

June 2, 2014

The Randolph County Board of Commissioners met in regular session at 6:00 p.m. in the 1909 Randolph County Historic Courthouse Meeting Room, 145 Worth Street, Asheboro, NC. Commissioners Holmes, Frye, Haywood, Kemp and Lanier were present. Dr. Bob Shackelford, RCC President, gave the invocation and everyone recited the pledge of allegiance.

Public Comment Period

Pursuant to N.C.G.S. § 153A-52.1, Chairman Holmes opened the floor for public comment. County Attorney Ben Morgan read aloud the Public Comment Rules of Procedure.

Tom Morgan, Archdale, NC, asked the Board to endorse and encourage the elimination of elder abuse in Randolph County. He said that local citizens have formed a group to address the problems and stated he would keep the Board updated on their progress.

Alan Ferguson, 4794 Troy Smith Rd., Liberty, NC, spoke in regard to the proposed mega site, stating that they are aware that the acquisition efforts have been turned over to a Greensboro commercial real estate agent. He said that the agent is contracting to pay interested property owners five percent of the proposed purchase price in non-refundable due diligence money in return for commitments to transfer property owners' titles. The contracts require that the sellers cooperate with the buyer in seeking to have the property rezoned to a zoning classification designated by the buyer that permits the property to be used for the buyer's intended purposes. He said it is believed that the agent has about 1000 acres under a contract pending the tendering of promised money. Mr. Ferguson said the citizens around the property are wondering if it is true that Randolph County will be asked to pay for half of the costs for water and sewer lines to be run to the property. Mr. Ferguson asked that the Board take great care in continuing to support and eventually funding a project that seems designed largely for the benefit of folks from Greensboro. He would like to see assurances that Randolph County receive most of whatever benefit accrues to the sacrifices that Randolph County taxpayers would have to bear if this project proceeds.

Approval of Consent Agenda

On motion of Frye, seconded by Haywood, the Board voted unanimously to approve the Consent Agenda, as presented:

- *approve Board of Commissioners regular meeting minutes of 5/5/14;*
- *approve Budget Amendment #31 to the Fire District Fund to reflect additional fire tax revenues received and remitted for all 19 fire districts;*

• 2013-2014 Budget Ordinance—General Fund—Budget Amendment #31		
<i>Revenues</i>	<i>Increase</i>	<i>Decrease</i>
<i>Ad Valorem Property Taxes</i>	<i>\$600,000</i>	
<i>Appropriations</i>	<i>Increase</i>	<i>Decrease</i>
<i>Tax Distributions</i>	<i>\$600,000</i>	

- *appoint Warren Coble (2-year term) and reappoint Duffy Johnson, Betty Hunt, Addie Luther, Carolyn Vickrey, Rev. Brian Gawf, Liz Rickard, Elizabeth Mitchell, Emma Washington, Richard Wells, Candie Rudzinski, Joy Ratliffe, Arey Rash, Kendria Eckard, Ann Hoover, Donald Monroe and John McCormick to the Aging Services Planning Committee;*
- *approve Budget Amendment #32 for Public Health (\$7,143-Env. Health, \$6,789-Chronic Disease/Nutrition, \$2,678-Women’s Health, \$5,000-Animal Shelter, as follows:*

2013-2014 Budget Ordinance—General Fund—Budget Amendment #32		
Revenues	Increase	Decrease
<i>Restricted Intergovernmental</i>	\$16,610	
<i>Miscellaneous</i>	\$ 5,000	
Appropriations	Increase	Decrease
<i>Public Health</i>	\$21,610	

- *approve Budget Amendment #33 for Public Health (\$6,435-WIC), as follows:*

2013-2014 Budget Ordinance—General Fund—Budget Amendment #33		
Revenues	Increase	Decrease
<i>Restricted Intergovernmental</i>	\$6,435	
Appropriations	Increase	Decrease
<i>Public Health</i>	\$6,435	

- *reappoint Commissioner Arnold Lanier to Randolph County Social Services Board;*
- *approve lease agreement for Child Support Enforcement office space, as presented;*
- *reappoint Fred Meredith to the RCC Board of Trustees;*
- *reappoint Brad Rice, Lucy Dorsey, Suzanne Dale, Judge Jimmy Hill, Debbie McKenzie and Celena Fleming to the Randolph County Juvenile Crime Prevention Council.*

Changes to New Business Agenda

Chairman Holmes announced that *Item F. Request for Adoption of Resolution Approving New Slogan for Welcome Signs* had been removed from the New Business Agenda and will be considered on the July 7 agenda.

Approval of Aging Services Requests

Candie Rudzinski, Aging Services Planning Committee (ASPC) Chair, reported that the ASPC met on May 13, 2014 and approved a recommendation for the HCCBG agency allocations for FY 14-15 totaling \$771,441. She said this total includes an additional \$28,400 that was allocated to Randolph County for the upcoming fiscal year. The ASPC recommends that the Randolph County Board of Commissioners approve the HCCBG Funding Plan, requesting a total of \$771,441 for fiscal year 2014-2015 for Randolph County aging services providers. Ms. Rudzinski also asked that the Board accept additional/supplemental funding, should it become available, and to allow the Aging Services Planning Committee to decide how to allocate these funds, as appropriate, according to the existing “Policy for Distribution of Aging Services Funding.”

On motion of Frye, seconded by Haywood, the Board unanimously approved 1) the HCCBG Funding Plan, as indicated on Form DOA-731, requesting a total of \$771,441 for fiscal year 2014-2015; and 2) agreed to accept additional/supplemental funding, should it become available, and to allow the Aging Services Planning Committee to decide how to allocate these funds, as appropriate, according to the existing “Policy for Distribution of Aging Services Funding.”

Adoption of Ambulance Fee Schedule

Donovan Davis, Emergency Services Director said that the Ambulance Fee Schedule for Randolph County EMS was established in April of 2002. Since that time many changes have occurred causing significant operational cost increases such as fuel, new and replacement equipment, oxygen and medical supplies. In 2011 the amount in which Medicare allows for reimbursement under the Ambulance Fee Schedule increased to reflect our current charges. The last approved increase by this Board became effective on July 1, 2011. The 2014 Medicare allowable charges have increased and our operational costs continue to increase each year. During the 2013 calendar year, EMS responded to 19,272 calls, an increase of 2,377 calls since 2012.

Mr. Davis said, in 2009, Randolph Hospital informed the County that they would no longer replace medical supplies on each ambulance, creating a significant increase in costs to EMS. With little warning, on April 1, 2013, they were informed that the hospital would no longer replace certain medications on the ambulances, beginning on April 15, 2013. This has added another unexpected increase to County medical supplies costs. Moses Cone and High Point Regional have also adopted the same policy and will not replace medications or supplies. National medication shortages have caused the County to purchase and use more expensive replacement drugs.

Mr. Davis presented a fee schedule comparison for each of the surrounding EMS agencies/counties, stating that Randolph County continues to have the lowest emergency transport fees in the area. Mr. Davis said he does realize and appreciate that this Board has always been committed to keeping our fees as low as possible for the citizens and visitors of Randolph County, however, the current fee schedule is no longer sufficient to support actual operational costs. Ash-Rand Rescue & EMS, Inc. and Piedmont Triad Ambulance & Rescue, Inc. have each requested a fee increase to assist in covering their amplified operational costs. Mr. Davis requested the new schedule to become effective July 1, 2014.

On motion of Kemp, seconded by Lanier, the Board voted unanimously to adopt the new Ambulance Fee Schedule, effective July 1, 2014, as follows:

Type of Service	Effective July 1, 2014
Basic Life Support (BLS) Transport – Non Emergency A0428	\$325
Basic Life Support (BLS) Transport –Emergency A0429	\$375
Advanced Life Support – Non Emergency A0426	\$375
Advanced Life Support – Emergency 1 A0427	\$445
Advanced Life Support – Emergency 2 A0433	\$645
Specialty Care A0434	\$750
Patient Return A0428	\$275

Treatment – No Transport	\$175
Convalescent Waiting Time (after 30 mins) added to base fee – per hour	\$125
Standby – Special Event (Unit & Crew Per Hour)	\$100
Standby – Special Event (per hour/per EMS employee)	\$25
Mileage – per patient loaded mile A0425	\$10.41

Approval of JAG Assistance Grant

Jane Leonard, Sheriff’s Office Assistant Business Manager, stated that Randolph County has been designated to receive a grant for \$10,771 from the Bureau of Justice Assistance (JAG). The Sheriff’s Office proposes to use the \$10,771 in the grant award to pay for the overtime expenses of officers who work on the Internet Crimes Against Children Task Force. These officers investigate persons who use the internet to lure children who might be susceptible to meet with them for illegal purposes, and also use the internet to disseminate child pornography. These officers work these cases after hours in addition to their regular duties. They all have received extensive training in the strategies necessary to investigate these types of crimes and already have a very successful arrest record.

Ms. Leonard said that per grant requirement, an ad was placed in the *Courier Tribune* on May 23, 2014, announcing the grant and seeking public comment. Also per grant requirement, a copy of the grant application was delivered to the County Manager. Ms. Leonard requested that the Board accept the grant funds in the amount of \$10,771, should the application be approved, and that the Sheriff’s Office be permitted to spend the funds as requested and as specified in the grant application.

On motion of Haywood, seconded by Kemp, the Board voted unanimously to approve the request of the Sheriff’s Department to accept the JAG Grant in the amount of \$10,110, if so awarded by the Bureau of Justice Assistance, and to use the grant money as specified in the grant application, which includes funding to pay for overtime expenses for officers who work on the Internet Crimes Against Children Task Force, as requested.

Approval of Renewal of Contract with Southern Health Partners, Inc.

Jane Leonard, Sheriff’s Office Assistant Business Manager, stated that the Sheriff’s Office wishes to renew the current Health Services Agreement with Southern Health Partners, Inc. (SHP) for the period of July 1, 2014 through June 30, 2015, but in order to assist with additional required medical paperwork and an increase in inmate population, they requested the nursing hours be increased from 84 hours per week to 100 hours per week. With the additional nursing hours, the fee structure will increase from \$26,609.83 per month to \$28,625.14 per month. All other provisions of the contract will remain the same.

SHP provides medical coverage for all jail inmates and staffs the jail with qualified nurses who work under the direction of doctors. The contract also includes SHP providing medical payments to third-party vendors, up to a stop-loss maximum. Ms. Leonard requested the approval of the renewal of the contract with Southern Health Partners, Inc. and that the County Manager be authorized to sign the contract renewal.

On motion of Frye, seconded by Kemp, the Board voted unanimously to approve the renewal of the Southern Health Partners contract for twelve months ending June 30, 2015, at the base monthly fee of \$28,625.14, and to authorize the County Manager to sign the contract.

Approval of New Contracts for Fire Departments

Aimee Scotton, Associate County Attorney, recently presented a draft of a new contract template for fire protection. Randolph County provides fire protection by contracting with local fire departments for these services. She said that the current contracts are woefully outdated and need to be expanded to more fully reflect the County's expectations. The new contract was developed by a committee that was comprised of Ms. Scotton, Emergency Services Director Donovan Davis, Deputy Director Lewis Schirloff, County Fire Marshal Rick Davis, and three fire chiefs: Brent Powell from Tabernacle, Marty Leonard from Randleman, and J.R. Beard from Liberty. Agreements were gathered from other counties to see what they had in place, and the committee met multiple times to develop an agreement that will best serve Randolph County and its citizens. As directed by the Board at their April meeting, Ms. Scotton said she circulated the draft agreement to all the fire departments. She said she had also responded to questions and issues raised by a few fire chiefs during this process. Some minor changes have been made and the revised document included in the agenda packet is the final result. She said it was emailed to all departments on May 15 for review and she said she had received only favorable responses.

Ms. Scotton said that there are actually two versions of the fire department contract. One is for departments that are funded and operate in rural fire protection districts. The other is for the three departments in the County (Climax, Guil-Rand and the newly-formed Randleman-Sophia) that operate and are funded in county service districts. Other than the paragraphs indicating how the district was formed, these documents are identical. She asked the Commissioners to approve the template form of the new fire department contracts (both for rural fire protection districts and county service districts) and to authorize the Chairman to sign for the County once the individual agreements have been prepared and signed by the departments.

Ms. Scotton said that they are in compliance with all applicable state and local laws, regulations and plans, including but not limited to, applicable guidelines published by the N.C. Department of Insurance, Office of State Fire Marshal, the Randolph County Fire Communications Standard Operating Guidelines, the Randolph County Emergency Operations Plan, and the Randolph County Emergency Medical System Plan and that all had been incorporated in the new contract, but nothing had changed within any of those individual regulations. A failure to comply with the terms could result in suspension of monthly tax remittals to the Department.

Ms. Scotton said that this document does not require fire departments to do anything that they are not already doing. She mentioned that one section was added to the contract requiring departments to conduct their meetings in accordance with the open meetings law, even though statutorily, the law does not apply to fire departments. She said she included the section due to Commissioners' concerns surrounding a past incident at a fire department meeting at which citizens were not allowed to attend. However, Ms. Scotton said that she believed that all fire department meetings are now open to the public.

No insurance guidelines were ever part of the previous contract. Wording was added just to make sure the Departments were covered in case of any lawsuit. Ms. Scotton said that only one department

had very specific questions about insurance coverage. She asked that chief to call her after he talked with his insurance carrier if there were still concerns. She said she had talked with the department a couple additional times, but insurance was never discussed again and she assumes there were no additional concerns. The Committee only added what seemed to be standard with every surrounding county.

Franklinville Fire Chief Kyle Dixon, said that he has had feedback from several chiefs in the county about the contract. He said he had not replied to Ms. Scotton's email after his initial response to her and felt it should be discussed in open meeting with the Commissioners. He said he still has some concerns and that his primary concern centers around the fact that the new contract calls for compliance with the Randolph County Fire Communications Standard Operating Guidelines, the Randolph County Emergency Operations Plan, and the Randolph County Emergency Medical System Plan. He said he had not received a copy of those until he was handed a disc prior to the meeting. He said that his Department Board of Directors did not have them in order to review prior to the contract. He said that in the Standard Operating Guidelines, there is a statement that trucks were to be numbered to the County system, but he said he disagrees due to the expenses it will have on the Department. He said Franklinville owns 17 pieces of apparatus that would need new numbers. He estimates it to cost between \$5000- \$7000 to change the numbers.

Mr. Dixon said that another item of concern to him and other chiefs is that tax remittals can be held if there is a failure to comply with the terms of the contract, saying that remittals are vital for the station operations. He said that it also concerns him that after several rounds of discussion that no appeal process has been included in the contract after the five-member review committee decides to suspend tax remittals. He stated that everyone needs to be ensured that there is an appeal process in place to appeal decisions that may not be proper and so that everyone is treated fairly.

Donovan Davis, Emergency Services Director stated that the Standard Operating Agreement (SOG) was updated in the prior year, distributed, and the numbering system discussed at the Fire Chief's Association meeting. He said that the Agreement states that the Department "should" comply and not "shall" and they have continued to work with Franklinville. Mr. Davis said that the Franklinville Fire Department is the only one that has not conformed to the numbering system, but has not been mandated to make any changes.

Chairman Holmes asked Ms. Scotton to review the process in the event that a Department breaches the agreement. Ms. Scotton said that if a Department fails to comply with the terms of Section B, Paragraph 4, where *the Department agrees that all funds paid to it by the County shall be used exclusively to provide the services outlined.*; or Section B, Paragraph 7, *the Department shall file with the County Fire Marshal's Office a true copy of its Articles of Incorporation and Bylaws, and shall furnish any changes thereto not less than thirty (30) days prior to their effective dates. The Department shall provide a copy of its standard operating guidelines/procedures upon the request of the County.* Then the tax remittals shall be suspended until the Department becomes compliant. The review process established in the contract has to be followed prior to the suspension of funds and are as follows:

- a) A six-member review committee shall be convened to examine the actions or omissions constituting the breach. The standing members of the committee shall be the Randolph County Emergency Services Director, the Randolph County Fire Marshal, and the Randolph County Finance Director. The remaining two (2) members (rotating members) shall be current fire chiefs of fire departments

located in Randolph County, provided, however, that the fire chief of the Department alleged to have breached this Agreement may not be on the review committee. The rotating members may vary per event and shall be chosen by the standing members of the committee.

- b) If, after examining the circumstances, the committee agrees that a breach has occurred, it shall issue a letter instructing the Department to cure the breach within thirty (30) days of the date of the letter.
- c) If the Department cures the breach within the thirty-day time frame, tax remittals shall continue to issue to the Department without interruption.
- d) If the Department fails to cure the breach within the thirty-day time frame, then tax remittals shall be suspended to the Department until such time as the breach has been cured.
- e) In the event that tax remittals are suspended pursuant to this Paragraph, the Department's responsibilities as outlined in Section B shall continue to be in force and effect.

Ms. Scotton said that Commissioners would be included if there was ever a breach in a contract. Mr. Dixon asked that the committee structure be changed to one chief and one Commissioner.

Commissioner Kemp made a motion to approve the contract as presented and Vice Chair Frye asked if anyone opposed adding a Commissioner to the review committee specified in Section C, Paragraph 3 (a) of the contract. Commissioner Kemp amended his motion to include a Commissioner on the review committee. Vice Chair Frye seconded the amended motion. The Board voted unanimously to approve the amended fire department contract template, as follows:

NORTH CAROLINA

RANDOLPH COUNTY

AGREEMENT

THIS AGREEMENT, made, entered into, and effective this 1st day of July, 2014, by and between Randolph County, a body politic and corporate, hereinafter referred to as the "County" and _____, hereinafter referred to as the "Department" and also collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, North Carolina General Statute 69-25.5 provides that a county may provide for fire protection in a fire protection district by contracting with any incorporated city or town or with any incorporated nonprofit volunteer or community fire department; and

WHEREAS, the Department agrees to contract with the County to provide fire protection and rescue services; and

WHEREAS, the Department is an incorporated North Carolina city or town or a North Carolina community fire department or a 501 C(3) or 501 C(4) nonprofit corporation organized and authorized to furnish fire protection, medical first responder, rescue to the certification level of the Department and emergency services authorized by its charter to the citizens of a district; and

WHEREAS, the _____ rural fire protection district of Randolph County, hereinafter referred to as the "District" has boundaries defined by description on file in the Randolph County Fire Marshal's Office; and

WHEREAS, the Department has secured equipment, land and building(s) for the operation of fire station(s) to serve the citizens of the District; and

WHEREAS, the County levies and collects special tax(es) and is responsible for appropriating the funds derived therefrom for fire protection in the County; and

WHEREAS, the County and the Department desire to enter into this Agreement for the Department to furnish fire protection, medical first responder, rescue to the Department's level of certification and emergency services within the described District.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the Parties hereto contract and agree as follows:

Section A. Responsibilities of the County

1. The County shall cause to be assessed or levied a special tax of up to fifteen cents (\$0.15) per one hundred dollar (\$100) valuation of all real or personal property in the District unless otherwise limited or prohibited by law or a vote of the people and will collect said tax as a part of the ad valorem taxes of Randolph County. The amount of tax levied shall be set by the Randolph County Board of Commissioners and shall be based upon the needs projected in the budget request submitted by the Department to the County.
2. The County shall maintain a special or separate fund for the funds collected as a result of the tax referenced in paragraph A(1) above.
3. The County shall remit to the Department monthly the funds collected in accordance with paragraph A(1) above.
4. The County shall furnish 911 communications services and shall dispatch the Department in response to calls received by said service.

Section B. Responsibilities of the Department

1. The Department shall provide and furnish fire protection services and shall provide the necessary equipment, personnel, and other resources as determined by the North Carolina Department of Insurance, Fire and Rescue Service Division and the Insurance Service Office for all persons and property located within its District, shall maintain at least a 9S insurance rating, and shall furnish all services free of charge to any person or individual within the District.
2. The Department shall furnish rescue and first responder services, including the necessary equipment, personnel and other resources, to its level of certification by the North Carolina Association of Rescue and EMS within the District, said services to be provided free of charge to any person or individual within the District. The Emergency Services Director, with input from the Fire Chief, will determine the types and severity of medical and rescue calls to be dispatched to the Department.
3. Notwithstanding the foregoing, nothing in this Agreement shall preclude the Department from making claims against an insurance company for services provided pursuant to Section B, Paragraphs 1 and 2 above.

4. The Department agrees that all funds paid to it by the County shall be used exclusively to provide the services outlined in B(1) and (2) above.
5. The Department shall operate at all times in compliance with all applicable state and local laws, regulations and plans, including but not limited to applicable guidelines published by the N.C. Department of Insurance, Office of State Fire Marshal, the Randolph County Fire Communications Standard Operating Guidelines, the Randolph County Emergency Operations Plan, and the Randolph County Emergency Medical System Plan. A failure by the department to comply with the terms of this paragraph shall result in suspension, in accordance with Section C, Paragraph 3 below, of monthly tax remittals to the Department by the County until such time as the Department complies.
6. The Department shall file with the County Fire Marshal's Office a current list of its Board of Directors, a roster of its Department personnel, an annual training report, and a list of apparatus including pump and tank sized and specialized fire suppression equipment no later than July 31st of each year.
7. The Department shall file with the County Fire Marshal's Office a true copy of its Articles of Incorporation and Bylaws, and shall furnish any changes thereto not less than thirty (30) days prior to their effective dates. The Department shall provide a copy of its standard operating guidelines/procedures upon the request of the County.
8. The Department shall allow the County to inspect all books and accounts of the Department at any reasonable time. It is further agreed that the Department shall present to the County an annual audit and accompanying management letter prepared according to generally accepted accounting principles (GAAP) and generally accepted auditing standards prepared by an independent certified public accountant for the preceding fiscal year within nine months of the end of that fiscal year. A failure by the Department to comply with the terms of this paragraph shall result in the suspension, in accordance with Section C, Paragraph 3 below, of monthly tax remittals to the Department by the County until such time as the Department complies.
9. The Department shall comply with County budgeting procedures and any procedure provided by state law and shall submit annual budget estimates in accordance with established County budget timetables along with a supporting letter of request for a proposed tax rate signed by the Department's president upon approval by its Board of Directors.
10. The Department shall obtain and keep in force during the term of this Agreement, and any extension hereof, at least the following minimum insurance coverage. For all types of insurance listed, volunteers and employees shall be included as insureds.
 - a. Worker's Compensation—Coverage of all volunteer firefighters and employees for statutory limits in compliance with applicable state and federal laws.
 - b. Comprehensive General Liability, Including Medical Malpractice—Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability.
 - c. Business Auto Policy—Coverage with minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. This shall

include owned vehicles, hired and non-owned vehicles and employee non-ownership. Coverage for physical damage to vehicles shall be a minimum of replacement value.

- d. Professional Errors and Omissions, Including Officers and Directors—Coverage with minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.
 - e. Property insurance protecting against the risk of direct physical loss or damage written on a Guaranteed Replacement Cost Basis.
 - f. Umbrella Liability—Coverage with a minimum limit of \$1,000,000.00 with underlying coverage of auto liability, employee's liability and errors and omissions liability.
11. The Department agrees to conduct its meetings in accordance with the North Carolina General Statutes governing open meetings.
 12. In connection with the performance of this Agreement, the Department agrees not to discriminate against any employee, member, or applicant for employment or membership because of race, religion, color, sex, age, disability or national origin.
 13. The Department agrees that its Board of Directors has a duty to manage its employees, its volunteers and its Fire Chief. The Department shall hold harmless and indemnify the County from and against any and all liability and expenses including attorney fees, court costs and other costs incurred by the County caused by any act or omission of the Department, its agents, volunteers and employees.
 14. The Department agrees to cooperate with the other fire departments/districts in the County to provide mutual aid and automatic aid when necessary for the benefit of the citizens of Randolph County.

C. General Provisions

1. **Independent Contractor.** All services performed by the Department pursuant to this Agreement are performed as an independent contractor pursuant to the control and authority of its own board and fire chief. Nothing in this Agreement is intended or shall be construed to make the Department an agent of the County.
2. **Effective Date.** This Agreement is effective as of July 1, 2014.
3. **Suspension of Tax Remittals.** In the event the Department breaches this Agreement by failing to comply with the terms of Section B, Paragraph 4 or Section B, Paragraph 7, the tax remittals from the County to the Department described in Section A, Paragraph 3 above shall be suspended until the Department comes into compliance. The following procedures shall be followed in effecting a suspension:
 - a) A six-member review committee shall be convened to examine the actions or omissions constituting the breach. The standing members of the committee shall be the Randolph County Emergency Services Director, the Randolph County Fire Marshal, the Randolph County Finance Director and a Randolph County Commissioner. The remaining two (2) members (rotating members) shall be current fire chiefs of fire departments located in Randolph County, provided, however, that the fire chief of the Department alleged to have breached this Agreement may not be on the review committee. The rotating

members may vary per event and shall be chosen by the standing members of the committee.

- b) If, after examining the circumstances, the committee agrees that a breach has occurred, it shall issue a letter instructing the Department to cure the breach within thirty (30) days of the date of the letter.
 - c) If the Department cures the breach within the thirty-day time frame, tax remittals shall continue to issue to the Department without interruption.
 - d) If the Department fails to cure the breach within the thirty-day time frame, then tax remittals shall be suspended to the Department until such time as the breach has been cured.
 - e) In the event that tax remittals are suspended pursuant to this Paragraph, the Department's responsibilities as outlined in Section B shall continue to be in force and effect.
4. Term/Renewal. The term of this Agreement is one year, provided however, that it shall automatically renew for successive one-year terms unless terminated by either party as hereinafter provided.
 5. Termination. This Agreement may be terminated by either party upon advance written notice to the other party by certified mail at least ninety (90) days prior to the termination.
 6. Binding/Non-Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives and assigns, but this Agreement may not be assigned by either party without the prior written consent of the other party, which consent may be withheld in the sole discretion of a party.
 7. No Third Party Benefit. This Agreement is not intended to serve for the benefit of any third party. The rights and obligation contained herein belong exclusively to the entities who are parties hereto.
 8. Amendments. This Agreement may not be amended except by written agreement of the parties.
 9. Severability. If any provision of this Agreement is held to be unenforceable, then said provision will be modified to reflect the parties' intentions. All remaining provisions of this Agreement shall remain in full force and effect.
 10. No Waiver. The failure of either party to exercise any right granted hereunder or to insist upon strict compliance by the other party with its respective obligations shall not constitute a waiver by either party to require exact compliance with the terms hereof.
 11. Entire Agreement. This Agreement sets forth the entire Agreement between the parties regarding this subject matter. All prior contracts, conversations or writings between the parties hereto or their representatives are merged within and extinguished.

IN WITNESS WHEREOF, the County and the Department have set their hands and seals, all pursuant to authority duly granted as of the day and year first above written.

RANDOLPH COUNTY

ATTEST:

Cheryl A. Ivey
Clerk to the Board

J. Harold Homes, Chairman
Randolph County Board of Commissioners

ATTEST:

FIRE DEPARTMENT

Corporate Secretary

President, Board of Directors

Fire Department

(CORPORATE SEAL)

Fire Chief

Fire Department

APPROVED AS TO CONTENT:

This instrument has been preaudited in the manner required by the Local Gov't Budget and Fiscal Control Act.

Donovan L. Davis, Director
Randolph County Emergency Services

William L. Massie, Finance Officer
Randolph County Government

Approval of Operating Agreement with Landfill Partner

County Manager Richard Wells stated that the Ordinance Granting A Franchise to Waste Management Of Carolinas, Inc. to permit, construct and operate a sanitary landfill in Randolph county was duly adopted by the Board on April 7, 2014. Section 1. (c) of that ordinance states the following: "this grant of franchise is contingent upon the execution of an operating agreement between the County and Waste Management." He said that staff and attorneys of both the County and Waste Management have been working diligently over the last month to develop an operating agreement. That agreement is now ready to be considered for adoption.

On motion of Kemp, seconded by Lanier, the Board voted 4-1, with Haywood opposing, to adopt the operating agreement, as presented, and to authorize management and legal counsel to take any further action to effectuate the terms of the operating agreement, as presented. (Attached)

Rezoning Public Hearing and Action

At 7:21 p.m., the Board adjourned to a duly advertised public hearing to consider rezoning requests. Hal Johnson, Planning Director, presented the following request, and Chairman Holmes opened the public hearing for comments and closed it before taking action on the request.

SYDNEY LOWE, Asheboro, North Carolina, is requesting that 1.36 acres located at 2809 Forest Park Drive, Forest Park Subdivision, Randleman Township, be rezoned from RM to LI-CD. Primary Growth Area. Tax ID#s 7763290073 and 7763281848. The proposed Conditional District would specifically allow the existing facility to be used for an automotive body repair business, wrecker service, and storage yard for containers (as per site plan). The Planning Board reviewed this request on May 13, 2014, and unanimously recommended that this request be approved. The Planning Board found the following policies within the 2009 Growth Management Plan that support determination of consistency with the adopted plan with this recommendation are:

Board of Commissioner Resolution Adopting the Growth Management Plan, Policy #2.
Recognize that growth management policies should afford flexibility to County boards and agencies that will enable them to adapt to the practical requirements often necessary for rural development.

Commissioner Resolution Adopting the 2009 Randolph County Growth Management Plan, #3.
Ensure the opportunity for landowners to achieve the highest and best uses of their land that are consistent with growth management policies in order to protect the economic viability of the County's citizens and tax base.

Sydney Lowe, property owner, said that he purchased the property several years ago with an existing business on the property and did not know that it was not zoned for his future intended use. He is renting empty storage containers to businesses and individuals that need a temporary storage alternative. These are stored on the property until rented. Examples were Wal-mart, for holiday use and Wal-greens, who have purchased the CVS stores and are in the process of remodeling and need storage of construction items. The building located on the property will be used to store wrecked vehicles until they are sold as salvage or insurance has been finalized. HE said no body work would be performed at this site.

On motion of Kemp, seconded by Lanier, the Board voted unanimously to approve the request of Sydney Lowe, as determined consistent with the standards and policies contained within the Growth Management Plan and outlined in the recommendations provided by the County Planning Board

Approval of Budget Amendment for Reimbursement of Landfill Costs

Assistant County Manager/Finance Director Will Massie said that during the past few years, Randolph County incurred certain costs in the due diligence phase of the regional landfill. The monies for purchase of additional land came from the General Fund. Professional fees, soil testing, and other necessary costs were advanced from the Landfill Closure Fund. He said that it has been the County's intent to replace these funds once the County received reimbursement from our operating partner. We still require a post-closure reserve for our closed landfill, as well as resources to pay for any further costs to permit the new facility.

On motion of Lanier, seconded by Frye, the Board voted unanimously to approve Budget Amendment #35 for Reimbursement of Landfill Costs, as follows:

2013-2014 Budget Ordinance—General Fund—Budget Amendment #35		
Revenues	Increase	Decrease
<i>Sales and Service</i>	\$1,500,000	
<i>Appropriated Fund Balance</i>		\$1,500,000

2013-2014 Budget Ordinance—Landfill Closure Fund—Budget Amendment #35		
Revenues	Increase	Decrease
<i>Sales and Services</i>	\$ 2,000,000	
<i>Appropriated Fund Balance</i>		\$ 219,500
Appropriations	Increase	Decrease
<i>Solid Waste Management</i>	\$ 500,000	
<i>Reserve for Future Costs</i>	\$ 1,280,500	

Election of NACo Conference Voting Delegate

On motion of Haywood, seconded by Lanier, the Board voted unanimously to elect Darrell Frye as the voting delegate for the 2014 NACo Conference in July.

Animal Shelter Position

MiMi Cooper, Public Health Director, stated that the County recently negotiated an increase in our Animal Control Services contract with the City of Asheboro. In order to provide these additional services, she requested to add back the Animal Shelter Attendant position that was removed from their classification plan. The money for this position is available in the contract. Stacy Griffin, Director of Human Resources, has reviewed the job description. Ms. Cooper requested the Board approve the addition of an Animal Shelter Attendant to the Randolph County Classification Plan at a Grade 6, effective July 1, 2014.

On motion of Frye, seconded by Lanier, the Board voted unanimously to approve the addition of an Animal Shelter Attendant to the Randolph County Classification Plan at a Grade 6, effective July 1, 2014.

Adjournment

At 7:34 p.m., on motion of Frye, seconded by Lanier, the Board voted unanimously to adjourn.

J. Harold Holmes, Chairman

Darrell L. Frye

Phil Kemp

Arnold Lanier

Stan Haywood

Amanda Varner, Deputy Clerk to the Board

AGREEMENT

**FOR THE
CONSTRUCTION AND OPERATION
OF A
MUNICIPAL SOLID WASTE LANDFILL**

AND RELATED SERVICES

BETWEEN

RANDOLPH COUNTY, NORTH CAROLINA

AND

WASTE MANAGEMENT OF CAROLINAS, INC.

Executed

_____, 2014

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STATE OF NORTH CAROLINA

AGREEMENT

COUNTY OF RANDOLPH

This Agreement for the Construction and Operation of a Municipal Solid Waste Landfill (“Operating Agreement” or “Agreement”) is entered into this ____ day of _____, 2014, between Randolph County (“Randolph County” or “County”), a political subdivision of the State of North Carolina, and Waste Management of Carolinas, Inc. (“Waste Management”), a company organized and existing under the laws of the State of North Carolina (sometimes collectively referred to as “Parties”).

**ARTICLE 1.
RECITALS AND BACKGROUND**

- 1.1 The Randolph County Planning Board issued Randolph County a Special Use Permit for a Solid Waste Management Facility on Old Cedar Falls Road on April 9, 2013.
- 1.2 On December 4, 2013, the County selected Waste Management to construct and operate a municipal solid waste (“MSW”) landfill in Randolph County.
- 1.3 On April 7, 2014 the County adopted an ordinance issuing Waste Management a Franchise to receive certain types of Solid Waste for disposal in Randolph County for thirty (30) years upon the terms and conditions set forth therein.
- 1.4 The Parties enter this Agreement to specify the manner in which the County will allow Waste Management to enter and utilize County-owned and County-leased lands to operate a regional MSW Landfill and Convenience Centers and Recycling Sites in exchange for certain payments and other considerations that benefit the citizens of Randolph County. Except as expressly provided in this Agreement, the decisions related to the construction, operation and business of the Landfill Facility and Convenience Centers and Recycling Sites shall be made exclusively by Waste Management.

**ARTICLE 2.
DEFINITIONS**

- 2.1 Interpretation and Construction
 - 2.1.1 Defined Terms – The terms as defined herein shall control the interpretation of this Agreement.
 - 2.1.2 Undefined Terms – Undefined terms shall be interpreted consistently with the same or similar definitions in the General Statutes and Administrative Code of the State of North Carolina. Terms not defined under North Carolina law shall have the same meaning as is commonly given in the solid waste industry. All other

terms shall have their ordinary and common meanings. The most recent edition of Webster's Dictionary shall be the authority for resolving disputes over their definition of undefined terms.

- 2.1.3 Headings – Headings are generally used for reference and convenience, but where appropriate may provide context for the interpretation of terms and provisions.
- 2.1.4 General Construction – “Shall” expresses a mandatory intent, subject to waivers or modifications allowed or allowable by law or by this Agreement and as approved by County administrative personnel or the Board of Commissioners.
- 2.1.5 Ambiguities – Each party shall be deemed an equal participant in the drafting of this Agreement such that the rule of construction that ambiguities are resolved against the drafting party is inapplicable.

2.2 Definitions

Agreement – “Agreement” shall refer to this “Agreement for the Construction and Operation of a Municipal Solid Waste Landfill and Related Services” as currently adopted and agreed to by each party and as modified and amended from time to time pursuant to the provisions in Section 16.22.

Beginning date – As defined in Section 5.1.

Board or Board of Commissioners – Board of County Commissioners of Randolph County, North Carolina, as it is constituted at the relevant time of reference.

Closure – Closure is the design, construction, cost, and receipt from NCDENR its certification of the final cover system for any portion of the Landfill constructed by Waste Management pursuant to this Agreement. Closure shall exclude only any portion of the Landfill constructed by Waste Management that the County and Waste Management agree to exclude in writing.

Commercial Solid Waste – All types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding residential and industrial wastes.

Construction and Demolition Debris (C&D) – Solid waste resulting solely from construction, remodeling, repair, or demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris. [N.C.G.S. § 130A-290(a)(4)]

Consumer Price Index (“CPI”) – A measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services as published by the U.S. Department of Labor, Bureau of Labor Statistics for All Urban Consumers (CPI-U) in the South Region (All Items) in March of each year. The applicable adjustment in pricing shall be based upon the annual percentage of change in

the CPI (or if such Index shall cease to be published, any similar Index agreed upon by the parties), commencing, and for the applicable period, as set forth in this Agreement.

Convenience Centers. – As defined in Section 3.1.

County – Randolph County, North Carolina, acting at various times through its Board or through its authorized employees, agents, engineers, legal counsel or management as allowed by law and as appropriate to the context of this Agreement.

Environmental Impact Statement (EIS) – An evaluation of direct, secondary, and cumulative impacts related to proposed project that meets all requirements of Laws and the NC Department of Environment and Natural Resources (NCDENR) *Secondary and Cumulative Impacts Guidance Manual*.

Excluded Waste – All waste excluded from the definition of Solid Waste under N.C. Gen. Stat. § 130A-290(35), including, per statutory definition: (a) Fecal waste from fowls and animals other than humans; (b) solid or dissolved material in: 1) Septage or domestic sewage; 2) Irrigation return flows; and 3) Wastewater discharges which are point sources subject to permits granted under Section 402 of the Water Pollution Control Act, as amended (P.L. 92-500), and permits granted under G.S. 143-215.1 by the Environmental Management Commission; (c) Oils and other liquid hydrocarbons controlled under Article 21A of Chapter 143 of the General Statutes. However, any oils or other liquid hydrocarbons that meet the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Article; (d) Any source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011); (e) Mining refuse covered by the North Carolina Mining Act, G.S. 74-46 through 74-68 and regulated by the North Carolina Mining Commission (as defined under G.S. 143B-290). However, any specific mining waste that meets the criteria for hazardous waste under RCRA shall also be a solid waste for the purposes of this Agreement; and (f) Recovered material. [See N.C.G.S. § 130A-290(a)(35)] Excluded waste shall also refer to waste not specifically permitted to be received for disposal or recycling or processing pursuant to the Franchise, Special Use Permit or permits and regulations issued by NCDENR; (g) yard trash or yard waste; (h) white goods; (i) antifreeze; (j) aluminum cans; (k) whole scrap tires; (l) lead-acid batteries; (m) beverage containers that are required to be recycled under N.C. G.S. 18B-1006.1; (n) motor vehicle oil filters; (o) recyclable rigid plastic containers with the applicable labels; (p) wooden pallets; (q) oyster shells (r) discarded computer, televisions and other electronic equipment; (s) regulated radioactive waste; (t) other waste determined by 15A NCAC Chapter 13B not to be acceptable for disposal at MSW landfills. Excluded waste shall also include waste generated outside of the Franchise Territory facility's approved service area or from an unpermitted transfer station or recycling facility.

Existing Improvements – All buildings and other improvements and fixtures owned by the County which are permanently affixed to land as of the date of this Agreement and which would generally be considered real estate. Existing Improvements do not include movable items or personal property.

Facility Plan – The document prepared by the County and the County’s consultant, Golder Associates, pursuant to 15A NCAC 13B. 1619 that defines the comprehensive development of the property proposed for permitting. The Facility Plan includes a set of drawings and a report which present the long-term, general design concepts related to construction, operation, and Closure of the Municipal Solid Waste Landfill (“MSWLF”) unit(s), including leachate management. The scope of the plan spans the active life of the MSWLF unit(s).

Fees – As defined in Section 8.16.

Force Majeure – Any act, event or condition reasonably relied upon by Waste Management as justification for delay in, or excuse from, performing or complying with any obligation, duty or agreement required of Waste Management under this Agreement, which act, event or condition is beyond the reasonable control of Waste Management or its agents relying thereon, including, without limitation: (i) an act of God, interference by third parties with any Solid Waste disposal operations or any other duties of Waste Management, default by the County, epidemic, landslide, lightning, earthquake, fire, explosion, storm or similar occurrence, public utility power failures; damage or destruction to the Sites or Facilities as a result of an act of God, an act of public enemy, war, blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or disobedience, sabotage or similar occurrence; (ii) a strike, work slowdown, or similar industrial or labor action; (iii) the order or judgment or other act of, or any failure to act by, any federal, state, county or local court, administrative agency or governmental office or body; (iv) the denial, loss, suspension, expiration, termination or failure of renewal of any Governmental Permits which does not result from any negligent act or omission or willful misconduct of Waste Management; (v) 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 date hereof applicable to the Sites and Facilities or Waste Management’s affiliates, adversely and significantly affecting its obligations hereunder; or (vi) if Waste Management is, for any reason (other than any reason resulting from Waste Management’s negligent act or omission or willful misconduct), delayed or barred by governmental or judicial action from collecting all or any part of the Fees, as may be from time to time adjusted, and any other payments that may become due and owing.

Franchise – The authorization granted to Waste Management by Randolph County through the Franchise Ordinance and pursuant to N.C. Gen. Stat. § 130A-294(b1)(b) to receive permitted waste from the Franchise Territory and to dispose of it within the boundaries of Randolph County.

Franchise Ordinance – The action by the Randolph County Board of Commissioners acting pursuant to N.C. Gen. Stat. § 130A-294(b1)(b) on April 7, 2014 to authorize Waste Management to receive and dispose of solid waste within the boundaries of Randolph County.

Franchise Territory – The geographic area from which Waste Management is authorized by the County to receive permissible types of waste and which geographic area consists of all of the area within the State of North Carolina.

Future Improvements – All buildings and other improvements, including Landfill cells and fixtures which become part of or affixed to land and which would generally be considered to be real estate. Future Improvements shall not include the placement of movable items or personal property.

Governmental Permits – The issuance, and the continuing effectiveness, of all final, non-appealable licenses, permits and approvals that are necessary to perform the obligations set forth in this Agreement, including any permit, license or other governmental approval required to construct and operate the Sites and Facilities.

Hazardous Waste – A solid waste, or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

- a. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- b. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. [N.C.G.S. § 130A-290(a)(8)]

Household Waste – Any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). [See N.C.G.S. § 130A-290(17a) for reference to “household waste” as defined in 40 CFR § 261.4(b)(1)]

Industrial Solid Waste – Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment.

Landfill – As appropriate to context, the municipal solid waste landfill that is constructed and operated pursuant to the Governmental Permits issued to Randolph County and Waste Management and the franchise issued to Waste Management on April 7, 2014.

Landfill Facility – As defined in Section 3.1.

Laws – Generally referenced, refers to all federal, state and local laws, statutes, regulations, ordinances and requirements related to the disposal of Solid Waste and the

operation and management of the Landfill, including all modifications of the laws. Notwithstanding the foregoing, Waste Management and Randolph County shall be vested with respect to local land use laws and zoning code provisions as they existed on the date of the issuance of a Special Use Permit for the operation of a municipal solid waste facility.

Materials Recycling Facility – A solid waste handling facility that provides for the processing of recoverable materials and the extraction and/or processing of recyclables from solid waste that can feasibly be reused or returned to use in the form of raw materials or other products.

Municipal Solid Waste (“MSW”) – Any Solid Waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. MSW does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, solid waste from mining or agricultural operations. [N.C.G.S. § 130A-290(18a)]

NCDENR – The North Carolina Department of Environment and Natural Resources acting through its Division of Waste Management, Division of Water Resources, Division of Air Quality, Division of Land Quality, or other appropriate division and its successor departments, agencies and divisions.

Old Landfill – The approximately 75 acres owned by the County adjoining the Landfill Facility which was previously operated by the County as a landfill facility (NCSWP 76-01) including a C&D landfill and which was closed by the County in 1997.

Permit to Construct – The permit to be issued by NCDENR to Waste Management and Randolph County pursuant to 15A NCAC 13B.1617 et. seq. indicating that the owner and operator have met all conditions precedent to commencement of construction of a Sanitary Landfill, including approval of its Facility Plan, and that further certifies that commencement of construction would be in compliance with local, state and federal requirements and which authorizes construction to commence according to the terms of the permit.

Permit to Operate – The permit to be issued by NCDENR to Waste Management and Randolph County pursuant to 15A NCAC 13B.1617 et. seq. indicating that construction has been completed in full compliance with the approved Facility Plan and that operation would be compliant with all local, state and federal requirements precedent to the receipt and disposal of acceptable Solid Waste, and which authorizes receipt and disposal to commence according to the terms of the permit.

Person – An individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity. [N.C.G.S. § 130A-290(22)]

RCRA – The Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.

Recyclable Materials – Those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste. [N.C.G.S. § 130A-290(26)]

Recycling – Any process by which Solid Waste, or materials which would otherwise become Solid Waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products. [N.C.G.S. § 130A-290(27)]

Recycling Center – As defined in Section 3.3.

Refuse-Derived Fuel – Fuel that consists of Municipal Solid Waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

Sanitary Landfill – A facility for disposal of Solid Waste on land in a sanitary manner in accordance with the rules concerning sanitary landfills adopted under Article 9, N.C.G.S. Chapter 130A. [N.C.G.S. § 130A-290(31)]

Services Agreement – As defined in Section 5.1.

Sites and Facilities – As defined in Section 3.4.

Solid Waste – Any hazardous or nonhazardous garbage, refuse or sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. [N.C.G.S. § 130A-290(35)]

Special Use Permit – The permit issued to Randolph County Randolph County Planning Board on April 9, 2013 pursuant to the Randolph County Zoning Ordinance and which contains terms and conditions governing the development and operation of the Landfill.

Special Waste – As used in this Agreement, a term commonly used within the solid waste industry to describe acceptable waste that requires special handling and management and for which higher or different disposal rates may apply, including, but not limited to, industrial waste, industrial waste by-products and permitted sludges. Special Waste shall not include Household Waste, Commercial Solid Waste, uncontaminated Construction and Demolition Debris that is not involved with any manufacturing or industrial process, and uncontaminated packaging material (i.e., not previously in direct contact with products, raw materials or Excluded Waste). The above-described categories shall not be confused with, and shall override, Special Waste as defined by N.C. Gen. Stat. § 130A-290 (a)(40) which generally describes a waste stream not allowed in MSW landfills.

Transfer Station – The transfer station to be operated by Waste Management at the County Land Road Site during the Transition Period.

Transition Period – That period of time commencing as of January 6, 2015 through and until the date the Landfill Facility has all Governmental Permits necessary to operate and is accepting Solid Waste.

Waste Management – Waste Management of Carolinas, Inc., acting through its principals, owners, directors, officers, or authorized agents as allowed by law.

Waste-to-Energy – Any means by which received or disposed waste can be converted to any form of energy for use at the Landfill Facility or for sale or use by others in other locations.

ARTICLE 3. DESCRIPTION OF SITES AND FACILITIES

- 3.1 Landfill Facility. The Landfill Facility consists of approximately 667 acres and structures and improvements for landfill development as described on Exhibit A and any other property within the approximately 667 acres described in Exhibit A required for right-of-ways for utilities, sanitary sewers, entrance improvements, and stormwater conveyance. The Landfill Facility does not include the Convenience Centers or the Old Landfill. Of the 667 acres, approximately 190 acres are planned for the Landfill with an estimated gross capacity of 41,739,400 cubic yards. This Agreement applies to the first 115 acres of the 190 acres with a projected, but not guaranteed, preliminary capacity of approximately 20.5 million or more cubic yards and an estimated life of 30 years.
- 3.2 Convenience Centers. The County operates four convenience centers described more fully on Exhibit B and which are in the following locations (together with any replacement locations and any future Convenience Centers as referenced in Section 3.5, the “Convenience Centers”):
- A. 5488 N.C. Highway 49 S, Denton, N.C. (“Farmer Site”)
 - B. 4717 Holly Springs Road, Ramseur, N.C. (“Coleridge Site”)
 - C. 428 W. Brower Avenue, Liberty, N.C. (“Liberty Site”)
 - D. 1287 County Land Road, Randleman, N.C. (“County Land Road Site”)
- 3.3 Recycling Centers. The County operates two unmanned recycling centers described more fully on Exhibit C at the following locations (“Recycling Centers”):
- A. NC Zoo on Zoo Parkway (African Exhibit) (“Zoo Recycling Center”)
 - B. Depot Street, Randleman, N.C. (“Randleman Recycling Center”)

- 3.4 Sites and Facilities. The Landfill, Landfill Facility, Convenience Centers and Recycling Centers shall collectively be referred to as “Sites and Facilities.”
- 3.5 Future Convenience Center Sites. The County plans to develop two additional Convenience Centers. At such time as land for each future Convenience Center is acquired by ownership or lease it shall become part of the Sites and Facilities governed by this Agreement.
- 3.6 Ownership. At all times during the term of this Agreement, the County owns and shall continue to own the Landfill Facility, the Transfer Station and the County Land Road Site and all Existing Improvements and the real estate related to the Landfill Facility and the County Land Road Site, but excluding the Future Improvements thereon. Waste Management shall retain ownership of all Future Improvements made by Waste Management until the expiration or earlier termination of this Agreement, at which time Waste Management, subject to partial recoupment of its investments as set forth in Sections 6.4 and 14.3, shall convey to the County title to the Future Improvements. Notwithstanding the foregoing, the County shall own the Landfill gas and Landfill gas collection system. Existing and Future Improvements shall include scales, scale houses, maintenance facilities, office buildings, storage facilities, roads, bridges, signage, fences, utility improvements and any other buildings, fixtures and infrastructure. Waste Management shall not have any legal or equitable title to or leasehold interests in any of the Sites and Facilities or Existing Improvements. Existing and Future Improvements shall not include movable bins and movable storage facilities at the Sites and Facilities that are purchased or placed by Waste Management, nor shall Existing and Future Improvements include any business equipment or movable heavy equipment (non-fixtured) used at the Sites and Facilities that is purchased or leased by Waste Management, all of which shall remain the property of Waste Management.
- 3.7 Leasehold Interests.
- 3.7.1 Leases Control. The County has month-to-month leasehold interests in the Farmer Site, Coleridge Site, Zoo Recycling Center and Randleman Recycling Center and has a long term leasehold interest through November 30, 2033 in the Liberty Site. Ownership of Existing and Future Improvements at leased Convenience Center and Recycling Center sites shall be governed by leases for each site; provided, however, that the County and Waste Management intend that personal property of Waste Management placed or used at each leased Convenience Center or Recycling Center shall be and remain the property of Waste Management.
- 3.7.2 Acceptance of Lease Terms. Subject to Waste Management’s prior review and approval, Waste Management accepts the terms of each existing lease and agrees to abide by its terms and conditions.
- 3.7.3 Affirmation of Right to Grant License and Easement. Randolph County affirms that it has the right to grant Waste Management access, use and operation to each of the Convenience Centers and Recycling Centers.

- 3.8 License to Enter Sites and Facilities and Easement for Ingress, Egress and Regress at the Landfill Facility. The County grants Waste Management a license to enter the Sites and Facilities and an exclusive right to perform all duties and to effectuate the purposes specified in this Agreement, including the design, monitoring, permitting, building, construction, operation and maintenance of the Sites and Facilities and an easement for ingress, egress and regress over, along, beneath and through the Landfill Facility for purposes of this Agreement and fulfillment of its rights and obligations. This license and easement shall run through and including the term of this Agreement and the fulfillment of any post-Closure obligations.
- 3.9 Reservation of Right. The County reserves the right to determine the location of future Convenience Centers referenced in paragraph 3.5 and to relocate any of its existing and future Convenience Centers to better serve the population of Randolph County, subject to the County's obligation to reimburse Waste Management for all relocation costs and expenses as provided in Section 3.10 hereof.
- 3.10 Development and Redevelopment. The County shall be responsible for the development of the two future Convenience Centers referenced in paragraph 3.5, including, but not limited to, all costs of engineering, design, construction, installation of utilities and all signage related thereto. Waste Management shall be responsible for all costs and expenses associated with placement of bins and containers at the two future convenience centers. If Randolph County relocates or is required to relocate any of the existing four Convenience Centers or two Recycling Centers, the County shall bear all costs of engineering, design, construction, installation of utilities and signage of the redeveloped site(s) and all of Waste Management's costs of relocation. Sites for any relocated Convenience Center shall be selected in consultation with Waste Management, and the locations shall not unreasonably increase, based upon a cumulative impact over the remaining term of this Agreement, Waste Management's costs for transportation over any previous Convenience Center location.

ARTICLE 4.

PERMITTING, DEVELOPMENT AND CONSTRUCTION

- 4.1 General Permitting Responsibility. Except as provided in Section 4.2, Waste Management shall, at its cost and through its employees, agents, consultants, engineers, and contractors, be responsible for all of Waste Management's designs and engineering studies, submittals, permit application fees and communications with governmental agencies that are necessary to obtain Governmental Permits required for the development, construction, operation and management of the Landfill and that have been prepared by Waste Management or any contractor or consultant while under contract with Waste Management. Notwithstanding the foregoing, if Waste Management elects to make design changes which necessitate changes in any portion of the County's Site Suitability Report, it shall be responsible for making those changes.
- 4.2 County Responsibilities. The County shall be responsible for completing the Environmental Impact Statement and completing the Site Suitability Report and

responding to comments from NCDENR and for paying 50% for the Site Suitability Fee charged by NCDENR. Randolph County shall, at its cost and expense, complete and obtain the final approval of NCDENR of the Site Suitability Report in compliance with all Laws and cooperate with and assist Waste Management in its obligations to secure, amend, renew and maintain all Governmental Permits by signing permit applications, attending hearings and meetings with agencies responsible for the issuance of Governmental Permits, and by providing data within the County's control necessary for such purposes and by allowing any governmental agency (and others, if necessary) access to County-owned property for the purposes of tests and inspections. The County's execution of permit applications and cooperation with Waste Management in obtaining Governmental Permits shall constitute a representation by the County that the engineering and design studies and the Environmental Impact Statement and Site Suitability Report prepared by or for the County, including by the County's contractors (including Golder) are complete and correct, however Waste Management accepts and agrees that the County and its contractors do not make assurances as to subjective matters. However, the County's execution of permit applications and cooperation with Waste Management in obtaining Governmental Permits shall not constitute a representation by the County that Waste Management's engineering and design studies or construction documents are complete, correct or sufficient to obtain the required Governmental Permits.

- 4.3 Compliance and Fines. Waste Management shall comply with its permits, including appropriate or necessary action to remedy unchallenged notices of violation and any payment of any fines or penalties for its failure to comply with permit conditions, consent orders or decrees. Any fines or penalties imposed upon the County for violations by Waste Management of permits or law shall be paid by Waste Management.
- 4.4 Determination of Suitability. Except as otherwise set forth in this Agreement, Waste Management represents that its employees, agents and consultants have visited and inspected the Landfill Facility and that it has, to its satisfaction, studied the site's physical condition, including its location, access, soils and topography sufficient to determine that the site constitutes an acceptable site for the submission of a permit application for the development and construction of a regional municipal solid waste facility capable of receiving, upon proper permitting, no less than 2,000 tons of waste per equivalent operational days. Except as otherwise set forth in this Agreement, Waste Management further represents that previous and preliminary studies, including any site suitability studies, conducted on this site by Randolph County and its employees or consultants were conducted for Randolph County to determine basic suitability of the Landfill Facility to serve as a Landfill and do not constitute the County's guarantee that the site is suitable for any purpose related to the disposal of solid waste. The Parties acknowledge that NCDENR has not approved the EIS or Site Suitability Report.
- 4.5 No Interference. Except with respect to the Environmental Impact Statement and the Site Suitability Report and as provided herein or as required by law, the County shall exercise no control or supervisory oversight of the technical, design, environmental or engineering decisions involved in the development and construction of the Landfill Facility. Except as

to any challenge to the Governmental Permits arising out of or related to the Environmental Impact Statement or the Site Suitability Report. Waste Management shall hold the County harmless from any legal actions, challenges or liabilities resulting from technical, design or engineering decisions made by Waste Management's engineers, contractors and consultants which were made in the permitting and construction of any part or phase of the Landfill Facility during the term of this Agreement, including technical, design and engineering decisions of which the County had general or specific knowledge. Except as to any challenge to the Governmental Permits arising out of or related to the Environmental Impact Statement or the Site Suitability Report, the County shall indemnify, defend and hold Waste Management harmless from any legal actions, challenges or liabilities resulting from technical, design or engineering decisions made by the County's contractors and consultants which were made in the permitting and design of any part or phase of the Landfill Facility during the term of this Agreement, including technical, design and engineering decisions of which Waste Management had general or specific knowledge. Except as to any site inspections related to activities subject to permits issued by the County, the general monitoring or observation of Landfill Facility construction or operation by County employees or consultants shall not constitute the County's agreement or acquiescence that the construction or operations comply with permit requirements, engineering standards, standards of workmanship, or applicable laws.

- 4.6 Construction Management. Within thirty days of the execution of this Agreement, Waste Management shall designate and assign a project manager to oversee Landfill development and construction. The project manager shall communicate with the County on a regular basis. No later than the date the Permit to Construct is final and unappealable, Waste Management shall assign a construction manager, who shall immediately inform the County of problems, delays, regulatory issues and shall generally update the County on construction progress. At the County's request and with reasonable notice, the construction manager shall attend meetings of the Board of Commissioners, other community or County government meetings, and meetings with neighbors.
- 4.7 Zoning Compliance. Notwithstanding the provisions in paragraph 4.5 above, the County shall exercise oversight of the construction and operation of the Landfill Facility to insure compliance with the Special Use Permit issued to Randolph County by the Randolph County Planning Board for the operation of a sanitary landfill.
- 4.8 Title and Risk of Loss. Title to Future Improvements shall be conveyed to the County upon expiration or early termination of this Agreement in accordance with Section 3.6 hereof. Without negating the provisions in paragraph 4.5 above, the County reserves the right to monitor construction, operation and maintenance of the Existing and Future Improvements to determine that the assets are properly constructed and maintained during the term of this Agreement. Except to the extent any loss is caused by the County, as between Waste Management and the County, Waste Management shall bear all risk of loss concerning the Future Improvements, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

- 4.9 Warranties. Waste Management agrees that, unless otherwise agreed by the County, Future Improvements will be new or of recent manufacture, of good quality, free from material faults and defects known to Waste Management, suitable for their intended purposes and in material conformity with all applicable codes, laws, regulations and specifications.

**ARTICLE 5.
ASSUMPTION OF MANAGEMENT OF COUNTY WASTE**

5.1 Scope of Interim Services.

5.1.1 No Interruption of Service. Subject to the terms and conditions of this Agreement, Waste Management shall insure that there is no interruption of solid waste disposal services to the County or citizens during the Transition Period and remaining term of this Agreement.

5.1.2 Services Agreement. Pursuant to the Services Agreement attached hereto as Exhibit D (the “Services Agreement”), Waste Management shall assume management of the Solid Waste Facility (as defined in the Services Agreement), and hauling services for the four Convenience Centers and the two Recycling Centers on January 6, 2015. Waste Management shall offer to contract with all Solid Waste Facility personnel other than scale house operators at the County Land Road Site on terms and conditions as Waste Management may establish, in its sole discretion.

5.1.3 Convenience Center Management. The County shall be responsible for hiring personnel to operate the Convenience Centers during the Transition Period.

5.1.4 Recyclable Materials. During the Transition Period, Waste Management shall haul Recyclable Materials from the Recycling Centers and Convenience Centers pursuant to the Services Agreement set forth in Exhibit D.

5.1.5 End of Transition Services. Beginning as of the date the Landfill has all Governmental Permits necessary to operate and is accepting Solid Waste (the “Beginning Date”), Waste Management shall manage the Convenience Centers and Recycling Centers pursuant to Sections 5.2 through 5.5 of this Agreement. No Payments shall be due under the Services Agreement to Waste Management for services rendered thereunder by Waste Management after the Beginning Date.

5.2 Convenience Centers. Beginning as of the Beginning Date, Waste Management shall operate and manage the Convenience Centers as follows:

5.2.1 Operation and Management. Waste Management shall assume full responsibility for the management and operation of each Convenience Center, including responsibility for permit compliance, compliance with all laws and regulations,

and the proper and appropriate disposal of all Municipal Solid Waste brought to the Convenience Centers.

- 5.2.2 Containers. Waste Management shall provide equipment at the Convenience Centers and Recycling Centers including two 20 yard enclosed roll-off containers at each Convenience Center for commingled materials; one 40 yard open top roll-off container for bulky waste at each Convenience Center plus a 30 yard open top container for corrugated board (cardboard) at the County Land Road Site; two 20 yard enclosed roll-off containers at the Randleman Recycling Center; and one 20 yard enclosed roll-off container at the Zoo Recycling Center. Waste Management shall have the right to change the number, size and type of waste containers and the recycling containers of Waste Management's vendors located at each Convenience Center and Recycling Center with the consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed. Any equipment Waste Management furnishes shall remain Waste Management's property.
- 5.2.3 Recyclables. Waste Management shall manage the collection, sorting, and appropriate handling and recycling of all Recyclable Materials brought to the Convenience Centers.
- 5.2.4 Other Services. Waste Management shall accept the same types of waste previously accepted at each Convenience Center and will insure Randolph County residents' ability to dispose of batteries, oil filters, antifreeze, motor oil, E-waste, tires (rims off), and commingled recyclables (including, but not limited to, plastics, glass, paper of all types, cardboard, corrugated board, and metal cans and bottles. Waste Management shall be responsible for all Freon removal and recycling of white goods.
- 5.2.5 Wood Waste. Waste Management shall be responsible for the shredding and processing of wood waste received at the Transfer Station; provided, however, Waste Management shall have sole discretion in establishing, and changing, the fees chargeable by Waste Management for accepting and processing wood waste.
- 5.2.6 Transportation of Solid Waste. Waste Management shall be responsible for the transportation and disposal of all nonhazardous Solid Waste accepted at a Convenience Center from the Convenience Center to the Landfill, as long as the Landfill is available to accept the Solid Waste for disposal. Any Excluded Waste, including Hazardous Wastes, accepted at a Convenience Center, shall be transported to an appropriate waste facility at Waste Management's expense.
- 5.3 Recycling Centers. Beginning as of the Beginning Date, Waste Management shall monitor both Recycling Centers and timely transfer and transport recyclables to an appropriate recycling facility.
- 5.4 Hours of Operation. Hours of operation of the Coleridge, Farmer, Liberty and two future Convenience Centers and the Recycling Centers after the Beginning Date shall be each

Monday, Thursday and Friday 8:00 a.m. to 4:30 p.m. and Saturday from 8:00 a.m. to 3:00 p.m. The hours of operation of the central Convenience Center on County Land Road shall be Monday through Friday from 8:00 a.m. to 4:30 p.m. and Saturday from 7:00 a.m. to 12 noon. The Convenience and Recycling Centers may be closed on the holidays listed in Section 8.6.

- 5.5 Conversion to Materials Recycling Facility. That portion of the County Land Road Site that is used as the Transfer Station during the Transition Period may, after the termination of the Transition Period, be developed and used as a Materials Recycling Facility or otherwise, subject to satisfactory negotiation by the County and Waste Management of an amendment to this Agreement that provides for Waste Management's management and operation of the facility.

ARTICLE 6. TERM

- 6.1 Term of Agreement. Unless earlier terminated pursuant to the provisions in Article 14, or later extended by agreement of the parties, the term of this Agreement shall be thirty (30) years beginning the day this Agreement is executed by both parties.
- 6.2 Consistency with Franchise. The term of this Agreement and the term of the Franchise issued to Waste Management shall have consistent beginning and ending dates. If this Agreement is executed on a date that is different from the date the Franchise is approved, then the date that the Franchise shall become effective and commence shall be the date of this Agreement.
- 6.3 Renewal. Waste Management shall give the County notice of its desire to renew this Agreement. Notice shall be given no less than two (2) years prior to the end of the thirty (30) year term. The parties may agree to renew this Agreement for like terms; provided, however, Waste Management's notice to renew this Agreement shall not preclude the County from submitting the operation of the Landfill for public bid.
- 6.4 Reimbursement on Termination or Early Termination. Upon the expiration of the term of this Agreement or in the event this Agreement is terminated prior to the end of the term for any reason, including, but not limited to, the loss or non-renewal of any Governmental Permits, see Section 14.3 for the parties rights and obligations.

ARTICLE 7. TYPES OF WASTE ALLOWED

- 7.1 Municipal Solid Waste Landfill. The County agrees to execute the Application to NCDENR for a Permit to Construct and a Permit to Operate a Municipal Solid Waste landfill at the Landfill Facility to receive and dispose of acceptable Solid Waste. Solid Waste shall include all types of Municipal Solid Waste and waste streams as may be defined and/or permitted for disposal by NCDENR.

- 7.2 Special Waste. Waste Management is further allowed to accept and dispose of Special Wastes, including Industrial Solid Wastes, as defined by N.C. Gen. Stat. § 130A-290(a)(13b) and those special wastes approved in the Governmental Permits.
- 7.3 Special Waste Monitoring and Acceptance. Waste Management shall screen and characterize all special waste received at the Landfill. Generators shall submit waste characterizations to Waste Management for approval. All special waste received at the Landfill shall be subject to a load check process.
- 7.4 Excluded Waste. Excluded Waste shall not be accepted at the Landfill. Waste Management shall develop operating procedures directed to identification, handling and rejection of Excluded Waste. Notwithstanding the foregoing, Waste Management shall be able to receive any waste that is permitted by NCDENR to be disposed of at the Landfill and such wastes shall also be an acceptable Solid Waste for the purposes of this Agreement. Any Excluded Waste, including Hazardous Waste, delivered to the Landfill Facility, shall be transported to an appropriate waste facility at Waste Management's expense.
- 7.5 Permit Restrictions. Nothing in this Agreement shall be construed to allow types of wastes or waste streams not allowed in the Permit to Operate.
- 7.6 Future Waste Streams. Waste Management shall be able to accept future types of waste or waste streams not now known or regulated to the extent such future wastes or waste streams are allowed by the Permit to Operate and by applicable statutes and regulations to be disposed of in the Landfill.

ARTICLE 8. OPERATION AND MAINTENANCE

- 8.1 Compliance.
- 8.1.1 Laws. Waste Management shall operate and maintain the Landfill in accordance with all applicable state and federal laws, permits, rules, regulations, and industry standards. Waste Management shall furnish all labor, materials and equipment in accordance with industry standards.
- 8.1.2 Special Use Permit. The requirements of the Special Use Permit issued to Randolph County for the operation of a sanitary landfill shall be binding upon Waste Management. Violations of the Special Use Permit conditions may, in the County's discretion, be enforced as zoning violations. Treatment of a Special Use Permit as a zoning violation shall not constitute an election of remedies precluding the County from declaring the violation a breach of this Agreement.
- 8.1.3 Notices of Violation. Waste Management shall give the County reasonable and adequate notice of a receipt of a Notice of Violation related to operation of the Sites and Facilities.

- 8.1.4 Fines and Penalties. Waste Management shall be responsible for all fines and penalties levied by any governmental agency as a result of Waste Management's operation of the Sites and Facilities.
- 8.2 Operational Control. Waste Management shall have operational control of the 667 acre Landfill Facility and all activities within the Landfill Facility, including, but not limited to, construction, engineering, disposal activities, access, scale house, entrance and perimeter roads, solidification basin, leachate management, soil excavation and transport, wildlife habitats, landfill gas extraction, water and sewer lines, equipment, pest control, and general maintenance.
- 8.3 Construction.
- 8.3.1 Construction Manager. Upon receipt of a non-appealable Permit to Construct, Waste Management shall assign a full-time construction manager for the initial construction of the Landfill Facility, who shall provide construction progress reports no less often than weekly to the County's Director of Public Works.
- 8.3.2 Entrance Road. The Landfill Facility entrance from Old Cedar Fall Road shall be paved, no less than thirty feet in width, and designed and built to service Landfill equipment and trucks.
- 8.3.3 Gabriel's Creek. The crossing at Gabriel's Creek shall be designed and constructed to hold two trucks simultaneously. If Waste Management is required to conduct mitigation activities as a condition of stream or wetland disturbance permits, such mitigation shall be Waste Management's sole responsibility. Notwithstanding the foregoing, the County shall work cooperatively with Waste Management to find streams or wetlands on County-owned property for mitigation activities.
- 8.4 Equipment. Waste Management shall furnish and maintain all tools, materials and equipment at its sole expense for the execution of Landfill operation and maintenance of the Landfill Facility.
- 8.5 Impact Minimization
- 8.5.1 Working Face. Waste Management shall make reasonable efforts to maintain the active working face approximately 10,000 square feet in size and, absent unforeseen circumstances, no larger than 20,000 square feet in size. Soil shall be banked to direct the sound of equipment away from residences when the 300 to 400 foot wooded buffer along Old Cedar Falls Road is insufficient to buffer the normal sounds of equipment at the working face.
- 8.5.2 Litter Control. Waste Management shall install litter fencing at appropriate locations on the active working face of sufficient height to catch windblown litter and trash during disposal operations. Waste Management shall implement other measures reasonable and necessary to control paper and other materials from being blown from the Landfill Facility. Waste Management shall be responsible for picking up litter at the Landfill Facility entrance and along the perimeter road and

other parts of the Landfill Facility and collecting and returning all windblown material to the Landfill Facility.

- 8.5.3 Dust. Waste Management shall provide a tire washing station for exiting vehicles and spray roadways as necessary to prevent dust from migrating from the Landfill Facility and wash the facility entrance and any portion of Old Cedar Falls Road as frequently as necessary to keep it reasonably clean.
- 8.5.4 Vector Control. Waste Management shall implement animal control measures to control birds, pigs, and other vector the facility might attract.
- 8.5.6 Salvaging. Waste Management shall not allow salvaging or scavenging except as approved by permit or regulations, but may engage in recycling activities.
- 8.6 Hours of Operation. Landfill operating hours to receive waste shall be 7:30 a.m. to 5:00 p.m., Monday through Friday; 7:30 a.m. to 12:00 p.m. on Saturday; and closed Sunday. In Waste Management's sole discretion, the Landfill may be closed during the following holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day. By agreement of the County Manager, Waste Management may operate extended hours or additional days in the event of a Force Majeure event generating significant acceptable waste.
- 8.7 Signage. Signage sufficient to mark the Landfill Facility entrance shall be erected no later than the date Solid Waste is accepted for disposal. Sufficient signage shall also be erected to communicate hours of operation, applicable gate rates for disposal, safety rules, acceptable types of wastes, and any other information necessary for safe and efficient operation of the Landfill Facility.
- 8.8 Liner System. Except as may be modified by NCDENR:
- (a) Waste Management shall construct a landfill liner system that includes three (3) HDPE geomembranes at appropriate elevations of the cells and which is an NCDENR-approved double liner system consisting of a primary and secondary liner system separated by a leak detection/"witness zone."
- (b) The primary liner shall, at a minimum, be a synthetic liner on top of a drainage collection layer ("witness zone"). The secondary liner shall consist of two overlying synthetic liners in direct contact with underlying soil. The "witness zone" shall be designed and constructed to monitor and collect any seepage from the primary liner and serve as part of the monitoring system for the engineered containment system.
- 8.9 Alternate Daily Cover. Waste Management may use any form of alternate daily cover approved by NCDENR.
- 8.10 Compaction. Waste Management shall use compaction methods designed to maximize compaction and protect air space, placing waste in the most efficient location at the landfill to achieve this. Waste Management shall also monitor densities no less than annually through topographic surveys or other equivalent technology to achieve a life-of-

the-landfill target density of 1,600 pounds per cubic yard or .08 compaction ratio that includes daily and intermediate cover. Density reports shall be made to the County on an annual basis.

- 8.11 Excluded Waste Monitoring. Waste Management shall monitor all incoming waste for unapproved materials at a minimum of two points of inspection, including its arrival and upon disposal at the working face.
- 8.12 Leachate Management. Waste Management shall use best management practices to reduce leachate volume. Leachate shall be delivered to the City of Asheboro waste water treatment plant by force main, provided the City of Asheboro is willing to accept the leachate at a reasonable and acceptable cost. The County agrees to support Waste Management's efforts to reach agreement with the City of Asheboro. If pump station upgrades are necessary to accommodate the Landfill's leachate, the upgrades shall be made at Waste Management's expense.
- 8.13 Employee Management.
- 8.13.1 Non-Discrimination. Waste Management agrees that it will not engage in or allow employee discrimination on the basis of race, ethnicity, religion, creed, sex, or national origin. Waste Management shall use reasonable efforts to hire as many Randolph County citizens as possible who meet all qualifications for available jobs or work.
- 8.13.2 Drug and Alcohol Free Workplace. Waste Management shall adopt rules to maintain a drug and alcohol free workplace, including, but not limited to, mandatory drug testing at time of initial employment and mandatory, random drug testing thereafter.
- 8.13.3 Safety and Instruction. Waste Management shall train all employees to perform the job assigned, supervise the employees, and direct operations and apply such skills and expertise as may be necessary to perform the work. Waste Management shall be solely responsible for the means, methods, techniques, sequences and procedures of Landfill operations.
- 8.14 Truck Route. All trucks shall be directed to use the mandatory access and departure route of Highway 64, East Presnell Street, Henley Country Road, and Old Cedar Falls Road.
- 8.15 Tonnage. The County shall support Waste Management's application to NCDENR to accept an average of 2,000 tons of Solid Waste per equivalent operational days as specified in the Facility Plan to be approved in support of the Permit to Operate.
- 8.16 Fees and Rates. Waste Management shall be responsible for setting Landfill fees and rates ("Fees"). Fees charged for disposal may change from time to time and shall be fees determined by Waste Management to be commercially reasonable and competitive. Waste Management's gate rates shall approximate the average of posted gate rates at similar, privately owned or operated facilities in the Piedmont area of North Carolina and be submitted to the County Manager for approval. In the event that the County Manager

does not object to the proposed rates within thirty (30) days of receipt, the proposed rates shall become effective. If a Randolph County customer maintains that the Landfill is charging a disposal rate above the effective gate rate(s), that customer may petition the County Manager for a determination of whether the disposal rate charged is above the facility's posted gate rate. The County Manager's determination shall be binding on the parties.

8.17 Soil Management.

8.17.1 Soil Management Plan. To accommodate a potential shortage of sufficient on-site soil to complete the required operations and Closure of the Landfill, Waste Management's engineers shall prepare a soil management plan to direct and monitor the efficient use of on-site soils. The soil management plan may include off-site soils from other County-owned properties, subject to County approval of the amounts, locations, degree and the availability of the site as a soil borrow area, such approval not to be unreasonably withheld, delayed or conditioned. Soils determined available to Waste Management from other sites shall be provided to Waste Management at no charge. Waste Management shall not disturb other County properties except for the limited purposes of the removal of such soil. The County agrees that it will not sell soils from properties adjoining the Landfill Facility until Waste Management has determined that such soil is not necessary for operations and Closure of the Landfill.

8.17.2 Audits and Reports. Soil use and available supply shall be included in Waste Management's annual report to the County. The County may, at its election, audit all such reports. Waste Management shall make the site and all necessary records available to the County to conduct such audits.

8.17.3 Deficits. Soil deficits shall be the operational and financial responsibility of Waste Management.

8.18 County-Controlled Waste. The County shall direct all County-controlled waste to the Landfill Facility.

8.19 Closed Landfill. Waste Management shall assume responsibilities for monitoring and maintaining the County's closed landfill during the term of this Agreement, including routine ground and surface water monitoring and methane probe sampling, and any other monitoring activity required by current Governmental Permits or Law. Waste Management shall not be responsible for mitigation, corrective or remediation activities required by NCDENR or other governmental agencies.

**ARTICLE 9.
PAYMENTS**

Except as set forth below, the payments in this Article are subject to Waste Management receiving Governmental Permits for a projected, but not guaranteed, preliminary Landfill

capacity of not less than 20.5 million cubic yards (or a lesser amount in Waste Management's sole discretion).

9.1 Initial Payment. Waste Management shall pay Randolph County a one-time payment of \$3.5 million within thirty (30) days of the execution of this Agreement (the "Initial Payment"). Two million dollars of the Initial Payment will be paid to the County immediately as a non-refundable fee. In the event all final, non-appealable Governmental Permits, which are sufficient to open the Landfill for disposal of Solid Waste, are not issued for the Landfill by June 30, 2016, Waste Management will have the continuing option of terminating this Agreement and the Franchise. At any point prior to the termination of any appeal rights of the Governmental Permits and upon Waste Management's notification of its termination of this Agreement and the Franchise, the remaining \$1.5 million of the Initial Payment will be refunded to Waste Management within thirty (30) days. In its sole discretion, the County may hold the \$1.5 million in an interest bearing account and return the \$1.5 million with interest. Upon Waste Management's receipt of all non-appealable Governmental Permits, which are sufficient to open the Landfill for disposal of Solid Waste, the remaining \$1.5 million shall be retained by the County and be non-refundable. Notwithstanding the foregoing, if within ten years of receiving all Governmental Permits sufficient to begin disposal at the Landfill, Waste Management exercises reasonable efforts to renew the Governmental Permits in a timely manner, but one or more of the Governmental Permits necessary to operate the Landfill is denied due to no fault of Waste Management, then the County shall pay Waste Management \$1 million, subject to an annual adjustment to be determined by the change in the Consumer Price Index.

9.2 Annual Payments. Upon Waste Management's receipt of the final, non-appealable Permit to Construct, Waste Management shall make the payments set forth below (the "Annual Payments") by July 31 of each calendar year during the term of this Agreement based upon a permit to receive an average of 2,000 tons of acceptable Solid Waste per equivalent operational day. In the event the 10-year Permit to Operate should not be renewed by the appropriate Governmental Agency for any year or years of this Agreement, or if any Governmental Permit necessary to operate a subsequent cell or phase of the Landfill should be denied, the Annual Payment obligations shall cease and this Agreement and the Franchise shall be terminated.

9.2.1 First Annual Payment. The first Annual Payment in the amount of \$500,000 shall be made within thirty (30) days following the date on which the Permit to Construct becomes final and non-appealable.

9.2.2 Second Annual Payment. The Second Annual Payment shall be made by the next following July 31st in the amount of \$1 million, even if the next July 31st is within the same calendar year. The First Annual Payment shall be the base year upon which an annual adjustment is made pursuant to the Consumer Price Index. A manipulated or intentional delay of the date the Permit to Construct is received shall be deemed a material breach of this Agreement.

- 9.2.3 Subsequent Annual Payments. Subsequent Annual Payments shall be made no later than July 31 of each following calendar year in the amount of \$1 million, subject to an annual adjustment to be determined by the change in the Consumer Price Index. Each subsequent Annual Payment shall be adjusted by applying the total change in the Consumer Price Index (measured over the latest twelve (12) month period ending as of March 31) to the previous annual payment.
- 9.2.4 Final Payment. Unless this Agreement is (1) terminated pursuant to Article 14 or by consent of the parties, or (2) extended by consent of the parties, the final Annual Payment shall be made no later than ten (10) days after the last July 31 on which Waste Management received Waste for disposal at the Landfill.
- 9.3 Capital Projects Fee. Within thirty (30) days of Waste Management's commencement of receipt of waste at the Landfill, Waste Management shall pay Randolph County a one-time Capital Projects Fee of \$750,000. The Capital Projects Fee shall be applied to one or more capital projects in the discretion of the County.
- 9.4 Fee on Sale. Upon the sale of Waste Management (or assets including this Agreement), Waste Management shall pay the County the sum of \$175,000 if the County approves the assignments of this Agreement and the Franchise to the acquiring or new entity. The County shall, upon payment of such fee and the purchaser's acceptance of the Franchise and assumption of this Agreement, permit the purchaser to assume the obligations of Waste Management and Waste Management shall thereafter be released from all obligations under the Franchise and this Agreement.
- 9.5 Tonnage Increase Fee. If Waste Management requests an increase above the permitted 2,000 tons of average daily intake, the parties agree that additional and fair compensation shall be payable to the County. At the time of the execution of this Agreement, the parties were not able to reach an agreement on compensation for additional tonnage and have agreed to re-enter negotiations on tonnage increase compensation when any permitted tonnage increase is sought.
- 9.6 Recyclable Materials Fee. Beginning as of the end of the Transition Period, Waste Management shall annually pay the County 75% of the net income, if any, from Waste Management's sale of Recyclable Materials. The payment shall be based upon the net income received by Waste Management from July 1 through June 30 of the immediately preceding County fiscal year. Net income shall be calculated after deducting from the gross recycling revenue the costs of sorting, processing, disposition of residuals, custom's charges, duties or other charges paid to third parties for sales of Recyclable Materials and shipping, but shall not include the cost of collecting or transporting Recyclable Materials from Convenience Centers or Recycling Centers to the Transfer Station at the County Land Road Site.
- 9.7 Gas-to Energy Fee. The County reserves the right to all landfill gas and further reserves the right to issue a request for proposal ("RFP") for future gas-to-energy opportunities. Fees described in paragraphs 9.1 through 9.7 do not include payment for landfill gas rights or usage. Any County RFP for future gas-to-energy opportunities

shall provide that Waste Management shall properly manage all gas generated at the Landfill, including in accordance with all state and federal regulations and Governmental Permits and to minimize odors, which shall be the sole responsibility of Waste Management. Waste Management and any selected Landfill gas operator shall cooperate and work reasonably with each other.

- 9.8 Payments under Services Agreement. During the Transition Period, the County shall pay to Waste Management all fees, expenses and other amounts as provided in the Services Agreement.
- 9.9 Reservation of Rights. Subject to the operation and rights of Waste Management as granted by the Franchise and this Agreement, the County reserves the rights to all enterprises, functions, and materials relating to future types of acceptable waste not now known or contemplated and any form of technology not now known or contemplated, to the extent not provided in this Agreement, and secondary activities not specifically listed in, or permitted pursuant to, the Franchise and this Agreement, including, but not limited to, the sale of waste by-products not otherwise permitted for receipt at the Landfill, mineral rights, stream and wetland banking rights, air rights, carbon credits, and other rights that may be derived from the Landfill, including naming rights. Waste Management's obligations to undertake, and/or support, and any rights to participate in revenues from, the aforementioned activities or sources reserved to the County and not addressed herein shall be determined in future amendments to this Agreement.
- 9.10 Suspension of Annual Payments. In the event of a Force Majeure that causes the Landfill to be closed and unable to accept waste, the following shall apply with respect to the Annual Payments.
- (a) If the Landfill is closed for less than 100 days, there shall be no reduction in the Annual Payment.
 - (b) If the Landfill is closed for 100 days or more, the Annual Payment shall be prorated on the basis of the number of days the Landfill is closed divided by 279.

ARTICLE 10. COMMUNITY RELATIONS

10.1 General Relations.

- 10.1.1 General. Waste Management understands and agrees that it shall have an ongoing and general duty to be reasonably responsive to legitimate citizens' concerns and complaints and to become an active member of Randolph County communities and to join such chambers of commerce as Waste Management shall determine.

- 10.1.2 Annual Report. On or about July 31 of each year, Waste Management shall provide the County an annual report of the state of the Landfill Facility. The annual report shall include status of construction; tons of Solid Waste received, disposed and recycled during the past year; changes in the Permit to Construct or Permit to Operate; notices of violation and steps taken to correct defects or violations; amount of fees paid to the County in the current calendar year and cumulatively since the date of the execution of this Agreement; the amount and types of taxes paid during the previous calendar year and cumulatively since the execution of this contract; cumulative minutes from the Community Advisory Committee during the previous year and Waste Management's responses; number of employees hired; description of the Household Hazardous Waste Day, including number of citizens who utilized it and the amount of waste received; the number and types of community groups served by Waste Management in the previous year; the types of public amenities used and the manner of use in the previous year; the ways in which Waste Management is benefitting the local environment through alternative energies, if any; status and condition of the Landfill wildlife habitat; any new technologies employed or to be employed at any of the Sites and Facilities; the annual soil management report; and any other topical matter reasonably requested by the County.
- 10.2 Community Advisory Committee. No later than the receipt of the Permit to Construct, Waste Management shall establish a Community Advisory Committee comprised of at least six, but not more than ten, standing members to provide advice to Waste Management. If possible, the members shall include three neighborhood representatives that live near the Landfill, one county employee, the district's County Commissioner (or his or her designee) and the Landfill District Manager. The Community Advisory Committee shall meet at least quarterly, at locations convenient to the Landfill Facility, to listen and respond to changes or improvements in Waste Management's operations of the Sites and Facilities; to hear and respond to neighborhood and community concerns; and to explore ways Waste Management can improve and/or maintain community outreach. Minutes of each meeting shall be regularly provided to the Department of Public Works. The Community Advisory Committee shall be advisory in nature and possess no regulatory authority.
- 10.3 Phone Line. No later than thirty (30) days after receipt of the Permit to Construct, Waste Management shall establish a community phone line for citizens to call to register concerns about any aspect of the construction or operation of the Sites and Facilities. A call log and responses shall be delivered to the Department of Public Works on a monthly basis.
- 10.4 Community Outreach. Waste Management shall regularly and reasonably make the Sites and Facilities available to neighbors, school groups, scout groups, churches and other community groups for educational programs on recycling, waste-to-energy, and environmentally responsible ways to manage solid waste and solid waste by-products. As part of this community outreach, Waste Management shall regularly consult with and make the Sites and Facilities available to the Randolph County Board of Education for

use in educational programs and, at reasonable times and opportunities, make Waste Management employees available to give presentations at the Sites and Facilities.

- 10.5 Local Employment. As part of its community outreach, Waste Management shall regularly post job openings in local media, websites and other public places within Randolph County and make reasonable efforts to hire and/or contract with qualified Randolph County citizens, as long as such efforts do not conflict with other laws and Waste Management policies. An initial meeting open to all Randolph County citizens shall be publicized and held at a convenient location no less than ninety (90) days after the issuance of the Permit to Construct to educate citizens of the jobs and work that will become available with Waste Management and any partnering companies, including partnering trucking operations, and the types of education and training needed in order to be eligible for consideration.
- 10.6 Employment Education. As part of its efforts to hire locally, Waste Management shall make reasonable efforts to coordinate with Randolph Community College and other educational institutions as appropriate so that they may offer job training programs that support operations at the Sites and Facilities and other companies affiliated with Waste Management.
- 10.7 Household Hazardous Waste Acceptance Day. Annually, Waste Management shall organize, publicize and carry out a household hazardous waste acceptance day when Randolph County citizens can bring household hazardous waste to a location determined by the County and Waste Management. Waste Management shall take all appropriate steps, consistent with applicable laws, to dispose of the household hazardous waste at facilities permitted to receive such wastes.
- 10.8 Wildlife Habitat Area. No later than one (1) year following the issuance of the final non-appealable Permit to Operate, Waste Management shall present the County with detailed plans for a Wildlife Habitat area at the Landfill Facility and/or on adjacent County-owned properties that can be used for public educational purposes.
- 10.9 Eastside Baptist Church. Subject to receiving appropriate easements from Eastside Baptist Church, Waste Management, at its expense, but not to exceed \$50,000, shall construct public water and sewer lines from the nearest available source across the Landfill Facility to the gymnasium building owned by Eastside Baptist Church. These utility extensions shall be made no later than the opening of the Landfill for waste disposal.
- 10.10 Roadside Litter. Litter shall be picked up from the Landfill Facility entrance and along Old Cedar Falls Road up to its intersection with Henley Country Road on a daily basis.
- 10.11 Community Open House. Immediately prior to or soon after opening the Landfill Facility for the disposal of Solid Waste, Waste Management shall plan, organize and advertise a Community Open House open to all citizens of Randolph County to view the Landfill Facility and to learn how citizens can be involved and provide feedback to the Waste Management operations team.

**ARTICLE 11.
FRANCHISE**

- 11.1 Issuance of Franchise. The County has, after a public hearing and in accordance with statutory requirements, granted Waste Management a Franchise for the collection and disposal of solid waste in Randolph County. The term of the Franchise is thirty (30) years.
- 11.2 Exclusivity. The Franchise granted Waste Management is an exclusive franchise for the collection, recycling, and disposal of solid waste in Randolph County. In the County's discretion, the Franchise may later be expanded to include gas-to-energy activities, if required.
- 11.3 Reservation of Right. The County reserves the right to issue a franchise to another company to engage in gas-to-energy production at the Landfill.
- 11.4 Termination and Revocation. This Agreement shall automatically terminate upon revocation or termination of the Franchise.

**ARTICLE 12.
INSURANCE AND INDEMNIFICATION**

- 12.1 Hold Harmless. Waste Management shall hold harmless, indemnify and defend the County, its officers, employees and representatives, from and against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorney's fees and court costs) arising out of injury to persons, including death, or damage to property, including any and all costs resulting from environmental contamination, arising out of any negligent act or omission of Waste Management in the operation of the Sites and Facilities. In the event of joint negligence on the part of the County and Waste Management, any loss shall be apportioned in accordance with their respective percentage of negligence. In no event shall Waste Management be liable, or be required to indemnify the County for any consequential or punitive damages. At its option, Waste Management shall have the right to actively participate in the defense of any action in which damages are sought which might be its ultimate responsibility. If Waste Management elects to exercise said right, it shall bear all of its defense costs, including attorneys' fees.
- 12.2 Insurance. Without limiting its liability under this Agreement, Waste Management shall procure and maintain at its sole expense during the life of the Agreement, insurance of the types and in the minimum amounts stated below:

Schedule

Limits

Workers' Compensation

Statutory Coverage & Employer's Liability	Statutory coverage	
<u>Commercial General Liability</u>		
Premises-Operations	\$5,000,000	
Products-Completed	Combined	Single
Operations	Limit	
Contractual Liability		
<u>Environmental Liability</u>		
	\$5,000,000	
	Combined	Single
	Limit	
<u>Automobile Liability</u>		
All Autos – Owned, Hired or Used	\$2,000,000	
	Combined	Single
	Limit	
<u>Umbrella Liability Insurance</u>		
	\$15,000,000	each
	occurrence	and
	aggregate	

Waste Management's commercial general liability policy shall include contractual liability on a blanket or specific basis to cover the indemnification contained in Section 12.1 hereof, subject to policy terms, conditions and exclusions. It shall also name the County as an additional insured for liability arising out of operations performed by Waste Management pursuant to this Agreement. All insurance shall be written by a company or companies licensed to do business in the State of North Carolina. Prior to commencing any work under this Agreement, certificates evidencing the maintenance of said insurance shall be furnished to the County. All insurance shall provide that no cancellation shall be effective until thirty (30) days after receipt of written notice by the County.

- 12.3 Insurance Company Ratings. The insurers for all policies must be approved to do business in the State of North Carolina and have a minimum rating of A in the current A.M. Best Key Rating Guide.
- 12.4 Certificate of Insurance. Waste Management shall provide the County with (a) an ACORD form Certificate of Insurance within thirty (30) days of the execution of this Agreement and (b) an updated ACORD form Certificate of Insurance by July 31st of each year.
- 12.5 County as Insured. The County, its officers, and employees shall be named as an additional insureds on the General Liability, Automobile Liability, Umbrella Liability and Environmental Liability policies required in Section 2.

- 12.6 Subcontractors. Waste Management shall either require subcontractors to maintain insurance equal to the amounts in Section 12.2 or carry insurance that covers actions of subcontractors in the same amounts.
- 12.7 Failure to Maintain Required Insurance. If Waste Management fails to maintain the coverage required in this Article, the County may procure such coverage and Waste Management shall be required to reimburse the County.
- 12.8 Periodic Increase. No less often than every five years beginning July 1, 2014, the County shall review the insurance requirements in Section 12.2 and determine whether coverage levels are adequate. If, in the County's discretion, the coverage levels do not meet commercially reasonable amounts for the work and activities taking place at the Sites and Facilities, then the County shall inform Waste Management of its determination and give Waste Management sixty (60) days to increase insurance to commercially reasonable amounts; provided, however, the percentage increase of any such amounts shall not exceed the percentage increase in the Consumer Price Index over the applicable five year period.

ARTICLE 13. CLOSURE AND POST-CLOSURE

- 13.1 Closure.
- 13.1.1 Waste Management Responsible for Closure. Waste Management shall be responsible for the design, construction, cost, and certification of the final cover system for any portion of the Landfill constructed by Waste Management pursuant to this Agreement.
- 13.1.2 Time. Landfill Closure will occur when required by Law. Closure shall occur prior to the Landfill reaching its capacity if required by Law, and may occur prior to reaching its capacity upon agreement of the Parties.
- 13.1.3 Manner of Closure. Closure shall be in accordance with Governmental Permits, including their engineering drawings and all applicable Laws. Waste Management may construct the final cover in increments as permitted final areas and grades are achieved.
- 13.1.4 Condition Upon Closure. Waste Management shall leave the Sites and Facilities in good condition and repair, normal wear and tear excepted, including, but not limited to, roads, fences, gates, buildings, bridge, scales, landfill gas management equipment, and monitoring wells.
- 13.1.5 Termination of License. Subject to requirements imposed on Waste Management by permit, Law, or this Agreement, to undertake its agreed upon Closure activity, or to conduct any other agreed upon or required activity, Waste Management's license to enter the Landfill Facility will terminate upon determination by

NCDENR that Closure has been completed according to the terms of the Permit to Operate and other Laws. The County shall give Waste Management a reasonable time to remove all equipment and other personal property belonging to Waste Management. Waste Management's license to enter Convenience Center and Recycling Sites shall terminate as agreed upon by the Parties at the termination of this Agreement.

13.1.6 Records and Data. Copies of all engineering drawings, tests, studies, customer lists, repair and construction records, and other records and data necessary or helpful to the County as owner of the Landfill Facility and lessor of Convenience Centers and Recycling Sites, shall be delivered to the County.

13.2 Costs and Financial Assurance for Closure

Waste Management shall be responsible for all costs and actions necessary to effect Closure as required by Law and shall be solely responsible for the actual costs of Closure. Financial assurance to NCDENR for Closure shall be by performance bond and standby trust fund (or other mechanism agreed upon by the Parties and approved by NCDENR) in the amount determined by NCDENR, and as the amount may be adjusted by NCDENR's rules. As between the County and Waste Management, the Parties agree that Waste Management shall supplement any financial assurance amount mandated by NCDENR through a performance bond benefitting the County so that the total is not less than \$175,000 per developed, unclosed, acre, which amount shall be subject to the CPI adjustment. The financial assurance set forth in this subsection shall be renewed as required by law until all areas developed by Waste Management have completed Closure activities.

13.3 Post-Closure.

13.3.1 County Responsible for Post-Closure. Except as provided in subsections 13.3.2 and 13.3.3, the County shall be responsible for all matters involving post-Closure care, monitoring, maintenance, and reporting as required by Governmental Permits and Laws, including all facility and final cover system repairs and maintenance, gas collection and destruction systems and their operating and permit requirements, leachate and condensate system operations and maintenance, leachate and condensate disposal, environmental monitoring, environmental liability, permit renewals, and any other activities, repairs or improvements required by Governmental Permits and Laws, and to maintain the environmental integrity of the Landfill. The term of post-Closure shall be as required by Governmental Permits and Laws.

13.3.2 General Maintenance and Repair. Upon commencement of the post-Closure period, the County will assume responsibility for all maintenance and repairs at the Landfill Facility for all buildings, roads, infrastructure, leachate collection systems, ground water monitoring wells, gas monitoring systems, and utilities. However, notwithstanding the foregoing, Waste Management shall be responsible for maintenance and repairs of any wells, infrastructure or other equipment or

devices installed or constructed for the purposes of implementing corrective action or assessment activities.

13.3.3 Contamination and Corrective Action. Waste Management shall be and remain financially responsible for corrective actions, including the funding of any corrective action financial mechanism required by Laws and NCDENR until released from such duties by NCDENR. Waste Management may handle corrective action through its own employees or through third parties. The County shall license Waste Management or its contractors to have reasonable access to the Sites and Facilities to conduct and oversee assessment and corrective action if such assessment and corrective action occurs beyond the term of the Franchise and this Agreement. Waste Management's failure to reasonably and timely report and take steps to correct any activity or event requiring assessment or corrective action may be deemed to be a material breach of this Agreement.

13.3.4 Report to County. Reports on assessments and corrective action measures and results shall be made to the County no less often than every six months until completed.

13.4 Post-Closure Capital Reserve Fund

13.4.1 Waste Management Responsible for Post-Closure Costs. Waste Management shall be fully responsible to fund the projected costs of post-Closure care for any permitted portion of the Landfill that is subject to this Agreement. Payments into the Capital Reserve Fund shall be adjusted from time to time if projected post-Closure costs change.

13.4.2 Capital Reserve Fund. The County will establish a Capital Reserve Fund as a mechanism by which Waste Management can make annual payments during the permitted life of the Landfill (5- or 10-year permit or other permit duration approved by NCDENR) to fund the value of the projected cost of the post-Closure maintenance and care. The Capital Reserve Fund will be owned at all times by the County and held as a separate fund, including all accrued interest, to be used only for purposes of post-Closure care. Waste Management shall contribute annually to the Capital Reserve Fund for the purpose of funding over the permitted term the agreed upon cost of the County's post-Closure care of each permitted MSW landfill unit at the Landfill.

13.4.3 Estimated Costs. Waste Management shall, through a professional engineer, prepare detailed annual estimated costs of hiring a third party to conduct post-Closure care at standards no less stringent than required by 15A N.C.A.C. 13B. 1629, et. seq. and provide those estimates to the County for review. The estimate shall account for the total costs of conducting post-Closure care for the permitted area of the Landfill and will meet all requirements of the Potential Assessment and Corrective Action, including periodic and annual costs outlined in the post-Closure plan filed with NCDENR, and costs of any known corrective actions.

The cost estimates shall be based on the most expensive costs of post-Closure for the permitted area of the Landfill during the post-Closure period and approved by NCDENR.

13.4.4 Inflation Adjustment. No later than July 31 of each calendar year throughout the active life of the Landfill, Waste Management shall annually adjust the value of the post-Closure cost, including for inflation and increase, if necessary (a) the post-Closure care cost estimate for the Landfill and (b) the amount of payments into the Capital Reserve Fund if inflation increases the maximum post-Closure costs.

13.4.5 Payments and Bond. Waste Management shall make annual payments for post-closure to the County as provided in subsection 13.4.7 no later than thirty days after the anniversary date of the financial assurance mechanism each calendar year, as established pursuant to 15A N.C.A.C. 13B. 1628 (b)(1)(B). The County shall transfer the annual post-Closure payment to the Capital Reserve Fund. Inasmuch as the post-Closure fund would not be fully funded until the end of the permit(s), Waste Management shall provide a payment bond to the County at the time of the Initial Payment referenced in subsection 13.4.6 to cover the difference between the amount in the County's Capital Reserve Fund and the current post-Closure cost estimate, if any, as calculated above. The payment bond shall be reviewed annually,

13.4.6 Initial Payment. The initial payment shall be a cash payment and shall be made prior to the receipt of waste at the Landfill, and post-Closure funding may include a payment bond.

13.4.7 Payment Calculation. The first payment into the fund shall be at least equal to the current cost estimate for post-Closure care for the permitted portion of the Landfill, divided by the number of years in the permit (5- or 10-year permit or other permit duration approved by NCDENR). The amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

Where CE = the current cost estimate; CV = the current value of the Capital Reserve Fund; and Y is the number of years remaining in the permit(s).

ARTICLE 14. DEFAULT AND REMEDIES

14.1 For Cause. Except as otherwise provided herein, if either party materially breaches this Agreement or materially defaults in the performance of any of the covenants or conditions contained herein for thirty (30) days after the other party has given the party breaching or defaulting written notice of such breach or default, or sixty (60) days after

the County has given Waste Management written notice of a breach or default relating to Waste Management's violation of any orders or rulings of any regulatory body having jurisdiction over Waste Management's operation of the Landfill, the non-defaulting party may: (i) terminate this Agreement; (ii) cure the breach or default at the expense of the breaching or defaulting party; and/or (iii) have recourse to any other right or remedy to which It may be entitled by law or equity. In no event shall Waste Management be liable, or be required to indemnify the County for any consequential or punitive damages. In the event that in the exercise of due diligence and cure during the aforesaid thirty (30) day period, a cure cannot reasonably be effected, such thirty (30) day period shall be extended to include such additional time as is reasonably necessary to effect cure, provided the defaulting party exercises continuous diligent efforts to cure such default during such extended cure period.

14.2 Interim Operations. In the event that this Agreement is terminated pursuant to Section 14.1, Waste Management shall continue operations for an interim period of up to one hundred twenty (120) calendar days if requested to do so by the County in order to allow the County to obtain the services of a successor to Waste Management or to make arrangements for the County to undertake operation of the Landfill. Waste Management shall be paid for its services during this interim period at the rates and factors set forth in the last payment schedule in effect prior to issuance of written final notice of termination.

14.3 Reimbursement.

14.3.1 Upon the expiration or early termination of this Agreement (where the Landfill's developed or permitted airspace will be used in the future), the County shall reimburse (or cause its contractor to reimburse) Waste Management for (a) the depreciated value of Waste Management's Future Improvements, including any components of the Landfill not addressed in (b) below, and (b) Waste Management's cost of preparing any permitted airspace (and supporting infrastructure), as adjusted by the percentage change in the Consumer Price Index from the month in which such development activities occurred until the expiration or early termination of this Agreement, less, if applicable, the pro rata cost (as escalated) of the permitted airspace that had been filled with solid waste by Waste Management. The County or its contractor shall reimburse Waste Management upon the subsequent commencement of use of the Landfill or any part thereof. The County may claim an offset as to any damages claims it may have against Waste Management.

14.3.2 Notwithstanding anything herein to the contrary, if the use of the Landfill or any part thereof is not continued after the expiration or early termination of this Agreement for any reason, including loss or non-renewal of any Governmental Permits, the County shall not be obligated to reimburse Waste Management for the amounts set forth in Section 14.3.1 above, and Waste Management shall be entitled to remove the personal property of Waste Management and the Future Improvements consisting of scales and other movable assets (not including the Landfill gas collection system, the road, the bridge, and utility improvements).

- 14.4 Force Majeure. To the extent the operation of the Landfill is adversely affected by an event of Force Majeure, Waste Management shall be excused from its obligations under this Agreement, and the failure to perform shall not be considered a breach or default under this Agreement. If Waste Management intends to rely upon an event of Force Majeure to suspend its obligations as provided in this Section 14.4, Waste Management shall notify the County 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.

ARTICLE 15. REPRESENTATIONS AND WARRANTIES

- 15.1 Representations and Warranties of County. Randolph County represents and warrants as follows:
- 15.1.1 Existence and Good Standing. The County is (and will continue to be throughout the term hereof) a validly existing political subdivision in good standing under the laws of the State of North Carolina.
- 15.1.2 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 Chapter 153A, Article 15 of the North Carolina General Statutes. The Board has duly authorized the execution and delivery of the Franchise and this Agreement and 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, except to the extent that the enforceability thereof may hereafter be limited by judicial or other appropriate regulatory decree or order.
- 15.1.3 No Litigation. There is no action, suit, or proceeding of any kind 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 could adversely affect the transactions contemplated herein. The County agrees upon being notified of the threat or filing of any such action, suit or proceeding to fully inform Waste Management within two (2) business days thereafter.
- 15.1.4 No Conflicts. The execution and performance of this Agreement do not conflict with any Laws or governmental regulations or any condition of any contract or judicial order binding upon the County.
- 15.1.5 Zoning. No zoning or any other land use restriction exists under the Laws and ordinances of the County or any other governmental entity having jurisdiction within the County which would restrict or prohibit the use of any of the Landfill Facility for the Landfill contemplated hereunder.

15.1.6 Exclusivity. The County has not entered into any agreements with other persons, governments, corporations or other entities which would violate the rights it granted to Waste Management in the Franchise or this Agreement to receive, recycle, process and dispose of within the boundaries of Randolph County, any Household Waste, commercial waste and industrial waste and any other kinds of waste permitted to be disposed of within the Landfill and for which Waste Management has received a permit.

15.1.7 Ownership. The County owns the subject properties described herein in fee simple with no restrictions, reservations or rights that would be violated by the construction or operation of a Landfill thereon.

15.2 Representations and Warranties of Waste Management. Waste Management represents and warrants as follows:

15.2.1 Existence and Good Standing. Waste Management of Carolinas, Inc. has been duly incorporated and is (and will continue to be throughout the term hereof) validly existing in good standing under the laws of the State of North Carolina.

15.2.2 Approval and Authorization. Waste Management has all requisite corporate power and authority to enter into and fully perform this Agreement. Waste Management's execution and delivery of this Agreement and Waste Management's performance of all of its duties and obligations contained herein have been duly authorized by all necessary corporate action on the part of Waste Management, and this Agreement constitutes a valid and binding obligation of Waste Management, enforceable against Waste Management in accordance with its terms, except to the extent that the enforceability thereof may hereafter be limited by the exercise of judicial or other appropriate regulatory decree or order.

15.2.3 No Litigation. There is no action, suit or proceeding of any kind pending or, to the best knowledge and belief of Waste Management, threatened against Waste Management 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. Waste Management agrees upon being notified of the threat or filing of any such action, suit or proceeding to fully inform the County within five (5) business days thereafter.

15.2.4 No Conflicts. The execution and performance of this Agreement do not conflict with any laws or governmental regulations or any condition of any contract or judicial order binding upon Waste Management.

ARTICLE 16.
MISCELLANEOUS

- 16.1 Cooperation. Whenever the consent, approval or cooperation of one party is expressly or implicitly required or is necessary by the terms of this Agreement or to the effective and successful performance of the other party, such consent, approval or cooperation shall not be unreasonably withheld, denied, or delayed. The County and Waste Management shall support each other's efforts to obtain permit approvals and modifications and will cooperate with each other by having appropriate representatives available for public hearings and meetings.
- 16.2 Further Assurances. The County and Waste Management shall execute and deliver such further instruments and perform any acts necessary or reasonably requested to give full effect to this Agreement.
- 16.3 Third Party Litigation. The County and Waste Management agree that each shall cooperate with the other to the extent practical in the event of regulatory challenge or appeal or litigation by third parties against state or federal regulatory authorities or against the County or Waste Management that threatens the construction, operation, function, viability or date of opening of the Landfill Facility. Notwithstanding the foregoing, each party reserves the right to pursue its own defense or defense strategies and to withhold information protected by law or privilege, and to pursue independent courses of action when conflicts of interest appear.
- 16.4 Notice of Legal Action. In the event Waste Management or the County receives notice of any legal action or proceeding threatened or filed against it related to the services performed under this Agreement, the party receiving notice shall, within five (5) business days, inform the other of the legal action. In the event Waste Management or the County decides to prosecute a legal action against a third party or parties during the term of this Agreement arising out of the services performed under this Agreement, each shall provide reasonable notice to the other party in advance of initiating the action.
- 16.5 Governing Law. This Agreement has been drafted and shall be deemed a contract entered into, delivered and made in the State of North Carolina, and it shall be governed, construed, interpreted and enforced in accordance with the laws of the State of North Carolina, notwithstanding the principles of conflicts of law.
- 16.6 Consent to Jurisdiction. Any legal proceeding arising out of this Agreement shall be brought in the North Carolina General Court of Justice, Superior Court Division, Randolph County, with exception made for actions where jurisdiction is exclusively in the District Court or Clerk of Court. Waste Management consents to jurisdiction of the courts of Randolph County.
- 16.7 Attorney's Fees. Each party shall be responsible for its own attorney's fees in any action related to this Agreement, except as otherwise expressly set forth herein.

Notwithstanding the foregoing, payments described herein for amounts due from one party to another shall be considered evidences of indebtedness upon which the non-breaching party may additionally collect attorney's fees pursuant to N.C. Gen. Stat. § 6 - 21.2 if forced to pursue legal action to collect.

16.8 Bankruptcy.

16.8.1 Executory Contract Issues. Waste Management agrees that the management of solid waste activities at the Landfill Facility could affect the public health and welfare of citizens within the franchise territory. If Waste Management files for bankruptcy, it shall, within thirty (30) days of a bankruptcy filing, file a motion pursuant to Section 365 of the Bankruptcy Code to either assume or reject the Agreement and, during such 30-day period, continue to perform under this Agreement. If Waste Management fails to file the aforementioned Section 365 motion, then it agrees not to oppose a motion filed by the County to compel the Company to assume or reject the Agreement promptly under Section 365(d)(2) of the Bankruptcy Code.

16.8.2 Property of the Estate. Waste Management agrees that it owns no right, title or interest in the Landfill Facility or Convenience Centers other than as described in this Agreement. Except as provided in Section 3.6, no parts of the Sites and Facilities shall constitute property of Waste Management's bankruptcy estate under Section 541 of the Bankruptcy Code.

16.9 Relationship of the Parties. The relationship of the parties hereto shall be host government and franchisee for purposes of issues arising under the Franchise. As to issues arising under this Agreement, the relationship shall be that of owner and independent contractor. Neither party to this Agreement shall be deemed to be a partner, agent, joint venturer, or legal representative of the other, except as explicitly provided. Neither the County nor Waste Management acquires or assumes, through this Agreement, the authority to create an obligation or responsibility, express or implied, on behalf of or in the name of the other or to bind the other in any manner except as expressly provided in this Agreement.

16.10 Actions by the County in its Governmental Capacity.

16.10.1 No Limitation on Statutory Powers. Except as otherwise provided herein, this Agreement does not limit the statutory rights and powers of the County to act in its governmental, legislative or regulatory capacity including, but not limited to, actions to protect health, safety and welfare of the citizens or to enforce zoning laws or to protect the environment.

16.10.2 Governmental Approvals. Except to the extent allowed by Laws, no provision or Article in this Agreement shall obligate the County to issue any governmental approval or approve any permit independent of its statutory powers and duties to oversee compliance with all laws. Except to the extent allowed by Laws, the County shall not be deemed to be in breach or default of

this Agreement as a result of any delay or failure in the issuance or approval of any such governmental approval or permit so long as the County is reasonably acting within its statutory powers. The County does not, by executing this Agreement, waive or modify its governmental, legislative or regulatory powers.

- 16.11 Intellectual Property. All intellectual property developed by Waste Management through the construction or operation of the Landfill Facility and Convenience Centers or otherwise in connection with the performance of this Agreement shall be made fully available to the County upon termination of the Agreement. Such intellectual property shall be limited to reports and permits to governmental agencies; maintenance, inspection and repair records to permanent structures; engineering drawings; and customer lists. Waste Management grants the County an irrevocable, perpetual and unrestricted right to use such intellectual property for any County purpose, following the termination of the Agreement. The County shall not license, transfer, disclose or otherwise make available such intellectual property to any third party except in connection with operation and maintenance of the Sites and Facilities.
- 16.12 Fees, Taxes and Assessments. Waste Management shall be responsible for the payment of, and shall pay before delinquent, any and all uncontested taxes, assessments fines, penalties; permit and/or license fees and any other fees lawfully assessed or levied upon Waste Management on any buildings, structures, machines, appliances or other improvements or by reason of the business or other activities of Waste Management. Nothing herein shall prevent Waste Management from contesting the validity or the amount of any such tax, assessment or fee in the manner authorized by law.
- 16.13 Fines. Neither party shall be assessed with damages for delay in performance of their respective obligations hereunder where such delay is caused by the failure of the other party to perform its obligations under this Agreement.
- 16.14 Interest on Payments Due. Payments to either party, including the County as listed and described in Article 9, under this Agreement that are not paid within thirty (30) days of the date due shall bear interest at the legal rate.
- 16.15 Notices. Any notice or demand permitted or required hereby shall be made in writing and shall be delivered (a) by certified or registered mail, return receipt requested, with proper postage prepaid and addressed to the party as set out below, or (b) by hand delivery (which shall include delivery by reputable national overnight courier service, such as Federal Express) or (c) by any other electronic means by which confirmation of receipt can be secured and provided. Any such notice or demand shall be effective and deemed received on the date delivered by hand delivery, on the date of receipt appearing on the return postal receipt for notices given by registered or certified mail and on the date of receipt evidenced on the electronic confirmation for notices given by electronic means. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed receipt of the notice, demand or request sent. Any party may change its address for notices to any other location within the continental United States by notifying the other party of the new address in the manner provided herein for the giving of notices, with such change to become effective

ten (10) days after notice of the change of address is given. Each party shall make a diligent and good faith effort to determine the name of the person currently holding the position of notice. For the purposes hereof, notices shall be sent as follows:

If to the County: Mr. Richard T. Wells
County Manager
725 McDowell Road
Asheboro, N.C. 27205
rtwells@co.randolph.nc.us

With a copy to: Thomas E. Terrell, Jr., Esq.
300 N. Greene Street Suite 1400
Greensboro, N.C. 27401
tom.terrell@smithmoorelaw.com

If to Waste Management John Van Gessel
Waste Management
1850 Parkway Place
Suite 600
Marietta, GA 30067
jvangessel@wm.com

and

Randall Essick
10411 Globe Road
Morrisville, NC 27560
Ressick@wm.com

With a copy to: M. Jay DeVaney or A. Scott Jackson
Nexsen Pruet, PLLC
701 Green Valley Rd., Ste. 100
Greensboro, NC 27408
jdevaney@nexsenpruet.com
sjackson@nexsenpruet.com

16.16 Assignment. Waste Management shall not assign, transfer, delegate or permit the assignment, transfer or delegation of this Agreement to a subsidiary company or third party without complying with the provisions in Section 15 of the Franchise and any statutory and permit requirements. No assignment of this Agreement shall be effective without prior approval by NCDENR, the assignee's full consent to the terms of this Agreement and to the terms of the Waste Management Franchise or any Franchise newly issued by the County to the assignee.

16.17 Force Majeure. In the event Waste Management is rendered unable or incapable, wholly or in part, by an event of Force Majeure to carry out any of its obligations under this Agreement, then the operational obligations of Waste Management shall be suspended

during the continuance of any inability so caused by the event of Force Majeure, but for no longer period. If Waste Management intends to rely upon an event of Force Majeure to suspend obligations as provided in this Section, it shall notify the County 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.

- 16.18 Severability. If any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable by a state or federal court, then such invalidity, illegality or unenforceability of the specifically invalidated provision or provisions shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Provided, however, each party intends that in lieu of each term, clause, or provision that is invalid, illegal or unenforceable, there shall be added as a part of this Agreement a term, clause or provision as similar in meaning and intent to such invalid, illegal or unenforceable term, clause or provision as may be possible and which may be valid, legal or enforceable.
- 16.19 Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.
- 16.20 Integration. This Agreement is intended by the parties as the final expression of their agreement with respect to such subject matter hereof, both written and oral, and supersedes all previous agreements. To the extent of any conflict between the terms of this Agreement and the Franchise or the Special Use Permit, a specific provision in this Agreement shall take precedence over a general provision in the Franchise and Special Use Permit. Second, the Parties shall attempt to read the provisions in this Agreement, the Franchise and the Special Use Permit harmoniously to give effect to each. If the terms of this Agreement and the Franchise and Special Use Permit cannot be interpreted to give effect to each provision, then the terms of the Franchise and Special Use Permit shall control.
- 16.21 Standing in North Carolina. Waste Management shall maintain its standing as a corporation authorized to conduct business in the State of North Carolina for the duration of this Agreement.
- 16.22 Amendment. This Agreement may not be amended except upon approval by both parties in writing and only after approval on the County's behalf by the Board of Commissioners.
- 16.23 E-Verify Certification. Waste Management hereby attests that it currently complies with and shall continue to comply with, for the duration of this Agreement, Article 2 of Chapter 64 of the North Carolina General Statutes (commonly referred to as "E-Verify") and further agrees that it will include a contract obligation that any subcontractors utilized by Waste Management shall also comply with said Article.

16.24 Waiver. A waiver by either Waste Management or the County of any failure of the other party to perform any of its obligations under this Agreement shall not be construed as a waiver of any future or continuing failure or failures, whether similar or dissimilar thereto.

16.25 Termination upon Mutual Consent. This Agreement may be terminated upon the mutual written consent of the County and Waste Management.

IN WITNESS WHEREOF, Randolph County and Waste Management have caused this Agreement to be executed by their duly authorized officers on the day and year of execution as set forth above.

Randolph County

By: _____
J. Harold Homes, Chairman
Randolph County Board of Commissioners

_____ Date

Waste Management of Carolinas, Inc.

By: _____
Tracey Shrader, President

_____ Date

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

By: _____
William L. Massie
Finance Officer