

**SOLID WASTE COLLECTION,  
TRANSFER AND DISPOSAL  
AGREEMENT**

by and between

**BRUNSWICK COUNTY  
NORTH CAROLINA**

and

**WASTE INDUSTRIES, INC.**

July 1, 1998

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THIS AGREEMENT is made and entered into this the 16<sup>th</sup> day of March, 1998, by and between BRUNSWICK COUNTY, NORTH CAROLINA, a political sub-division, organized and existing under the laws of the state of North Carolina (hereinafter referred to as the "County"), and WASTE INDUSTRIES, INC., a corporation organized and existing under the laws of the state of North Carolina (hereinafter referred to as "Waste Industries").

#### RECITALS

It is hereby ascertained, determined and declared by the parties that:

A. The citizens of Brunswick County generate approximately 100,000 tons of solid waste each year.

B. Solid waste generated by Brunswick County residents was for many years disposed of at the County Landfill located at Galloway Road, Bolivia, North Carolina.

C. Stringent new environmental laws have dramatically increased the cost of permitting, constructing and operating a solid waste landfill.

D. Rather than building a landfill meeting Subtitle D Regulations, effective January 1, 1998, Brunswick County began to deliver its Municipal Solid Waste to a County owned Transfer Station located at the Brunswick County Landfill, and contracted with Waste Industries to manage and operate the Transfer Station, and to transfer such waste to a disposal facility which has received appropriate permits and Subtitle D authorization.

E. As a part of the Agreement to Operate the County Transfer Station and to transfer waste for disposal, the County and Waste Industries recognized the County's desire to improve its county wide collection system and agreed to work on changes to the system and to, "negotiate in good faith for Waste Industries to continue as the exclusive provider of these services, provided that the negotiated price for such services is reasonable and competitive as based on quotations previously provided to the County."

F. As a result of these negotiations the County agrees to contract with Waste Industries to provide a comprehensive solid waste collection and disposal program consisting of county wide residential curbside garbage collection; five strategically located manned convenience centers; hauling of all materials collected at the convenience centers; management and operation of the County's Transfer Station; transfer and disposal of all municipal solid waste processed through the County's Transfer Station.

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, the County and Waste Industries, each intending to be legally bound, agree as follows:

1. SERVICES TO BE PERFORMED BY WASTE INDUSTRIES. Waste Industries agrees to provide and perform the following services:

1.1 Residential Curbside Collection.

1.1.1 Customer Base. Contract pricing is based upon an estimated 40,000 customers and the participation of all municipalities within Brunswick County.

1.1.2 Service Frequency. We will provide collection service on a scheduled basis once per week per customer.

1.1.3 Carts. Waste Industries will furnish each customer with one 90 gallon roll out cart, which shall be accompanied with an information packet, approved by the County. Waste Industries will be responsible for repair or replacement of the Cart due to normal use of the Cart. Waste Industries will also provide 200 carts per year for replacement of carts lost as a result of theft or abuse. The County shall provide that each customer shall, by the above receipt, bear the

responsibility for the proper care, custody, control, safekeeping and use of the Carts while on the individual customer property. The County will be responsible for replacement of all Carts damaged or lost due to abnormal use or theft of the Cart beyond the aforementioned first 200 per year.

1.1.4 Basic Service level. Waste Industries will collect Municipal Solid Waste, excluding Yard Waste, from one 90 gallon cart per week per customer. "Excluded Waste", as defined in Section 20.8 of this Agreement are prohibited, and collection of such wastes are not a part of the services provided in this Agreement. Carts must be placed at the curbside by 6:00 AM on the day of collection. Waste Industries will make exceptions to the "curbside" policy for customers who are physically unable to roll their cart to the curb (i.e. physically disabled, elderly, etc.). Waste Industries will require proof of such disabilities and will have sole discretion in granting exceptions to the policy.

1.1.5 Additional Service. Individual residential customers will be able to contract with Waste Industries for additional carts to be serviced on regularly scheduled collection days for a fee of \$4.80 per cart per month. Municipalities and qualifying communities may negotiate with Waste Industries for increased service frequency (i.e. twice per week) at a fee not to exceed \$4.80 per month per household for each additional day of service, pro-rated to actual usage. These rates will be reviewed annually as a part of the Annual Price Adjustment as described in Section 2.4 of this agreement, and will be adjusted accordingly.

1.1.6 Service Accessibility. Waste Industries requires fully accessible right of way sufficient to accommodate the size and weight of its route vehicles, and will not be responsible for any damages to roads that may occur as a result of providing services as described in this Agreement unless caused solely by the negligence or willful misconduct of Waste Industries, its employees or contractors, or Waste Industries' breach of this Agreement.

1.2 Convenience Centers. Waste Industries will provide equipment, personnel, and management to operate five Manned Convenience Centers located on County owned and designated sites. It is the responsibility of the County to ensure that the sites are designed to meet all Federal, State, and local regulations, provide sufficient operational access, and accommodate all equipment necessary to perform services related to the Convenience Site. All material delivered to the Convenience Centers shall become the property of Waste Industries.

1.2.1 Site Locations. To be designated by Brunswick County and reasonably acceptable to Waste Industries.

1.2.2 Hours of Operation. Convenience Centers will be open Monday-Saturday for a total of 40 hours per site per week. Actual hours of operation may vary from center to center with the approval of the County, but will be posted at each center. Waste Industries personnel will staff Convenience Centers during all hours of operation.

1.2.3 Waste Materials Accepted. Convenience Centers will be designed to accept Municipal Solid Waste, C&D Waste, Yard Waste, Brown Goods, and White Goods from customers with a maximum load size being a standard pick-up truck bed load. "Excluded Waste", as defined in Section 20.8 of this Agreement, will not be accepted at the Convenience Centers.

1.2.4 Equipment. Waste Industries will provide containers sufficient in size and configuration to efficiently accommodate the volume of each type of waste and recyclable material delivered to the Convenience Center.

1.2.5 Site Clean-up. Convenience Center Site clean-up will be the responsibility of Waste Industries. For the purpose of this Agreement, "Convenience Center Site" is defined as the fenced area inside the gate over which Waste Industries has control. For the calendar period of July 1, 1998, to December 31, 1998, the County shall be called to investigate all illegal dumping outside of the fenced areas of the Convenience Center Site. After the County investigates, the County may

deliver acceptable material, as defined in Section 1.2.3 of this Agreement, to the Convenience Center Site, without fee. Beginning January 1, 1999, Waste Industries will be responsible for the clean-up of all Municipal Solid Waste illegally dumped outside the immediate area of the Convenience Center Site. The County will reimburse Waste Industries for the material collected in the Clean-up at the posted disposal rate at the Convenience Center Site. The County will be responsible for the clean-up of all materials other than acceptable materials, as defined in Section 1.2.3 of this Agreement, that are illegally dumped outside of the fenced area of the Convenience Center Sites.

1.2.6 Utilities. Payment of charges for utility services at the Convenience Centers will be the responsibility of Waste Industries.

1.2.7 Site Maintenance. Site Maintenance (i.e. road maintenance, erosion control, septic tanks, fencing, etc.) will be the responsibility of the County.

1.2.8 Security. Proper security lighting and fencing will be provided by Brunswick County. The County will exercise its best efforts to cause the Convenience Centers to become a part of routine patrol by the Brunswick County Sheriff's Department in an effort to contribute to the safety of site attendants. No firearms will be permitted in the Convenience Centers.

1.2.9 Fees. Waste Industries will charge a fee for all waste materials collected at the Convenience Centers. Fees will be collected from individuals delivering materials to the Centers prior to allowing materials to be deposited into containers. The Fees will be structured as follows and are subject to Annual Price Adjustments as described in Section 2.4 of this Agreement.

- Municipal Solid Waste - MSW must be bagged in order to be accepted at the Convenience Centers. Waste Industries will charge \$0.75 per bagged waste up to 20 pounds, \$1.50 per bagged refuse 21-40 gallons in capacity. The charge for bags over 40 gallons capacity will be \$2.00 per bag.
- C&D Waste - Maximum load accepted at Convenience Centers will be four cubic yards (average load in standard pick-up truck bed). Charge will be \$5.00 minimum, \$8.00 for one-quarter load, \$16.25 for one-half load, \$24.00 for three-quarter load, and \$32.50 per full load. All the above sizes refer to a standard pick-up truck load.
- Yard Waste - Bagged Yard Waste will be charged at a rate of \$1.00 per bag for any bag up to 40 gallons in capacity. Bags in excess of 40 gallons will be charged at a rate of \$1.50 per bag. Loose yard waste will be charged at a rate of \$3.50 per one-quarter load, \$7.00 per one-half load, \$10.50 per three-quarter load, and \$14.00 per load (based on a standard pick-up truck bed load).
- Brown Goods - \$5.00 per item. \$25.00 maximum charge for standard size pick-up truck loads. Maximum load size accepted at Convenience Centers will be standard pick-up truck bed loads.
- White Goods - \$7.50 per appliance.

1.2.10 Recyclable Materials. Waste Industries supports Brunswick County's desire to encourage recycling throughout the County. To assist in this effort, the following recyclable materials will be accepted at the Convenience Centers at no charge:

- Corrugated Cardboard
- Newspaper
- Aluminum cans
- Brown Glass
- Green Glass
- Clear Glass
- Plastic Bottles (1's and 2's)

Waste Industries will retain any revenues generated from the sale of recyclable materials, but will

document the amounts recycled for the County's needs to document waste stream reduction in a format that can be utilized by the County. In the event Federal and State Regulations require further waste stream reduction, Waste Industries will cooperate with the County in meeting its goals and will assist the County with planning and permitting alternatives to the system outlined herein.

1.3 Convenience Center Material Hauling. Hauling of materials collected at the Convenience Centers is an integral part of this Agreement and will be provided and performed by Waste Industries.

1.4 Transfer Station Operation. Waste Industries shall operate the Transfer Station in material conformance with all applicable laws and regulations, which shall be used for the sole purpose of handling Municipal Solid Waste contemplated in this agreement. The County will be responsible for ensuring that the Transfer Station is in compliance with all Federal, State, and Local regulations regarding the design and construction of the facility throughout the Term of this Agreement. Should there be any violation as a result of Waste Industries activity or operation of the Transfer Station, all costs associated with the said violation and any attendant fines or fees assessed against the County will be reimbursed to the County from Waste Industries. All non-excluded waste delivered to Waste Industries at the Transfer Station shall become the property of Waste Industries.

1.4.1 Equipment. Waste Industries will provide and maintain all equipment necessary in the Transfer Station Operation including, but not limited to:

- One Bucket Loader to work tipping floor and to load Municipal Solid Waste into transfer trailers.
- One Backhoe for leveling and tamping materials in trailers.
- One "Yard-Dog" tractor for trailer staging.

1.4.2 Personnel. Waste Industries will staff the County Transfer Station as follows:

- One working Supervisor.
- One Loader Operator.
- One driver to stage trailers.
- All personnel will wear uniforms and display name tags.

1.4.3 Recycling. Waste Industries may, but is not obligated to, remove recyclables from Waste received at the Transfer Station. In the event Waste Industries elects to remove recyclables, Waste Industries shall be entitled to retain all revenues, if any, derived from the sale of such recyclables. None of the materials listed in 1.2.10 above will be disposed of as Municipal Solid Waste.

1.5. Transfer and Disposal of Municipal Solid Waste. Waste Industries will be responsible for providing for transportation and disposal of all Municipal Solid Waste (MSW) processed through the Brunswick County Transfer Station. All MSW collected at the Transfer Station will be disposed of in a certified facility meeting all county, state, and federal regulations. Waste Industries presently has a long term contract with BFI for disposal in their landfill located in Sampson County, NC. This is a lined facility meeting all Subtitle D requirements and is certified to handle 3,000 to 5,000 tons per day.

1.6. Resolution of Incomplete or Inadequate Service. Waste Industries will maintain local telephone service to all areas of Brunswick County or will provide some form of toll-free telephone service to all areas of Brunswick County during the period of operation. Waste Industries will maintain a log of all complaints received, recording the nature and as many particulars of the problem as practicable. The log will be provided to the County as frequently as can be provided, but no less frequent than every thirty days.. The log shall record what remedy was applied and the time frame thereof. All remedies shall commence within twenty-four (24) hours of the complaint,

and shall be complete within four (4) days thereof. If report of a remedy is not received by the County within the time parameters listed above, or if a secondary complaint is received, County personnel shall investigate to determine the origin of the problem, and if it can be remedied within the present plan of operations of the delivery of services, or if remedy is best addressed by alteration of the operations plan. Waste Industries and the County agree that a mutually agreed upon remedy shall be implemented in the operations plan to prevent a reoccurrence of the complained problem. For every secondary failure of service, or if there is no remedy completed within the four (4) days of the complaint, there shall be a fine imposed against Waste Industries of \$10.00 (ten dollars). Notification to the County shall be as provided in Section 9 herein. This provision shall begin operation 90 days after the beginning date of the Terms of this Agreement and continue thereafter through the life of the contract.

## 2. CONTRACT PRICE

The Contract Price for services as described in Section 1 of this Agreement is as follows:

2.1 Price. The Contract Price is based upon the conditions set forth in section 1.1.1 of this Agreement, and shall be calculated on a basis of \$10.98 (Ten dollars and ninety-eight cents) per month per cart, pro-rated to actual service delivery. In the event that either of the conditions set forth in section 1.1.1 of this Agreement are not met, the County agrees to pay Waste Industries an adjusted Price based upon the extent of the altered conditions and the impact such altered conditions have on Waste Industries' operating costs. The adjusted price will be negotiated utilizing the methods described in Section 15(b) of this agreement.

2.2 Cart Count. Waste Industries will provide the County with an initial cart count based upon deliveries of carts as directed by the County. The initial cart count will be verified and agreed upon by both the County and Waste Industries prior to the start date. For billing purposes adjustments to the cart count will be made on a monthly basis as carts are added or deleted. Brunswick County must authorize any additions or deletions of carts, pro-rated for actual usage.

2.3 Payment. Waste Industries will invoice Brunswick County for services performed on a monthly basis. The County agrees to make payment to Waste Industries within thirty days of the invoice date.

2.4 Annual Price Adjustment. At the end of the first year of this Agreement, and each subsequent year thereafter, Waste Industries will be entitled to a price increase as provided in Section 15(b) of this agreement. For this purpose, Waste Industries will make available to the County on a confidential basis all operation costs associated with providing services as described in this Agreement. Such operating data is claimed by Waste Industries as Trade Secrets. The County shall provide for the collection of the price increases as provided by law, utilizing fee collection.

## 3. REPRESENTATIONS AND WARRANTIES OF COUNTY

The County represents, warrants and agrees as follows:

3.1 Existence and Good Standing: The County is validly existing as a political subdivision in good standing under the laws of the state of North Carolina.

3.2 Approval and Authorization. The County has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder pursuant to various enabling sections of the North Carolina General Statutes. The Board has duly authorized the execution and delivery of this Agreement and the County's performance of all of its duties and obligations contained herein, and this Agreement constitutes a valid and legally binding obligation of the County, enforceable in accordance with its terms.

3.3 No Litigation. There is no action, suit, or proceeding pending or, to the best of County's knowledge and belief, threatened against or affecting the County, at law or in equity or before or by any federal, state, municipal or other governmental department, commission, board,

bureau, agency or instrumentality wherein any decision, ruling or finding would adversely affect the transactions contemplated herein, with the exclusion of the recovery action that may be taken by the County against BCH Energy, or any of its partners, successors or assigns, for losses that the County may have suffered as a result of the breach of that contract.

3.4 Continuing Obligation. This Agreement pertains solely to a public purpose which the County is authorized by law to engage in. To the extent allowed by law, the County's obligations under this Agreement are continuing and bind all future County boards or other governing bodies, during the term of this Agreement, to make all necessary appropriations and take all necessary actions to meet these obligations.

3.5 Covenant for Delivery of Waste. The County covenants and agrees that, to the extent allowed by law and contract, it will deliver or cause to be delivered all County Municipal Solid Waste to the Transfer Station for transport by Waste Industries to a Disposal Facility; provided, however, that Special Waste may be transported directly to the Disposal Facility, by-passing the Transfer Station, upon prior written approval by Waste Industries. To the extent necessary to fulfill this covenant and to the extent allowed by law, the County will adopt all necessary solid waste management plans and solid waste management agreements with all municipalities within the County, in order to obligate, to the extent allowed by law, all county waste to be delivered to the Transfer Station and transported to a Disposal Facility. To the extent allowed by law, the County shall: (i) exclusively use the Transfer Station for disposal of Brunswick Municipal Solid Waste; (ii) not contract with any other Person for municipal solid waste services which are the same or similar to those provided by Waste Industries; and (iii) not establish, operate or allow the establishment or operation of a solid waste management facility within the County offering the same or similar services as those provided by Waste Industries. Notwithstanding anything to the contrary, nothing herein shall prohibit the County from building and operating its own landfill for the disposal of waste other than municipal solid waste, or undertaking plans near the conclusion of this agreement to meet its future solid waste requirements, up to and including plans for a disposal facility that will meet future requirements for the construction of a permitted landfill. Any change in controlling legislation that would require Brunswick County to reduce its solid waste production by whatever means shall not void this agreement, impose any penalty upon Brunswick County or prevent Brunswick County from meeting its obligations herein.

3.6 Statements. No statement, information, representation or warranty of the County contained in this Agreement or furnished by or on behalf of the County in connection with the transactions contemplated in this Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make a statement contained herein not misleading.

4. REPRESENTATIONS AND WARRANTIES OF WASTE INDUSTRIES. Waste Industries represents and warrants as follows:

4.1. Existence and Good Standing. Waste Industries has been duly incorporated under the laws of North Carolina and is validly existing in good standing under the laws of the state of North Carolina.

4.2. Approval and Authorization. Waste Industries has all requisite corporate power and authority to enter into and fully perform this Agreement. Waste Industries' execution and delivery of this Agreement and Waste Industries' performance of all of its duties and obligations contained herein have been duly authorized by all necessary corporate action on the part of Waste Industries and this Agreement of Waste Industries, subject to any approval required by any applicable statute, is enforceable against Waste Industries in accordance with its terms.

4.3 No Litigation. There is no action, suit or proceeding pending or, to the best

knowledge and belief of Waste Industries, threatened against or affecting Waste Industries at law or in equity or before or by any federal, state, municipal, or other governmental department wherein any decision would materially adversely affect the transactions contemplated herein.

4.4. Compliance with Laws. Waste Industries covenants and agrees that, in the operation of the Transfer Station, Waste Industries will comply, in all material respects, with any and all federal, state, and local laws applicable to Waste Industries concerning the operation of the Transfer Station for the disposal of Waste, subject to Waste Industries' right to contest in good faith the interpretation, application and enforcement of any such laws.

5. CONTROL OVER OPERATIONS.

Waste Industries shall have full, complete and sole control and direction over all aspects of its business and operation as contemplated under this Agreement. The County of Brunswick will have the right to examine the public financial statements of Waste Industries and will be entitled to standard and further assurances of the financial standing of Waste Industries, subject to Waste Industries' obligations as a public company. Subject to the foregoing limitations, the vendor will provide necessary annual reporting data to assist Brunswick County in fulfilling its mandated annual reporting requirements.

6. TERMS AND CONDITIONS.

6.1. Term. The Term of this Agreement shall be Six Years, commencing 120 days from the date this Agreement is signed. The current Agreement between Waste Industries and Brunswick County, signed by the County on December 15, 1997, will be extended if necessary, to remain in effect until the start date of this Agreement, provided that no double-billing will occur for the disposal of any acceptable waste.

6.2. Termination. In addition to the other terms and conditions of this Agreement, Waste Industries may (but is not obligated to) terminate this Agreement upon (i) a breach by the County of this Agreement by the failure to make any payment required hereunder, (ii) an event of Force Majeure which continues unabated for a period of thirty (30) days and which, in Waste Industries' reasonable discretion, renders the construction, operations or maintenance of the Transfer Station non-feasible for any reason, (iii) any breach or default of this Agreement by the County, pursuant to Section 8 hereof; (iv) any court of competent jurisdiction determines that any or all of the exclusivity provisions of Section 3.5 are unenforceable; or (v) the County does not exclusively use the Transfer Station for the disposal of Brunswick Municipal Solid Waste, or contracts with any other Person for the provision of services the same or similar to those provided by Waste Industries. Waste Industries agrees that it will provide 30 days notice of termination to the County only if termination is based on a breach of this Agreement by the County or on an event of Force Majeure. If such breach is cured or event terminates within the 30 day period, the notice of termination will be of no effect and this Agreement will remain in full force and effect. Notwithstanding the above or any other provision of this Agreement, if the County breaches this Agreement by failure to make any payment, Waste Industries may terminate this Agreement after prior written notice giving the County 30 days to cure such breach.

6.3. Materiality of Obligation. The obligation of Waste Industries to dispose of all Brunswick Municipal Solid Waste is an integral and material part of the Agreement. Waste Industries' obligation to provide waste disposal shall be a continuing obligation, and an uncured breach thereof shall subject Waste Industries to remedies for default as provided in Section 8 hereof. Without limitation, the obligations of the County to (i) deliver or cause to be delivered all Brunswick Waste to the Transfer Station for disposal at the Facility, and (ii) pay any fee when due under this Agreement are integral and material parts of this Agreement. The County's obligations, without limitations, shall be continuing, and an uncured breach thereof shall subject the County to

remedies for default as provided in Section 8 hereof. The specific enumeration of the above obligations as material under this Agreement does not exclude other obligations from also being considered as material.

#### 7. INDEMNIFICATION.

7.1. Indemnification by Waste Industries. Conditioned on the County being able under North Carolina law to provide Waste Industries indemnification as provided in Section 7.2 below, Waste Industries agrees to indemnify and save harmless the County, its officers, employees and agents from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including cost of defense, settlement and reasonable attorney's fee) ("Indemnified Costs") caused by or resulting from any negligent or willful act or omission of Waste Industries, its officers, employees, agents or contractors in connection with Waste Industries' operation of the Transfer Station, or resulting from the breach by Waste Industries of any of the agreements, representations, or warranties of Waste Industries contained in the Agreement, provided, however, that Waste Industries shall not indemnify the County or any of its officers, employees and agents from any Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of the County or any of its officers, employees, agents or contractors, or any breach by the County of any agreement, representation or warranty of the County contained in this Agreement. Waste Industries shall maintain and provide proof of adequate liability insurance, workman's compensation insurance and automotive insurance, with a minimum of \$1,000,000.00 (One million dollars) general liability (each occurrence). The indemnity obligation of Waste Industries under this Section 7.1 shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation.

7.2. Indemnification by County. To the extent allowed by North Carolina law, the County agrees to indemnify, defend and save harmless Waste Industries, its officers, employees and agents from any Indemnified Costs caused by or resulting from any negligent or willful act or omission of the County, its officers, employees, agents or contractors or resulting from the breach by the County of any of the agreements, representations, or warranties of the County contained in this Agreement, provided, however, that the County shall not indemnify Waste Industries, its officers, employees and agents from Indemnified Costs to the extent caused by or resulting from any negligent or willful act or omission of Waste Industries, its officers, employees, agents or contractors including, without limitation, any such act or omission in connection with Waste Industries' operation of the Facility, or any breach by Waste Industries of any agreement, representation or warranty of Waste Industries contained in this Agreement. The indemnity obligations of the County under this Section 7.2 shall survive the expiration or termination of this Agreement subject to any applicable statute of limitation.

#### 8. DEFAULT REMEDIES.

8.1. Breaches. A breach of this Agreement shall mean a material failure to comply with any of the material provisions of this Agreement. A breach shall also consist of a failure of performance that occurs twice within a two-week period, without a lawful excuse or justification.

#### 8.2. Events of Default.

(a) An event of default shall include, but not be limited to, the following:

- (i) (a) voluntarily commencing any proceeding or filing any petition seeking relief under the United States Bankruptcy Code or any federal, state or foreign bankruptcy, insolvency or similar law,
- (b) consenting to the institution of, or failing to have dismissed within 60 days of filing, any such proceeding or filing of any such petition,
- (c) applying for or consenting to the appointment of a receiver, trustee, custodian, sequestrator or similar official for a substantial part of its property,
- (d) filing an answer admitting the material allegations of a petition filed against it in any such

proceeding, or (e) making a general assignment for the benefit of creditors;

(ii) The commencement of an involuntary proceeding or the filing of an involuntary petition in a court of competent jurisdiction seeking (a) relief under the United States Bankruptcy Code or any other federal, state or foreign bankruptcy, insolvency or similar law; or (b) the appointment of a receiver, trustee, custodian, sequestrator or similar official and such petition shall continue undismissed for 120 days; or (c) an order or decree approving or ordering any of the foregoing shall continue and stay in effect for 60 days; or

(iii) a breach of this Agreement by Waste Industries, which breach is not cured pursuant to Section 16 hereof:

8.3 Right to Cure Breaches. Except as otherwise provided in this Agreement, each party shall in the case of a breach of its obligations under this Agreement either (i) cure the breach within 30 days of receipt of written notice from the non-breaching party, or (ii) continuously demonstrate within such cure period that it is actively and continuously pursuing a course of action which can reasonably be expected to lead to a curing of the breach (the 30-day period will be extended for so long as the breaching party is actively and continuously pursuing such a course); provided, however, that:

(a) in the event of the failure of any party to this Agreement to pay the other party or parties any sum or dollar amount required to be paid when due hereunder, cure shall consist of payment which shall be made within 30 days of written demand from the non-breaching party.

(b) in the event that Waste Industries unreasonably rejects non-excluded waste from disposal at the Transfer Station or Disposal Facility, then cure shall consist of immediate action by Waste Industries to remedy this practice within thirty (30) days or such additional time as may be reasonably necessary to cure, provided that Waste Industries is actively and continuously pursuing a course of action which will reasonably lead to a curing of the breach. In the event that a curing of the breach shall not have occurred, then the matter will be referred for mediation.

#### 8.4 Remedies for Default

(a) in the event of a default under this Agreement, the non-defaulting party shall, upon 5 days prior written notice to the defaulting party, have the right, but not the obligation or duty, to cure such default, including the right to offset the costs of curing the default against any sums due or which becomes due to the defaulting party under this Agreement. In any event, such costs shall be considered Indemnified Costs. The non-defaulting party shall use its best efforts to employ an economically reasonable method of curing any such default, including the right to take over the operation of the service, providing a minimal fee for the cost of such use, until such time as the defaulting party cures or terminates to allow the non-defaulting party to seek service provision elsewhere.

(b) If any event of default occurs and is not cured in the manner allowed hereunder, then the non-defaulting party shall have the right, but not the obligation, to (i) take whatever action at law or in equity that it deems necessary or desirable to collect any amounts then due or thereafter to become due under this Agreement or to enforce performance of any covenant or obligation of the breaching party under this Agreement, and/or (ii) terminate this Agreement.

(c) All rights and remedies under this Section are cumulative and the exercise of any one remedy does not preclude the exercise of one or more of any other available remedies, including any remedies not specified herein.

9. NOTICES. All notices or other communications to be given hereunder shall be in writing and shall be by registered or certified United States mail, return receipt requested, properly addressed as follows:

To the County: Brunswick County

Post Office Box 249  
Bolivia, NC 28422-0249

Attention: County Manager

To Waste Industries: Waste Industries, Inc.  
3949 Browning Place  
Raleigh, North Carolina 27609

Attention: President

Change of address by either party shall be by notice given to the other in the same manner as above specified. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery upon the third (3<sup>rd</sup>) regular business day following the day on which such notice or other communication is deposited with a United States post office or branch post office or upon actual delivery as shown by the return receipt, whichever first occurs.

10. ASSIGNMENT. Neither party shall assign, transfer or delegate, or permit the assignment, transfer or delegation of, this Agreement or any right or duty hereunder, without the prior written consent of the other party, which shall not be unreasonably withheld.

11. FORCE MAJEURE. In the event Waste Industries or the County is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of its obligations under this Agreement, then, in addition to the other remedies provided in this Agreement, the obligations of Waste Industries or the County may be suspended during the continuation of any inability so caused by the event of Force Majeure, but for no longer period. Any time that Waste Industries or the County intends to rely upon an event of Force Majeure to suspend obligations as provided in this Section, Waste Industries or the County shall notify the other party to this Agreement as soon as reasonably practicable, describing in reasonable detail the circumstances of the event of Force Majeure. Notice shall again be given when the effect of the event of Force Majeure has ceased. If an event of Force Majeure materially and adversely increases Waste Industries' cost of construction, operation, or maintenance of the Transfer Station, Waste Industries may, in addition to its other remedies, request the consent of the Board to increase the fees specified in Section 1.2.9. hereof to the extent necessary to offset the increase in such costs of construction, operation or maintenance, which consent shall not be unreasonably withheld.

12. INDEPENDENT CONTRACTOR; NO AGENCY. Waste Industries will act hereunder as an independent contractor and not as an agent of the County. Similarly, the County is neither an agent of Waste Industries nor empowered or authorized to obligate Waste Industries in any way.

13. SEVERABILITY. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, unconstitutional, or unenforceable in any respect, such invalidity, illegality, unconstitutionality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal, unconstitutional or unenforceable provision had never been contained herein, provided, however, that it is the intention of the parties hereto that in lieu of each term, clause, or provision that is held to be invalid, illegal or unenforceable, there shall be added by mutual agreement as a part of this Agreement a term, clause or provision as similar in terms to such invalid, illegal or unenforceable term, clause or provision as may be possible and valid, legal or enforceable. Notwithstanding the above, if the term of this Agreement is held to be invalid, illegal, or unenforceable in any respect, then the term of this Agreement shall automatically be the maximum valid and legal term allowed by

applicable common or statutory law.

14. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

15. **MEDIATION.** All claims or disputes arising between the parties to this Agreement which relate to this Agreement or breach thereof shall be resolved as follows:

(a) The parties shall first attempt to negotiate in good faith to resolve any claim or dispute;

(b) If unsuccessful, the parties shall then refer the matter for a mediation procedure. Each of the parties herein shall nominate two members, and the fifth member of the mediation board shall be agreed upon by the parties, provided that the fifth nominee shall have been certified by the North Carolina Rules of Mediated Settlement Conferences, and in the event of no agreement, the fifth nominee shall be appointed by the Clerk of Superior Court of Brunswick County and shall be qualified as above. Both parties shall be bound by the mediation.

(c) If not resolved as provided in (a) and/or (b) above, any dispute or claim must first be mediated according to the rules of the North Carolina Rules of Mediated Settlement Conferences prior to further litigation.

16. **BINDING EFFECT.** This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

17. **CONSTRUCTION.** Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms, corporations, or other entities. The terms "herein", "hereunder", "hereto", "hereof", and any similar terms, shall refer to this Agreement; the term "heretofore" shall mean before the date of adoption of this Agreement; and the term "hereafter" shall mean after the date of this Agreement. This Agreement is the result of joint negotiations and authorship and no part of this Agreement shall be construed as the product of any one of the parties hereto.

18. **ENTIRE AGREEMENT.** This Agreement constitutes the entire understanding between the County and Waste Industries, and cancels and supersedes all prior negotiations, representations, understandings and agreements, either written or oral, between such parties with respect to the subject matter hereof. No changes, amendments, alterations, or modifications to this Agreement will be effective unless in writing and signed by the parties hereto.

19. **COUNTERPARTS.** This Agreement may be executed in two counterparts, each of which will be considered an original.

20. **DEFINITIONS:** The following definitions shall apply in this Agreement.

20.1 **Agreement:** This Transfer and Disposal Agreement between the County and Waste Industries.

20.2 **Board:** The Board of County Commissioners of Brunswick County, North Carolina.

20.3 **Brown Goods:** Bulky household items, including furniture, but excluding yard waste and C & D waste.

20.4 **Brunswick Solid Waste:** Solid Waste generated within Brunswick County which is collected or delivered to the Transfer Station by the County, or the agents, franchisees or contractors of the County.

20.5 **Brunswick Special Waste:** Special Waste collected or delivered to the Transfer Station by the County, or the agents, franchisees or contractors of the County.

20.6 **C&D Waste:** Non-putrescible construction or demolition materials, as defined by North Carolina laws and regulations on the date of this Agreement.

20.7 **County Waste:** Solid waste and special waste generated within Brunswick County.

20.8 **Customer:** A single residential dwelling unit or single commercial business utilizing 90 Gallon Roll Out Cart and Service as defined in this Agreement.

20.9 DENR: The Department of Environment and Natural Resources of the State of North Carolina, including any successor department or agency performing the same or similar duties.

20.10 Disposal Facility: The solid waste disposal facility will be a Subtitle D Landfill or other disposal facility which has received all necessary state and local authority.

20.11 Effective Date: The date that this Agreement shall become effective, occurring upon the later of Board approval and the execution of this Agreement.

20.12 Environmental Law: Any federal, state, county, or local statute, law, regulation, rule, ordinance, code, directive, policy, license or permit, or any agreement, imposing liability or standards of conduct or responsibility concerning or otherwise relating to environmental or health and safety matters, as amended from time to time and all as now or at any time hereafter may be in effect.

20.13 Excluded Waste: Highly flammable substances, hazardous waste, liquid wastes, certain pathological and biological wastes, explosives, radioactive materials, or any other waste excluded by any applicable Environmental Law or excluded by any of the terms and conditions of any permits, licenses or approval obtained with respect to the operation of the Transfer Station or Disposal Facility. This term shall also include such other waste material which the operators of the Transfer Station or Disposal Facility find, upon the reasonable exercise of their discretion, to pose an unreasonable risk or danger to the operation or safety of the Disposal Facility, Transfer Station, Transfer Vehicles, or the environment.

20.14 Force Majeure: Any act, event or condition reasonably relied upon by Waste Industries or the County as justification for delay in or excuse from performing or complying with any obligation, duty or agreement required of Waste Industries or the County under this Agreement, which act, event or condition is beyond the reasonable control of Waste Industries or the County or its agents relying thereon, including, without limitation: (i) an act of God, epidemic, landslide, lightning, earthquake, fire explosion, storm, flood or similar occurrence; (ii) interference by third parties with any solid waste, transfer or disposal operations or any other duties of Waste Industries or the County; (iii) an act of public enemy, war, blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or disobedience, sabotage or similar occurrence; (iv) a strike, work slowdown, or similar industrial or labor action; (v) the order or judgment (including, without limitation, a temporary restraining order, temporary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body, including, without limitation, such an order or judgment which limits the duration of this Agreement to less than the term as set forth in Section 10 of this Agreement or which stays, invalidates, or otherwise affects this Agreement with respect to the delivery of waste, (vi) the denial, loss, suspension, expiration, termination or failure of renewal of any permit, license or other governmental approval required to operate the Disposal Facility or Transfer Station which does not result from any negligent or willful act or omission of Waste Industries or the County, (vii) the adoption or change (including a change in interpretation or enforcement) of any federal, state, county, or local law, rule, permit, regulation or ordinance after the Effective Date hereof, applicable to the County, the Disposal Facility, the Transfer Station, Waste Industries or Waste Industries' subcontractors, adversely affecting the obligations of Waste Industries and/or Waste Industries' subcontractors hereunder, including, without limitation, such changes which have a substantial, material and adverse effect on the cost of constructing, operating or maintaining the Disposal Facility or Transfer Station beyond what is incurred and contemplated as of the Effective Date; (viii) the institution of a legal or administrative action, or similar proceeding, by any person, firm, corporation, agency or other entity which delays or prevents any aspect of the construction or operation of the Transfer Station, including, without limitation, comments on or challenges to the consideration or issuance of any permit, license or other approval

required to construct or operate the Transfer Station, or (ix) if Waste Industries is for any reason (other than any reason resulting from Waste Industries' negligent or willful act or omission) delayed or barred by governmental or judicial action from collecting all or any part of the fees to be paid under this Agreement, as may be from time to time adjusted, and any other payments that may become due and owing under this Agreement.

20.15 Hazardous Waste: All materials or substances defined or characterized as hazardous waste by the United States Environmental Protection Agency, the North Carolina Department of Environment, Health and Natural Resources, or any other agency pursuant to any Environmental Law and all current and future amendments thereto, and all current and future regulations promulgated thereunder.

20.16 Jurisdiction: The political boundary of Brunswick County.

20.17 Municipal Solid Waste (MSW): Non-hazardous durable and non-durable goods, containers and packaging, food scraps, yard trimmings, and various inorganic wastes from household, commercial, institutional, and industrial sources. MSW is distinct from other waste categories defined by the U.S. Environmental Protection Agency, such as Hazardous Wastes and Industrial non-hazardous waste.

20.18 Person: Any individual, partnership, firm, organization, corporation, association or any other legal entity, public or private, whether singular or plural, masculine or feminine, as the context may require.

20.19 Solid Waste: Any solid wastes which may be disposed of in sanitary landfills, including, without limitation, garbage, refuse, trash, C&D Waste, and other discarded material, whether from residential, commercial, industrial or institutional sources, which wastes are typically found in household, commercial or municipal refuse, but not including any Special Waste, Yard Waste or Excluded Waste.

20.20 Special Waste: Any waste which, in the reasonable opinion of Waste Industries, requires special or exceptional handling or requires approval from DEHNR for disposal, including, without limitation, any material other than that which is typically found in household, commercial or municipal refuse; industrial waste; medical waste; ashes; sludge; residue from incineration; dredging wastes; tires, white goods and asbestos. This term excludes nuclear and hazardous waste.

20.21 Ton: 2,000 (Two thousand) pounds.

20.22 White Goods: All major appliances, such as refrigerators, washing machines, dryers, dish washers, etc., that are presently accepted for disposal by Brunswick County.

20.23 Yard Waste: Stumps, trees and vegetative matter resulting from landscaping maintenance, such as leaves, grass limbs and trimmings

IN WITNESS WHEREOF, the County and Waste Industries have caused their respective duly authorized officers to execute this Agreement as of the day and year first above written.

BRUNSWICK COUNTY, NORTH CAROLINA

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Jo Ann B. Simmons, Chair  
Brunswick County Commissioners

ATTEST:

Joyce C. Johnson, Clerk to the Board

(Seal)

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

By: \_\_\_\_\_  
Director of Fiscal Operations

WASTE INDUSTRIES, INC.

By: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

(Corporate Seal)