

**TRANSFER STATION CONSTRUCTION, OPERATION AND LEASE AGREEMENT**

THIS TRANSFER STATION CONSTRUCTION, OPERATION AND LEASE AGREEMENT (this "Agreement") is dated and made effective this 18<sup>th</sup> day of August, 2009, by and between the CITY OF FAYETTEVILLE, North Carolina (hereinafter "CITY"), and WASTE INDUSTRIES, LLC, a North Carolina limited liability company (hereinafter "WASTE INDUSTRIES");

Permit No.	Date	Document ID No.
26-09T	January 17, 2014	20433

Sent by an e-mail  
Date: **January 17, 2014**  
Solid Waste Section  
Raleigh Central Office

**WITNESSETH:**

WHEREAS, the CITY and Sampson County Disposal, LLC, entered into a Lease Agreement dated July 15, 2002, for the transfer facility (the "Existing Facility" and some surrounding property (the "Existing Lease"); and

WHEREAS, Sampson County Disposal, LLC, is an affiliate of WASTE INDUSTRIES; and

WHEREAS, the Existing Lease for the Existing Facility expired on July 31, 2007, and WASTE INDUSTRIES opted to extend the Existing Lease for an additional five (5) years; and

WHEREAS, WASTE INDUSTRIES currently uses the Existing Facility for tipping commercial solid waste hauled to Sampson County Disposal, LLC, Roseboro, North Carolina; and

WHEREAS, the Existing Facility and equipment have surpassed their useful life and are no longer adequate to continue functioning as a transfer facility.

NOW, THEREFORE, it is mutually agreed and understood between the parties as follows:

1. **Construction of New Transfer Station.** WASTE INDUSTRIES will construct a new transfer facility (the "New Facility") located at 583 Winslow Street, Fayetteville, NC as further described in Section 2 below at its own cost in accordance with a plan and schedule provided by WASTE INDUSTRIES and approved by the CITY, which approval will not be unreasonably withheld. Completion of the New Facility will be evidenced by execution by both parties of a Certificate in substantially the form attached hereto as Exhibit A, certifying the completion date of the New Facility (the "Completion Date"). WASTE INDUSTRIES will dismantle and dispose of the Existing Facility at its own cost, in accordance with a demolition plan and schedule provided by WASTE INDUSTRIES and approved by the CITY, which approval will not be unreasonably withheld.

2. **Lease of New Facility.** The CITY hereby leases, and WASTE INDUSTRIES hereby takes and rents from CITY, the premises described in Exhibit B, consisting of a legal description and site plan, attached hereto and made a part hereof, together with all improvements located thereon (including, without limitation, the Existing Facility and, from and after the

Completion Date, the New Facility) and all easements, rights, licenses and permits appurtenant thereto the ("Premises"). The Existing Lease shall be superseded and replaced in its entirety by this Agreement on and as of the date hereof.

3. **Lease of Equipment.** In addition, CITY leases unto WASTE INDUSTRIES, and WASTE INDUSTRIES takes and rents from CITY, the items of personal property, plus any replacements or additions thereto, described in Exhibit C attached hereto and made a part hereof (the "Equipment").

4. **Term.** This Agreement shall be effective upon the date hereof and shall terminate on the date that is fifteen (15) years after the Completion Date ("Term"). The parties may extend the Term for an additional five (5) year period (the "Renewal Term") by mutual agreement not less than ninety (90) days prior to expiration of the Term. The Renewal Term, if applicable, will be included in the definition of "Term". Prior to expiration of the Term, including the Renewal Term, if any, CITY, subject to its obligation as a public body to make the Premises and Equipment available to other potential lessees, agrees to negotiate in good faith with WASTE INDUSTRIES regarding further renewals. Should the renewal or extension not be signed by the expiration of the Term, this Agreement will continue on a month-to-month basis at rates existing at the time of the expiration.

5. **Rental Amount.** Beginning on the date of this Agreement, WASTE INDUSTRIES shall pay rent to CITY the sum of Two Thousand Five Hundred Dollars (\$2,500) per month. Beginning on the Completion Date, WASTE INDUSTRIES shall pay the following monthly rent to CITY, with Year 1 beginning on the Completion Date and each subsequent year beginning on the next following anniversary of the Completion Date:

Year 1	\$3,300.00
Year 2	\$3,630.00
Year 3	\$3,993.00
Year 4	\$4,392.00
Year 5	\$4,831.00

Thereafter, the monthly rent amount will increase on each subsequent anniversary of the Completion Date by the annual percentage increase in the Consumer Price Index All Urban Consumers, All Items, South Urban Group, 50,000-450,000 population, as published by Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the most recently available 12-month period. In the event that the publication of the CPI is hereafter discontinued, the parties will designate a comparable index to be used in lieu thereof for purposes of this Agreement. All such rent payments to be due and payable in advance no later than the 10th day of each calendar month for and during the Term and any extensions thereof.

6. **Fire Insurance.** WASTE INDUSTRIES shall carry at all times during the Term, at WASTE INDUSTRIES' expense, fire insurance with extended coverage insuring against loss or damage to the buildings and/or other improvements making up the New Facility, as well as the Equipment located at the New Facility in an amount equal to the full insurable value thereof. CITY will continue to provide such insurance on the Existing Facility and equipment as set forth

in the Existing Lease until the Existing Facility is dismantled and disposed of as set forth herein. WASTE INDUSTRIES, at its own expense, shall insure its own trade fixtures and personal property against any loss by fire, theft, vandalism or any other physical damage. The CITY will be listed as a certificate holder on such insurance policies and shall be provided copies of all renewals or notices of cancellation of policies.

7. **Trade Fixtures.** Notwithstanding the foregoing, WASTE INDUSTRIES shall be permitted to install, subject to compliance with all applicable federal, state, and local statutory or common law, ordinance, rule, or regulation, whether now in existence or established or enacted in the future, its trade fixtures on the Premises (including, without limitation, a new/additional set of scales), and WASTE INDUSTRIES shall be permitted to remove said new trade fixtures from the Premises at any time. Any trade fixtures currently existing on the property that are the property of the CITY, including but not limited to the existing set of scales, shall either be returned to the CITY or the CITY shall receive reimbursement from WASTE INDUSTRIES for their current value should they be damaged or destroyed, ordinary wear and tear excepted.

8. **Improvements and Repairs.** WASTE INDUSTRIES shall, at WASTE INDUSTRIES' expense, perform all regular maintenance of the Premises and the Equipment and all parts thereof as required to keep the same in good condition and working order, ordinary wear and tear excepted. Notwithstanding the foregoing, WASTE INDUSTRIES assumes financial responsibility to make all improvements and repairs, if any, to the paved surfaces and apron areas located on Premises and to keep same in good condition, ordinary wear and tear excepted. WASTE INDUSTRIES shall submit to CITY every six (6) months a written report of all material maintenance activity with respect to the Existing Facility and, from and after the Completion Date, the New Facility.

At the expiration or earlier termination of this Agreement, subject to the provisions of Section 16, WASTE INDUSTRIES shall surrender the Equipment and Premises to CITY in good order and condition, except for ordinary wear and tear and damage by insured casualty (the proceeds of which shall be applied to the repair or replacement of the same). Subject to the provisions of Section 16, upon the expiration of this Agreement, all improvements shall become the property of the CITY.

9. **Indemnification.** Except to the extent of the negligent acts or omissions or willful misconduct of CITY, or its contractors, agents, or employees, WASTE INDUSTRIES shall indemnify and hold CITY, its elected officials, directors, officials, employees and agents harmless from and against liability for losses, expenses, demands and claims in connection with, arising out of or resulting from (a) the negligence of WASTE INDUSTRIES, its contractors, agents, and employees, in the use of the Premises and the Equipment and in the performance of this Agreement, or (b) breach by WASTE INDUSTRIES of any term, condition, covenant, representation or warranty of this Agreement.

Except to the extent of the negligent acts or omissions or willful misconduct of WASTE INDUSTRIES, or its contractors, agents, or employees, CITY shall indemnify and hold WASTE INDUSTRIES, its members, managers, officers, directors, employees and agents harmless from and against liability for losses, expenses, demands and claims, to the extent allowed by

applicable law, in connection with, arising out of or resulting from (a) the negligence of CITY, its contractors, agents, and employees in the performance of this Agreement, or (b) breach by the CITY of any term, condition, covenant, representation or warranty of this Agreement.

Notwithstanding the foregoing, CITY and WASTE INDUSTRIES each waive any claims each may have against the other arising out of personal injury or damage to property to the extent of recovery received by such party pursuant to the insurance required to be carried hereunder.

10. **Insurance.**

(a) WASTE INDUSTRIES shall obtain all insurance required under this paragraph and such insurance shall be subject to approval by CITY, which approval will not be unreasonably withheld. All insurance policies shall be written by insurers licensed to do business in North Carolina. CITY reserves the right to reject any and all certificates or policies issued by insurers with a Best's rating less than A. WASTE INDUSTRIES shall not allow any subcontractors, agents, or employees access to the Premises and Equipment until all such insurance has been so obtained and approved.

The insurance required for this Agreement is as follows:

(i) Commercial General Liability ISO #CG 00 01 10 93: WASTE INDUSTRIES shall take out and maintain during the Term of this Agreement commercial general liability insurance with limits of \$1,000,000.00 per occurrence; \$2,000,000.00 aggregate other than products/completed operations; \$2,000,000.00 aggregate for products/completed operations.

(ii) Automobile Liability ISO #CA 00 01 12 93: WASTE INDUSTRIES shall take out and maintain during the Term of this Agreement automobile liability insurance in an amount not less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage for owned, non-owned, and hired automobiles.

(iii) Workers' Compensation and Employers' Liability Insurance: WASTE INDUSTRIES shall take out and maintain during the term of this Agreement workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of \$1,000,000.00 each accident, \$1,000,000.00 policy limit, and \$1,000,000.00 each employee for all employees employed. In case any employee(s) engaged under this Agreement is or are not protected under the Workers' Compensation Statute, WASTE INDUSTRIES shall provide adequate coverage for the protection of employees not otherwise protected.

(b) The CITY shall obtain and maintain during the Term of this Agreement commercial general liability insurance pursuant to N.C.G.S. § 160A-485 with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, subject to approval by WASTE INDUSTRIES, which approval will not be unreasonably withheld. All insurance policies shall be written by insurers licensed to do business in North Carolina. WASTE INDUSTRIES

reserves the right to reject any and all certificates or policies issued by insurers with a Best's rating less than A.

11. **Other Insurance Provisions.**

(a) Any deductible or self-insured retention must be declared to and approved by CITY. CITY acknowledges that WASTE INDUSTRIES has informed it that there is a \$100,000 deductible on the insurance referenced in Subsections 10(a)(ii) and (iii) above, and a \$25,000 deductible on the insurance referenced in Subsection 10(a)(i) above.

(b) The policies are to contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability Coverage. CITY's officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of WASTE INDUSTRIES; products and completed operations of WASTE INDUSTRIES; premises owned, leased, or used by WASTE INDUSTRIES; or automobiles owned, leased, hired or borrowed by WASTE INDUSTRIES. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officials, employees or volunteers.

(2) WASTE INDUSTRIES' insurance coverage shall be primary insurance as respects the CITY, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, employees, or volunteers shall be excess of WASTE INDUSTRIES' insurance and shall not contribute with it.

(3) Coverage shall state that WASTE INDUSTRIES' insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

City of Fayetteville  
Attention: City Manager  
433 Hay Street  
Fayetteville, NC 28301-5537

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees, and volunteers. In the event CITY is damaged by the failure of WASTE INDUSTRIES to maintain such insurance and to so notify CITY, WASTE INDUSTRIES shall bear all reasonable costs properly attributable thereto.

(d) WASTE INDUSTRIES shall require that all contractors and subcontractors engaged by WASTE INDUSTRIES shall meet the insurance obligations set forth in Section 10(a).

(e) Any insurance coverage required by the terms of this Agreement and purchased by WASTE INDUSTRIES for the protection of CITY shall not be deemed a contract of insurance purchased by CITY pursuant to N.C.G.S. § 160A-485.

12. **Records Access and Retention Requirements.** WASTE INDUSTRIES, in order for CITY to validate host fees, tonnage data, and complete federal and State regulatory reports and plans, shall give any duly authorized representative of CITY access to any and all records which are directly pertinent to this specific Agreement for proper review requirements. CITY's access rights shall not extend to WASTE INDUSTRIES' client list or other confidential information but shall include, at a minimum, the number of tons passing through the transfer station each day. CITY shall keep any information obtained pursuant to the preceding paragraph confidential, provided, however, that WASTE INDUSTRIES acknowledges that CITY is subject to the North Carolina Public Records Act (Chapter 132 of the General Statutes). Access will be provided during normal business hours and CITY may request copies of any or all records and may conduct audits of said pertinent records at CITY's expense. WASTE INDUSTRIES and its subcontractors agree to maintain all records required during the course of this Agreement for a period of not less than three (3) years for review by CITY.

13. **Inspection.** WASTE INDUSTRIES shall permit the CITY to access the facility at all times, including, but not limited to, maintenance and safety inspections.

14. **Condemnation.** If any portion of the Premises or Equipment shall be taken or condemned for a public or quasi-public use, then this Agreement shall terminate as to the portions taken as of the date the first notice of such taking is given to WASTE INDUSTRIES, such notice to be provided by CITY as soon as CITY is aware of such taking. If the portion so taken is such as to render the remaining portion of the Premises or the Equipment unsuitable for WASTE INDUSTRIES' intended use, then WASTE INDUSTRIES, at its option, may terminate this Agreement by giving written notice to CITY within thirty (30) days of the date WASTE INDUSTRIES receives notice of the taking, and such taking or condemnation shall be deemed an Event of Default subject to Section 15(b)(i) hereof. If WASTE INDUSTRIES does not terminate this Agreement and the amount of condemnation award equals or exceeds the cost of repair, CITY, if there is adequate real estate remaining, shall promptly rebuild or repair the damaged portion. During the rebuilding, rent shall abate and thereafter shall abate proportionately. WASTE INDUSTRIES shall be entitled to such portion of the condemnation award as permitted by law. At the time of execution of this Agreement, CITY is not aware of any pending or threatened condemnation actions that would affect the Premises.

15. **Default.**

(a) Any one and more of the following shall constitute an Event of Default by WASTE INDUSTRIES hereunder:

(i) WASTE INDUSTRIES makes a general assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property, commences any proceeding relating to it under bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereinafter in effect, or if there shall have been filed any such proceeding, in which an order for relief is entered or which remains undismissed for a period of 60 days or more or if by any act indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order or relief or the appointment of any custodian, receiver of or any trustee for it or any substantial part of its property or suffers such custodianship, receivership or trusteeship to continue undismissed for a period of 60 days or more.

(ii) The failure of WASTE INDUSTRIES to pay any undisputed sum due from it in accordance with the provisions of this Agreement within thirty (30) days after written notice thereof from CITY; or

(ii) The breach by WASTE INDUSTRIES of any material provision of this Agreement, which breach is reasonably likely to cause material harm to the CITY, financial or otherwise, and is not cured within thirty (30) days after written notice thereof from CITY, provided, however, if the failure is of such a nature that it cannot reasonably be cured within such thirty (30) day period, WASTE INDUSTRIES shall have a reasonable time thereafter within which to cure, provided that it has commenced and is reasonably proceeding to effect such cure. In the event of a default by WASTE INDUSTRIES hereunder beyond any applicable cure period, in lieu of termination, the CITY shall have the right to remedy the condition giving rise to the default, and WASTE INDUSTRIES shall reimburse CITY for the actual, reasonable cost of such remedy, including, without limitation, all materials and labor. Performance of any act or expenditure of any sum hereunder shall not constitute a waiver of any other right of CITY under the terms of this Agreement.

(b) Any one and more of the following shall constitute an Event of Default by the CITY hereunder:

(i) A taking or condemnation of the Premises by the City for a public or quasi-public use, that renders the Premises or the Equipment unsuitable for WASTE INDUSTRIES' intended use;

(ii) The breach by the CITY of any material provision of this Agreement, which breach is reasonably likely to cause material harm to WASTE INDUSTRIES, financial or otherwise, and is not cured within thirty (30) days after written notice thereof from WASTE INDUSTRIES, provided, however, if the failure is of such a nature that it cannot reasonably be cured within such thirty (30) day period, the CITY shall have a reasonable time

thereafter within which to cure, provided that it has commenced and is reasonably proceeding to effect such cure. In the event of a default by CITY hereunder beyond any applicable cure period, in lieu of termination, WASTE INDUSTRIES shall have the right to remedy the condition giving rise to the default, and CITY shall reimburse WASTE INDUSTRIES for the actual, reasonable cost of such remedy, including, without limitation, all materials and labor. Performance of any act or expenditure of any sum hereunder shall not constitute a waiver of any other right of WASTE INDUSTRIES under the terms of this Agreement.

(c) Upon the occurrence of any Event or Default as set forth above, or at any time thereafter, the nondefaulting party shall have the right, at its option, to terminate this Agreement by giving notice of termination to the defaulting party not less than thirty (30) days prior to the effective date of such termination, subject, in the case of termination by WASTE INDUSTRIES due to an Event of Default by the CITY, to the terms of Section 16 below. In addition to the right to terminate this Agreement as provided herein, the nondefaulting party may exercise and pursue any and all rights and remedies against the defaulting party that the nondefaulting party may have at law or in equity.

16. **Early Termination.** With respect to any termination of this Agreement prior to the end of the initial fifteen (15) year Term by WASTE INDUSTRIES due to an Event of Default by CITY as set forth in Section 15 above, CITY shall be required to pay WASTE INDUSTRIES one hundred ten percent (110%) of the amount of the remaining unamortized actual cost to WASTE INDUSTRIES of constructing the New Facility, including tear down and disposal of the Existing Facility, which amount will be capped at \$1,500,000 (the "Cost of Construction"). For purposes of the above calculations, the amortization period will be deemed to be fifteen years and the amortization will be straight-lined during such period, with equal amounts amortized each month for one hundred eighty (180) months beginning on the Completion Date. This Section will survive termination of this Agreement. Within sixty (60) days following completion of all work on the New Facility, including destruction and disposal of the Existing Facility, WASTE INDUSTRIES will make available to CITY the total actual amount of costs incurred.

17. **Law Applicable.** WASTE INDUSTRIES and CITY each agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, and units of local government. This Agreement shall be interpreted under and governed by the laws of the State of North Carolina.

18. **Assignment.** WASTE INDUSTRIES shall not assign its contract rights under this Agreement or any part thereof, nor delegate any performances herein, nor subcontract without first obtaining the CITY's written approval, which shall not be unreasonably withheld, conditioned, or delayed. WASTE INDUSTRIES shall have the right to assign its contract rights hereunder in the event of WASTE INDUSTRIES' merger or consolidation with another entity, or in the event of the sale of all or substantially all of the assets of WASTE INDUSTRIES.

19. **Taxes.** Should any governmental authority having jurisdiction over the Premises other than CITY declare or otherwise assess any ad valorem tax on leases or leaseholds, then in

any of such events, all taxes so declared or charged shall be the obligation of WASTE INDUSTRIES.

20. **Binding Effect and Complete Terms.** The terms, covenants, conditions and agreements herein contained shall be binding upon and inure to the benefit of and shall be enforceable by CITY and WASTE INDUSTRIES and by their respective successors and assigns. All negotiations and agreements of CITY and WASTE INDUSTRIES are merged herein. No modification hereof or other purported agreement of the parties shall be enforceable unless the same is in writing and signed by the CITY and WASTE INDUSTRIES.

21. **Notices and Written Consents.** All notices and written consents required under this Agreement shall be in writing and shall only be deemed properly served when (a) posted by certified United States mail, postage prepaid, return receipt requested; (b) addressed to the party to whom directed at the following address or at such other address as may be from time to time designated in writing; and (c) deemed served upon receipt:

To CITY: City of Fayetteville  
City Manager's Office  
City Hall  
433 Hay Street  
Fayetteville, NC 28301

To WASTE INDUSTRIES: Waste Industries, LLC  
3301 Benson Drive, Suite 601  
Raleigh, NC 27609  
Attn: President

22. **Utilities.** WASTE INDUSTRIES shall contract in its own name for water, sewer, electricity, telephone, natural gas, and any other utilities used or consumed on the Premises, and shall pay for such utility services when the statements for the same are due.

23. **Covenant of Title and Quiet Enjoyment.** CITY covenants and warrants to WASTE INDUSTRIES that CITY has full right and lawful authority to enter into this Agreement for the Term hereof and that WASTE INDUSTRIES' quiet and peaceable enjoyment of the Premises and the Equipment shall not be disturbed by anyone.

24. **Construction of Agreement.** This Agreement shall not be construed more strictly against either party regardless of which party is responsible for the preparation of the same. Any place in this Agreement where the consent of either party is required, such consent shall not unreasonably be withheld, conditioned, or delayed.

25. **Hazardous Substances.**

(a) CITY warrants and represents that as of the date of execution of this Agreement, the Premises are in compliance with all Environmental Laws. For purposes of this Agreement, "Environmental Laws" shall mean any federal, state, or local statutory or common

law, ordinance, rule or regulation, relating to pollution or protection of the environment, including, without limitation, any common law or nuisance or trespass, and any law, rule, or regulation relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or chemicals, or industrial, toxic, or hazardous substances or waste into the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or chemicals or industrial, toxic or hazardous substances or waste.

(b) WASTE INDUSTRIES or, as the case may be, CITY shall promptly give to the other party hereto written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Premises and any breach of any Environmental Laws of which WASTE INDUSTRIES or CITY has actual knowledge.

(c) WASTE INDUSTRIES agrees to indemnify and hold harmless CITY, its elected officials, officers, directors, employees, successors and assigns from and against any loss, cost, expense, liabilities or claims resulting from the breach of any Environmental Laws on or about the Premises which contaminate air, soils, surface waters, or ground waters over or under the Premises to the extent caused by WASTE INDUSTRIES or its employees, agents, or contractors. CITY agrees to indemnify and hold harmless WASTE INDUSTRIES, its officers, directors, employees, successors and assigns from and against any loss, cost, expense, liabilities or claims, to the extent allowed by applicable law, resulting from the breach of any Environmental Laws on or about the Premises which contaminate air, soils, surface waters, or ground waters over or under the Premises to the extent such breach occurred prior to the date of this Agreement or that of the Existing Lease with Waste Industries or is caused by CITY or its employees, agents, or contractors.

(d) If, during construction of the New Facility, including during the site review and preparation stage, WASTE INDUSTRIES or its environmental engineers identify issues that evidence non-compliance with Environmental Laws, to the extent not contributed to by WASTE INDUSTRIES, WASTE INDUSTRIES will notify the CITY of such non-compliance and provide its proposal for remediation. All liabilities, costs and expenses associated with such non-compliance, including those related to remediation, will be retained by CITY to the extent not contributed to by WASTE INDUSTRIES. CITY authorizes WASTE INDUSTRIES to take action to cause the remediation of such non-compliance and CITY will promptly reimburse WASTE INDUSTRIES for its reasonable costs and expenses in connection therewith. Once construction is complete, if evidence of non-compliance with Environmental Laws that appears to pre-date construction is discovered, to the extent not contributed to by WASTE INDUSTRIES, the CITY will retain all liability and the same process as set forth above with respect to remediation will be followed.

26. **Memorandum of Lease.** At the request of WASTE INDUSTRIES, CITY will execute in customary form a Memorandum of Lease for recording in the Cumberland County Registry.

27. **Special Stipulations.**

(a) WASTE INDUSTRIES agrees to pay a "host fee" to CITY of \$0.60 per ton for the first 115,000 tons of solid waste delivered to the Premises per year and \$1.00 per ton for any additional tons of solid waste delivered to the Premises per year. The "host fees" shall be adjusted by the CPI category described in Section 5 of this Agreement on an annual basis beginning on the first anniversary of the Completion Date.

(b) WASTE INDUSTRIES agrees that it will reasonably cooperate with CITY to help design transportation routes that attempt to minimize the material adverse effects, if any, of WASTE INDUSTRIES' hauling vehicles and transfer trucks on local property owners near the Premises. WASTE INDUSTRIES will also use commercially reasonable efforts to inform and, to the extent reasonably practicable, require, that third-party haulers making deliveries to the Premises use the same "preferred" routes (for example, requiring in delivery contracts that certain routes, rather than others, be used).

(c) WASTE INDUSTRIES agrees to continue to employ a minimum of three (3) employees to man the New Facility and agrees to add one (1) employee for every additional 60,000 tons of waste transferred annually above the rate as of the signing of this Agreement.

(d) The agreements contained in this Section 27 shall terminate upon the expiration or earlier termination of this Agreement.

28. **Transfer Station Permit.** WASTE INDUSTRIES' obligations under this Agreement are at all times conditioned upon WASTE INDUSTRIES having obtained and maintaining for the Premises, and WASTE INDUSTRIES' use thereof, all such permits and licenses for operating a municipal solid waste transfer station as may be required by the State of North Carolina and any other applicable governmental authorities.

29. **Force Majeure.** Whenever a period of time is prescribed for the taking of any action by CITY or WASTE INDUSTRIES, neither CITY nor WASTE INDUSTRIES shall be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strike, fire, unusually adverse and catastrophic weather, embargoes, or any other cause beyond the reasonable control of CITY or WASTE INDUSTRIES, as the case may be, and occurring without the negligence or fault of the party seeking relief hereunder, but excluding any delays caused by or resulting from the financial condition or the unavailability or cost of funds of either party.

30. **Severability.** The parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with purposes of this Agreement and the requirements of applicable law.

*[The next page is the signature page.]*

IN WITNESS WHEREOF, CITY and WASTE INDUSTRIES have signed this Agreement this day and year first above written.

CITY OF FAYETTEVILLE



ATTEST:

Rita Perry  
RITA PERRY, City Clerk

By: Dale E. Iman  
DALE E. IMAN, City Manager

WASTE INDUSTRIES, LLC

By: \_\_\_\_\_  
Michael J. Durham, Vice President

APPROVED AS TO FORM:

Karen M. McDonald  
KAREN M. MCDONALD, City Attorney

**IN WITNESS WHEREOF, CITY and WASTE INDUSTRIES have signed this Agreement this day and year first above written.**

**CITY OF FAYETTEVILLE**

By: \_\_\_\_\_  
DALE E. IMAN, City Manager

ATTEST:

\_\_\_\_\_  
DEBORAH DANIELS, Interim City Clerk

**WASTE INDUSTRIES, LLC**

By:  \_\_\_\_\_  
Michael J. Durham, Vice President

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

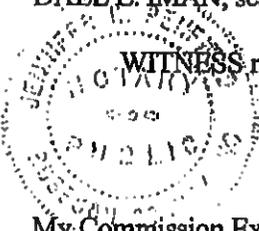
APPROVED AS TO FORM:

\_\_\_\_\_  
LISA T. SMITH, Chief Financial Officer

\_\_\_\_\_  
KAREN M. MCDONALD, City Attorney

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, Jennifer K. Penfield, a Notary Public for said County and State, do hereby certify that RITA PERRY personally appeared before me this day and acknowledged that she is the CITY CLERK for the CITY OF FAYETTEVILLE, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the CITY OF FAYETTEVILLE, the foregoing instrument was signed in its name by its CITY MANAGER, DALEE IMAN, sealed with its corporate seal and attested by RITA PERRY as its CITY CLERK.



WITNESS my hand and Notarial Seal, this the 18th day of August, 2009.

Jennifer K. Penfield  
NOTARY PUBLIC

My Commission Expires: 6/28/2012

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that MICHAEL J. DURHAM personally appeared before me this day and acknowledged that he is the VICE PRESIDENT of WASTE INDUSTRIES, LLC, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by him by and on behalf of the limited liability company.

WITNESS my hand and Notarial Seal, this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that DEBORAH DANIELS personally appeared before me this day and acknowledged that she is the INTERIM CITY CLERK for the CITY OF FAYETTEVILLE, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the CITY OF FAYETTEVILLE, the foregoing instrument was signed in its name by its CITY MANAGER, DALE E. IMAN, sealed with its corporate seal and attested by DEBORAH DANIELS as its INTERIM CITY CLERK.

WITNESS my hand and Notarial Seal, this the \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF NORTH CAROLINA  
COUNTY OF Wake

I, Cynthia D. Spencer, a Notary Public for said County and State, do hereby certify that MICHAEL J. DURHAM personally appeared before me this day and acknowledged that he is the VICE PRESIDENT of WASTE INDUSTRIES, LLC, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by him by and on behalf of the limited liability company.

WITNESS my hand and Notarial Seal, this the 3<sup>rd</sup> day of August, 2009.

Cynthia D. Spencer / Cynthia D. Spencer  
NOTARY PUBLIC

My Commission Expires: 4-16-11

**EXHIBIT A**

**COMPLETION CERTIFICATE**

The undersigned hereby certify that the transfer station constructed at \_\_\_\_\_ has been completed in accordance with the plans and specifications and has received all approvals and permits necessary to be open for business as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, which date shall be the "Completion Date" under the Transfer Station Construction, Operation and Lease Agreement dated \_\_\_\_\_, 2009 between the undersigned.

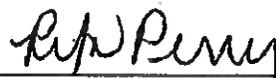
**CITY OF FAYETTEVILLE**



By:

  
DALE E. IMAN, City Manager

ATTEST:

  
\_\_\_\_\_  
RITA PERRY, City Clerk

**WASTE INDUSTRIES, LLC**

By:

\_\_\_\_\_  
MICHAEL J. DURHAM, Vice President

**EXHIBIT B**

**PREMISES**

**EXHIBIT C**

**INSERT DESCRIPTION OF ITEMS OF PERSONAL PROPERTY,  
PLUS ANY REPLACEMENTS OR ADDITIONS**

- 1 Below Ground Truck Scale

**COMPLETION CERTIFICATE**

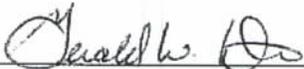
**TRANSFER STATION CONSTRUCTION, OPERATION AND LEASE AGREEMENT**

**Dated August 18, 2009**

The undersigned hereby certify that the transfer station constructed at 583 Winslow Street, Fayetteville, NC was completed on September 14, 2010 as reflected in the attached Certificate of Completion and Occupancy issued by the City of Fayetteville. The parties agree that the "Completion Date" under the Transfer Station Construction, Operation and Lease Agreement (the "Agreement") shall be September 14, 2010.

The parties further acknowledge that this Completion Certificate shall supersede and replace the Completion Certificate attached to the Agreement.

**CITY OF FAYETTEVILLE**

By:   
Name: Gerald W. Dietzen  
Title: ENVIRONMENTAL SERVICES DIRECTOR

**WASTE INDUSTRIES, LLC**

By:   
Name: Michael J. Durham  
Title: Vice President

Replaces  
Exhibit A, Completion  
Certificate

**EXHIBIT A**

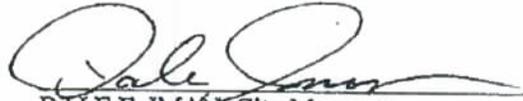
**COMPLETION CERTIFICATE**

The undersigned hereby certify that the transfer station constructed at \_\_\_\_\_ has been completed in accordance with the plans and specifications and has received all approvals and permits necessary to be open for business as of this \_\_\_\_ day of \_\_\_\_\_, which date shall be the "Completion Date" under the Transfer Station Construction, Operation and Lease Agreement dated \_\_\_\_\_, 2009 between the undersigned.

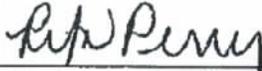
**CITY OF FAYETTEVILLE**



By:

  
DALE E. IMANT, City Manager

ATTEST:



RITA PERRY, City Clerk

**WASTE INDUSTRIES, LLC**

By:

MICHAEL J. DURHAM, Vice President



**CERTIFICATE OF COMPLETION AND OCCUPANCY**

**Reference:**

**Building Permit #: 201016845**

**Building Permit Issue Date: 2010-04-09**

**CO Issue Date: 09/14/2010**

This is to certify that inspections have been made of the:

- Zoning       Building       Mechanical
- Electrical       Landscaping       Plumbing

of the structure at:

Number and Street: 583 Winslow St Fayetteville, NC (0437-31-2400)

Subdivision:

Lot/Block/Zone: 00

and the work authorized under the above numbered building permit has been completed in compliance with the North Carolina State Building Code.

Permission is hereby granted to City Of Fayetteville to occupy and use the structure, land, and floor area of building, at the above location for the following purposes:

Type of Improvement: Storage

Occupancy Type: Storage

Type of Construction: 2B

Occupancy Capacity:

Remarks:

Date Finaled: 09/14/2010

Signature: Randy H. Ray

Building Inspector: Randy Ray

If this Certificate of Completion and Occupancy is issued by the direction of the City/County's Board of Adjustment, it shall be subject to any and all conditions specified by the Board. If any of the conditions so specified or any part thereof shall be held void or invalid, or if any such conditions are not complied with, this Certificate shall be void and of no effect. This Certificate of Completion and Occupancy shall remain in force until such time that there is an alteration, addition, or change in use of this structure, or land, when it shall become void and a new Certificate must be issued.

BUILDING DIVISION (910) 433-1707  
PLANNING &  
ZONING DIVISION (910) 433-1612

433 HAY STREET  
FAYETTEVILLE, NC 28501-5537  
www.cityoffayetteville.org  
An Equal Opportunity Employer

HOUSING & CODE  
ENFORCEMENT DIVISION (910) 433-1056