

DISPOSAL SERVICE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 2018, by and between the Jackson County, North Carolina, referred to as "County" and R & B Landfill, Inc., a Georgia corporation, hereinafter referred to as "the Company,"

W I T N E S S E T H:

WHEREAS, the County desires to ensure the continued availability of a sanitary landfill site for the economically and environmentally sound disposition of waste material generated by the residential sector of the; and

WHEREAS, the governing authority of the County has the power to enter into service contracts for the disposal of such waste material; and

WHEREAS, the Company is experienced in providing environmentally sound disposal services; and,

WHEREAS, the Company owns and operates a landfill facility in Banks County Georgia known as the R & B Landfill (the "Landfill") which is permitted by the State of Georgia to receive municipal solid waste; and

WHEREAS, the County has determined that it is in the best interest of its citizens to dispose of its solid waste at the Landfill;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the respective covenants herein contained, the parties have agreed as follows:

I. DEFINITIONS

- 1.01 The Sanitary Landfill – the Company's R & B Landfill located at 610 Bennett Road, Homer, Georgia.
- 1.02 County Waste Material - any and all "solid waste" as defined by Georgia law which is generated by residences and businesses located within the County which waste is allowed for disposal by the Landfill's permits, state and federal laws, rules and regulations, excluding Unacceptable Waste; provided said waste material is collected by and delivered to the Sanitary Landfill by the County's waste collection vehicles or the waste collection service(s) operating under contract with the County.
- 1.03 Unacceptable Waste – construction and demolition wastes, whole tires, lead-acid batteries and any of the following:
 - A. Any material which is toxic, infectious, pathological, highly flammable,

explosive, radioactive or otherwise reasonably determined by the Company to be dangerous;

- B. Any material the disposal of which would violate federal or state laws, rules, regulations or permits;
- C. Any "Hazardous Waste," which shall be deemed to be: (i) any waste defined as "hazardous waste" by the Resource Conservation and Recovery Act, as amended, (ii) any waste defined as "hazardous waste" by MSDEQ, (iii) solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics may: (a) cause or significantly contribute to an increase in serious irreversible or incapacitating reversible illness or (b) pose a substantial present or potential hazard to human health, the Landfill or the environment when treated, stored, transported, disposed of or otherwise managed;
- D. Any "Special Waste" which shall be deemed to be: Polychlorinated biphenyl ("PCB") wastes, industrial process wastes, asbestos containing material, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, demolition debris and other materials requiring special handling in accordance with applicable federal, state, or local laws or regulations.

II. SCOPE OF SERVICE

2.01 Subject to the terms and conditions hereof, the County agrees that it shall cause County Waste Material to be delivered to the Sanitary Landfill and the Company agrees that it will accept and landfill such County Waste Material.

2.02 The Tipping Fee to be charged to the County for the disposal of Waste Material pursuant to this Agreement shall be as follows:

During the first year of this Agreement, the County Waste Material Tipping Fee shall be Twenty-One and 75/100 Dollars (\$21.75) per ton as adjusted in accordance with the terms hereof. This rate includes the current State of Georgia fees and taxes of \$2.75 on the disposal of solid waste. Commencing with the first anniversary date of the date of this Agreement and on each subsequent anniversary date the said Tipping Fee shall be adjusted and revised according to the changes in the Consumer Price Index ("CPI") during the most recently available 12 month period. For purposes of this Agreement, CPI shall mean Consumer Price Index, Water, Sewer, and Trash CPI, Not Seasonally Adjusted, All Areas, (WST CPI) as published by the United States Department of Labor. As soon as practicable after the said annual anniversary date of each year, the Company shall notify the County of such rate adjustment and upon request provide the supporting data that is the basis for the gate rate adjustment. No single annual CPI adjustment shall exceed three percent (3%). Each successive twelve (12) month period of operation shall constitute one (1) year.

2.03 In addition to the foregoing annual adjustment, the Company shall be entitled to an automatic increase in the County Waste Material Tipping Fee equal to the amount of any new or additional fee, surcharge, duty, tax, or other charges of any nature imposed

by the federal government, any agency thereof, the state wherein the Sanitary Landfill is located (or to be located), any agency thereof, or by any local governmental agency which is payable solely by reason of the nature of the operations conducted by the Company and any other sales or service taxes of general application to the operation of the Sanitary Landfill. Such fee, surcharge, duty, tax or other charge shall immediately be passed through to the County in the form of a Tipping Fee increase and shall include by way of example and not limitation a state tax or surcharge for "superfund" purposes.

- 2.04 The Company shall also be entitled to an automatic increase in the County Waste Material Tipping Fee to proportionately (as against the entire waste stream received) offset the increased cost of operating the Sanitary Landfill as a result of increases in costs of operations at the Sanitary Landfill resulting from changes in federal, state or local environmental or other law or regulation concerning the receipt, transportation, disposal or handling of County Solid Waste at the Sanitary Landfill.
- 2.05 In addition to the foregoing, the Company may petition the County for County Waste Material Tipping Fee increases to cover unforeseen and unusual increases in the cost of operating the Sanitary Landfill. The Company will be responsible for documenting the impact of such expenses and the approval of the resulting increase in the County Waste Material Tipping Fee shall not be unreasonably withheld by the County.
- 2.06 The Company shall display at the Sanitary Landfill the Tipping Fee charged for handling the Special Wastes (defined in Exhibit "A") contained in County Waste Material and County Waste Material delivered to the Sanitary Landfill in cars and pickup trucks.
- 2.07 The Company shall be responsible for securing necessary permits and approvals from relevant federal, state and local governmental agencies having jurisdiction over sanitary landfill operations.
- 2.08 The Company shall maintain the Sanitary Landfill open for performance of this Agreement between the hours of 5:00 a.m. and 4:00 p.m., Monday through Friday, and Saturdays between the hours of 7:00 a.m. and 11:00 a.m. or such other hours as the Company shall determine. In the event the aforesaid Saturday hours are not required, Company may, upon prior notice to County shorten or eliminate such hours of operation. In the event of emergency conditions declared by the County, the Company will keep the Sanitary Landfill open for disposal of unusual amounts of solid waste material generated or created by such emergency conditions.
- 2.09 The following holidays may be observed by the Company on which dates the Sanitary Landfill may, in the discretion of the Company, be closed: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- 2.10 The Company agrees to install, construct and maintain in good working order and to have available on all days in which the Sanitary Landfill is open, a scale to be used in weighing County Waste Material deposited at the Sanitary Landfill. The Company

agrees to cause normal maintenance and calibration of the scale to be performed in accord with manufacturer's recommendation. The County may, on a monthly basis and during normal business hours, inspect the scale and test the accuracy of same. In the event the scale is not operable at any time, vehicles will be charged based upon the capacity tonnage for such size vehicles.

- 2.11 During the term of this Agreement, the County will continue its current practices or initiate the practices of: collecting County Waste Material on its own behalf, or entering into and maintaining contracts with a waste collection service(s) for the collection of all County Waste Material; or permitting or licensing such waste collection service(s), and shall require as a condition to any such contract, permit or license that such collection service(s) dispose of all defined waste at the Sanitary Landfill.
- 2.12 During the term of this Agreement, the County shall not enter into any other Agreement with any other entity for the development of a solid waste disposal facility.

III. TERM OF CONTRACT

This Agreement shall be effective on full execution by the parties. The initial term of this Agreement shall be four (4) years, commencing on, provided all necessary Permits have been issued by all governmental bodies permitting the disposal of waste at the Sanitary Landfill.

IV. PERMITS AND COMPLIANCE

The Company shall perform its obligations herein in compliance with the Permits and applicable law and regulation and the County shall fully cooperate with Company in this regard.

V. INDEMNIFICATION

The Company agrees to protect, indemnify, defend and save harmless the County, its present and future officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorneys' fees), arising out of or relating to the Company's negligent acts or omissions related to the maintenance and operation of the Sanitary Landfill except for occurrences caused by or arising out of the misconduct or negligent conduct of County, its officers, employees and agents.

VI.
INSURANCE

- 6.01 Company shall provide and maintain during active Sanitary Landfill operations, Worker's Compensation Insurance which shall meet the requirements of the state wherein the Sanitary Landfill is located.
- 6.02 The Company shall provide and maintain during active Sanitary Landfill operations hereunder Public Liability Insurance, to protect against all claims arising out of the Company's negligent or willful acts or omissions in the course of its operations that result in bodily injury, death or property damage suffered on or about the Sanitary Landfill. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving County thirty (30) days notice in writing.
- 6.03 The Company shall upon request furnish County evidence that the insurance relative to its said acts or omissions is in force; provided, however, such insurance certificate shall not operate to amend or alter such insurance coverage so as to increase the level or extent expressly set forth herein.
- 6.04 The limits of liability of all insurance required herein shall be as set forth in Exhibit "B" which is attached hereto and made a part hereof.

VII.
DEFAULT

Except as otherwise provided herein, if either party breaches this Agreement or defaults in the performance of any of the covenants or conditions contained herein for fifteen (15) days after the other party has given the party breaching or defaulting written notice of such breach or default, unless a longer period of time is required to cure such breach or default and the party breaching or defaulting shall have commenced to cure such breach or default within said period and pursues diligently to the completion thereof, the other party may: i) terminate this Agreement as of any date which the said other party may select provided said date is at least thirty (30) days after the fifteen (15) days in which to cure or commence curing; ii) cure the breach or default at the expense of the breaching or defaulting party; and iii) have recourse to any other right or remedy to which it may be entitled by law, including, but not limited to, the right for all damage or loss suffered as a result of such termination. In the event either party waives default by the other party, such waiver shall not be construed or determined to be a continuing waiver of the same or any subsequent breach or default.

VIII.
GENERAL PROVISIONS

- 8.01 Neither party shall assign or transfer, or permit the assignment or transfer of, this Agreement or the rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, however, the Company

may transfer or assign its interest hereunder to an "Affiliated Company" without the prior written consent of County. In the event of such assignment or transfer, the assignee shall assume the liability of the Company, but such assumption of liability shall not relieve the Company of liability under this Agreement. For purposes of this paragraph, "Affiliated Company" means any company which is a wholly owned subsidiary of Waste Management, Inc. or which Waste Management, Inc. or a subsidiary thereof owns at least fifty-one percent (51%) thereof.

- 8.02 This Agreement constitutes the entire agreement and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto.
- 8.03 This is an Agreement for the performance of specific services described herein. Under no circumstances or conditions shall the operation of the Sanitary Landfill by the Company in accordance with this Agreement be deemed a public function, nor has County acquired an interest, ownership or otherwise in the real or personal property or improvements or fixtures at the Sanitary Landfill by virtue of this Agreement.
- 8.04 From and after the Commencement Date, the Company's performance hereunder may be suspended and its obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond the reasonable control of the Company unless such cause or causes are a result of action or non-action by the Company. Such causes shall include, but not be limited to, acts of God, acts of war, riot, fire, explosion, accident, flood or sabotage; lack or adequate fuel, power or raw materials; judicial administrative or governmental laws, regulations, requirements, rules, orders or actions; injunctions or restraining orders; the failure of any governmental body to issue or grant, or the suspension or revocation or modification of any license, permit or other authorization necessary for the construction and/or operation envisioned by this Agreement; national defense requirements; labor strike lockout or injunction.
- 8.05 If any term, clause or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be illegal, invalid or unenforceable under present or future laws effective during the term hereof, then it is the intention of the parties hereto that the remainder of this Agreement, or the application of such term, clause or provision to persons or circumstances other than those to which it is held illegal, invalid or unenforceable, there be added as a part of this Agreement a term, clause or provision as similar in terms to such illegal, invalid or unenforceable term, clause or provision as may be possible and be legal, valid and enforceable.
- 8.06 This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.
- 8.07 The covenants, terms, conditions and provisions of this Agreement shall extend to and be binding upon the successors and approved assigns of the respective parties.

8.08 All notices or other communications to be given hereunder shall be in writing and shall be deemed given when mailed by registered or certified United States mail, addressed as follows:

To the County: Jackson County
401 Grindstaff Cove Road, Suite #A207
Sylva, NC 28779
Attn: County Manager, Don Adams

To the Company: R & B Landfill, Inc.
705 Frank Bennett Road
Homer, GA 30547
Attn: Landfill Manager

With a copy to: Waste Management Southern Office
1850 Parkway Circle, Suite 600
Marietta, GA 30067
Attn: Legal Department

Change of address by either party shall be by notice given to the other in the same manner as above specified.

8.09 To the extent definition of specific terms is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as of the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.

8.10 Whenever the consent, approval or cooperation of one party is expressly or implicitly required or necessary by the terms hereof or to effect successful performance of the other party, such consent, approval or cooperation shall not be unreasonably withheld, denied or delayed.

IN WITNESS WHEREOF, the parties hereto cause their presence to be signed and sealed this ____ day of _____, 2018, written by their respective officers pursuant to authorizations contained in duly adopted resolutions or ordinances, as the case may be.

JACKSON COUNTY, NORTH CAROLINA

By: _____
Its: _____

ATTEST:

R & B LANDFILL, INC.
By: 
Its: President

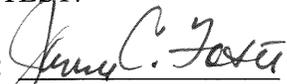
ATTEST:
By: 
Its: Asst. Secretary

EXHIBIT "A"

CONTRACTOR'S DEFINITION OF SPECIAL WASTE

"Special Waste" means any discarded material from a non-residential source meeting any of the following descriptions:

- a. Containerized waste (e.g., a drum, portable tank, lugger box, roll-off box, pail, bulk tanker, etc.) listed in b. - g. below.
- b. Waste containing free liquids.
- c. Sludge waste.
- d. Waste from an industrial process.
- e. Waste from a pollution control process.
- f. Residue from a spill of a non-hazardous chemical substance or commercial product or a waste listed in a. - e. or g.
- g. Contaminated non-hazardous residuals from the cleanup of a facility generating, storing, treating, recycling or disposing of wastes, chemical substances or commercial products listed in a. - f.

EXHIBIT "B"

INSURANCE COVERAGE RIDER

<u>Coverages</u>	<u>Limits of Liability</u>
Worker's Compensation	Statutory
Employer's Liability	\$1,000,000 each accident \$1,000,000 disease-policy
Limit Employee	\$1,000,000 disease-each
Bodily Injury Liability and Property Damage Combined	\$1,000,000 each occurrence
Automobile Bodily Injury Liability and Automobile Property Damage Combined	\$1,000,000 each occurrence