estimated Project Cost

Based on the general plan concepts outlined above the estimated cost of the Eufaula Street Relocation Project is \$1,650,000 to \$1,850,000. This amount is subject to change based upon actual property appraisals, the cost of comparable replacement housing, and any modifications that may be made to the proposed payment policies.

IX. Project Phasing

Implementation of the project can be phased over several fiscal years based upon the availability of funds, the availability of comparable replacement housing, and the particular needs and desires of persons to be displaced by the project. As a general rule the first priority for acquisition and relocation should be given to residential properties located nearest to the Baling Plant and lowest priority should be given to non-residential and vacant properties.

X. Project Administration

It is proposed the project be administered either by a consulting firm retained by the county or by the Fayetteville Community Development Department through an interlocal agreement between the city and the county. In either case the project administrator will be reimbursed by the county for staff time and expenses. The cost for project administration is included in the estimated overall project cost.



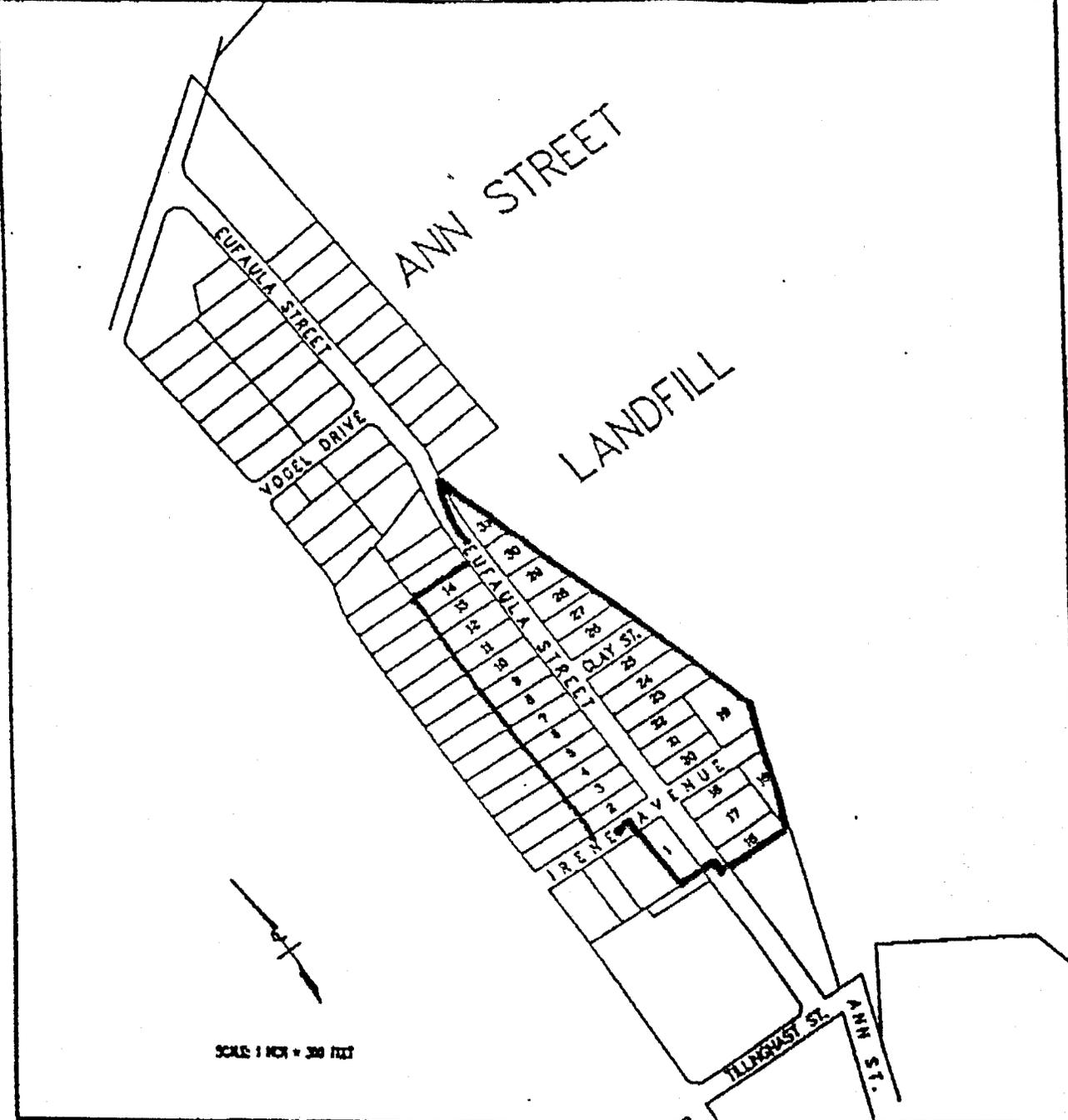
CUMBERLAND COUNTY

NORTH CAROLINA

PREPARED BY COUNTY ASSESSOR / GIS

Exhibit "A"
Eufaula Street Relocation Project

PROJECT AREA



PARCEL OWNERSHIP INFORMATION FOR EUFAULA STREET

LOT	P.I.N.	OWNER	ACREAGE	ASSESSMENT	LOT	P.I.N.	OWNER	ACREAGE	ASSESSMENT
1.	0437-08-2259	RICHARD ALLEN, JR.	0.17	50,300	16.	0437-08-3187	FRANKIE THOMAS	0.17	50,133
2.	0437-08-2000	WOMENS COURT	0.17	50,271	17.	0437-08-3273	JIMMIE McINTOSH	0.17	50,290
3.	0437-08-2003	WIMMERS TRUST	0.17	50,250	18.	0437-08-4200	DELIVERED TRUST	0.17	52,110
4.	0437-08-2501	BOBBY & BETTY MCWILL	0.17	51,750	19.	0437-08-4404	1ST PENTECOSTAL CHURCH	0.17	50,371
5.	0437-08-2506	MORTON STOVES, JR	0.17	51,650	20.	0437-08-4400	1ST PENTECOSTAL CHURCH	0.17	52,204
6.	0437-08-2001	BOBMC RECREATION	0.17	51,207	21.	0437-08-4000	JAMMIE WELLS	0.17	50,753
7.	0437-08-2000	JAMES HIGDON	0.17	50,491	22.	0437-08-4500	BOBBIE WELLES	0.17	50,733
8.	0437-08-2210	MARY PATTERSON	0.17	50,510	23.	0437-08-4334	DEBBY McWILL	0.17	50,733
9.	0437-08-2210	RICHARD LAMBY	0.17	50,333	24.	0437-08-4524	BOBBY McWILL	0.17	50,900
10.	0437-08-2001	RICHARD McWILL	0.17	51,300	25.	0437-08-4523	CHARLES STOTT	0.17	51,833
11.	0437-08-2000	THOMAS PEPPER	0.17	52,220	26.	0437-08-4704	CLAYTON WELLS	0.16	50,700
12.	0437-08-2021	FLOYD McWILL	0.17	51,154	27.	0437-08-4700	LOLA McWILL	0.17	51,701
13.	0437-08-2020	HAROLD CAMP	0.17	50,833	28.	0437-08-4003	LOLA McWILL	0.16	50,700
14.	0437-08-2020	McWILL McWILL	0.17	51,300	29.	0437-08-3991	KAREN WELLS	0.16	51,043
15.	0437-08-4250	MULT EMP. BLDG CO.	0.16	51,403	30.	0437-08-3990	JANE McWILL	0.16	52,230
					31.	0437-08-3990	CUMBERLAND COUNTY	0.16	50,300
				TOTALS					
					3.72			500,715	

SUMMARY OF PROPOSED AGREEMENTS BETWEEN
BCH ENERGY, LIMITED PARTNERSHIP, CAROLINA ENERGY,
LIMITED PARTNERSHIP, AND CUMBERLAND COUNTY

BCH Energy, Limited Partnership ("BCH") understands that Cumberland County intends to address the concerns of certain residents of properties located adjacent to the landfill. BCH wishes to commit to financially assist Cumberland County in this endeavor.

In addition, BCH and Cumberland County propose to enter into agreements that would permit BCH to accept municipal solid waste from Nash County for processing at the MRF being constructed by BCH in Cumberland County in the event that the MRF to be constructed by an affiliate of BCH in Lenoir County does not accept and process municipal waste by January 1, 1998. Finally, BCH and Cumberland County are contemplating entering into an agreement regarding the acceptance and disposal of additional "fines" (defined as ash and residue that will pass through a two inch trommel screen) by Cumberland County at its Ann Street Landfill and revising Exhibit B to the Amended and Restated Landfill Lease and Franchise Agreement (the "Landfill Lease") to include an additional portion of the Ann Street Landfill property upon which the MRF will be constructed and operated.

This memorandum summarizes the terms of the proposed agreements.

1. Cumberland County has advised BCH that it intends to address the concerns of certain residents of properties located adjacent to the landfill and BCH has expressed its desire to assist the County in this endeavor, as follows:

a. As a part of this program, Cumberland County will make compensatory payments (consisting of both payments for property ownership rights and relocation expenses) to the owners and other residents of Eufaula Street whose property is located within 500 feet of the baling plant which is part of the Ann Street Landfill.

b. BCH believes that its project will be beneficial to the residents because landfill operations will be relocated away from residents of Eufaula Street and odors and noises from existing operations will be eliminated or substantially reduced.

c. BCH and Carolina Energy will donate up to \$1,250,000 to Cumberland County to further assist in this endeavor. Up to \$500,000 of this contribution will be paid by BCH to the County as and when needed by the County to make payments to Eufaula Street property owners and other residents, in amounts equal to one-half of each such payment. Up to \$750,000 will be similarly paid by Carolina Energy beginning when the financial closing of the Carolina Energy project occurs.

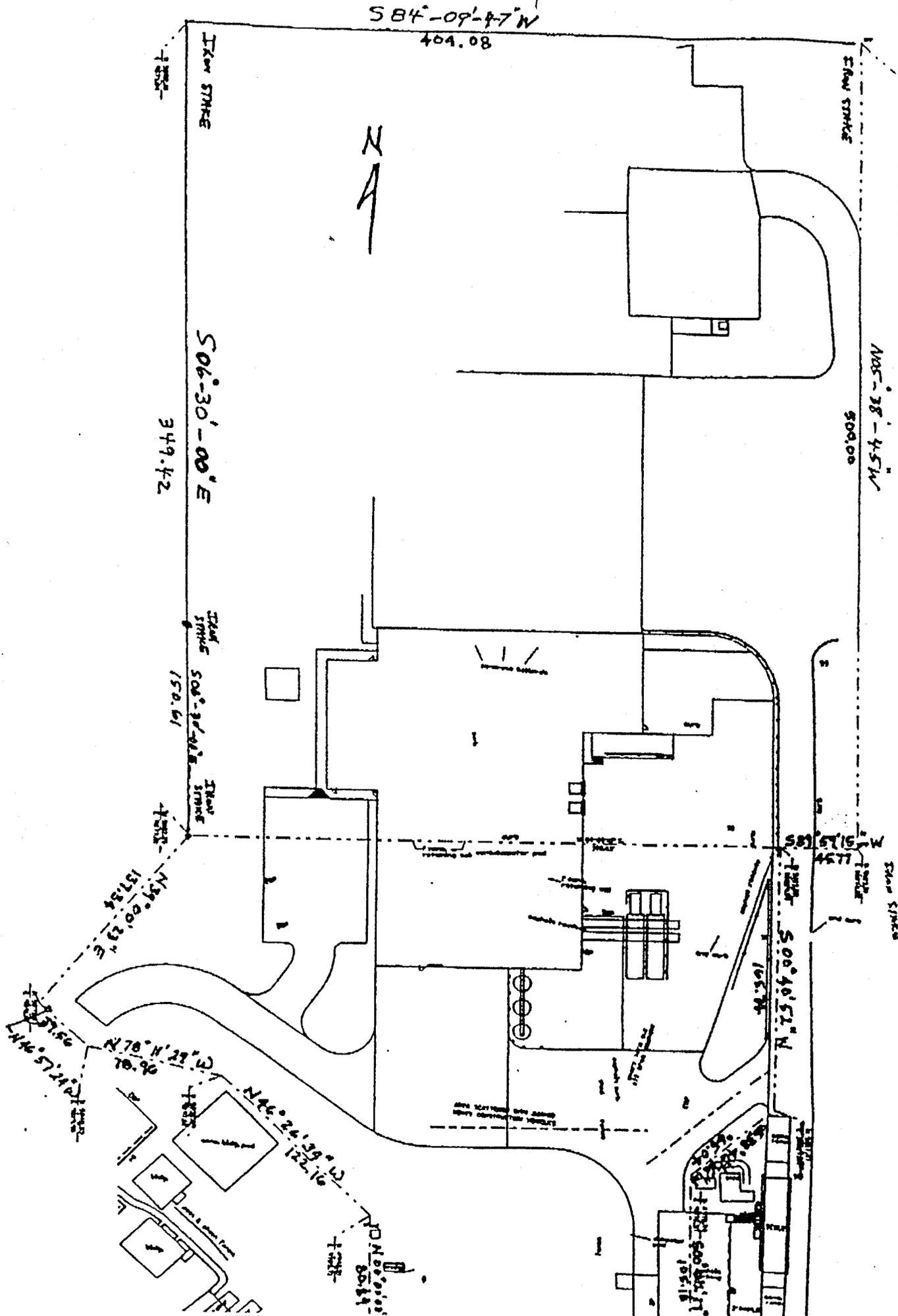
2. Cumberland County (as well as Bladen and Hoke Counties) will approve BCH accepting and processing municipal solid waste of Nash County at the MRF being constructed by BCH in Cumberland County.

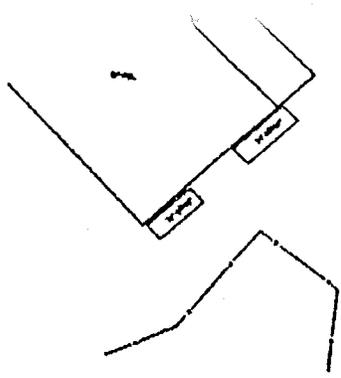
3. a. Cumberland County will agree to accept for disposal at its Ann Street Landfill up to 60,000 tons per year of fines from other North Carolina projects operated by Carolina Energy, Limited Partnership, an affiliate of BCH, or other affiliates of BCH. This tonnage will be in addition to any tonnage BCH is entitled to deposit in the Ann Street Landfill under the Amended and Restated Resource Recovery Agreement.

b. For each ton of additional fines disposed of at the Ann Street Landfill, BCH will pay Cumberland County a disposal fee equal to the Ash and Residue Disposal Fee then in effect under Section 6.08 of the Amended and Restated Resource Recovery Agreement, plus \$5.00 per ton.

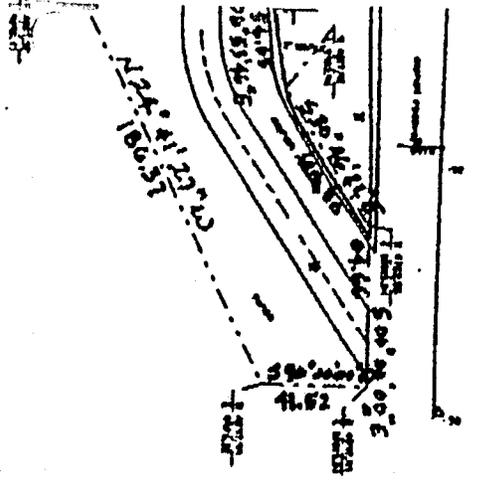
c. The agreement will become effective upon execution; deliveries will begin no earlier than the Commencement Date under the Amended and Restated Resource Recovery Agreement; and the Agreement will remain in effect for 26 years thereafter.

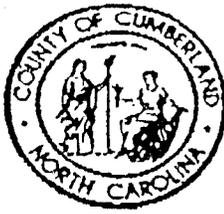
4. Exhibit B to the Landfill Lease will be revised to include an additional portion of the Ann Street Landfill property upon which facilities relating to the MRF will be constructed and operated.





100



ITEM NO. 10

**COUNTY OF CUMBERLAND
OFFICE OF THE COUNTY ATTORNEY**

G.B. JOHNSON
COUNTY ATTORNEY

ELAINE J. BOWSER
ADMINISTRATIVE SUPERVISOR

P.O. DRAWER 1829
FAYETTEVILLE, NORTH CAROLINA 28302
TELEPHONE (919) 678-7762
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DANNY G. HIGGINS
DEPUTY COUNTY ATTORNEY

DOUGLAS E. CANDER
ASSISTANT COUNTY ATTORNEY

DAVID L. CLEGG
STAFF ATTORNEY

April 13, 1994

MEMORANDUM FOR COUNTY COMMISSIONERS' AGENDA OF APRIL 18, 1994

TO: BOARD OF COUNTY COMMISSIONERS

FROM: DANNY G. HIGGINS, DEPUTY COUNTY ATTORNEY *DGH*

SUBJECT: AMENDMENT TO THE AMENDED AND RESTATED LANDFILL LEASE AND FRANCHISE AGREEMENT

Background: In connection with the BCH Energy, L.P. Waste to Energy Project, we executed an Amended and Restated Landfill Lease and Franchise Agreement on August 2, 1993. Exhibit B, and the plat attached to Exhibit B, show the 4.6 acres around the baling plant and the tipping floor which we agreed to lease to BCH Energy, L.P.. Once the engineers, Lockwood Green, came on site with the landfill to do the preliminary work for the construction of the material recovery facility (MRF) they determined that a larger area should be included in Exhibit B in order that all of their construction work would be included in the leased territory.

This Amendment has advantages for both BCH Energy, L.P. and the County. BCH Energy, L.P. needs to lease and control all of the territory on which they do construction and on which they will work. Also, it is to the County's advantage to have all of the territory that BCH Energy, L.P. will control included in the lease because of the insurance and indemnify provisions of the lease.

Recommendation and Proposed Action: That the Board of Commissioners authorize the Chairman to execute an amendment to Exhibit B of the Amended and Restated Landfill Lease and Franchise Agreement to include the larger area requested by BCH Energy, L.P..

DGH/svg

Attachment

2WDHCOIF.AQ1

"REVISED"

AMENDED AND RESTATED LANDFILL LEASE AND FRANCHISE AGREEMENT

"EXHIBIT B"

Description of Property leased to BCH Energy Corp.:

Beginning at an existing iron stake in the western line of the Ann Street Landfill, said point also the Northeast corner of Lot #11, Block "P" as shown on the Plat of Alexander McArthur Property as recorded in Plat Book #8 at Page 3, Cumberland County Registry and running thence; S 06° 30' 00" E, a distance of 150.61 feet to an iron stake set; thence running N39° 00' 23" E a distance of 137.34 feet to a point; thence running N 46° 57' 24" W a distance of 39.56 feet to a point; thence running N78° 11' 29" W a distance of 78.96 feet to a point; thence running N 46° 26' 34" W a distance of 122.16 feet to a point; thence running N 00° 00' 00" W a distance of 80.89 feet to a point; thence running S 90° 00' 00" W a distance of 110.76 feet to a point; thence running N 24° 41' 27" W a distance of 186.37 feet to a point; thence running S 90° 00' 00" W a distance of 41.52 feet to a point; thence running S 00° 00' 00" E a distance of 64.66 feet to a point; thence running S 30° 46' 22" E a distance of 64.30 feet to a point; thence running S 06° 53' 46" E a distance of 54.05 feet to a point; thence running S 00° 02' 37" E a distance of 105.18 feet to a point; thence running S 38° 46' 16" W a distance of 65.04 feet to a point; thence running S 00° 40' 52" W a distance of 165.74 feet to a point; thence running S 89° 59' 15" W a distance of 45.77 feet to an iron stake set; thence running parallel and through the back of concrete curb and gutter to the East of the Baling Facility, N 05° 38' 45" W a distance of 500.00 feet to an iron stake set; and running thence S 84° 90' 47" W, a distance of 404.08 feet to an iron pipe set in the western line of the landfill property; and running thence with the said Ann Street Landfill property line, S 06° 30' 00" E, a distance of 349.42 feet to the point of beginning.

DRAFT

CUMBERLAND COUNTY BOARD OF COMMISSIONERS
APRIL 18, 1994, 7:30 P.M.
REGULAR MEETING

PRESENT: Chairman, J. Lee Warren, Jr.
Vice Chairman, Johnnie Evans
Commissioner Tom Bacote
Commissioner Marshall Faircloth
Commissioner Juanita Gonzalez
Commissioner John Keefe
Commissioner Billy King
Cliff Strassenburg, Co. Manager
Juanita Pilgrim, Asst. Co. Mgr.
Cliff Spiller, Asst. Co. Manager
Danny Higgins, Dep. Co. Attorney
Rhonda Davis, Deputy Clerk

INVOCATION: Commissioner Tom Bacote

PLEDGE OF ALLEGIANCE

Recognition of outgoing Board/Committee members:
Carol Martin - Nursing Home Advisory Board
R.T. Smith - Nursing Home Advisory Board
Christina Washington - Board of Health

Recognition of the Government Finance Officers Association 1994
Distinguished Budget Presentation Award presented to Cumberland
County.

Addition to the Agenda:

MOTION: Commissioner Gonzalez offered a motion to add an
executive session to the meeting.
SECOND: Commissioner Evans
VOTE: UNANIMOUS

1. Public hearing to consider the closing of a portion of Waddell
Street in the Anna Mae Waddell Subdivision.

There were no speakers.

MOTION: Commissioner King offered a motion to adopt the order
closing a portion of Waddell Street.
SECOND: Commissioner Gonzalez
VOTE: UNANIMOUS

ORDER CLOSING A PUBLIC ROAD
(PORTION OF WADDELL STREET)

WHEREAS, a petition has been submitted to the Board of County
Commissioners by adjoining landowners to close a portion of Waddell
Street located in Anna Mae Waddell Subdivision in Cumberland
County;

MOTION: Commissioner Gonzalez offered a motion to make the Pre-Sentencing Diagnostic Team program effective June 1, 1994 and appropriate \$14,000 from the fund balance.

MOTION DIED FOR LACK OF A SECOND.

Commissioner Warren stated he feels the board should give as much consideration to their decisions as the task force did. He is not suggesting any long delays, but feels they should consider each proposal fully before making decisions.

Commissioner Gonzalez stated they would not have to fund every single priority. They will be getting some funding from the state. The task force has worked hard on these proposals and they have done a lot of work. She feels they should move forward.

Commissioner Faircloth stated people are concerned about the youth in this county.

Commissioner King asked about the truancy ordinance and how long it would take the legal staff to prepare the necessary paperwork.

Mr. Higgins advised it would take until the middle of May to develop a curfew or truancy ordinance.

MOTION: Commissioner Bacote offered a motion to accept the report from the Task Force for Juveniles in Trouble and to begin working on dealing with the proposals quickly and to direct staff to also begin working on the proposals.

SECOND: Commissioner King

DISCUSSION: Commissioner Warren again commended the task force members for their work and stated the board would be acting on them very soon.

Commissioner Evans also commended the task force members.

Mr. Strassenburg stated they will review the proposals to see what is involved and determine what needs to be done and give a report at the mid-month meeting in May.

VOTE: UNANIMOUS

5. Consideration of a revised proposed General Relocation Plan for the Eufaula Street Relocation Project.

BACKGROUND: At the January 18, 1994 Board meeting management presented a proposed General Relocation Plan for the Eufaula Street Relocation Project. The plan was developed based on management's understanding of the objectives the Board wishes to achieve -- namely to acquire all properties within 500 feet of the Baling Plant and to relocate the affected residents. The plan was also based on information developed from interviews of area residents conducted by county staff. Three unresolved issues were identified

that served as impediments to the implementation of the plan: adequate funding; the lack of clear legal authority for the county to provide financial assistance for the relocation of displaced persons and businesses; and five unresolved policy issues. Although no action was taken on the proposed relocation plan, the Board did decide to ask the General Assembly to provide funding for the project and to give the county authority to expend funds for the relocation of displaced persons and businesses.

Since January, two new developments have arisen that have a significant positive bearing on the relocation project. First, the Deputy County Attorney has found the legal authority we previously thought the county did not have to expend funds for the relocation of displaced Eufaula Street residents. The authority is not contained in the statutes applying to county government, but rather in state public works statutes that were apparently enacted to facilitate relocation needs resulting from state highway projects. Fortunately, the statutes entitled "Uniform Relocation Assistance and Real Property Acquisition Policies Act", extend the relocation authority to local units of government. This seems to clear the way for the county to undertake the Eufaula Street Relocation Project without seeking additional authority from the General Assembly. The proposed General Relocation Plan for the Eufaula Street Relocation Project has been revised to incorporate the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

The second development is that management has been able to work out a proposed arrangement with VEDCO that will result in VEDCO providing up to \$1,250,000 to assist with the Eufaula Street Relocation Project. The VEDCO funds will be in the form of a grant (not a loan or advance requiring repayment) and will be provided on a dollar-for-dollar matching basis with county expenditures. In other words, the VEDCO funds will constitute a fifty percent matching grant up to a potential total project cost of \$2.5 million. A sum of \$500,000 will be available immediately to match the \$500,000 the county has budgeted for the Eufaula Street project. The balance of up to \$750,000 will be available when VEDCO's other North Carolina projects are approved which is expected to be toward the end of this calendar year. In return for the grant funds the county (as well as Bladen and Hoke Counties) must agree to allow VEDCO to process municipal waste from Nash County at the Ann Street Materials Recover Facility (MRF). In addition, the county must also agree to accept for disposal at the Ann Street Landfill up to 60,000 tons per year of fines (inorganic residue material) from VEDCO's other North Carolina projects. The county will incur no cost for the municipal solid waste processed through the Ann Street MRF and, additionally, the county will be paid a disposal fee for any fines that VEDCO delivers for disposal in the Ann Street Landfill.

These two developments plus the actions the Board has taken resolve four of the five policy issues identified in January. The remaining policy issue is -- what would be the county's policy in the event a property owner declined to sell to the county? During the area survey several Eufaula Street residents told county staff they did not wish to sell their property or be relocated. Should the county exercise its power of condemnation, or would the property be allowed to remain in private ownership? If the property was left in private ownership, would this contradict the Board's finding that the area within 500 feet of the Baling Plant is not suitable for habitation? This policy issue needs to be resolved by the Board prior to implementing the relocation project.

RECOMMENDATION/PROPOSED ACTION: Management recommends the Board consider the following actions:

1. Approve the revised General Relocation Plan in principle.
2. Authorize management to negotiate an agreement with the Fayetteville Community Development Department, or another appropriate organization or private firm, to administer the Eufaula Street Relocation Project. The services should include preparation of the detailed final relocation plan for the Board's approval; development of a refined project schedule and budget; and supervision of project implementation including the provision of relocation assistance advisory services.
3. Approve the proposed agreement with VEDCO in principle and authorize the Deputy County Attorney to prepare the appropriate legal documents for subsequent approval by the Board.
4. Resolve the policy issue regarding property owners who may decline to sell their Eufaula Street property to the county. The Board may wish to refer this matter to the Policy Committee for further study and recommendation.
5. Modify the county's request to the General Assembly to just ask for state funds to assist with the Eufaula Street Relocation Project. It is no longer necessary to request authority to expend county funds for relocation of displaced persons and businesses.

MOTION: Commissioner Keefe offered a motion to defer this item.

SECOND: Commissioner Gonzalez

DISCUSSION: Commissioner King asked why a motion was made to defer this item.

Commissioner Keefe stated it is not a clear problem. He would like to see what VEDCO is going to do. He feels some of the action is extremely excessive.

Commissioner King stated the action of the board was to direct management to come up with a solution and they have done so. He would like some discussion on any problems the other commissioners may have with the proposal and make any changes.

VOTE: FAVOR: Commissioners Faircloth, Gonzalez and Keefe
OPPOSE: Commissioners Bacote, Evans, King and Warren

Mr. Strassenburg reviewed the five point plan with the board.

Commissioner Keefe stated VEDCO is giving them money. The county will have to receive extra fines and materials. He is concerned that taking all of this refuse from other counties will turn Cumberland County into the southeast dump site.

Mr. Strassenburg advised the fines are dirt, grit and stone that are not combustible. Ash is separate and it is anticipated to be a non-toxic material and can be used as an aggregate for making building products. If it can't be used, the county will be paid the actual costs for disposing of it.

Commissioner Keefe noted the Health Department report did not say the landfill was a health hazard to these residents. He also feels a resident who is 501 feet from the landfill will be very unhappy when others are relocated and they are not. He also noted several of these residents are renters.

MOTION: Commissioner Evans offered a motion to approve the five point plan submitted by management.

SECOND: Commissioner King

DISCUSSION: Commissioner Gonzalez stated she thought they were going to discuss each item one by one.

COMMISSIONER KING CALLED FOR THE QUESTION.

Chairman Warren noted the board's rules of procedure allows for at least ten minutes of discussion and for each commissioner to be given the opportunity to speak on the issue.

Commissioner Faircloth stated the VEDCO proposition is a deal disguised as a grant. The county is in the position to do something to earn the grant. He would like to see the board amend the agreement that makes this a matching grant and make it a grant. The county can spend the money from VEDCO until it runs out and then begin spending county money. If the project runs out before the money, the the balance of the grant money should be placed in the county's fund balance.

Commissioner Gonzalez asked who will be providing relocation assistance to these residents. The answer was the assistance would be provided by an agency hired by the county.

Mr. Strassenburg advised they are assuming the project administration and other incidental costs will run roughly 10% of the total project costs. If the county works with the City Community Development agency, they will only have to pay for the hours this agency spends on the project.

Commissioner Keefe questioned the amount of inorganic products that will be coming into the county and cost to the county to dispose of these materials.

Larry Carter, Director of Solid Waste advised it will cost less than \$30.00 a ton to bury this material.

Mr. Strassenburg advised VEDCO will be paying the county \$31.00 to bury this material and the payment will increase.

Mr. Carter advised there are three counties involved in this project with VEDCO. The agreement states an additional entity to be included must be approved by all three counties (Cumberland, Bladen and Hoke). They are still waiting on approval from the state on the service area.

COMMISSIONER KING CALLED FOR THE QUESTION.

VOTE: FAVOR: Commissioners Bacote, Evans, Gonzalez & King
OPPOSE: Commissioners Faircloth and Keefe

6. Consideration of a proposed Memorandum of Understanding with the Board of Elections regarding personnel administration.

BACKGROUND: On March 8, 1994, the Cumberland County Board of Elections unanimously passed a resolution to enter into a Memorandum of Understanding with the County of Cumberland for personnel administration. Subsequently, with the concurrence of the Elections Supervisor, the proposed Memorandum of Understanding was modified slightly to conform with the county's procedures and desired effective date.

The affect of the proposed Memorandum of Understanding will be to place the employees of the Board of Elections under the County's personnel administration system for leave policies, position classification and compensation, benefits, employee personnel reviews, general employment rules and employee selection and separation. The county's policies and procedures concerning disciplinary actions against employees and employee grievances will be followed except any appeals from employment decisions made by the Elections Supervisor will be heard and disposed of by the Board of Elections rather than the County Manager. The proposed Memorandum of Understanding does not affect the Board of Elections statutory authority to appoint and remove its employees. The proposed Memorandum of Understanding will become effective with the beginning of FY95 (July 1, 1994) and will continue in force from fiscal year to fiscal year until modified or terminated upon 90 days written notice by either the county or the Board of Elections.

The proposed Memorandum of Understanding will provide uniformity and consistency in personnel administration for county employees and the employees of the Board of Elections.

RECOMMENDATION: The Board of Elections and management recommend the proposed Memorandum of Understanding be approved.

MOTION: Commissioner Keefe offered a motion to develop a formal policy in coordination with PWC and the City of Fayetteville on the size of sewer lines to ensure along with the assistance of Developers that the sewer needs of the county are met.

SECOND: Commissioner King

VOTE: UNANIMOUS

10. Consideration of a proposed amendment to the BCH Landfill Lease Agreement.

BACKGROUND: In connection with the BCH Energy, L.P. Waste to Energy Project, we executed an Amended and Restated Landfill Lease and Franchise Agreement on August 2, 1993. Exhibit B, and the plat attached to Exhibit B, show the 4.6 acres around the baling plant and the tipping floor which we agreed to lease to BCH Energy, L.P. Once the engineers, Lockwood Green, came on site with the landfill to do the preliminary work for the construction of the material recovery facility (MRF) they determined that a larger area should be included in Exhibit B in order that 11 of their construction work would be included in the leased territory.

This amendment has advantages for both BCH Energy, L.P., and the County. BCH Energy, L.P. needs to lease and control all of the territory on which they do construction and on which they will work. Also, it is to the County's advantage to have all of the territory that BCH Energy, L.P. will control included in the lease because of the insurance and indemnify provisions of the lease.

RECOMMENDATION AND PROPOSED ACTION: That the Board of Commissioners authorize the Chairman to execute an amendment to Exhibit B of the Amended and Restated Landfill Lease and Franchise Agreement to include the larger area requested by BCH Energy, L.P.

MOTION: Commissioner Evans offered a motion to authorize the Chairman to execute an amendment to Exhibit B of the Amended and Restated Landfill Lease and Franchise Agreement to include the larger area requested by BCH Energy, L.P.

SECOND: Commissioner Faircloth

DISCUSSION: Commissioner King asked what had changed to cause this amendment. A BCH representative advised that blue bag recycling had contributed to the need for an amendment. In order for blue bag recycling to be beneficial, it required additional space for processing. Also, insurance issues were look at. Roads and parking areas had to be covered. Three acres have been added to the original amount of land covered by insurance.

VOTE: UNANIMOUS

would facilitate the County staying informed as to the activities of the Corporation.

By adopting the resolution, you are also approving the plan of financing for the Project and authorizing the Chairman, the County Manager, and myself to take further steps in connection with the financing. This includes publishing notice of a public hearing on the financing.

RECOMMENDATION AND PROPOSED ACTION: It is recommended that the Board of Commissioners take the following actions:

1. Pass the resolution concerning financing of the acquisition and improvement of Heritage Place for the Cumberland County Finance Corporation on behalf of Cumberland County; and
2. Nominate three members to serve as the initial Board of Directors of the Corporation.

MOTION: Commissioner Faircloth offered a motion to approve parts one and two of the proposed action.

SECOND: Commissioner Warren.

VOTE: FAVOR: Commissioners Bacote, Evans, Faircloth, Gonzalez and Warren

OPPOSE: Commissioners Keefe and King

Nominations to serve as the initial Board of Directors:

Commissioner Warren nominated Juanita Pilgrim and Dr. Charlie Koffman

Commissioner Gonzalez nominated Mary Grace Hair

Appointments will be made at the next meeting.

MOTION: Commissioner Warren offered a motion to go into executive session.

SECOND: Commissioner King

VOTE: UNANIMOUS

MOTION: Commissioner Evans offered a motion to go back into regular session.

SECOND: Commissioner Warren

VOTE: UNANIMOUS

MOTION: Commissioner Evans offered a motion to adjourn

SECOND: Commissioner King

VOTE: UNANIMOUS

Meeting adjourned at 10:30 PM.