
AGREEMENT FOR EAST WAKE TRANSFER STATION OPERATION, MAINTENANCE,

AND

MUNICIPAL SOLID WASTE TRANSPORTATION SERVICES

Between

WAKE COUNTY, NORTH CAROLINA

and

_____ CONTRACTOR

_____, 2021

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SOLID WASTE TRANSFER FACILITY OPERATIONS AND MAINTENANCE
AND WASTE TRANSPORTATION SERVICES AGREEMENT

THIS SOLID WASTE TRANSFER FACILITY OPERATIONS AND MAINTENANCE AND WASTE TRANSPORTATION SERVICES AGREEMENT is made and entered into as of this ____ day of _____, 2021 between County of Wake, a body politic and corporate of the State of North Carolina, hereinafter referred to as “COUNTY” and _____ a [limited liability company][corporation] organized under the laws of [] and authorized to do business in the State of North Carolina hereinafter referred to as “CONTRACTOR”.

RECITALS

WHEREAS, the City of Raleigh, hereafter referred to as “CITY” is authorized to establish and operate solid waste collection and disposal facilities;

WHEREAS, the CITY owns a municipal solid waste Transfer Facility located at 820 Corporation Parkway, Raleigh, NC 27610 which has been in operation since May 2008; and has granted the COUNTY a license to enter such premises for purposes related to the operation of the Transfer Facility; and

WHEREAS, the CITY has obtained a permit to operate said Transfer Facility, more specifically identified as the North Carolina Department of Environmental Quality (DEQ) Permit No. 92-33T ("Transfer Facility Permit"), a copy of which is attached hereto as Reference Document A, and owns the real property subject to the Transfer Facility Permit known as the East Wake Transfer Facility ("Transfer Facility"); and

WHEREAS, the COUNTY has applied for a new permit to operate the Transfer Facility and is awaiting finalization from the DEQ; and

WHEREAS, the CITY, COUNTY and the other South Wake Partners (Towns of Apex, Cary, Morrisville, Fuquay-Varina, Garner, Knightdale, Wendell, Zebulon, Rolesville and Wake Forest) have entered into an Interlocal Agreement for the purposes of the COUNTY taking over the operations of the Transfer Facility; and

WHEREAS, pursuant to the authority of the Interlocal Agreement, the COUNTY issued a Request for Proposals (“RFP”) for Transfer Station Operation and Maintenance and Municipal Solid Waste Hauling on the ____ day of _____ 2021, a true and accurate copy of which is attached hereto and incorporated herein by reference as Exhibit 1; and

WHEREAS, the CONTRACTOR submitted a responsive proposal (“Proposal”) to the COUNTY’s RFP, a true and accurate copy of which is attached hereto and incorporated herein by reference as Exhibit 2; and

WHEREAS, the COUNTY desires to enter into an agreement with the CONTRACTOR to operate and maintain the Transfer Facility and provide waste transportation services on the terms and conditions set forth in this Agreement; and

WHEREAS, the CONTRACTOR is in the business of providing Transfer Facility operation and maintenance and waste transportation services; and

WHEREAS, the COUNTY desires to contract with CONTRACTOR and CONTRACTOR desires to contract with the COUNTY to perform the services set forth in this agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

"Acceptable Waste" means solid waste as defined in NCGS 130A-290(18a) which is generated in Wake County. Acceptable Waste does not include any waste included in the definition of Unacceptable Waste, except for minor quantities of Unacceptable Waste ordinarily present in municipal solid waste in amounts consistent with the RCRA and other Applicable Law.

"Affiliate" means any business entity under common ownership with the CONTRACTOR or the CONTRACTOR's majority members/shareholders or with any parent or subsidiary of the CONTRACTOR.

"Agreement" means this Transfer Facility Operations and Maintenance and Waste Transportation Services Agreement between the CONTRACTOR and the COUNTY, including the Appendices, forms and the Reference Documents, as the same may be amended or modified from time to time in accordance herewith.

"Applicable Law" means: (1) any federal, state or local law, code or regulation; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule or other order of any Governmental Body having appropriate jurisdiction; (3) any Governmental Approval; and (4) any consent order or decree, settlement agreement or other similar agreement between the COUNTY and DEQ or EPA.

"Billing Period" means each calendar month, except that (1) the first Billing Period shall begin on the Commencement Date and shall continue to the last day of such month and (2) the last Billing Period shall end on the last day of the Contract Term of this Agreement. Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

"Capital Modification" means any material change, alteration, improvement, upgrade or modification of any of the Managed Assets, or any installation of new equipment or systems, including any of the foregoing that results from a replacement of any of the Managed Assets or the installation of new equipment, machinery, systems or other property at the Managed Assets.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq., and the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

"City" means the City of Raleigh, North Carolina.

"Commencement Date" means the date on which the COUNTY has authorized by Notice to Proceed the CONTRACTOR to commence operation of the Transfer Facility and associated waste transportation to the Landfill.

"Consumer Price Index". See CPI.

"Contract Administrator" has the meaning specified in Section 5.3

"Contract Date" means the date this Agreement is executed and delivered by the parties hereto.

"Contract Services" means all services provided by the CONTRACTOR as specified in this Agreement.

"Contract Standards" means the terms, conditions, methods, techniques, requirements, practices and standards imposed or required to be met by the CONTRACTOR in the performance of the Contract Services by: (1) Applicable Law; (2) the Permit; (3) the Minimum Requirements of the RFP; (4) the performance bond and any guarantee agreements; (5) applicable manufacturers specifications; (6) applicable Insurance Requirements; (7) Good Industry Practice, and (8) any other standard, term, condition, method, technique, practice or requirement specifically provided in this Agreement to be observed by the CONTRACTOR.

"Contract Term" means the initial and renewal terms collectively.

"Contract Year" means the COUNTY's fiscal year commencing on July 1 in any year and ending on June 30 of the following calendar year; provided, however, that the first Contract Year shall commence on the earlier of the scheduled Commencement Date and the actual Commencement Date and shall end on the following June 30, and the last Contract Year shall commence on July 1 prior to the date this Agreement expires or is terminated, whichever is applicable, and shall end on the last day of the Contract Term of this Agreement or the effective date of any termination, whichever is applicable. Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365/366 days.

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

"CPI" means the Consumer Price Index - All Urban Consumer Southeast as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

"DEQ" means the North Carolina Department of Environmental Quality, an agency of the State, designated to oversee the environmental activities of North Carolina, which, among other duties, regulates the handling and disposal of solid waste.

"EPA" means the United States Environmental Protection Agency and any successor agency.

"Equipment" means all vehicles, rolling stock, loaders, tractors, trailers, tools, machines, office equipment and other property owned by or leased to the CONTRACTOR that can be removed from the land without material damage to the land or the improvements.

"Fees and Costs" means fees and costs actually incurred by a party and determined by a Court to be expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any legal proceeding.

"Force Majeure" means any cause beyond the reasonable control of the party whose performance under this Agreement is affected, including but not limited to natural disasters, Acts of God, acts of war, rebellions, riots, civil disturbance, or sabotage, or to damage resulting there from; fires, floods, explosions, accidents or mechanical breakdowns not caused by the negligence of either party; or any other like or unlike causes which are beyond the control of the party whose performance is affected thereby. Force Majeure shall not include strikes, labor disputes, or equipment failure nor shall it apply to events caused by the negligence, willful or intentional action or malfeasance of the party asserting Force Majeure or to matters reasonably within the control of or which reasonably could have been prevented by such party.

"Good Industry Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances know or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices in the solid waste industry as observed in the Southeast region of the United States.

"Governmental Approvals" means all approvals, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services.

"Governmental Body" means any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction

"Hazardous Material" means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation "hazardous substance" as defined in CERCLA and "hazardous waste" as defined in RCRA.

"Landfill" means the South Wake Landfill, and all permitted contiguous land and structures, other appurtenances, and improvements of the land within the legal description of the site included in the Landfill Permit,

"Loss-and-Expense" means any and all actual loss, liability, forfeiture, obligation, damage, delay, fine, penalty, judgment, deposit, cost, expense, claim, Tax, or expense, including all fees and costs, except as explicitly excluded or limited under any provision of this Agreement.

"Managed Assets" means all or any portion of the Transfer Facility and Transfer Facility Office, and all improvements made to the Transfer Facility and Transfer Facility Office by or on behalf of the COUNTY, including, but not limited to all structures, tanks, pumping stations, drains, water supply and plumbing systems, roads and parking areas, gates, fences, alarms, lighting systems, but excluding the Equipment. The truck scales and Scale House are not included in the Managed Assets.

"Mediator" means any person serving as a mediator of disputes hereunder pursuant to Section 11.6.

"Non-Binding Mediation" means the voluntary system of dispute resolution established by Section 12.7 for the resolution of disputes arising under this Agreement.

"Notice To Proceed" means a notice issued by the COUNTY for the CONTRACTOR to commence the Contract Services.

"NPDES" means National Pollutant Discharge Elimination System.

"NSPS" means New Source Performance Standards of the EPA.

"Operation and Maintenance Manual" means the manual and related computer programs prepared by the CONTRACTOR containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Contract Services, developed and maintained as required by Section 7.4.

"Operating Day" means any day that the Transfer Facility is open for receipt of Acceptable Waste.

"OSHA" means the Occupational Safety and Health Act of 1970, as amended.

"Performance Bond" means a corporate surety bond that guarantees compensation to the COUNTY in the event that the COUNTY must assume the obligations or duties of the CONTRACTOR in order to continue the Contract Services.

"Permit to Operate" means the Permit to Operate the Municipal Solid Waste Transfer Facility and any modifications, renewals or amendments of the foregoing.

"RFP" means the Transportation and/or Maintenance of Transfer Facility/Loading of Municipal Solid Waste Request for Proposals issued on the ____ day of _____, 2021, as amended.

"Scales and Scale House" means the truck scales and structure adjacent to the truck scales at the Transfer Facility site where COUNTY employees responsible for weighing vehicles will work.

"Service Fee" means the compensation due to the CONTRACTOR in exchange for the services rendered, as further described in Article 10.

"Service Fee Schedule" means the basis for compensation as set forth in Appendix 6.

"Site" means the real property delineated on the map in Appendix 1, which includes the property located at 820 Corporation Parkway, Raleigh, NC 27610.

"State" means the State of North Carolina.

"Subcontract" means an agreement or purchase order by the CONTRACTOR or a Subcontractor to the CONTRACTOR, as applicable.

"Subcontractor" means every person (other than employees of the CONTRACTOR) engaged by the CONTRACTOR to perform any portion of the Contract Services.

"SWANA" means the Solid Waste Association of North America.

"Tax" means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment--in-lieu thereof, and any related interest, penalty or addition to tax.

"Termination Date" means the last day of the Contract Term of this Agreement.

"Transfer Facility" means the buildings, grounds and all appurtenances comprising the system for management of waste at the Site of the East Wake Transfer Station, 820 Corporation Parkway, Raleigh, NC 27610.

"Transfer Facility Superintendent" has the meaning defined in Section 7.2.

"Unacceptable Waste" means all solid waste which is not permitted to be disposed of at the Landfill under the Landfill Permit, including, but not limited to, Hazardous Materials, biological waste, biomedical waste, and construction debris.

"Utilities" means any and all utility services and installations whatsoever (including gas, water, sewer, stormwater, electricity, telephone, and data), and all piping, wiring, conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"Work" shall mean all the services provided by the CONTRACTOR pursuant to this agreement.

ARTICLE 2
SCOPE OF SERVICES AND CONTRACT TERM

SECTION 2.1 SCOPE OF SERVICES. This Agreement establishes the terms and conditions under which the CONTRACTOR shall perform the services required herein for the proper management of solid waste delivered to the Transfer Facility. It is the objective of this Agreement that every aspect of the CONTRACTOR's Work under this Agreement shall be performed safely and in accordance with the highest professional standards and best management practices for the solid waste industry.

(A) Solid Waste Transfer Facility Operations and Maintenance and Waste Transportation Services. In accordance with the requirements in this Agreement, the CONTRACTOR shall operate and maintain the Transfer Facility and transport waste from the Transfer Facility and unload the waste in a proper manner at the Landfill for the landfill operator to effect proper disposal.

(B) Labor and Services. Except as otherwise provided herein, the CONTRACTOR shall at its expense provide all labor, services, supervision, materials, and equipment necessary to accomplish these tasks throughout the Contract Term. It is the sole responsibility of the CONTRACTOR to perform the necessary activities under this Agreement in accordance with the requirements of this Agreement, the permits, and Applicable Law.

SECTION 2.2 CONTRACT TERM. This Agreement shall become effective on the Contract Date, and shall continue in effect until June 30, 2029, unless earlier terminated pursuant to the termination provisions of Article 11 hereof, in which event the Contract Term shall be deemed to have ended as of the date of such termination. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. The COUNTY shall have no obligation to make payments or to provide any other compensation to the CONTRACTOR until after the Commencement Date. This Agreement may be renewed and extended for one (1) additional four (4) year period upon the same terms and conditions set forth in this Agreement at the option of the COUNTY upon giving at least one hundred eighty (180) days written notice to CONTRACTOR prior to the expiration of the Contract Term.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

SECTION 3.1 REPRESENTATIONS OF THE COUNTY AND CONTRACTOR. The COUNTY and CONTRACTOR recognize that the successful implementation of this Agreement and the efficient operation of the Transfer Facility is dependent upon the good faith performance of their respective obligations. The COUNTY and CONTRACTOR hereby warrant that they will take all reasonable actions necessary to promptly and efficiently carry-out their responsibilities under this Agreement and they will cooperate with each other, as necessary, to ensure the effective, continuous performance of their respective obligations hereunder.

SECTION 3.2 MINIMUM STANDARDS. This Agreement contains performance standards and other requirements that shall govern the CONTRACTOR's activities under this Agreement. These requirements establish the minimum levels of performance that will be deemed acceptable by the COUNTY. It is the objective of this Agreement that every aspect of the CONTRACTOR's Work under this Agreement, including all Exhibits, Appendices, and Reference Documents, shall be performed safely and in accordance with the highest professional standards and best management practices for the solid waste industry.

SECTION 3.3 REPRESENTATIONS AND WARRANTIES. The CONTRACTOR represents and warrants the following:

(A) Existence and Powers. The CONTRACTOR is a [limited liability company][corporation] duly organized, validly existing and in good standing under the laws of the State of North Carolina, and fully authorized to do business in the State of North Carolina, with the full legal right, power and authority to enter into and perform its obligations under this Agreement;

(B) Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by all necessary corporate action of the CONTRACTOR and constitutes a legal, valid and binding obligation of the CONTRACTOR, enforceable against the CONTRACTOR in accordance with its terms, except to the extent that its enforceability may be limited by constitutional, bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application;

(C) No Conflict. To its knowledge, neither the execution nor delivery by the CONTRACTOR of this Agreement nor the performance by the CONTRACTOR of its obligations in connection with the transactions contemplated hereby or the fulfillment by the CONTRACTOR of the terms or conditions hereof (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the CONTRACTOR; or (b) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the CONTRACTOR is a party or by which the CONTRACTOR or any of its properties or assets are bound, or constitutes a default under any of the foregoing;

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Agreement by the CONTRACTOR or the performance of its payment or other obligations hereunder except such as have been duly obtained or made.

(E) No Litigation. Except as disclosed in writing to the COUNTY in a certification of an officer of the CONTRACTOR addressed to the COUNTY simultaneously with the execution and delivery of this Agreement, there is no Legal Proceeding before or by any Governmental Body pending or, to the CONTRACTOR's knowledge, overtly threatened or publicly announced against the CONTRACTOR or any Affiliate of the CONTRACTOR in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Agreement by the CONTRACTOR, or the validity, legality or enforceability of this Agreement against the CONTRACTOR or any other agreement or instrument entered into by the CONTRACTOR in connection with the transactions contemplated hereby, or on the ability of the CONTRACTOR to perform its obligations hereunder or under any such other agreement or instrument.

(F) Claims and Demands. Except as disclosed in writing to the COUNTY in a certification of an officer of the CONTRACTOR addressed to the COUNTY simultaneously with the execution and delivery of this Agreement, there are no material and adverse claims and demands based in environmental, contract or tort law pending or to its knowledge, threatened against the CONTRACTOR or any past or present Affiliate of the CONTRACTOR with respect to any solid waste landfill or transfer facilities designed, constructed, operated, maintained or managed by any of the foregoing.

(G) Governmental Approvals. The CONTRACTOR has or will obtain in the course of its performance hereunder, either directly or through qualified Subcontractors, the Governmental Approvals which the CONTRACTOR must obtain in its own name or that of its Subcontractors to provide the Contract Services.

(H) Information Supplied by the CONTRACTOR. The information supplied and representations and warranties made by the CONTRACTOR and the Guarantor in all submittals made in response to the RFP and in all post-proposal submittals with respect to the CONTRACTOR and the Guarantor (and, to its knowledge, all information supplied in such submittals with respect to any such Subcontractor) are true, correct and complete in all material respects.

(I) Expertise. The CONTRACTOR has the requisite expertise and financial ability to fully, completely, and satisfactorily perform its obligations hereunder in compliance with Applicable Law.

SECTION 3.4 ASSIGNMENT

The CONTRACTOR shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Agreement, its right to execute the same, or its right, title or interest in all or any part of this Agreement or any monies due hereunder whatsoever, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the COUNTY with approval of its Board of Commissioners. Any such approval given in one instance shall not relieve the CONTRACTOR of its obligation to obtain the prior written approval of the COUNTY to any further assignment. Any assignment of this Agreement which is approved by the COUNTY shall require the assignee of the CONTRACTOR to assume the performance of and observe all obligations, representations and warranties of the CONTRACTOR under this Agreement, The approval of any assignment, transfer or conveyance shall not operate to release the CONTRACTOR in any way from any of its obligations under Agreement unless such approval specifically provides otherwise.

ARTICLE 4
COMMENCEMENT DATE

SECTION 4.1 COMMENCEMENT DATE CONDITIONS. The following conditions must be satisfied in all material respects by the CONTRACTOR in order for the Commencement Date to occur.

(A) Operating Governmental Approvals. All Governmental Approvals required under Applicable Law which are necessary for the provision of the Contract Services shall have been duly obtained and shall be in full force and effect and all conditions to the commencement of operations contained therein shall have been satisfied in all material respects. Certified copies of all such Governmental Approvals, to the extent not in the COUNTY's possession, shall have been delivered to the COUNTY.

(B) Operation and Maintenance Manual. The CONTRACTOR shall have provided to the COUNTY five (5) copies of a draft Operation and Maintenance Manual prior to the Commencement Date.

(C) Training Program. The CONTRACTOR shall have developed and conducted a training program to train operating personnel to operate and maintain the Managed Assets.

(D) Vehicle Traffic Plan. The CONTRACTOR shall have submitted a transfer vehicle access and traffic plan prior to initiating operations.

(E) Required Insurance. The CONTRACTOR shall have filed with the COUNTY for approval, a certificate of insurance for each and every insurance policy required by Article 12 of this Agreement prior to Commencement Date.

(F) Pre-Operation Meeting. At least five (5) days prior to the Commencement Date, a joint meeting shall be held with representatives of the CONTRACTOR, the COUNTY, and other parties or government agencies which may be affected by or have jurisdiction over the Transfer Facility or the CONTRACTOR's activities under this Agreement. The purpose of this meeting is to introduce the key personnel from each organization and provide an opportunity for discussions concerning the start of operations and other pertinent issues associated with the Transfer Facility and this Agreement.

(G) Contact Information. Prior to the Commencement Date, the CONTRACTOR shall inform the COUNTY of the telephone, fax and beeper numbers, e-mail address and other means by which the CONTRACTOR, Transfer Facility Superintendent, and other key personnel may be contacted as required by the communication system identified in Section 5.3 of this agreement. The COUNTY shall furnish to the CONTRACTOR comparable communications information with respect to the Contract Administrator.

SECTION 4.2 NOTICE TO PROCEED WITH OPERATIONS. The COUNTY shall deliver a Notice to Proceed to the CONTRACTOR at least three (3) calendar days before the Commencement Date. The COUNTY's Notice to Proceed shall identify and establish the Commencement Date.

ARTICLE 5
GENERAL TERMS AND CONDITIONS

SECTION 5.1 COUNTY ACCESS TO MANAGED ASSETS. The COUNTY shall have the right at any time, on a 24-hour per day, 365 days per year basis, to have immediate access to the Managed Assets, to visit and inspect the Managed Assets and observe the CONTRACTOR's performance of the Contract Services without providing advance notice to the CONTRACTOR. The CONTRACTOR shall permit and facilitate access to the Managed Assets for such purposes by COUNTY personnel and by agents and Contractors designated by the COUNTY. All visitors shall comply with the CONTRACTOR's reasonable operating and safety procedures and rules, and shall not interfere with the CONTRACTOR's operations of the Managed Assets. The City of Raleigh, as the property owner, will be allowed the same right of access as the COUNTY described above.

SECTION 5.2 INDEPENDENT CONTRACTOR. CONTRACTOR will perform all Work under this Agreement as an independent contractor. CONTRACTOR shall secure, at his own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. It is further agreed by Provider that it shall obey all State and Federal statutes, rules and regulations, which are applicable to provisions of the services called for herein. Neither Provider nor any employee of the Provider shall be deemed an officer, employee or agent of the County for any purpose under this Agreement or otherwise.

SECTION 5.3 COMMUNICATIONS BETWEEN COUNTY AND CONTRACTOR. The CONTRACTOR shall develop, implement and maintain a system that will allow the CONTRACTOR and the COUNTY to communicate with each other at any time, 24 hours per day, seven days per week. The CONTRACTOR's proposed communications system shall be subject to the COUNTY's prior approval.

(A) COUNTY's Contract Administrator. The COUNTY shall designate an individual to administer this Agreement and act as the COUNTY's liaison with the CONTRACTOR in connection with the Contract Services (the "Contract Administrator"). The CONTRACTOR understands and agrees that the Contract Administrator has only limited authority with respect to the implementation of this Agreement, and cannot bind the COUNTY with respect to any Agreement amendment, or any waiver of the obligations of the CONTRACTOR hereunder. Within such limitations, the CONTRACTOR shall be entitled to rely on the written directions of the Contract Administrator.

(B) COUNTY Approvals and Consents. When this Agreement shall require any approval or consent by the COUNTY to a CONTRACTOR submission, request or report, the approval or consent shall be given by the Contract Administrator in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the COUNTY with the Applicable Law that generally governs its affairs, with which the COUNTY will comply. Unless expressly stated otherwise in this Agreement, and except for requests, reports and submittals made by the CONTRACTOR that do not, by their terms or the terms of this Agreement, require a response or action, if the COUNTY does not find a request, report or submittal acceptable, it shall provide written response to the

CONTRACTOR describing its objections and the reasons therefore within 30 days of the COUNTY's receipt thereof. The failure of the COUNTY to respond within 30 days of the COUNTY's receipt thereof shall be deemed as approval or consent to CONTRACTOR's submission.

(C) Meetings. The CONTRACTOR shall be required to hold monthly meetings with the COUNTY to review all aspects of the Transfer Facility operations and Contract Services. The Transfer Facility Superintendent shall personally attend the monthly meetings with the COUNTY, and all special meetings which the COUNTY may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Managed Assets and this Agreement.

(D) Notice. All notices shall be in writing and sent certified or registered mail (postage prepaid), facsimile transmission or confirmed receipt overnight delivery to the following address.

To CONTRACTOR:

To COUNTY:

Wake County Solid Waste Division

P.O. Box 550

Raleigh, NC 27602

Attn: John Roberson, Solid Waste Director

Fax: 919-743-4772

With a copy to :

Mr. Scott W. Warren, County Attorney

P.O. Box 550

Raleigh, N.C. 27602

The date of time of receipt for purposes of all notices required or allowed under this Agreement shall be the time or date the relevant document was sent by registered or certified mail in accordance with the provisions hereof, or personally delivered to or acknowledged receipt at the proper address, or on the business day following a successful facsimile transmission. Any party may change its address for notices hereunder on not less than five (5) days notice by delivering a notice of such change in accordance with the provisions of this Agreement.

SECTION 5.4 CUSTOMER AND COMMUNITY RELATIONS.

(A) Responding to Complaints. If there are any complaints or communications made by customers, citizens, citizen groups and/or public agencies about the Contract Services (collectively "complaints"), the CONTRACTOR shall investigate each such complaint and communication. If the CONTRACTOR determines that a complaint has a valid basis, the CONTRACTOR shall use reasonable efforts to provide a solution to any issues that are within the CONTRACTOR's control raised by such complaints. The CONTRACTOR shall respond to all complaints as soon as possible, but no later than the end of the next Operating Day following receipt of the complaint.

(B) Reporting Complaints. All such communications shall be immediately logged and promptly responded to in writing, faxed to the COUNTY on a daily basis, and reported to the COUNTY no later than the next Operating Day after the complaint is received by the CONTRACTOR. The CONTRACTOR's report shall include, but not be limited to, the name and address of the complainant, the

substance of the complaint, including the activity or service at issue, the action, if any, the CONTRACTOR has taken to investigate or remedy the problem or an explanation of why no action has been taken. The CONTRACTOR shall establish, maintain and make freely known a telephone number, e-mail address and mailing address to which customer complaints and communications may be directed.

SECTION 5.5 STAFFING AND PERSONNEL TRAINING. All of the CONTRACTOR's employees shall be competent and appropriately trained for the tasks assigned to them. The CONTRACTOR shall staff the Managed Assets during the Contract Term of this Agreement with qualified personnel who meet the licensing and certification requirements of the State, under a staffing plan that is consistent with industry standards and best management practices.

(A) Employee Conduct.

(1) At all times when CONTRACTOR's employees are on-site, the CONTRACTOR's employees shall wear a standard shirt or uniform of high visibility with the CONTRACTOR's logo.

(2) Any employee of either the CONTRACTOR or the COUNTY who engages in misconduct, is incompetent in his duties, dishonest, intoxicated, under the influence of drugs, or engages in scavenging shall be disciplined or removed from his position. The COUNTY reserves the right, however is not required, to direct the CONTRACTOR to dismiss, or relocate away from the Transfer Facility, any employee of the CONTRACTOR or a Subcontractor who materially or repeatedly violates any term of this Agreement or who is wanton, negligent, or discourteous in the performance of his duties. The COUNTY shall coordinate with the CONTRACTOR before exercising this right. Nothing herein shall be construed to relieve the CONTRACTOR of responsibility for the conduct of its employees, agents, and subcontractors.

(B) Additional Staffing. Sufficient backup personnel shall be available to properly staff the Managed Assets during periods of sickness, vacations or other absences of regular personnel. CONTRACTOR shall maintain a contingency plan for providing expected levels of staffing at all times including during the COVID-19 pandemic. At the request of the COUNTY, the CONTRACTOR shall provide added staff under this Agreement at no additional cost to the COUNTY if it is shown that additional personnel are needed to properly operate the Transfer Facility.

(C) Training. The CONTRACTOR shall be responsible for training all personnel to perform the Contract Services in accordance with the Contract Standards. The CONTRACTOR shall employ certified managers and operators as required by North Carolina Solid Waste regulations. The CONTRACTOR shall ensure that its employees receive adequate training and are SWANA certified transfer station operators before their starting date of service. The costs of employee training shall be borne by the CONTRACTOR and documentation of completed training shall be maintained by the CONTRACTOR.

(D) COVID-19 . For the duration of the declared state of emergency due to the COVID 19 pandemic, Provider shall ensure that all assigned workers follow the more restrictive of CONTRACTOR or Wake County protocols for COVID-19 while assigned to staff the Managed Assets. CONTRACTOR shall be responsible for screening all of CONTRACTOR's assigned workers for COVID-19 symptoms. Any worker with COVID-19 symptoms, a positive COVID-19 test, a pending COVID-19 test, or known exposures to COVID-19 shall not be assigned to the Managed Assets.

SECTION 5.6 SUBCONTRACTORS. The CONTRACTOR shall be responsible to the COUNTY for the acts and omissions of its Subcontractors and for any person that is directly or indirectly employed by the Subcontractors.

(A) COUNTY Approval. The CONTRACTOR agrees to employ only those Subcontractors that have been reasonably approved by the COUNTY. Such approval shall not be unreasonably withheld and shall be based on the COUNTY's reasonable determination that the Subcontractor has the experience, equipment, personnel and financial resources to satisfactorily perform the Work required by this Agreement. The COUNTY's approval shall be limited to a specific Subcontractor and specific dates of service. As a condition of approval, CONTRACTOR must provide COUNTY with proof of Subcontractor's insurance consistent with or greater than as required of CONTRACTOR under this Agreement.

(B) Subcontractor Payment. Nothing in this Agreement shall create any contractual relationship between any Subcontractor and the COUNTY or any obligation on the part of the COUNTY to pay or see to the payment of any monies which may be due to any Subcontractor. No subcontract shall relieve the CONTRACTOR of its responsibilities under this Agreement.

SECTION 5.7 REGULATORY COMPLIANCE.

(A) Compliance Obligation. The CONTRACTOR shall perform all of its obligations hereunder in compliance with Applicable Law, and shall cause all Subcontractors to remain in compliance with Applicable Law. The CONTRACTOR shall remain in compliance with the terms of all Governmental Approvals applicable to the Managed Assets. The contractor shall report immediately to the COUNTY any inspections by any governmental agencies known to the CONTRACTOR and all violations of the terms and conditions of any governmental approval or applicable law pertaining to the Managed Assets.

(B) Non-Compliance and Enforcement. The CONTRACTOR shall report immediately to the COUNTY any inspections by any governmental agencies known to the CONTRACTOR and all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Managed Assets.

(C) No Nuisance. The CONTRACTOR shall keep the Managed Assets neat, clean and substantially litter-free at all times, ensure that the operation of the Managed Assets does not create any odor, litter, noise, fugitive dust, vector or other adverse environmental effects constituting, with respect to each of the foregoing, a nuisance condition under Applicable Law.

SECTION 5.8 TAXES, CHARGES, AND LEVIES. The CONTRACTOR shall pay all sales, consumer, use, and other taxes and fees required by Applicable Law for the CONTRACTOR's activities under this Agreement.

SECTION 5.9 MAINTENANCE OF RECORDS. The CONTRACTOR shall keep accurate records of all transactions connected with this Agreement. The CONTRACTOR shall develop and implement an organized system for keeping records concerning the CONTRACTOR's activities under this Agreement.

(A) Record Documents At a minimum, the CONTRACTOR's records shall include all correspondence and invoices including correspondence to and from DEQ and other regulatory agencies; transaction tickets and receipts; permits, complaints; and maintenance reports.

(B) Accounting. The CONTRACTOR shall at all times maintain an accounting system that uses generally accepted accounting principles for all services rendered and materials supplied, including additional and deleted Work, in connection with this Agreement.

(C) Retention of Records. The CONTRACTOR's records and documents concerning this Agreement shall be retained by the CONTRACTOR for a minimum of five (5) years after the termination of this Agreement.

(D) COUNTY Access to Records. The COUNTY and its authorized agents shall have the right to audit, inspect, and copy all such records and documents as often as the COUNTY deems necessary during the Contract Term and for five (5) years after the termination of this Agreement and any extensions thereof. The right to audit, inspect and copy records and documents may be exercised during normal business hours, at the COUNTY's sole expense, but shall not extend to confidential or proprietary information.

(E) Nightly Operating Reports. The CONTRACTOR shall submit a photo of the transfer station floor, every day of operation by 6 pm nightly to the COUNTY Contract Administrator. This can be submitted via email or by text message.

SECTION 5.10 MONTHLY OPERATION REPORTS (MOR). The CONTRACTOR shall provide to the COUNTY, by the fifteenth business day of each month, a report for the preceding month summarizing routine and extraordinary activities during the prior month. At a minimum, the reports shall include complaints; spills, emergencies, accidents or injuries at the Site, in transit, or at the Landfill; new or revised operating practices or procedures; pollution, objectionable odors, or nuisance conditions at the Site, in transit or at the Landfill; and any other unusual or extraordinary occurrences affecting the CONTRACTOR's performance under the Agreement.

ARTICLE 6
DELIVERY AND RECEIPT OF WASTE

SECTION 6.1 DELIVERY OF ACCEPTABLE WASTE BY THE COUNTY.

(A) No Delivery Commitment by COUNTY. The COUNTY shall not be required to deliver or cause the delivery of any amounts of Acceptable Waste to the Transfer Facility and shall not be liable in damages for any failure to so deliver or cause the delivery of Acceptable Waste.

(B) Source Separation. Nothing in this Agreement shall be deemed to restrict the right of the municipalities, residents, businesses or organizations in the COUNTY to practice source separation for the recovery, recycling or composting of waste nor the right of the COUNTY to conduct, sponsor, encourage or require such source separation.

SECTION 6.2 RECEIPT OF WASTE BY THE CONTRACTOR.

(A) Receiving and Transporting of Acceptable Waste. The CONTRACTOR shall receive and transport to the Landfill all Acceptable Waste delivered to the Transfer Facility; provided, however, that the CONTRACTOR shall not accept any load which has not been weighed by the COUNTY's weigh master. The CONTRACTOR may refuse delivery of Unacceptable Waste and waste delivered outside the receiving time.

(B) Determination of Tonnage Processed. The weight records pertaining to the receipt of Acceptable Waste at the Transfer Facility, the tare weight or outgoing weight records and the weights of any Acceptable Waste and Unacceptable Waste removed from the Transfer Facility shall be utilized.

(C) Weight Record. For each Billing Period, the COUNTY shall furnish the CONTRACTOR daily and monthly tonnage records.

SECTION 6.3 RECEIVING AND OPERATING HOURS.

(A) Receiving Time. On and after the Commencement Date, the CONTRACTOR shall keep the Transfer Facility open for receiving Acceptable Waste from 6:00 A.M. until 3:00 P.M. Monday through Saturday, (other than New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, on which the Transfer Facility may be closed), and during such additional hours as may be required to accommodate special collection practices associated with holidays or specials events, or to accommodate disposal requirements associated with a natural disaster, unusually inclement weather, or other emergency condition as defined by the COUNTY

(B) Consistent Operating Rate. The CONTRACTOR shall perform Transfer Facility operations in an efficient manner, handling waste at a consistent operating rate so as to avoid the back up of delivery vehicles waiting to unload waste. The CONTRACTOR will direct delivery vehicles to unload their waste on a first come first serve basis and will in no way provide preferential treatment to any delivery vehicles or class of delivery vehicles except as necessitated by operational efficiencies.

SECTION 6.4 WEIGHING RECORDS.

(A) Measurement Devices and Procedures. The COUNTY shall own, operate and maintain the truck scales, calibrated to the accuracy required by Applicable Law, to weigh all vehicles arriving to, or departing from, the Transfer Facility, unless otherwise dictated in this agreement. All vehicles shall be weighed to record gross weight, tare weight, date and time and vehicle identification on a

weight record. The CONTRACTOR and its agents shall have the right to monitor weighing activities and records.

(B) Estimates During Incapacitation. To the extent that weighing facilities are incapacitated or are being tested or calibrated, the COUNTY and the CONTRACTOR will use weights from the landfill or shall estimate the quantity of waste delivered on the basis of truck volumes and estimated data obtained through historical information. These weights from the landfill or estimates shall take the place of actual weighing and shall be the basis for records during the scale outage.

(C) Weight Records. The COUNTY shall maintain daily records of the number of tons of Acceptable Waste delivered to the Transfer Facility, the number of tons of Acceptable Waste rejected (rightfully or wrongfully) by the CONTRACTOR, the number of tons of received Unacceptable Waste, indicating, in each case and to the extent practicable, the date and time of arrival or departure of each vehicle transporting such waste, with appropriate identification of each vehicle.

SECTION 6.5 NON-COUNTY WASTE. The COUNTY will not knowingly accept solid waste generated outside the County, notwithstanding the capacity of the Transfer Facility to process such waste. The CONTRACTOR and the COUNTY shall cooperate in enforcing this restriction.

SECTION 6.6 UNACCEPTABLE WASTE. Neither the COUNTY nor the CONTRACTOR shall knowingly receive or accept Unacceptable Waste at the Transfer Facility, and the COUNTY and CONTRACTOR agree to make all reasonable efforts to prevent the receipt of Unacceptable Wastes. The CONTRACTOR shall be responsible for inspecting vehicles delivering waste to the Transfer Facility, and inspecting waste before and after unloading, to ensure that Unacceptable Wastes are not being delivered to the Transfer Facility. Vehicle inspections shall be conducted on a reasonable and scheduled basis.

(A) Delivery of Unacceptable Waste. If the CONTRACTOR discovers delivery of any Unacceptable Waste during the active operation of unloading, handling and reloading of solid waste shall be suspended in the immediate vicinity of the identified Unacceptable Waste and the COUNTY weigh master shall be notified immediately. Safety measures shall be instituted as necessary.

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

(C) Temporary Storage of Unacceptable Waste. The CONTRACTOR shall provide the containers needed for the temporary storage of Unacceptable Waste and other materials that are segregated from the Acceptable Waste at the Transfer Facility. The CONTRACTOR shall arrange and pay for the removal of these materials from the Transfer Facility.

(D) Disposal of Unacceptable Waste. The CONTRACTOR shall arrange and pay for the disposal of any Unacceptable Waste that is removed from the Transfer Facility by the CONTRACTOR.

(E) Cost Recovery for Unacceptable Waste Disposal. If no responsible party can be identified or if a responsible party refuses to remove and properly dispose of Unacceptable Waste delivered to or deposited at the Transfer Facility, the CONTRACTOR, within forty-eight (48) hours of the discovery of said Unacceptable Waste, shall remove and properly dispose of the Unacceptable Waste, at the CONTRACTOR's costs with full right of cost recovery against the responsible party. The COUNTY hereby assigns to the CONTRACTOR any and all of its cost recovery rights and responsibilities under CERCLA, 42 U.S.C. §9601 et seq., against such responsible party when the CONTRACTOR removes and disposes of such Unacceptable Waste.

SECTION 6.7 HAZARDOUS MATERIALS. The parties acknowledge that the Transfer Facility has not been designed and is not intended to be used in any manner or to any extent as a facility for the receiving, handling, transportation, storage or disposal of Hazardous Materials. Neither the CONTRACTOR nor the COUNTY shall countenance or knowingly permit the delivery of Hazardous Materials to the Transfer Facility or the storage of Hazardous Materials at the Transfer Facility.

(A) The CONTRACTOR shall be responsible for inspecting vehicles delivering waste to the Transfer Facility, and inspecting waste before and after unloading, to ensure that Hazardous Materials are not being delivered to the Transfer Facility. Vehicle inspections shall be conducted on a reasonable and scheduled basis.

(B) Delivery of Hazardous Materials. If the CONTRACTOR discovers that Hazardous Materials have been delivered to the Transfer Facility, it shall isolate such waste from the waste stream and give immediate notice of such discovery to the COUNTY and the COUNTY shall immediately notify all other appropriate governmental authorities as required by Applicable Law. Immediately upon receipt of such notification, the COUNTY shall, in the most expeditious manner possible under the circumstances, cause such Hazardous Materials to be removed from the Transfer Facility and transported to and disposed of at a landfill or other disposal site selected by the COUNTY in its sole discretion, and lawfully permitted to receive and dispose of such Hazardous Materials.

(C) Costs and Liabilities. In any Contract Year, the CONTRACTOR shall pay the first \$25,000 of any costs incurred by either party in connection with the cleanup, removal, transportation and disposal of any Hazardous Materials delivered to the Transfer Facility incurred as a result of the CONTRACTOR's improper screening of the waste delivered to the Transfer Facility, and the COUNTY shall pay any balance of such costs in any Contract year; provided, however, that the CONTRACTOR shall pay all such costs to the extent covered by the CONTRACTOR's insurance required under this Agreement, or to the extent incurred due to the negligence or willful misconduct of the CONTRACTOR.

ARTICLE 7
SOLID WASTE TRANSFER FACILITY OPERATION AND MAINTENANCE

SECTION 7.1 OPERATION GENERALLY. Following the Commencement Date, the Managed Assets shall be operated and maintained by the CONTRACTOR, excepting the truck scales and scale house, which shall be maintained by the COUNTY. The CONTRACTOR shall maintain the Managed Assets in good working order, condition and repair, in a neat and orderly condition and in material accordance with Good Industry Practice and shall maintain the aesthetic quality of the Managed Assets as originally constructed.

SECTION 7.2 SERVICE COORDINATION AND CONTRACT ADMINISTRATION

(A) Transfer Facility Office. The CONTRACTOR shall maintain an office at the Transfer Facility in a building on the Site provided by the COUNTY. At a minimum, the office shall be used to store all documents related to the operation of the Transfer Facility, including correspondence, compliance records, operational records, personnel records and maintenance records.

(B) Transfer Facility Superintendent. The CONTRACTOR shall appoint a full-time manager of the Managed Assets (the "Transfer Facility Superintendent") who shall be trained, experienced and proficient in the management and operation of assets comparable to the Managed Assets, and whose primary employment responsibility shall be managing the Contractors' performance of the Contract Services. This person is required to be SWANA certified in Transfer Station Management. The primary residence of the Transfer Facility Superintendent shall be within a fifty (50) mile radius of the Transfer Facility.

(C) Administrative Assistant. The CONTRACTOR shall appoint at the minimum a part-time employee dedicated to assisting the Transfer Facility Superintendent with record retention and other administrative responsibilities.

SECTION 7.3 SCALE HOUSE and SCALES. The COUNTY shall maintain and operate the scale house and weighing scales at the Transfer Facility.

(A) Scale Operator. The scale operator(s) shall be employed by the COUNTY. The scale house facility will be maintained by the County. The Contract Administrator shall cooperate with the CONTRACTOR in reviews of the performance of the scale operator(s), and the Contract Administrator will give full consideration to issues raised by the CONTRACTOR in light of the cooperative nature with which the parties must work together and depend upon one another.

(B) Weight Records. The COUNTY's scale operators shall retain the original weight records. All disposal tickets issued by the COUNTY will be consecutively numbered when practical. The disposal tickets and other scale house records shall be available for inspection by the CONTRACTOR upon request. In the event the weighing scales become inoperable, the COUNTY shall use its best efforts to repair or replace the scale. During a scale breakdown, the COUNTY shall estimate each truck's Acceptable Waste tonnage based upon its volume and historical weight data. In the event of a scale breakdown lasting ten (10) days or more, the COUNTY shall, at its expense, rent or otherwise obtain temporary scales until the permanent scales are repaired or replaced.

SECTION 7.4 OPERATION AND MAINTENANCE MANUAL. An Operations Plan for the Transfer Facility was developed by the COUNTY and approved as part of the facility permitting process. The CONTRACTOR shall prepare an Operation and Maintenance Manual to supplement the

Operation Plan and this Agreement and establish additional requirements for the CONTRACTOR's performance under this Agreement. The Operation and Maintenance manual should include, at a minimum, the CONTRACTOR's safety and emergency procedures along with staffing, training, waste screening plan, and maintenance plans. Nothing in the CONTRACTOR's Operation and Maintenance manual shall be in conflict with the COUNTY's approved Operations Plan. The Operation and Maintenance Manual may be modified or amended by mutual written agreement of the COUNTY and CONTRACTOR. The COUNTY is authorized to approve changes to the Operation and Maintenance Manual on behalf of the COUNTY. However, if there is any conflict or inconsistency between the requirements of this Agreement and the Operation and Maintenance Manual, the provisions of this Agreement shall govern the parties' conduct.

SECTION 7.5 SAFETY AND SECURITY. The CONTRACTOR shall take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the operation of the Managed Assets to all employees, customers and visitors to the Managed Assets.

(A) Safety Plan. The CONTRACTOR shall have a written safety plan describing plans and procedures including safety and loss control training for all of the CONTRACTOR's employees that will be providing services for the COUNTY under this Agreement. All such employees shall receive appropriate training before they commence work under this Agreement and they shall receive updated, refresher training on a routine basis throughout the Contract Term of this Agreement.

(B) OSHA. The provision of the Contract Services by the CONTRACTOR and the Managed Assets shall at all times be in compliance with OSHA.

(C) Security. The CONTRACTOR shall be responsible for the security of the facilities in use by the CONTRACTOR 24 hours a day, 7 days a week, and shall maintain suitable fences, gates and locks. The CONTRACTOR will install security cameras in the Transfer Station and around the Transfer Facility that record 24 hours a day, 7 days a week for monitoring purposes. The CONTRACTOR shall take all reasonable precautions and efforts to guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall provide for safe and orderly vehicular movement. CONTRACTOR may, at its own cost, install a security system at the site, office building, and/or transfer facility building.

(D) Accidents. The CONTRACTOR shall report any accidents resulting from the performance of this Agreement to the COUNTY as soon as practicable by telephone or messenger. For purposes of this Agreement, "accident" shall include the death of any person, any personal injury resulting in in-patient hospitalization or out-patient treatment by a physician, or damage to any real or personal property exceeding \$5,000. The CONTRACTOR shall report, in writing, to the COUNTY, within seven (7) days of that accident, complete details of the accident, including witness statements.

SECTION 7.6 EMERGENCIES. If at any time the CONTRACTOR determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Managed Assets, or to mitigate the immediate consequences of an emergency event, then the CONTRACTOR shall take all such action necessary to remedy such emergency situation.

(A) Emergency Plan. Within sixty (60) days following the Commencement Date, the CONTRACTOR shall provide the COUNTY with a plan of action to be implemented in the event of an

emergency, including fire, weather, environmental, health, safety and other potential emergency conditions. The plan shall: (1) provide for appropriate notifications to the COUNTY and all other Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the COUNTY and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; (3) assure the timely availability of all personnel required to respond to any emergency (no longer than two hours during nights, weekends or holidays) and shall otherwise comply with this Agreement. The emergency plan shall be reviewed by the parties annually as part of the review of the annual operations report, and updated when necessary.

SECTION 7.7 VEHICLES AND EQUIPMENT. The CONTRACTOR shall provide all equipment and personnel necessary to perform CONTRACTOR's duties under this Agreement in a safe, timely and efficient manner. Minimum characteristics for major equipment use at the Transfer Facility are specified as follows:

(A) Wheel Loaders. CONTRACTOR shall provide a minimum of two (2) wheel loaders at the site (a primary loader and a secondary loader), with access to a third unit, which can be on-site within 24 hours, as a backup. The primary loader must be new (less than 200 operating hours) at the start of the term of the Agreement. The secondary loader does not need to be new, but must meet the standard described below. Factory certified refurbished equipment may be considered as new equipment, given proper documentation is provided. Minimum characteristics and requirements for wheel loaders are identified below:

- Maximum Operating hours: 12,000. Equipment may be used beyond 12,000 hours if a powertrain rebuild has been performed. No equipment may be used beyond 18,000 hours.
- Primary Loader Minimum net power (ISO 9249): 280 hp
- Secondary and Backup Loaders Minimum net power (ISO 9249): 260 hp
- Minimum Bucket Capacity: 5 cubic yards.
- Rubber cutting edges must be used at all times on all buckets. Worn cutting edges must be replaced promptly.
- One of the two wheel loaders must have a quick connect

(B) Waste Handlers/Wheeled Excavators. CONTRACTOR shall provide, at a minimum, two waste handlers or wheeled excavators.. Waste handlers with standard grapples may not be used for tamping. Specialized grapple/load tamping attachments are available and should be used if the CONTRACTOR desires to use this equipment for waste tamping. Waste handlers must be sized and designed such that they do not contact the pit walls or other structures during normal operation. Minimum characteristics and requirements for waste handlers are identified below:

- Maximum Operating hours: Primary unit 20,000. Secondary unit 40,000.
- Minimum boom reach length: 30 feet (two-piece boom recommended but not required)

(C) Other Equipment. CONTRACTOR must provide a skid steer with a brush attachment for light loading, grading, clean-up and other functions. CONTRACTOR must provide a designated sweeper or sweeper attachment to ensure that the tipping floor remains clean on a daily basis. Other rolling stock and supporting equipment shall be provided as CONTRACTOR deems necessary to

ensure the efficient and safe operation of the facility. Equipment shall be maintained in good working order at all times and be subject to routine servicing and maintenance at manufacturer recommended intervals.

(D) At the request of the COUNTY, the CONTRACTOR shall provide added vehicles or equipment at no additional cost to the COUNTY if it is shown that additional vehicles or equipment are needed to properly and timely operate the Transfer Facility at the levels of service outlined in this Agreement.

SECTION 7.8 NOISE REDUCTION. The CONTRACTOR shall operate the facility in a manner that ensures the noise level measured at the perimeter of the facility as a result of operations does not exceed safe standards as established by the National Institute for Occupational Safety and Health (NIOSH).

SECTION 7.9 NO FUEL STORAGE. The CONTRACTOR shall not place or install any fuel storage and dispensing facilities on the Site.

SECTION 7.10 UTILITIES AND SUPPLIES. The CONTRACTOR shall pay for all utilities used and necessary for the operation of the Transfer Facility, including the Transfer Facility Office, Truck Scales, and Scale House. All utilities, including electric power, water, telephone, light, broadband/internet, security systems, heating and air conditioning shall be applied for by the CONTRACTOR, and bills for utilities shall be mailed to the CONTRACTOR by the each respective utility provider. All supplies, materials, equipment, tools , fuel and all other incidentals used and necessary for the operation of the Facility shall be the responsibility of the CONTRACTOR.

SECTION 7.11 VECTOR CONTROL. The CONTRACTOR shall take all appropriate measures to control insects, rodents and other vectors and birds and the costs associated with these services are included in the Service Fee.

SECTION 7.12 ODOR CONTROL. The CONTRACTOR shall employ whatever reasonable means necessary to minimize the generation and migration of nuisance odors from the Site, consistent with Good Industry Practice and the costs associated with these services are included in the CONTRACTOR's Service Fee.

SECTION 7.13 DUST CONTROL. Whenever dusty conditions prevail, the unloading area and newly discharged solid waste shall be sprinkled with water as required to control dust. The paved on-site roads shall be swept on a regular basis and the costs associated with these services are included in the CONTRACTOR's Service Fee.

SECTION 7.14 LITTER CONTROL. The CONTRACTOR shall employ whatever means are reasonably necessary to minimize the generation and migration of nuisance litter and debris throughout the entire Site on a daily basis. The cleanup and disposal of nuisance litter and debris shall be performed in accordance with State regulations and to a quality standard satisfactory to the COUNTY. Daily litter control shall be maintained by a full time employee dedicated solely to the removal of litter

from the roadway leading into the facility and the surrounding area inside the facility's fence. The costs associated with these services are included in the CONTRACTOR's Service Fee.

SECTION 7.15 SURFACE WATER MANAGEMENT. The Transfer Facility shall be operated to minimize drainage of surface water across exposed solid waste. Trailers shall be managed in a manner such that leakage of water that has been in contact with waste does not occur.

SECTION 7.16 ROUTINE MAINTENANCE. The CONTRACTOR shall provide routine maintenance for the Transfer Facility on a scheduled basis to ensure that the facility remains in good working order and condition, compliant with NCDEQ permit conditions, and can be used in a safe manner during normal hours of operation. The costs associated with routine maintenance are included in the CONTRACTOR's Service Fee. Routine maintenance will include, but not be limited to, the following:

(A) Cleanup of litter and debris on a daily basis or more frequently as required on the Transfer Facility site and along the entrance road to the Transfer Facility site.

(B) Winter maintenance (snow and ice removal) to all parking lots, roadways, walk-ways, and building entrances and exits as well as private access roads to the Managed Assets and Scale House.

(C) Cleaning and rodding of trench drains and piping as necessary to allow for proper drainage of the Transfer Facility plumbing systems.

(D) Wastewater pumping station inspection and maintenance to allow wastewater and Transfer Facility drainage to be properly discharged to City's wastewater collection system.

CONTRACTOR is responsible for keeping the drains clear of debris such that ponding of water is prevented at all times and to ensure the effective operation of the pumps. Should pump damage occur due to insufficient servicing and maintenance of the solids/water separator, the CONTRACTOR will be responsible for all costs associated with repair and/or replacement.

(E) Monthly power washing of the tipping floor, push walls and truck loading bays. Biannual power washing of the site building, including site walls and material storage areas. Quarterly power washing of both the inbound scales and the outbound scale.

(F) Repair gravel parking and staging areas used exclusively by the CONTRACTOR within the Transfer Facility site.

(G) CONTRACTOR is responsible for regularly mowing the areas identified in the Turf Maintenance Plan of Appendix 1. Mowing along both sides of the access road should extend at least five feet up the slope of each ditch. Contractor is responsible for reseeding damaged turf areas, as might be necessary to prevent erosion.

(H) CONTRACTOR is responsible for pressure washing under the scales four times a year or more frequently and as necessary to ensure they operate in good working order.

SECTION 7.17 COUNTY'S RESPONSIBILITIES FOR CAPITAL REPLACEMENTS. The COUNTY shall be responsible for the repair and replacement of the Transfer Facility structural elements, operating floor, and common roadways due to normal wear and tear. The County shall be responsible for replacing light ballasts (but not bulbs) that fail at the Transfer Facility. In the event a scale becomes inoperable, Wake County will be responsible for repairing or replacing the scale. CONTRACTOR will not be responsible for costs associated with scale repair or replacement unless the Capital replacement is necessitated by the negligence of CONTRACTOR. The scope and schedule

associated with the repair and replacement of these elements shall be as determined by the COUNTY.

SECTION 7.18 LOSS, DAMAGE OR DESTRUCTION TO THE MANAGED ASSETS.

(A) Prevention and Repair. The CONTRACTOR shall immediately notify the COUNTY and the insurers of any damage or destruction to the Managed Assets and need for Capital Replacements as set forth in Section 7.17 and as soon as practicable thereafter shall submit a full report on the Repair Request Form to the COUNTY (the County will provide blank form for CONTRACTOR use). It is especially important that any form of damage, whether it be minor or major in nature to the tipping floor, push walls or push pits be communicated promptly to the County. The CONTRACTOR shall also submit to the COUNTY within 24 hours copies of all accident and other reports filed with, or given to the CONTRACTOR by, any insurance company, adjuster or Governmental Body. After receiving approval from the COUNTY via the Repair Request Form, the CONTRACTOR shall immediately repair, replace and restore the Managed Assets to at least the character or condition thereof existing immediately prior to the loss, damage or destruction. The COUNTY shall have sole responsibility, in the exercise of its reasonable discretion, for determining if the repair, replacement or restoration meets the requirements of this Section. The CONTRACTOR agrees to seek at least two quotes for repair, replacement or restoration of Managed Assets estimated to cost over \$5,000 but less than \$50,000. Repair, replacement or restoration of Managed Assets costing less than \$5,000 only requires one quote. Repair, replacement or restoration of Managed Assets estimated to cost over \$50,000 shall be the responsibility of the COUNTY. In the case of structural steel repair, due to the lack of available qualified contractors, the CONTRACTOR may do up to \$10,000 without seeking more than one quote. This allowance relies on the CONTRACTOR identifying and making arrangements for repair as soon as possible.

(B) Insurance and Other Third Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, the CONTRACTOR shall assist the COUNTY in exercising such rights as it may have to effect such recovery. The CONTRACTOR shall provide the COUNTY with copies of all relevant documentation at no cost to the COUNTY, and shall assist the COUNTY at the COUNTY's request, participating in conferences, negotiations and litigation regarding insurance claims.

(C) Uninsured Costs. The CONTRACTOR shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Managed Assets in accordance with this Section and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Managed Assets shall be for the account of the COUNTY and shall be applied to pay the CONTRACTOR for undertaking such repair, replacement and restoration; provided, however, that such costs not covered by insurance proceeds or third party payments shall be borne by the COUNTY to the extent the loss, damage or destruction was caused by Uncontrollable Circumstances or COUNTY fault.

SECTION 7.19 MANAGED ASSETS RETURN.

(A) Inventory and Record Review. Before return, the CONTRACTOR shall photograph and prepare an itemized inventory of all property constituting the Managed Assets structures, and shall review all relevant information in the possession of COUNTY.

(B) Final Inspection of Managed Assets. Not later than ninety (90) days prior to the Termination Date resulting from the expiration of this Agreement, or concurrently with the termination resulting from an early termination of this Agreement, the COUNTY shall conduct a final inspection of the

Managed Assets including appropriate testing, and performance testing of any Managed Asset equipment to ensure that all Managed Assets belonging to the COUNTY are returned to the COUNTY in good working order. The CONTRACTOR shall not be responsible for normal wear and tear; repairs or maintenance caused by or resulting from the acts or omissions of the COUNTY; modifications approved in writing by the COUNTY.

(C) Managed Assets Condition Deficiency. In the event the final audit establishes a maintenance, repair and replacement deficiency under this Section that requires action in order to comply with Applicable Law or the Permit to Operate, or that could reasonably result in harm to the Transfer Facility or the COUNTY, the CONTRACTOR shall either remedy the deficiency or make a cash payment to the COUNTY sufficient to enable the COUNTY to remedy the deficiency.

ARTICLE 8
HAULING OF WASTE

SECTION 8.1 TRANSPORT AND UNLOADING OF ACCEPTABLE WASTE.

Throughout the Contract Term, the CONTRACTOR shall be responsible for the safe and lawful transport and unloading of all Acceptable Waste delivered to the Transfer Facility. The CONTRACTOR's activities shall be conducted in accordance with Applicable Law, including laws governing highway weight limits, equipment inspections, safety standards, and speed limits. The haul route shall be limited to the following roads: Corporation Parkway, US 64 Business/New Bern Avenue, I-440, US 1, and SR 55. Alternate roads which support trucks with transfer trailers may be temporarily used when road closures or other emergency situations preclude use of the approved roads.

SECTION 8.2 FINES. CONTRACTOR shall be solely responsible for any fines and penalties arising out of its transportation of Waste.

SECTION 8.3 TRUCKS AND TRAILERS. The CONTRACTOR shall provide all of the trucks, trailers and ancillary equipment needed to haul the County's Acceptable Waste to the Landfill. Trucks must be late model, low mileage vehicles with GPS tracking/monitoring devices with appropriate EPA emissions ratings. Adequate horsepower is needed to minimize transit time between EWTS and SWLF and back including typical steep grades at the SWLF. Trailers must be top-loading, tandem axle, non-compaction, and self-unloading (walking floors). Trailers must be between 48 and 53 feet long and no higher than 13.5 feet. The CONTRACTOR's trailers shall have leakproof seals, which shall be maintained to ensure that any leakage of leachate is minimized.

(A) Loading & Covering. The CONTRACTOR shall move the trailer out of the Transfer Facility immediately after the trailer is filled. All trailers shall be securely covered by the CONTRACTOR promptly after they are removed from the Transfer Facility and remain covered until they are unloaded at the Landfill. Covers shall be sufficient to prevent any blowing litter from the vehicles. Per the Permit to Operate, trucks loaded with MSW that remain overnight must have watertight covers. Transfer trailers should be loaded with 21 to 23 tons of MSW with a total monthly haul average of at least 19 tons. The County reserves the right to penalize the Contractor for not meeting the monthly total average. For any month when the total monthly haul average is below 19 tons, the penalty will be calculated by dividing by the actual total monthly haul average by 19 tons. The resulting value will be multiplied by the haul price per ton, and the resulting value subtracted from the haul price per ton, then multiplied by the total tons hauled during that month. For example, if the total monthly haul average was 18.7 tons, the total tons hauled in the month was 30,000 tons, and the haul price was \$10 per ton, the penalty would be calculated as:

$$18.7 \text{ tons divided by } 19 \text{ tons} = 0.974$$

$$\$10/\text{ton} - (0.974 \times \$10/\text{ton}) \times 30,000 \text{ tons} = \$7,800 \text{ penalty}$$

(B) Maintenance. CONTRACTOR's trucks and trailers shall be routinely cleaned and maintained by the CONTRACTOR in a clean and sanitary condition to prevent odors, vectors, or nuisance conditions. No vehicle maintenance is to occur at the Transfer Facility other than emergency repairs (i.e., tire changes). CONTRACTOR must identify an off-site location for vehicle maintenance and servicing.

SECTION 8.4 HAULING SCHEDULE. The CONTRACTOR shall transport Acceptable Waste from the Transfer Facility to the Landfill on a daily basis consistent with the operating hours of the Transfer Facility and the Landfill. Any loaded trailers that remain on Site at the end of each day shall be hauled to the Landfill promptly the following operating morning.

SECTION 8.5 DISPOSAL AT ALTERNATIVE SITE. If, due to an Uncontrollable Circumstance, CONTRACTOR is not able to dispose of the Acceptable Waste at the Landfill, CONTRACTOR shall dispose of the Acceptable Waste at an alternative site designated in each instance by the COUNTY.

SECTION 8.6 SPILLS AND EMERGENCIES IN TRANSIT. The CONTRACTOR shall notify the COUNTY verbally within twelve (12) hours and shall provide a written report to the COUNTY within twenty-four (24) hours concerning the any spill or emergency during transit, the clean-up activities that were implemented, and the current status of the situation.

SECTION 8.7 MEASUREMENT OF SOLID WASTE TONNAGE. All vehicles transporting Acceptable Waste to the Landfill shall be weighed by the COUNTY when entering and leaving the Transfer Facility. The COUNTY shall be responsible for determining the number of tons of Acceptable Waste taken from the Transfer Facility by the CONTRACTOR and disposed at the Landfill.

SECTION 8.8 OWNERSHIP OF SOLID WASTE. All right, title, ownership and responsibility for the Acceptable Waste delivered to the Transfer Facility shall pass to the CONTRACTOR when the CONTRACTOR removes such materials from the Site.

SECTION 8.9 DISPOSAL OF C&D MATERIAL – SATURDAYS ONLY. The CONTRACTOR shall store and separate C&D material brought to the EWTS on Saturdays. The CONTRACTOR shall haul C&D material to the Brownfield C&D Landfill. The CONTRACTOR is required to handle, maintain and transport the C&D material to the C&D Landfill from the EWTS.

ARTICLE 9
COUNTY'S RESPONSIBILITIES

SECTION 9.1 ACCESS TO TRANSFER FACILITY . The COUNTY shall permit CONTRACTOR to have access to the Transfer Facility, or any other facilities necessary for CONTRACTOR to perform its obligations hereunder, or to scale house records for the purpose of auditing them if deemed necessary.

SECTION 9.2 SCALE HOUSE OPERATIONS. The COUNTY shall be responsible for the operation and maintenance of the scales and scale house at the Transfer Facility as detailed in Article 7.

SECTION 9.3 STORAGE & DISPOSAL OF UNACCEPTABLE WASTE. The COUNTY shall provide temporary storage for and arrange for disposal of any unacceptable waste delivered to the Transfer Facility in accordance with Article 7.

SECTION 9.4 DAILY REPORTS. The COUNTY shall provide an itemization and summary of all Acceptable Waste in tons delivered to the Transfer Facility during the previous day including total tonnage of Acceptable Waste delivered by Wake County residents, businesses, and the COUNTY; and total tonnage of Acceptable Waste delivered by Private Haulers.

SECTION 9.5 PAYMENT TO CONTRACTOR. The COUNTY shall pay the CONTRACTOR every month in accordance with Article 10 and the Fee Schedule sums incorporated hereinto.

SECTION 9.6 RECYCLING. The COUNTY may divert a portion of the County's solid waste to any other facility or location of the County's choice for the purpose of recycling, removing recovered materials, removing organic materials, or otherwise using or processing the solid waste or White Goods. These activities may be conducted at the Transfer Facility or Site in a manner that is not overly disruptive to the CONTRACTOR's overall operation of the Transfer Facility.

ARTICLE 10
PAYMENT TO CONTRACTOR

SECTION 10.1 PAYMENT TO CONTRACTOR GENERALLY. COUNTY shall pay the CONTRACTOR a Service Fee for services as described herein, and as further described in the attached contractor's Proposal, as the exclusive operator of the Transfer Facility and exclusive transporter of Acceptable Waste from the Transfer Facility to the Landfill based on the Service Fee Schedule included in the Appendices hereof. Payments will be made to the CONTRACTOR on a Billing Period basis.

(A) Billing. The CONTRACTOR shall submit to the COUNTY on or before the 10th day of each month a request for payment for Acceptable Waste received at the Landfill during the preceding month and accompanied by such data as the COUNTY may reasonably require. The COUNTY shall issue payment to the CONTRACTOR within 30 days from presentation to the COUNTY of an undisputed request for payment.

(B) Disposal at Alternative Site. If, due to an Uncontrollable Circumstance, CONTRACTOR is not able to dispose of the Acceptable Waste at the Landfill, CONTRACTOR shall dispose of the Acceptable Waste at an alternative site designated in each instance by the COUNTY. Unless the need for the COUNTY to designate an alternate site arises out the CONTRACTOR's failure to carry out its duties hereunder in a timely, diligent or workmanlike manner, the COUNTY shall reimburse CONTRACTOR for its additional costs of transportation to the alternate site, at the rate set forth in the Service Fee Schedule plus any tolls or assessments required in the course of transporting the waste. Disposal costs shall be the responsibility of the COUNTY under this paragraph.

(C) Annual Adjustment of Fees. The transportation and Transfer Facility fees will be adjusted as follows:

1. The Operation and Maintenance Fee will be annually adjusted based on the Consumer Price Index for all Urban Consumers (CPI-U, All U.S. City Average), as published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). Unit price adjustments will occur at the beginning of each fiscal year (July 1) and remain in effect until the end of the fiscal year (June 30). The annual change applied to the per ton Operation and Maintenance Fee will be based on 100 percent of the annual change in the CPI-U (December to December), as reported by the BLS. In all cases, the adjustments to the unit prices will be made up or down, as indicated by the change in the index. The maximum increase/decrease in any one year is limited to 3 percent.

2. The MSW Hauling Fee will be adjusted annually based on the CPI-U and quarterly based on a fuel index. Adjustments made based on the CPI-U will be performed as described in the preceding paragraph. If at least 75 percent of the Contractor's fleet of hauling vehicles that will be used to provide hauling services under this contract are diesel powered, the fuel index to be used is the monthly data of the Lower Atlantic (PADD-1C) No. 2 Diesel Retail Sales by all Sellers, reported in cents per gallon by the Energy Information Administration, Office of Energy Statistics, U.S. Government. The December 2020 price of **\$2.493** per gallon will be used as the base fuel charge (i.e. the price where the surcharge is zero). The fuel adjustment will be calculated quarterly on a calendar year, using data from the third month of each quarter (March, June, September, and December), and applied to the unit prices for the next quarter. If more than 25 percent of the Contractor's fleet of hauling vehicles that will be used to provide hauling services under this contract are powered by compressed natural gas (CNG), the County will work with the Contractor to establish an equitable fuel index that applies to the CNG portion of the fleet.

The fuel adjustment rate will be calculated according to the following formula:
Haul Price per Ton Increase or Decrease = (F - B) X 0.454

Where, F = Quarterly fuel price index (from 3rd month of each quarter)
B = Base fuel price index (December 2020 price of \$2.493)

In all cases, the adjustments to the unit prices will be made up or down, as indicated by the change in the index. The C&D Hauling Fee will be adjusted annually based on the CPI-U. No fuel index adjustment will be made.

SECTION 10.2 BILLING STATEMENT DISPUTES. If the COUNTY disputes any amount billed by the CONTRACTOR, the COUNTY shall provide the CONTRACTOR with a written objection indicating the amount that is being disputed and providing all reasons then known to the COUNTY for its objection to or disagreement with such amount, and will pay the CONTRACTOR the undisputed portion of such billing.

ARTICLE 11
DEFAULT AND TERMINATION

SECTION 11.1 DEFAULT BY CONTRACTOR. CONTRACTOR will be considered to be default of its obligations under this agreement under the following conditions.

- (A) Contractual Non-Compliance. Failure to comply with any material term or provision of this Agreement.
- (B) Regulatory Non-Compliance. Failure to maintain, or comply with, all requirements, any and all permits, approvals or licenses required by federal, state or local law, statute or ordinance necessary to CONTRACTOR's performance of this Agreement.
- (C) Voluntary or Involuntary Bankruptcy.
- (D) Failure to Maintain Performance Bond. The failure of the CONTRACTOR to maintain in force any performance bond in the amount required by Article 13.
- (E) Insurance. Failure to maintain at its sole cost and expense the insurance provided for in Article 12.

SECTION 11.2 DEFAULT BY COUNTY. The COUNTY will be considered to be in default if its obligations under this Agreement under the following conditions.

- (A) Timely Payment. Failure to make timely payments as required by this Agreement; provided that COUNTY has received thirty (30) days notice of alleged non-payment and has an opportunity to cure by tendering payment. The COUNTY shall not be considered to be in default under this Section as a result of failure to make payment of an amount that is disputed pursuant to a written objection.
- (B) Contractual Non-Compliance. Failure to otherwise comply with any material term or provision of this Agreement.

SECTION 11.3 CAUSE FOR TERMINATION. Any such default by either party shall provide good cause for termination if not cured within seven (7) calendar days after the defaulting party receives written notice from the other party. In addition, three events of default within any 12 month period shall promote good cause for termination, whether or not any or all of them were timely cured.

SECTION 11.4 COUNTY'S RIGHT TO PERFORM. If at any time, CONTRACTOR shall fail, within thirty (30) days' after notice from the COUNTY (except in case of emergency such number of days' notice which are reasonable in the circumstances shall suffice), to pay any imposition required herein, or to take out, pay for, maintain or deliver any of the required insurance, or to cause any lien to be discharged as therein provided, or to perform any other act on its part to be performed as provided in this Agreement, then, without further notice or demand upon CONTRACTOR and without waiving or releasing CONTRACTOR from any of CONTRACTOR 's obligations contained in this Agreement or waiving any other right or remedy of the COUNTY, the COUNTY may, but shall not be obligated to, perform any such obligation on behalf of CONTRACTOR. All sums paid by the COUNTY in connection with the COUNTY's performance of any obligation of CONTRACTOR and all reasonably necessary out-of-pocket incidental costs and expenses paid or incurred by the COUNTY in connection with the performance of any such act by the COUNTY, including reasonable attorneys' fees, may be deducted from monies owed to the CONTRACTOR after written notice of such charges.

SECTION 11.5 FORUM FOR DISPUTE RESOLUTION. It is the express intention of the parties that all Legal Proceedings related to this Agreement or to the Managed Assets or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and

maintained in the State courts located in Wake County, North Carolina. The CONTRACTOR irrevocably consents to the jurisdiction of such courts in any such actions or proceedings, waives any objection it may have to the laying of the jurisdiction of any such action or proceeding, and waives its right to a trial by jury.

SECTION 11.6 NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Agreement, whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply.

(B) Procedure. The Mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Agreement by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

ARTICLE 12
INSURANCE, FORCE MAJEURE, AND INDEMNIFICATION

SECTION 12.1 INSURANCE.

(A) CONTRACTOR Insurance. Prior to commencement of Agreement activities and at all times during the Term of this Agreement, the CONTRACTOR shall obtain and maintain or cause to be obtained and maintained the required insurance in accordance with the requirements of this Section, and shall pay all premiums and deductibles or retentions with respect thereto as the same become due and payable.

(B) Commercial General Liability Insurance, with limits not less than \$5,000,000 per occurrence., including bodily injury, property damage, personal injury, and contractual liability.

(C) Commercial Automobile Liability Insurance, with limits not less than \$5,000,000 per accident.

(D) Worker's Compensation Insurance, including occupational disease and employer's liability insurance with limits not less than \$5,000,000.

(E) Environmental Impairment Liability Insurance in the amount of \$5,000,000.00) which shall include coverage for third party injury, on and off site cleanup, non-owned disposal site (NODS) coverage, transportation pollution liability, and any remediation ordered by a Public Entity or a third party.

(E) General Requirements and/or Policy Endorsements:

(1) The COUNTY, its officers, employees and volunteers and the CITY, as owner of the Transfer Facility, shall be named as additional named insured. The additional named insured status, however, does not apply to Worker's Compensation policies.

(2) The insurance shall be endorsed to provide that coverage will not be limited in scope, cancelled or non-renewed until after thirty (30) days prior written notice has been given to the COUNTY.

(3) Waiver of rights of recovery (subrogation) in favor of the COUNTY.

(4) All CONTRACTOR insurance shall be primary and non-contributory.

(5) The insurers for all policies must be licensed/ approved to do business in the State of North Carolina and have a minimum AM Best rating of A-: VII or have reasonably equivalent financial strength and solvency to the satisfaction of the COUNTY's Finance department.

(6) If insurance policies are not written for specified coverage limits, Wake County will permit umbrella or excess liability coverage in an amount equal to or greater than the difference to satisfy the insurance requirement. Excess liability shall follow the form of the primary coverage.

(H) Certificates, Policies and Notice. The delivery by the CONTRACTOR to the COUNTY of certificates of insurance is required by this Agreement as a condition to the occurrence of the Commencement Date. The CONTRACTOR shall also supply the COUNTY, upon request, with certified copies of such policies promptly following issuance by the insurers. Not later than sixty (60) days prior to the beginning of each Contract Year throughout the Contract Term, the CONTRACTOR shall furnish certificates of insurance to the COUNTY to confirm the continued effectiveness of the required insurance. Whenever a Subcontractor is permitted and utilized, the CONTRACTOR shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of this Section.

(I) Maintenance of Insurance Coverage. If the CONTRACTOR fails to pay any premium for required insurance, or if any insurer cancels any required insurance policy and the CONTRACTOR fails to obtain replacement coverage so that the required insurance is maintained on a continuous basis, then, at the COUNTY's election (but without any obligation to do so), the COUNTY, following notice to the CONTRACTOR, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the COUNTY the amount thereof shall be immediately reimbursable to the COUNTY by the CONTRACTOR. The failure of the CONTRACTOR to obtain and maintain any required insurance shall not relieve the CONTRACTOR of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the CONTRACTOR shall indemnify and hold harmless the COUNTY against any loss and expense arising out of such failure. The purchase of insurance to satisfy the CONTRACTOR's obligations under this Section shall not be a satisfaction of any CONTRACTOR liability under this Agreement or in any way limit, modify or satisfy the CONTRACTOR's indemnity obligations hereunder.

SECTION 12.2 FORCE MAJEURE.

(A) CONTRACTOR's Relief of Obligation. It is mutually understood and agreed by the parties that CONTRACTOR shall be relieved of its obligation under this Agreement during any period or periods of time when Force Majeure renders impossible its performance under this Agreement. Upon the occurrence of such an event of Force Majeure, CONTRACTOR shall promptly give the COUNTY written notice of its best, good faith estimate of the period of time it expects conditions of Force Majeure to render impossible its performance hereunder.

(B) COUNTY's Right to Alternate Vendors. Should CONTRACTOR be unable to render performance under this Agreement by reason of Force Majeure, the COUNTY shall have the right to secure another vendor to perform any or all portions of the service required under this Agreement for the period of the expected duration of CONTRACTOR's inability to perform as set out in CONTRACTOR's written notice. In the event CONTRACTOR becomes able to resume the performance of its obligations prior to the date set out in the written notice, the COUNTY, in its sole discretion, shall have the right to continue service during the notice period with any alternate vendor procured during the notice period or instruct CONTRACTOR to resume services notwithstanding anything herein to the contrary.

(C) Resumption of Service. The COUNTY shall resume service with CONTRACTOR according to the terms of this agreement after expiration of the notice period, unless CONTRACTOR shall provide further written notice of its continuing inability to perform by reason of Force Majeure.

(D) COUNTY's Relief of Obligation. At any time that CONTRACTOR's performance is suspended as set out in this Section, it is understood and agreed by the parties that the COUNTY shall not be obligated to CONTRACTOR for any or all service interrupted by reason of Force Majeure.

SECTION 12.3 INDEMNIFICATION.

(A) Accidents. The CONTRACTOR shall be responsible for all injuries, accidents and other mishaps arising out of its performing the Contract Services, except to the extent that the same are caused by the actions or inactions of the COUNTY, its employees or agents.

(B) Damage to Customers. The CONTRACTOR agrees to indemnify and hold harmless the COUNTY for any and all costs and damages caused to the property of customers of the COUNTY that utilize the Managed Assets, such as damage to collection vehicles, which is caused by the CONTRACTOR's negligence or willful misconduct.

(C) Indemnification by the CONTRACTOR. The CONTRACTOR shall indemnify, defend and hold harmless the COUNTY, and its appointive officers, directors, representatives, agents, employees, and assignees (each, a "COUNTY Indemnitee"), from and against any third-party claim, suit, or proceeding asserted against a COUNTY Indemnitee arising from or in connection with (1) the negligent or willful misconduct of the CONTRACTOR or any of its officers, directors, employees, representatives, agents or Subcontractors in connection with this Agreement. The CONTRACTOR's indemnity obligations hereunder shall not be limited by any coverage exclusions or other provisions in any insurance policy maintained by the CONTRACTOR which is intended to respond to such events. The CONTRACTOR shall not, however, be required to reimburse or indemnify any COUNTY Indemnitee for any Loss-and-Expense to the extent caused by the negligent or willful misconduct of any COUNTY Indemnitee or to the extent attributable to any Uncontrollable Circumstance. A COUNTY Indemnitee shall promptly notify the CONTRACTOR of the assertion of any claim against it for which it is entitled to be indemnified hereunder, and the CONTRACTOR shall have the right to assume the defense of the claim in any legal proceeding and to approve any settlement of the claim. The obligation to indemnify includes the obligation to pay any attorney's fees, litigation expenses, or court costs actually incurred by COUNTY to the extent that the fault of the CONTRACTOR or its derivative parties is a proximate cause of the fees, expenses, or cost to be indemnified. It is the intent of this provision to require the CONTRACTOR to indemnify the COUNTY to the fullest extent permitted by North Carolina law. The language and definitions in this section shall be construed consistent with N.C.G.S. 22B-1 et seq. as it may be amended. These indemnification provisions are for the protection of the COUNTY Indemnitees only and shall not establish, of themselves, any liability to third parties. This indemnification obligation shall include, but is not limited to, all claims against the COUNTY by a current or former officer, director, employee, representative or agent of the CONTRACTOR, or any Subcontractor, and the CONTRACTOR expressly waives all immunity and limitation on liability under any worker's compensation act, disability benefit act, employee benefit act or any other Applicable Law of any jurisdiction which would otherwise be applicable in the case of such a claim. The provisions of this Section shall survive termination of this Agreement.

(E) Survival. The provisions of this Section shall survive the termination or expiration of this Agreement.

ARTICLE 13
PERFORMANCE BOND

SECTION 13.1 PERFORMANCE BOND.

(A) Generally. The CONTRACTOR shall provide at its expense, and maintain during the entire Contract Term of the Agreement and for a period of one year after the termination of this Agreement, a Performance Bond in an amount equal to the estimated annual amount of the Contract Services payable to the COUNTY, securing the faithful performance of this Agreement by the CONTRACTOR. For the first year of the contract, the performance bond shall be in an amount no less than the projected, total contract sum (exclusive of fuel surcharge amounts, if applicable), according to the CONTRACTOR's fee schedule, and premised upon a mutually agreed upon waste quantities estimate. In successive years of the contract, the performance bond shall be in an amount not less than the previous year's total contract sum. Such bond shall be in a form substantially identical to that set forth in Article 3 of Chapter 44A of the NC General Statutes.

(B) Monitoring of Sureties. The CONTRACTOR shall be responsible throughout the Contract Term of this Agreement for monitoring the financial condition of any surety company issuing bonds under this Agreement and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, the CONTRACTOR shall promptly notify the COUNTY of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the COUNTY agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the CONTRACTOR of such an event, the COUNTY shall not unreasonably withhold its approval of such assurance.

SECTION 14.2 COST OF PROVIDING SECURITY FOR PERFORMANCE. The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the CONTRACTOR 's obligations hereunder shall be borne by the CONTRACTOR without reimbursement from the COUNTY.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written

CONTRACTOR [_____]

By: _____

[SEAL]*corporation only

Title: _____

ATTEST:

WAKE COUNTY, NORTH CAROLINA

By: _____

David Ellis, County Manager

Date: _____

Approved as to form:

(Deputy) Wake County Attorney

The person responsible for monitoring contract performance requirements is

_____ Department Head Initials

APPENDICES AND REFERENCE DOCUMENTS

to the

AGREEMENT FOR EAST WAKE TRANSFER STATION OPERATION, MAINTENANCE,

AND

MUNICIPAL SOLID WASTE TRANSPORTATION SERVICES

Between

WAKE COUNTY, NORTH CAROLINA

and

CONTRACTOR

_____, 2021

APPENDICES

- A. Request for East Wake Transfer Station Operation and Maintenance and Municipal Solid Waste Hauling, January 25, 2013 with addenda
- B. CONTRACTOR's Proposal for East Wake Transfer Station Operation and Maintenance and Municipal Solid Waste Hauling, February 20, 2013
- C. Transfer Facility Site Use Plan
- D. Transfer Facility Site Turf Maintenance Plan
- E. Staffing Plan
- F. Service Fee Schedule

REFERENCE DOCUMENTS

- 1. Transfer Facility Permit to Operate (on file with the County and subject to update)
- 2. Transfer Facility Operations Plan (on file with the County and subject to update)