

**SOLID WASTE DISPOSAL SERVICE AGREEMENT**

**BETWEEN**

**THREE RIVERS SOLID  
WASTE MANAGEMENT AUTHORITY**

**AND**

**CITY OF TUPELO, MISSISSIPPI**

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## SOLID WASTE DISPOSAL SERVICE AGREEMENT

**THIS SOLID WASTE DISPOSAL SERVICE AGREEMENT** (the "Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Three Rivers Solid Waste Management Authority (the, "Authority"), a political subdivision organized and existing under the laws of the State of Mississippi (§ 17-17-301 et seq. Miss. Code of 1972 as amended) (the "Act"), and City of Tupelo, Mississippi (the "Unit of Local Government").

### BACKGROUND

**WHEREAS**, the Authority owns, and will continue to operate, maintain, and expand or cause to be operated, maintained, and expanded a Facility for disposing of Municipal Solid Waste all in accordance with the terms and conditions hereof.

**WHEREAS**, the Unit of Local Government is willing to enter into this Agreement with the Authority in reliance on the Authority, to provide such Disposal services in accordance with this Agreement. The Unit of Local Government further proposes to deliver or cause to be delivered all of its Municipal Solid Waste generated within its geographic boundaries that is placed in the waste stream for disposal within the State of Mississippi to the Facility and desires that the Authority operate the Facility to dispose of Municipal Solid Waste.

**WHEREAS**, the Unit of Local Government enters into this Agreement and does hereby declare and confirm its membership in the Authority in accordance with the Incorporation Agreement, as amended, a copy of which is attached as **Schedule 2**, and subject to all rights and obligations as set forth in the Act, the Incorporation Agreement, as amended, and this Agreement.

## **AGREEMENTS**

In consideration of the premises and the mutual obligations undertaken herein and intending to be legally bound, the parties hereby agree as follows:

### **ARTICLE I** **DEFINITIONS AND SCHEDULES**

1.1 Certain Definitions. Each of the capitalized terms in this Agreement, unless otherwise expressly defined herein, shall have the meaning given to such term in Schedule 1. Such meaning shall apply equally to all forms of such term.

1.2 Schedules Incorporated by Reference The following Schedules are hereby incorporated by reference and made a part hereof:

- (a) Schedule 1 – Definitions
- (b) Schedule 2 – Incorporation Agreement
- (c) Schedule 3 – Host County Agreement

### **ARTICLE II** **PURPOSE OF CONTRACTS; ACKNOWLEDGEMENTS**

2.1 Agreement to Operate, Maintain, and Expand. (a) It is hereby recognized and declared that, in accordance with provisions of the Act, the Authority owns and will continue to operate, maintain, and expand or cause to be operated, maintained, and expanded the Facility for the effective disposal of Municipal Solid Waste to be received from any Unit of Local Government contracting with the Authority therefor. Toward that end, and subject to the terms of this Agreement, the Authority will operate and maintain the Facility or enter into contracts for the operation and maintenance of the Facility, and the Unit of Local Government will deliver to the Facility for Disposal all of its Municipal Solid Waste generated within its geographic boundaries that is placed in the waste stream for disposal within the State of Mississippi to the Facility for Disposal.

(b) The Authority will continue in cooperation with the Unit of Local Government to make available the Facility so as to accept for Disposal the Municipal Solid Waste of the Unit of Local Government. Provided, however if for any reason the Facility shall not be operational, the Authority shall designate an Alternative Disposal Site or such Alternative Delivery Points as may be necessary. Any increase in transportation cost incurred by the Unit of Local Government as a result of the Alternative Delivery Points shall be borne by the Unit of Local Government.

(c) This Agreement shall not operate to prohibit or prevent the implementation by any Unit of Local Government or Generator of source separation of material for purposes of Recycling from Municipal Solid Waste prior to collection of such Municipal Solid Waste for management, provided however, the construction and operation of a resource recovery or Recycling facility by a Unit of Local Government shall not be authorized or allowed unless specifically approved by the Authority and pursuant to the approved local non-hazardous solid waste management plan.

2.2 Operation of Facility. (a) Upon the effective date of this Agreement, the Authority shall continue operation, maintenance, and expansion of the Facility; and shall have full discretion in determining the nature, design, size, capacity, route, location, and time of expansion of the Facility and may enter into any contract it may deem appropriate and necessary for the expansion, operation, and maintenance of the Facility. Additionally, but subject to the terms of this Agreement, the Authority may from time to time acquire, construct, or make such renewals, replacements, repairs, modifications, improvements, expansions, additions, extensions, and betterments to the Facility as the Authority deems consistent with the Plans and the Permits.

Expansion, extensions, and improvements to the Facility may be funded by the Capital Expansion Fund or by Bonds.

(b) The Unit of Local Government and the Authority agree that the Authority may issue its Bonds at such times as the Authority shall deem necessary or advantageous and will use the proceeds, together with any other funds made available to the Authority therefor, to finance and/or refinance any of the costs of operating, maintaining, and expanding the Facility. Such costs shall include, without limitation, the payment of interest on the Bonds for any period specified in the Bond Resolution, the establishment of reserves to secure the Bonds and to protect the integrity of the Facility's expenses incident to the issuance of the Bonds and to the implementation of the disposal services, all deposits required by the Bond Resolution to be made from the proceeds of Bonds into any fund or account established under the Bond Resolution, and all other expenditures incident or convenient to the operation and maintenance of the Facility and the expansion, replacements, repairs, modifications, improvements, and betterments thereto. The Authority may issue such Refunding Bonds in such amounts, and use the proceeds thereof to make such payments, as the Authority may be permitted by law.

(c) The Authority will furnish and make available the Facility hereunder to the Unit of Local Government continuously so far as reasonable diligence will permit, but the Authority may interrupt, curtail or otherwise interfere with such service to the Unit of Local Government as a result of an Unforeseen Circumstance, or for the purpose of safeguarding life or property, and in such event the Authority shall not be liable for damages or breach of contract.

**ARTICLE III**  
**OPERATIONS OF REGIONAL LANDFILL**

3.1 Term. The term of this Agreement (the "Term") shall be the period commencing on the date of execution and delivery hereof by the parties hereto (the "Effective Date") and ending

on the thirtieth (30th) anniversary date of the Effective Date unless earlier terminated pursuant to this Agreement.

3.2 Agreement to Operate. The Authority agrees to continue to exercise all reasonable efforts to operate, maintain, and expand the Facility in compliance with all applicable regulatory agency or court orders, regulations, requirements, obligations, conditions, and Permits, and in accordance with good operating practice.

3.3 Delivery Obligation. From and after the Acceptance Date and until this Agreement is terminated or expires, all Municipal Solid Waste generated within the Unit of Local Government's geographic boundaries shall be transported to, stored, and managed at the Facility or at a transfer station owned by the Authority or its members.

3.4 Equalized Delivery. The Unit of Local Government shall use its best efforts to ensure that the total amount of Municipal Solid Waste delivered or caused to be delivered to the Delivery Point by the Unit of Local Government shall be as nearly equal from Business Day to Business Day as is reasonably practicable, subject to unavoidable fluctuations in the waste stream, including seasonal fluctuations in solid waste generation within the Unit of Local Government. In the event the Unit of Local Government is not obligated hereunder to deliver a large enough quantity of Municipal Solid Waste to make equal deliveries each Business Day economical, the Unit of Local Government and the Authority shall arrange the Unit of Local Government's delivery schedule to achieve maximum economies for the Unit of Local Government's needs for as even deliveries each Business Day from all sources as is reasonably practicable.

3.5 Acceptance Obligation. From and after the effective date of Subtitle D Regulations and until this Agreement is terminated or expires, the Authority shall accept all Municipal Solid Waste generated within the jurisdiction of the Unit of Local Government or collected by the Unit



of Local Government, subject to the rejection rights described in Section 4.12, that is delivered or caused to be delivered to the Authority's designated Delivery Point during the normal operating hours as established by the Authority (unless other hours are provided in a notice from the Authority) on any Business Day. The Authority is under no duty or obligation to accept any waste which does not constitute Municipal Solid Waste.

3.6 Quality. The Unit of Local Government or User shall ensure that all Solid Waste that it delivers or causes to be delivered to the Delivery Point shall constitute Municipal Solid Waste generated within the Unit of Local Government.

3.7 Unacceptable Solid Waste. The Authority and the Member shall use their best efforts to identify the Person responsible for the delivery or abandonment at the Facility of any Unacceptable Solid Waste and to require such person to remove such Unacceptable Solid Waste or to recover from such person the cost of removal, transportation or disposal of such waste or any corrective action, remediation or penalty resulting therefrom. To the extent that such identification is not possible, the Authority shall promptly identify, contain, store and remove such Unacceptable Solid Waste from the Facility and dispose of it in accordance with applicable laws and regulations.

3.8 Right of Inspection. The Authority in its sole discretion shall have the right to inspect on the Site the contents of any vehicle containing Solid Waste to determine the presence of Unacceptable Solid Waste, including the right to require any hauler operating such vehicle to unload the contents for purposes of inspection. If any vehicle is found to contain Unacceptable Solid Waste the Authority may reject delivery thereof pursuant to Section 3.12.

3.9 Operation and Maintenance. On and after the Effective Date the Authority shall at all times operate, or cause to be operated, the Three Rivers Regional Landfill properly and in accordance with all applicable state and federal regulations with good operating procedures

applicable to all similar facilities and in a sound, efficient and economical manner so as to ensure that capacity is available, and shall maintain, preserve, and keep the same or cause the same to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or cause to be made, all ordinary, necessary and proper repairs, replacements and renewals so that at all times the operation of the Facility may be properly and advantageously conducted, and, if any useful part of the Facility is damaged or destroyed, the Authority shall, as expeditiously as may be possible, commence and diligently prosecute the ordinary replacement or reconstruction of such part so as to restore the same to use.

3.10 Alternate Delivery Points. If an Unforeseen Circumstance prevents the Authority from accepting at a Delivery Point any Municipal Solid Waste generated within the Unit of Local Government, the Authority shall designate by a notice to the Unit of Local Government an Alternative Delivery Point including any other available landfill or other point as the Delivery Point for the Unit of Local Government for its Municipal Solid Waste. Any additional cost of transportation incurred by the Unit of Local Government between the Delivery Points of the Authority and the Alternative Delivery Point and the cost of disposal of such Municipal Solid Waste shall be the responsibility of the Unit of Local Government. Such notice may be in writing or may be given orally in person or over the telephone, provided that notice is actually received by the Unit of Local Government on or before 4:00 PM of the day preceding the day the designated Delivery Point is to become the Alternative Delivery Point, and if so requested by the Unit of Local Government any oral notice shall be confirmed by a written notice delivered within five (5) business days. Upon receipt of such notice by the Unit of Local Government, such Alternative Delivery Point shall become the Delivery Point until expiration of any term specified in such notice

or until the receipt by the Unit of Local Government from the Authority at any time of subsequent notice terminating the designation as the Delivery Point which shall be solely within the discretion of the Authority.

3.11 Weighing of Delivery Vehicles and Solid Waste. After the arrival of any delivery vehicle at the Delivery Point, the Authority or Unit of Local Government shall weigh the loaded vehicle on a scale to be maintained by or on behalf of the Authority. Prior to or immediately following the first use of any vehicle for the purpose of delivering Municipal Solid Waste to the Authority, the vehicle shall be weighed upon the scale when empty. Such vehicle shall be weighed while loaded at the time of each delivery and the difference between such loaded weight and the empty weight shall be deemed to be the weight of the Municipal Solid Waste accepted. The Authority shall have the right to weigh any vehicle immediately following a delivery for the purpose of verifying the empty weight.

3.12 Acceptance/Rejection of Municipal Solid Waste. (a) Ownership of Municipal Solid Waste delivered to the Delivery Point shall not pass to the Authority until and unless such Municipal Solid Waste is accepted by the Authority.

(b) The Authority shall have the right to reject any portion of the Municipal Solid Waste that the Authority determines is Unacceptable Waste.

(c) Upon rejection of any Municipal Solid Waste delivered by or at the direction of the Unit of Local Government, the Authority shall notify the driver of the delivery vehicle of the rejection and afford the driver a reasonable opportunity to reload the vehicle and remove the rejected Municipal Solid Waste from the Delivery Point. If the rejected Municipal Solid Waste is reloaded and removed from the Delivery Point, the Authority will provide the driver prior to his departure with a written statement setting forth the date and a brief statement of the

reasons for the rejection. If the rejected Municipal Solid Waste is not removed from the Delivery Point by the delivery vehicle within one hour, the Authority may either deliver the written statement to the driver of such vehicle prior to departure or deliver it to the Unit of Local Government within ten (10) days after such rejection. The Authority may remove from the Delivery Point and dispose of in whatever manner is in compliance with laws and regulations and is appropriate given the nature of the Municipal Solid Waste (i) any Municipal Solid Waste rejected by the Authority and not removed from the Delivery Point by the delivery vehicle within one hour and (ii) any Unacceptable Waste discovered by the Authority after the departure of the delivery vehicle which the Authority can establish was delivered by or for the account of the Unit of Local Government. The costs of disposal of any such waste rejected by the Authority and not removed from the Delivery Point by the delivery vehicle and any such Unacceptable Waste discovered by the Authority will be assessed to the User responsible for the delivery. With respect to such rejected waste, such disposal and charge by the Authority shall not constitute acceptance by the Authority, transfer of ownership to the Authority, or waiver by the Authority of any remedies it may have in connection with the delivery of such Municipal Solid Waste. All Users shall exclude from delivery at any Delivery Point any Unacceptable Waste.

3.13 Testing of Scale. The scale at the Delivery Point shall be tested for accuracy at the expense of the Authority or Unit of Local Government at least once every twelve (12) months. At the request of the Unit of Local Government, the Authority shall provide a copy of the most recent test results to the Unit of Local Government. In addition, the Unit of Local Government at its expense may require that the Authority conduct tests of the scale at any time.

3.14 Reports of Deliveries. The Authority will monitor the quantity of Municipal Solid Waste delivered by the Unit of Local Government at the Delivery Point and prepare for the Unit

of Local Government, no later than the fifteenth (15th) day of each month, a written report (the "Monthly Report") describing on a per day and per vehicle basis the quantity of Municipal Solid Waste charged against the account of the Unit of Local Government during the prior month. The Monthly Report shall also describe the Monthly Service Fee payable by the Unit of Local Government in connection with the disposal of Municipal Solid Waste delivered by the Unit of Local Government during the preceding month. The Unit of Local Government will be entitled, during normal business hours and upon reasonable advance notice, to inspect the Authority's books of account in order to verify the truth and accuracy of any Monthly Report.

3.15 Facility Operating Rules and Regulations. The Authority shall have the right to make, amend, and enforce reasonable rules and regulations necessary for the operations of the Authority and its Facility which are not inconsistent with the terms, rights, and obligations under this Agreement, the Incorporation Agreement, or the Act.

#### **ARTICLE IV** **COST OF SERVICES, EXPENSES AND BILLING**

4.1 Agreement to Pay. In recognition of the Authority's agreement to operate, maintain, and expand the Facility, the Unit of Local Government agrees to pay a Monthly Service Fee as defined in Section 4.03 to the Authority. The obligation to pay the Monthly Service Fee shall continue for the term of this Agreement.

4.2 Tipping Fee. The Authority shall establish, fix, prescribe and collect a Tipping Fee for each ton of Municipal Solid Waste, which Tipping Fee shall be uniform for all Members of the Authority except the Host Member and for all Generators within the jurisdiction of Members, including commercial and industrial users' Municipal Solid Waste by setting the Tipping Fee on or before to August 15th of each year, in order that in each fiscal year, Revenue as shall be required is available and sufficient solely for the purpose of paying or discharging all obligations of the

Authority, and any expansion cost of the Facility or any cost or amounts necessary to fund a Capital Expansion Fund to provide during the term of this Agreement the capacity for Disposal as set forth in the Three Rivers Solid Waste Management Plan or to fund any cost or amounts necessary for Closure or Post Closure Care.

4.3 Monthly Service Fee The Monthly Service Fee will be the product of the Tipping Fee multiplied by the number of tons of Municipal Solid Waste delivered to the Authority at the designated Delivery Point by the Unit of Local Government for the Billing Period as defined in the Monthly Report provided pursuant to Section 3.14 of this Agreement.

4.4 Host Member. Nothing in this Agreement shall prohibit the Authority from entering an agreement with the Unit of Local Government serving as a Host for the Facility as set out in **Schedule 3**.

4.5 Billing of Monthly Service Fee. (a) Following the fifteenth (15th) day of each month the Authority shall prepare an invoice of the Monthly Service Fee, setting forth all charges due from the Unit of Local Government for the Billing Period. The Unit of Local Government shall pay the amount due to the Authority on or before the 15th day of the next month. If any portion thereof shall remain unpaid 15 days after its due date, the Unit of Local Government shall be charged with, and shall pay to the Authority, interest at the Overdue Rate on the amount unpaid from its due date until paid. If any portion thereof shall remain unpaid 60 days after its due date, the Authority shall have the right, upon 5 days' notice, to take all actions necessary to collect all unpaid amounts and interest. Such actions by the Authority will not relieve the Unit of Local Government of its obligations hereunder.

4.6 Other Users Payment. The use of the Facility or any Delivery Point or Transfer Station by any Person other than a Member, authorized by the Authority to use the Facility shall

be upon either a cash on delivery or credit payment terms as deemed necessary and on such conditions as may be determined by the Authority. The Authority shall be responsible for billing and collection from all Users.

4.7 Accounts and Reports. (a) The Authority shall keep or cause to be kept proper books of record and account, separate from all other records and accounts, in which complete and correct entries shall be made of all its transaction relating to the Facility, or any part thereof, the Revenues and expenditures, and each fund and account established.

(b) Any member of the Authority shall have the right upon reasonable notice and during reasonable business hours to examine the books and records of the funds and accounts held by the Authority with respect to the Revenues and expenses of the Authority.

(c) An audit of the Authority's books, records, accounts and activities shall be prepared each fiscal year and a copy furnished to each Member Unit of Local Government.

4.8 Funds Established. The Authority may create the following funds in addition to any other funds required by the Bond Resolution, or Indenture or determined to be necessary by the Authority, each to be funded by a portion of the Tipping Fees such portion of Bond proceeds as may be lawfully permitted.

(a) Operation and Maintenance Fund; to pay all Operation and Maintenance Expenses and other costs as the Authority deems necessary.

(b) Debt Service Fund; to pay principal and interest due on Bonds issued by the Authority.

(c) Reserve Fund; to provide a reserve fund for debt service on the Bond to the extent permissible by law.

(d) Closure and Post Closure Care Fund; to pay or cover all expenses necessary to cover any regulatory requirement for Closure or Post Closure care of the Facility, and related costs as the Authority deems necessary.

(e) Capital Expansion Fund; to pay for future expansion, extensions and improvements to the Facility as defined, and other costs as the Authority deems necessary.

4.9 Unforeseen Circumstances. If during any Billing Period, due to the occurrence of an Unforeseen Circumstance, the Unit of Local Government shall be unable to deliver or cause to delivered Municipal Solid Waste to the Facility or a Delivery Point, the Unit of Local Government shall continue to pay the Monthly Service Fee based upon its Current Volume.

4.10 Review of Rates. At such intervals as the Authority shall deem appropriate, the Authority shall review Tipping Fees, rates, and charges to ensure that such Tipping Fees, rates, and charges, continue to cover its estimate of all of the Authority's Revenue Requirements.

4.11 Authority's Budget. The Authority shall adopt a budget for each fiscal year and submit it the Governing Body of each Member of the Authority forty-five (45) days prior to the start of the fiscal year. The budget shall include a notice of the Tipping Fee to be charged to the Unit of Local Government for the next fiscal year to be set by the adoption by August 15th of each year.

4.12 Adjustment to Tipping Fees. On October 1 of the year ("Adjustment Date"), the Tipping Fee may be adjusted.

4.13 Regulatory Changes or Additional Requirements.

(a) The Authority may at any Adjustment Date provide notice to the Unit of Local Government that the Tipping Fees will adjusted to allow the Authority to fully cover any



increase in cost resulting from any Regulatory Change or from any Additional Requirement which may have occurred during the year prior to the Adjustment Date.

(b) If such Regulatory Change or Additional Requirement results in an increase or decrease in the Operation and Maintenance Expenses of the Facility, Closure, or Post-Closure costs, such adjustment will be in an amount equal to the increase or decrease of actual direct cost.

(c) If such Regulatory Changes or Additional Requirements require a change in design or construction or require a Capital Facility or Capital Expenditures any such adjustment will be in an amount equal to the increase or decrease of the actual direct cost.

#### 4.14 Limitation of Financial Obligation - Unit of Local Government.

(a) Notwithstanding anything to the contrary contained in this Agreement, any Bond Resolution or Indenture, the Unit of Local Government's total obligation to the Authority under this Agreement shall be no greater than the Unit of Local Government's Pro Rata Share of such obligation except to such extent a Member may be determined as responsible for the delivery of Unacceptable Waste or for any Regulatory Change or Additional Requirement.

(b) The Unit of Local Government's Pro Rata Share of the Bonds and any Closure or Post Closure Care obligation incurred or arising under this Agreement and remaining unpaid or otherwise unsatisfied shall survive the termination of this Agreement, except as provided in Section 7.05.

### **ARTICLE V** **COVENANTS**

5.1 Effect of Covenant. The Unit of Local Government hereby covenants and agrees with the Authority and makes provision which shall be a part of this Agreement and any contract with the Bondholder of the Authority to the effect and with the purpose set forth in this Agreement and the following Sections.

5.2 Covenants and Agreement of Unit of Local Government. Pursuant to Sections 17-17-323 Miss. Code of 1972 as amended, the Unit of Local Government covenants and agrees that under the terms of this Agreement, the Unit of Local Government will fix, establish, maintain and from time to time adjust rates and fees within its jurisdiction sufficient at all times to pay its obligation Monthly Service Fee to the Authority under this Agreement.

5.3 Powers as to Bonds and Pledge. The Unit of Local Government is duly authorized under the Act and all applicable law to enter into this Agreement and to pledge such Revenues and other moneys, securities and funds purported to be pledged in the manner and to the extent provided in the Act and this Agreement. This Agreement is and will be a valid and legally enforceable obligation of the Unit of Local Government, in accordance with the terms of the Act. The Unit of Local Government shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of any Revenues and other moneys, securities and funds pledged under the Act and this Agreement which the Authority may pledge to the Bondholders under the Resolution against all claims and demands of all persons whomsoever.

5.4 Obligation for Pro Rata Share of Bonded Debt. During any Billing Period, notwithstanding any occurrence of an Unforeseen Circumstance, the Unit of Local Government shall remain unconditionally obligated to pay its Pro Rata Share of the indebtedness of the Authority incurred during the Unit of Local Government's membership in the Authority. Such obligation shall survive the termination of this Agreement unless terminated pursuant to Section 6.5. This obligation shall consist of:

(a) the Unit of Local Government's Pro-Rata Share of the amounts required under any Bond Resolution to be paid or deposited into any fund or account established for the

payment of Debt Service on the Bonds issued to finance or refinance the Facility or any portion thereof; and

(b) the Pro-Rata Share of the amounts required by any Bond Resolution to be paid into any fund or account established under such Bond Resolution, including debt service reserve funds, general funds and such other funds or accounts as may be provided by any such Bond Resolution; and

(c) the Pro-Rata Share of additional amounts, if any, which must be realized by the Authority in order to meet the requirements of any rate covenant with respect to coverage of debt service on the Bonds issued to finance or refinance or refinance Facility under any terms of any Bond Resolution plus such additional amounts deemed desirable to facilitate the marketing of such Bonds on favorable terms; and

(d) the Pro Rata Share of any amounts unfunded and necessary for the Closure and Post Closure Care of the Facility should the Facility cease to operate.

5.5 Payment of Fees - Pledge for Bonds. (a) The Unit of Local Government covenants that it will promptly pay or cause to be paid all fees or costs due the Authority under the terms of this Agreement for which the Unit of Local Government is indebted or obligated.

(b) In order to provide additional security for the Bonds issued by the Authority for the Facility under the terms of this Agreement and pursuant to the provision of Section 17-17-327, Mississippi Code of 1972 as amended, the Unit of Local Government covenants, agrees and authorizes the Department of Revenue to (i) withhold all or any part of any monies, except gas taxes, which any such local governmental unit is entitled to receive from time to time pursuant to any law and which is in the possession of the Department of Revenue, and (ii) pay the same over to the Authority to satisfy any delinquent payments on any services to such local government unit

to ensure the timely payment of any Bonds of the Authority secured by revenue to be received from the Unit of local Government or as may be necessary to replenish any funds of debt service reserve fund of the Authority which might have been expended to pay debt service as a result of the delinquency of a Unit of Local Government.

5.6 Further Assurance. At any and all times the Unit of local government shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deed, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming of all and singular the rights, fees and other moneys, and funds hereby due, obligated, or owed under the terms of this Agreement which the Authority may hereafter become bound to pledge or assign.

5.7 Authority's Covenants with Respect to Service Agreements. The Authority hereby further covenants that it will not permit any transfers or assignments of its Service Agreements which would in any way adversely affect Revenues or which would in any way materially adversely affect or diminish the rights of the Bondholders under the Bond Resolution and said Service Agreements. The Authority hereby further covenants that it will not consent to any amendment of any Service Agreement that would subject to the provisions of Section 5.05 hereof (i) establish a termination date for any Service Agreement on a date prior to the final maturity date of any Bonds Outstanding on the date of such consent, or, if such amendment should be entered into while a default under the Resolution shall exist and be continuing, prior to the final payment of the Bonds Outstanding on the date of such amendment; or (ii) cause an entity with which Authority has entered into a Service Agreement no longer to be unconditionally obligated to make payments due thereunder.

5.8 Compliance with Law. The Authority and Unit of Local Government each covenants to the other it shall observe and perform all of the terms and conditions contained in the Act and this Agreement and shall comply with all valid acts, rules, regulations, orders and directions applicable to the operation of the Facility or the Authority not inconsistent or in conflict with the provisions of this Agreement or any legislation, statute, directive, ruling, or order of any legislative, executive, administrative or judicial body having lawful jurisdiction over the Authority or the Facility.

5.9 Other Facilities. The Unit of Local Government hereby covenants that it will not acquire or construct any solid waste disposal facility for the disposal of Municipal Solid Waste during the term of this Agreement so long as the services under this Agreement are provided by the Authority. Provided, however, nothing contained herein shall extinguish the Unit of Local Government obligation to pay it Pro Rata Share of the debt as provided by Section 5.04.

## **ARTICLE VI** **DEFAULTS AND TERMINATION**

6.1 Events of Default by Authority. Persistent and repeated failure of the Authority to timely perform any material obligation under this Agreement shall constitute Events of Default on the part of the Authority.

6.2 Events of Default by Unit of Local Government. Persistent and repeated failure of Unit of Local Government to timely perform any material obligation under this Agreement shall constitute Events of Default on the part of the Unit of Local Government.

6.3 Specific Performance: Remedies for Authority Event of Default. The Unit of Local Government and the Authority agree that monetary damages are not an adequate remedy for the Authority's Event of Default, nor could monetary damages be the equivalent of the performance of the obligations hereunder, and the Authority hereby consents to the initiation of legal

proceedings seeking specific performance of any obligation of the Authority under this Agreement in a court of competent jurisdiction within the State.

6.4 Specific Performance: Remedies for Unit of Local Government Default. The Unit of Local Government and the Authority agree that monetary damages are not an adequate remedy for the Unit of Local Government Event of Default and the Unit of Local Government hereby consents to the initiation of legal proceedings seeking specific performance of any obligation of the unit of Local Government or payment of any sums due under this Agreement in a court of competent jurisdiction within the State.

6.5 Termination of Agreement. (a) This Agreement may be terminated by the Unit of Local Government upon approval by the Board if the Unit of Local Government (i) makes a prepayment to the Trustee created or designated by any Bond Resolution or Indenture of the Authority, sufficient to pay or defease its Pro Rata Share of indebtedness of the Authority incurred by the Authority under Section 5.04 hereof or as otherwise authorized by this Agreement; (ii) pays an amount sufficient to cover its Pro Rata Share of the Operation and Maintenance Expenses based upon its Current Volume of Municipal Solid Waste for the remainder of the Billing Year; and (iii) pays its Pro Rata Share of the cost or obligation for Closure and Post Closure Care of the Facility or for any Regulatory Change or Additional Requirement unfunded at the time of termination which results from an event which occurred during the term of membership of the Unit of Local Government in the Authority.

(b) Within sixty (60) days following the date of any agreed termination under this Section 6.05 the Unit of Local Government and the Authority shall reconcile all amounts due and payable, with the payment by the Unit of Local Government sufficient to cover its Pro Rata Share described in this Section 6.05 when due and, payable to be made within ninety (90) days of

termination unless a payment on any Outstanding Bond is due during that period and in such case the Unit of Local Government shall immediately make its pro rata payment.

**ARTICLE VII**  
**REPRESENTATIONS**

7.1 Representations of the Unit of Local Government. The Unit of Local Government represents and warrants that:

(a) The Unit of Local Government is a duly organized and existing under the laws of the State.

(b) The Unit of Local Government has the full power, authority and legal right to enter into and perform this Agreement, and each other agreement or instrument entered into or to be entered into by the Unit of Local Government pursuant to this Agreement, and the execution, delivery and performance hereof and thereof by the Unit of Local Government (i) have the requisite approval of all governmental bodies, (ii) will not violate any judgment, order, law or regulation applicable to the Unit of Local Government or any provisions of the Unit of Local Government charter and (iii) do not (A) conflict with, (B) constitute a default under or (C) except as specifically created thereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Unit of Local Government under any agreement or instrument to which the Unit of Local Government is a party or by which the Unit of Local Government or its assets may be bound or affected.

(c) This Agreement, and each other agreement or instrument entered into by the Unit of Local Government pursuant to this Agreement, have been duly authorized, executed and delivered by the Unit of Local Government; each agreement or instrument to be entered into by the Unit of Local Government pursuant to this Agreement, when entered into, will be duly authorized, executed and delivered by the Unit of Local Government; and this Agreement and each

other agreement entered into by the Unit of Local Government, when executed and delivered, will constitute legal, valid and binding obligations of the Unit of Local Government, enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, or by general equitable principles concerning remedies.

(d) There is no litigation or proceeding pending or to the knowledge of the Unit of Local Government, threatened against or affecting the Unit of Local Government (i) challenging the validity of this Agreement or any agreements contemplated hereby (ii) seeking to enjoin the performance by the Unit of Local Government of its obligations hereunder or thereunder or (iii) which, if adversely determined, would materially adversely affect the ability of the Unit of Local Government to perform its obligations hereunder or thereunder.

7.2 Representations of the Authority. The Authority represents and warrants that as of the Effective Date:

(a) The Authority is duly organized and existing in good standing under the laws of the State.

(b) The Authority has the corporate power, authority and legal right to enter into and perform this Agreement and each other agreement or instrument entered into or to be entered into by the Authority pursuant to this Agreement, and the execution, delivery and performance hereof and thereof by the Authority (i) have the requisite approval of all governmental bodies; (ii) will not violate any judgment, order, law or regulations applicable to the Authority or any provisions of the Authority's Incorporation Agreement or by-laws; and (iii) do not (A) conflict with, (B) constitute a default under, or (C) except as specifically created thereby, result in the creation of any lien, charge, encumbrance or security interest upon any assets of the Authority



under any agreement or instrument to which the Authority is a party or by which the Authority or its assets may be bound or affected.

(c) The Authority or its designee holds, or is expressly authorized under, permits and licenses to operate, maintain, and expand the Facility pursuant to the terms of this Agreement.

(d) This Agreement, and each other agreement or instrument entered into by the Authority pursuant to this Agreement, have been duly authorized, executed and delivered by the Authority; each agreement or instrument to be entered into by the Authority pursuant to this Agreement, when entered into, will be duly authorized, executed and delivered by the Authority; this Agreement and each other agreement entered into by the Authority constitute, and each agreement to be entered into by the Authority, when executed and delivered, will constitute legal, valid and binding obligations of the Authority, enforceable in accordance with their respective terms, except as enforcement of such obligations may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, or by general equitable principles concerning remedies.

(e) There is no litigation or proceeding pending or, to the knowledge of the Authority, threatened against or affecting the (i) challenging the validity of this Agreement or any agreements contemplated hereby; (ii) seeking to enjoin the performance by the Authority of its obligations hereunder or thereunder; or (iii) which, if determined adversely, would materially adversely affect the financial condition of the Authority, or the ability of the Authority to perform its obligations hereunder or thereunder.

**ARTICLE VIII**  
**FURTHER AGREEMENTS**

8.1 Licenses Approvals and Permits. The Unit of Local Government shall provide all such cooperation as may reasonably be requested by the Authority in connection with the issuance of the Bonds or applications for grants and loans and with obtaining in a timely manner, maintaining or continually meeting the requirements of any licenses, approvals and Permits obtained or to be obtained by the Authority. The Authority shall obtain and/or maintain all Permits, licenses, and approvals necessary to the operation of the Facility, as applicable.

8.2 Actions Affecting the Facility

(a) If, any time during the Term of this Agreement, the Unit of Local Government delivery of solid waste (i) presents or may be reasonably expected to present an imminent or substantial endangerment to the health or welfare of persons, (ii) causes a Release, (iii) is Unacceptable Waste or (iv) would cause the Authority to violate or exceed any condition, parameter or limitation of its Permit, the Authority shall immediately notify the Unit of Local Government. To the extent any Unit of Local Government reasonably believes that its solid waste disposal will or may be expected to result in any event specified in this Section 9.02(a) (i), (ii), (iii), or (iv) it shall promptly give the Authority Notice of the same, both in writing and by oral communication, which Notice shall specify in reasonable detail the circumstances giving rise to such disposal(s), the duration of such disposal(s), the anticipated effect on the facility, as applicable, and the actions taken or to be taken by the Unit of Local Government to remedy and/or mitigate the same.

(b) Upon a determination by the Authority that the delivery to or disposal of waste at the Facility from any Unit of Local Government or other Person creates an immediate danger to the public or to property or creates a dangerous situation which may endanger the public,

public health or cause damage to property, the Facility or a Delivery Point, the Authority may take immediate action to; (i) notify the Unit of Local Government or other Person as the case may be to take immediate steps to remedy the situation; (ii) take other appropriate action to minimize or eliminate the risk or danger; (iii) discontinue accepting or disposing of such waste. The Authority shall make every effort under the circumstances to notify the Unit of Local Government or other Person of the danger or risk determined and the action planned with 24 hours notice.

8.3 Contracts With Others. (a) The Authority may, in its discretion, enter into Service Agreements for use of the Facility with any Unit of Local Government outside the Three Rivers Region or with any other Person or potential User, provided, however, that any charges or fees with respect to Municipal Solid Waste delivered or caused to be delivered and disposed at the Facility made and imposed pursuant to Article IV hereof or charged and collected pursuant to any applicable law, ordinance or Service Contract or Agreement with anyone other than a Unit of Local Government Member of the Authority shall not be computed or established at any rates more favorable than the rates applicable to all Units of Local Government who are members of the Authority, and the terms and conditions of any such agreement shall not be less favorable to the Authority than the terms and conditions of this Agreement.

(b) The Authority, upon receiving a bona fide offer from any potential User of the Facility from outside the Authority's Service Area as defined in the local solid waste management plan shall notify the Authority Board of the request or offer to contract with the Authority for disposal services. Nothing in this Agreement shall, however, prevent the Authority from contracting for or accepting for Disposal at its Facility any Municipal Solid Waste generated within or without Three Rivers Region or any Special Waste as defined by DEQ, provided, however, the Authority shall not accept such waste which originates from outside the State of

Mississippi unless the acceptance of such waste has been approved by the Authority and by a referendum of the Host County.

8.4 Additional Member Unit of Local Government. Any Unit of Local Government which becomes a Member of this Authority after the execution date of this Agreement shall not enter into any Service Agreement on terms and conditions more favorable to it than those contained in this Agreement.

8.5 Overdue Obligations to Bear Interest. All amounts due hereunder, whether as damages, credits, Revenue, or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount due and unpaid from time to time, on the basis of a 360-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by law, be deemed added to the amount due, as accrued.

8.6 Insurance. The Authority shall, subject to commercial availability, obtain and maintain the insurance coverages for the Facility, property, operator and employees, officers and any other coverage deemed necessary.

8.7 Notice. Any written Notice required or permitted under the terms of this Agreement shall be given and be deemed to have been duly served if either: (a) delivered in person to the designated representative of the party for whom it is intended, (b) deposited registered mail, postage prepaid in the United States mail, addressed to the respective parties, as indicated below:

For the Authority.

Vernon R. Kelley, III  
Three Rivers Solid Waste Management Authority  
P. O. Box 690  
Pontotoc, Mississippi 38863

For the Unit of Local Government.

Mayor, City of Tupelo, Mississippi  
P.O. Box 1485  
Tupelo, Mississippi 38802

8.8 Chance for Notice. The Parties specifically agree that the above designated representatives, and the addresses thereof, may be altered, upon the written submission of the Party seeking to alter such representative by a duly authorized individual within reasonable time to allow the implementation of such change before any Notice is actually served or attempted.

8.9 Waiver. Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver,

8.10 Governing Law. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by the laws and decisions of the courts of the State.

8.11 Severability. If any term or provision of this Agreement shall be declared unconstitutional or void by any court of competent jurisdiction, the constitutionality and validity of the remainder of said Agreement shall not be affected thereby, and to this extent the terms and provisions of said Agreement are declared to be severable.

8.12 Headings for Convenience. The headings in this Agreement are for convenience of reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

8.13 Rules and Regulations. The Unit of Local Government shall comply with such necessary reasonable rules and regulations as may from time to time be adopted by the Authority for the operation of the Facility, and the Unit of Local Government, to the extent practicable, shall assist the Authority in causing others to comply with such rules and regulations. Provided, however, such rules and regulations shall not conflict with the Provisions of this Agreement.

8.14 Amendment of Contract. (a) The Parties recognize that this Agreement is a uniform agreement between the Authority and each Unit of Local Government Member of the Authority setting forth the same rights, responsibilities and obligations of all such entities except the Host County.

(b) This Agreement may be amended or modified by mutual consent of the Parties provided that such amendment or modification does not have the effect of creating or alternating rights, obligations and responsibilities of the Parties compared to those of other Units of Local Government Members of the Authority, or

(c) This Agreement may be amended or modified by consent of all of the Unit of Local Government Members to affect the rights, responsibilities and obligations of the Parties except as prohibited below, provided that any such amendment or modification shall be uniform and applicable to each similar Agreement between the Authority and the member Unit of Local Government and acceptable to each Unit of Local Government.

(d) Provided however, this Contract shall not be amended, modified or otherwise changed by agreement of the Parties in any manner which will materially adversely affect the security afforded by the provisions of this Agreement for the payment of the principal, interest and premium, if any, on Bonds of the Authority as they respectively become payable so

long as the Bonds are Outstanding and unpaid and funds are not set aside for the payment or retirement thereof in accordance with the applicable Bond Resolution.

8.15 Opinion of Counsel of the Unit of Local Government. The Unit of Local Government shall, concurrently with the execution and delivery of this Agreement, cause an opinion or opinions in form and substance satisfactory to the Authority to be delivered by one or more attorneys or firms of attorneys satisfactory to the Authority which shall cover matters relating to the authorization, execution, validity and binding effect of this Agreement as it relates to the Unit of Local Government, and, if the Unit of Local Government shall have bonds or other evidences of indebtedness outstanding secured by revenues derived from the collection of Solid Waste, shall cover matters relating to the legality and permissibility under the terms and conditions of the ordinance, resolution, indenture or other contractual arrangement with such bondholders of the performance by the Authority of its obligations under this Agreement.


8.16 Impairment of Contracts. No provision of this Agreement shall be construed by any party hereto in such a manner as would result in the impairment in any way of any existing contract or contracts between the Authority and/or the Unit of Local Government and any other Person.

8.17 Entirety. Once effective, this Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter, hereof and constitutes the entire agreement between the parties hereto in respect thereof, subject, however, to the terms and conditions of the Act.

8.18 Conventions. In this Agreement the singular includes the plural and the plural includes the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; references to agreements and other contractual instruments shall be deemed to

include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms; references to Persons include their permitted successors and assigns; and the term "including" shall mean including without limitation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written. This Agreement is intended to take effect as a sealed instrument.

BY:  \_\_\_\_\_  
Carl Cadden, Chairman  
Three Rivers Solid Waste Management Authority

BY: \_\_\_\_\_  
Mayor, City of Tupelo, Mississippi



## **Schedule 1 – Definitions**

## SCHEDULE I - DEFINITIONS

"Acceptance Date" means the day the Facility began operation by accepting Municipal Solid Waste.

"Act" means the Mississippi Regional Solid Waste Management Act, Section 17-17-301 et seq., Mississippi Code of 1972 as Amended.

"Additional Requirement" means any requirement which may be imposed by any local, state or federal regulatory agency or state, local, or federal law or ordinance or determined by the Authority as necessary for the proper and good operating order of the Facility or the Authority including Closure and Post Closure Care, which may result in an increase in cost of the Project or the Operation and Maintenance Expenses.

"Adjustment Date" means October 1 of each year when any adjustment in the Tipping Fee will become effective for the next Billing Year as provided in this Agreement, provided, however, the Authority shall have notified the Unit of Local Government on or before August 15th of said adjustment.

"Agreement" means this Agreement between the Units of Local Government and the Authority, including the Schedules and any written amendments hereto.

"Alternative Delivery Point" means the Point of Delivery for Acceptable Solid Waste which has been designated by the Authority according to the terms of this Agreement as an alternative to the normal Delivery Point for the Three Rivers Regional Landfill.

"Alternative Disposal Site" means that site designated under the terms of this Agreement by the Authority as a disposal site when the Facility is not available.

"Article" means an article of this Agreement.

"Authority" means the Three Rivers Solid Waste Management Authority created under Miss. Code Ann. §§ 17-17-301 et seq. Miss. Code of 1972 as amended.

"Billing Period" means the 16th day in every month until the 15th day of the following month.

"Billing Year" means the fiscal year ending September 30, provided, however, the first Billing Year shall commence on the Acceptance Date and shall end on the following September 30 and the last Billing Year shall commence on October 1 and end on the last day of the initial or any extension term of this Agreement. Each Billing Year after the first Billing Year shall commence on the October 1 following the termination of the prior Billing Year.

"Board" means the board of commissioners of the Authority as established pursuant to the Act and the Incorporation Agreement.

"Bond Resolution" means a resolution of the Authority which authorizes and directs the issuance of Bonds pursuant to this Agreement.

"Bondholders" means the holder of any Bond issued by the Authority pursuant to this Agreement.

"Bonds" means the revenue bonds, bond anticipation notes, revenue anticipation notes or other types of debt instruments issued by the Authority and Outstanding under the terms of this Agreement for the purpose of paying Project Cost.

"Business Day" means each day of the week except Saturday, Sunday, or Legal Holidays.

"Capital Expansion Fund" means any fund created by the Authority in which shall be deposited a portion of the Tipping Fees or other Revenues to be used to pay the cost of future expansion of the Facility, its capacity or any Capital Project.

"Capital Expenditure" means any funds expended or spent for a Capital Project.

"Capital Project" means a construction or reconstruction project, beyond a normal and ordinary repair or reconstruction, which is undertaken for purposes of expanding, enlarging or improving the capacity or operation of the Facility or Facility Site or any improvement thereon.

"Change in Law" means (a) the adoption, promulgation or modification after the Contract Date of any federal, state, county statute, ordinance, code or regulation not adopted, and/or officially published in The Congressional Record, The Federal Register, or with regard to the State, released by the Mississippi Department of Environmental Quality or DEQ for public comment, on or before the Contract Date, or (b) the imposition after the Contract Date of any material conditions in connection with the issuance, renewal or modification of any official permit, license or approval, which in the case of either (a) or (b) establishes requirements affecting the design, construction, startup, operation, maintenance, Closure, Post Closure Care, Facility Price or construction schedule of the Facility more burdensome than the most stringent requirements (i) in effect or proposed and published or printed as of Contract Date, (ii) agreed to in any applications of Authority for official permits, licenses or approvals pending as of Contract Date or (iii) contained in any official permits, licenses, or approvals with respect to the Facility obtained as of Contract Date. A change in federal, State, County or any other tax law shall not be a Change in Law.

"Closure" means the installation of a final cover placed on the Site or any portion thereof and compliance with all standards and requirements of state and federal regulations for the closing of a Site or portion thereof from receiving Municipal Solid Waste.

"Contract Date" means the date of the signing of this Agreement.

"Corrective Action" means any activity undertaken as a remedy or corrective means as defined and used in Subpart E 258.50 et seq. Subtitle D Regulation (40CFR258).

"Current Volume" shall mean the average monthly volume of Acceptable Solid Waste disposed at the Facility during the previous twelve-month period.

"Debt Service" means the principal and interest on the Bonds and any necessary yearly fees or cost of the Trustee or Paying Agent.

"Delivery Point" means the point designated by the Authority at which Acceptable Solid Waste of the Unit of Local Government, a User, Generator or other Person, is delivered to the Authority for Disposal at the Facility.

"DEQ" means the Mississippi Department of Environmental Quality, including the BPC, as well as the assigns and/or successors of either.

"Disposal" means the discharge, deposit or dumping of Acceptable Solid Waste at an Authority owned Subtitle D permitted Regional Landfill or Transfer Stations.

"Effective Date" means the Contract date being the date upon which the Agreement is entered into by the parties.

"Facility" means the Three Rivers Regional Landfill.

"Fault" of any party to this Agreement means (a) unexcused failure or refusal of such party to perform any covenant or obligation under this Agreement, or (b) any action or failure to act by such party that results from the negligence or willful misconduct of such party.

"Generator" means any person, corporation or enterprise which produces, creates or otherwise has Acceptable Solid Waste and arranges for disposal.

"Governing Body" means 'the elected or duly appointed officials constituting the governing body of a municipality or county.

"Hazardous Substance" means any material defined as hazardous pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq., §17-17-103(f) Mississippi Code 1972 as amended and the rules, regulations and policies promulgated thereunder.

"Host County" means Pontotoc County – the Unit of Local Government member where Three Rivers Regional Landfill is located.

"Indenture" means the indenture or Trust Agreement pursuant to the Bond Resolution under which the Bonds are issued, as amended from time to time.

"Issuer" means the Authority, the issuer of the Bonds.

"Legal Holiday" means New Year's Day, Memorial Day, Independence Day; Labor Day, Thanksgiving Day, Christmas Eve (one-half day), Christmas Day and New Year's Eve (one-half day) and such other days as may otherwise be mutually agreed upon from time to time.

"Member" means a Unit of Local Government listed in Incorporation Agreement as of the Contract Date.

"Monthly Service Fee" means the total amount due as compensation to be paid in accordance with this Agreement hereof by each Unit of Local Government, Generator, Users, Person or transporter

or hauler of Acceptable Solid Waste to a Delivery Point for disposal at the Facility, for each Billing Period.

"Municipal Solid Waste" means any nonhazardous solid waste resulting from operation of residential, commercial, industrial, governmental, or institutional establishments except for Unacceptable Waste and Hazardous Materials. Provided however, Municipal Solid Waste may exclude oil field exploration and production waste, sewage sludge, Rubbish which may be disposed of in a Class I Rubbish Site or Class II Rubbish Site, and recycled materials.

"Municipal Solid Waste Management Facility" means any land, building, plant, system, motor vehicles, equipment or other property, whether real, personal or mixed, or any combination or either thereof, used or useful or capable of future use in the collection, storage, treatment, utilization, recycling, processing, extracting, or conversion of such resources into compost or useful form of energy, transporting or Disposal of Municipal Solid Waste, including Transfer Stations, incinerators, Solid Waste Landfill Facilities or other facilities necessary or desirable for such purpose.

"Operation and Maintenance Expense" means the Authority's expenses for operation, maintenance, repairs, ordinary replacement and ordinary reconstruction of the Three Rivers Regional Landfill and shall include, without limiting the generality of the foregoing, administrative expenses, salaries for employees, utilities, labor, material, supplies and equipment necessary for the operation and maintenance of the Facility, and, any amount set aside for Corrective Action, remediation, Closure and Post Closure Care or necessary to be expended for such purposes, insurance premiums, legal, engineering and other consulting expenses, payments to pension, retirement, group life insurance, health and hospitalization funds, or other employee benefit funds, and any other expenses required to be paid by the Authority and applicable in the circumstances, and the expenses, liabilities and compensation of the Fiduciaries required to be paid under any Bond Resolution, all to the extent properly attributable to the Authority and its Facility.

"Notice" shall have the meaning specified in Section 8.07.

"Outstanding" means Bonds which remain unpaid as to principal and interest at any point in time.

"Overdue Rate" means the rate of interest to be charged on unpaid and delinquent Monthly Service Fee which shall be a rate as established under Miss. Code Ann. 75-17-1.

"Parties" means the signatories to this Agreement.

"Party" means either signatory to this Agreement.

"Permits" means all permits, licenses and approvals required to allow for the construction and operation of the Facility by in accordance with the Plans submitted with the applications for such permits, licenses and approvals.

"Person" means a person as defined in Section 17-17-3, Mississippi Code of 1972.

"Plan" means the Three Rivers Local Nonhazardous Solid Waste Plan required by §17-17-201 et seq.

"Plans" means the plans and specifications prepared for the operation, maintenance, and expansion of the Facility including all improvements thereon.

"Post Closure Care" means the care, maintenance and other requirements imposed by state and federal regulations upon a Site or portion which has been closed according to law or regulations and no longer receives Municipal Solid Waste including the cost of leachate management for the entire post closure period.

"Pro Rata Share" means a fraction or percentage which represents the Unit of Local Government share of any obligation under this Agreement based upon its Voting Strength.

"Public Agency" means any incorporated city or town, county, political subdivision, governmental district or unit, public corporation, public institution of higher learning, community college district, planning and development district, or governmental agency created under the laws of the state.

"Recycling" means the separation of materials which would otherwise be disposed of as Municipal Solid Waste provided that such materials are sold or delivered to the open market to be used, reused, or processed into a marketable product. Recycling does not include the burning of waste as a fuel for the recovery of energy or the use of waste treatment technologies.

"Refunding Bonds" means any Bonds issued to refinance previously issued Bonds as provided in Section 2.02.

"Regulatory Change" means any (a) enactment of or change in any laws, rules, regulations, ordinances, regulatory requirements or guidelines (including changes in construction or interpretation thereof or changes in the manner or method of enforcement thereof by a state or federal regulatory agency or court of law) or (b) orders, judgments or directives of any court or governmental body or instrumentality thereof, or (c) issuance, change or modification of any permits regarding construction, use, operation, closure or post-closure care, which occurs or takes effect on or after the date of this Agreement and were unknown, unanticipated or not proposed or published as proposed on the date of this Agreement.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a substance which causes damage to the environment or is hazardous or creates a threat to the environment.

"Revenue" means:

- (i) all income and revenues from all sources, collected or received by the Authority in the operation of the Facility, including without limitation except as herein expressly provided, all rentals, charges, fees, Tipping Fees, Service Fees, and User charges received by or on behalf of the Authority in its capacity as the operator of the Facility or any part thereof;
- (ii) all gifts, grants, reimbursements or payments received from governmental units or public agencies by the Authority or Facility which are: (a) not restricted in application to a special purpose, and (b) otherwise lawfully available for the payment of charges and expenses of the Authority and or Facility;

(iii) income received on any investment of moneys held.

"Revenue Requirement" means the revenue necessary to pay all Operation and Maintenance Expenses, and Debt Service on the Bonds and amounts necessary for the Capital Expansion Fund for the fiscal year.

"Rubbish" means nonputrescible solid waste (excluding ashes) consisting of both combustible and non-combustible waste as defined by DEQ Regulations.

"Schedule" means a schedule which is incorporated in and made a part of this Agreement, as such schedule may be modified from time to time in accordance with the terms of this Agreement.

"Section" means a section of this Agreement.

"Service Agreement" means this Agreement or similar Agreement with a User of the Facility of the Authority.

"Site" means the property on which the Three Rivers Regional Landfill or a Transfer Station of the Authority is located.

"Solid Waste" means solid waste as defined in Section 17-17-3, Mississippi Code of 1972, except it shall not include Rubbish, which may be required or permitted for Disposal in a Subtitle D landfill.

"Special Waste" means any nonhazardous waste as defined by DEQ which requires special or exceptional handling or contains an added element of expense to dispose of as determined by the Authority and requires approval from DEQ.

"State" means the State of Mississippi.

"Subtitle D Regulations" means the regulations printed in the October 9, 1991, Federal Register to be included in the Code of Federal Regulation, Title 40, Parts 257 and 258.

"Three Rivers Regional Landfill" means the regional Municipal Solid Waste Management Facility and any Transfer Station of the Authority that is operated, maintained, and expanded in accordance with the terms and provisions of this Agreement for the disposal of Municipal Solid Waste of the Three Rivers Region.

"Tipping Fee" shall be the per ton charge from time to time imposed by the Authority on the Unit of Local Government as with respect to the costs of the Authority associated with acquiring, designing, constructing and permitting, operating, maintaining, and implementing Closure and Post Closure Care of the Facility, which costs shall, to the extent that other revenues or funds of the Authority have not been actually applied to meet such requirements, consist of:

- (i) the amounts required to pay the costs of Operation and Maintenance Expense of the Facility.

- (ii) amounts required by any Bond Resolution to be paid into any fund or account established under such Bond Resolution as an operating and maintenance reserve; and
- (iii) amounts required by an Bond Resolution to be paid into any fund or account established under such Bond Resolution for any of the following purposes: construction, renewal and replacement.
- (iv) amounts required to pay the cost of the Authority's administration, billing and collection cost, debt requirements on any Bonds or debt, operation, general overhead, and planning and such professional services necessary for the administration of the Authority and the Facility.
- (v) all cost relating to claims or judgments, fines or penalties required to be paid by the Authority arising out of the acquisition, construction, operation and maintenance of the Facility or the Authority.
- (vi) such amount as shall be necessary by the Authority for any Project Cost, any fees or adjustments to a Host county, financial assurance, Closure costs, Post Closure Care, Corrective Action, remediation, planning development costs, engineering fees, cost of obtaining Permits, approvals, licenses, Project Cost, expansions, labor, material, equipment, supplies, training and testing, insurance premiums, legal and financing fees and costs, and any cost deemed necessary to prevent the interruption of services and damage to the Facility.
- (vii) any taxes or regulation fees or charges imposed by any state, local or federal agencies on the Authority, the Facility or its permit.
- (viii) "Ton" means a "short ton" of 2,000 pounds.

"Transfer Station" means the Delivery Point for the Acceptable Solid Waste of the Unit of Local Government for transfer and transportation for Disposal by the Authority.

"Unacceptable Waste" means Hazardous Waste or any other portion of Solid Waste, the disposal of which, in the reasonable judgment of the Authority:

- (a) may present a substantial endangerment to health or safety of the public or Facility employees,
- (b) would cause applicable air quality or water effluent standards or other applicable standards or any air quality or water effluent or other permit issued to the Facility to be violated by the normal operation of the Facility.
- (c) would cause Residue to be Hazardous Waste,
- (d) has a reasonable possibility of adversely affecting the operation of the Facility, or



- (e) any waste which is not acceptable for disposal at the Three Rivers Regional Landfill under the Permit, or laws and regulations of the state and federal government.

"Unforeseen Circumstance" means any act, event or condition (other than labor strikes) that has had a material adverse effect on the rights or the obligations of the parties under this Agreement, or a material adverse effect on the Facility, or the ownership, possession or operation of the Facility, if such act, event or condition is beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement. Such acts or events may include, but shall not be limited to, the following:

- (a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Facility); lightning, earthquake, fire, explosion, flood, widespread pandemic, sabotage or similar occurrence; acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (b) the order and/or judgment of any federal, state or local court, administrative agency or governmental body, excepting decisions of federal courts interpreting the federal tax laws and decisions of state courts interpreting state tax laws, if it is not also the result of the willful or negligent action or inaction of the party relying thereon; provided that neither the contesting in good faith of any such order and/or judgment nor the failure to so contest shall constitute or be construed as a willful or negligent action or inaction of such party;
- (c) a change in law;
- (d) the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Facility, the Facility Site, or any material portion or part thereof by the action of any federal, State or local government or governmental agency or authority.

"Unit of Local Government" means the county or municipality of this state who is a party to this Agreement.

"User" means any person, individual, corporation, association, enterprise, or public agency who delivers or causes to be delivered Acceptable Solid Waste for disposal at the Facility, and including any public agency or unit of local government outside the region who may contract for disposal with the Authority.

"Voting Strength" means the voting percentage of a Member as set forth in the Incorporation Agreement.

## **Schedule 2 – Incorporation Agreement**

Sept 1992

**INCORPORATION AGREEMENT  
OF  
THREE RIVERS SOLID WASTE MANAGEMENT AUTHORITY**

The undersigned persons pursuant to § 17-17-301 et seq. Miss. Code of 1972 as amended (Chapter 581 Laws of 1991, Senate Bill 2984) (the "Act") hereby executes this Incorporation Agreement and sets forth:

1. The name of the Authority incorporated as authorized by the Act is the Three Rivers Solid Waste Management Authority ("the Authority"). The Authority is created and established as a public body corporate and politic constituting a political subdivision of the state and shall be deemed to be acting in all respects for the benefit of the people of the state in the performance of essential public functions and the Authority shall be empowered in accordance with the Act to promote the health, welfare and prosperity of the general public.

2. The following units of local government will participate as incorporating members of the Authority and have by resolution declared their intent to form and incorporate this Authority and have by their resolution designated a representative pursuant to the Act to serve as an Incorporator duly authorized and empowered to enter into this Agreement.

- A. Union County
- B. City of New Albany

Upon incorporation as a political subdivision under the provisions of the Act, all of the following counties and cities

within the Three Rivers Planning - and Development District in addition to the Incorporators shall compose the membership eligible to participate in the Authority for the purposes set forth in the Act:

- A. Calhoun County
- B. Itawamba County
- C. City of Fulton
- D. Lafayette County
- E. City of Oxford
- F. Lee County
- G. City of Tupelo
- H. Monroe County
- I. City of Aberdeen
- J. City of Amory
- K. Pontotoc County
- L. City of Pontotoc

While membership in the Authority shall be determined by the expressed intent of the governing body of each eligible member and the appointment of its commissioner under the terms of the Act and the Incorporation Agreement, full participation shall be ratified and confirmed whenever an eligible unit of local government enters into a contract with the Authority.

In the event that any unit of local government member of the Authority does not enter into a contract with the Authority for the delivery of its waste to the Authority, the unit shall cease to be a member of the Authority and its voting rights and all rights and

privileges of participation shall be forfeited. The Authority shall not have the right to implement mandatory flow control on any unit of government until such time as the unit shall execute a contract. Each contract shall contain a requirement that the governmental unit will require mandatory flow to the Authority of waste within its jurisdiction.

3. The period of duration is perpetual.

4. The principal office of the Authority is the Three Rivers Planning and Development District Office, P. O. Drawer B, Pontotoc, Mississippi 38863.

5. The Authority is organized pursuant to § 17-17-301 et seq. Miss. Code Ann. of 1972 as amended to function as a public body corporate and politic constituting a political subdivision of the State to function for purposes of solid waste management for the participating units of local government and shall have authority to do all things authorized by the act except as limited by this agreement.

6. The Authority shall be governed by a Board of Commissioners. The Board shall be composed of one Commissioner appointed by each member unit of local government. On all matters to be decided by the Board of Commissioners the outcome of each vote shall be determined by calculation of the respective voting strengths of the Commissioners. Pursuant to the Act, the member of the Board of Supervisors of the District in which the landfill site is situated shall also be a member of the Board of Commissioners. The Supervisor shall be entitled to one-half of the voting strength

of the County in which the landfill site is located. The voting percentages are shown in Exhibit "A" attached hereto and incorporated herein. The Incorporators of the Authority, by a drawing of lots among the incorporators, have established, as required by law, staggered terms of office for the Commissioners from each eligible member of the Authority with at least one-fourth for a term of one year, one-fourth for a term of two years, one-fourth for a term of three years, and the remainder for a term of four years, as set forth as follows:

<b>COMMISSIONER REPRESENTING</b>	<b>TERM</b>
Calhoun County	3
Itawamba County	.1
City of Fulton	4
Lafayette County	1
City of Oxford	3
Lee County	4
City of Tupelo	2
Monroe County	2
City of Aberdeen	3
City of Amory	2
Pontotoc County	3
City of Pontotoc	1
Union County	2
City of New Albany	1

Upon membership in the Authority and appointment of its Commissioner, the Commission shall assume the term of office set

forth above by the Incorporators and ending on October 2 of the year of the term. Commissioners are eligible for reappointment. All terms after the first term shall be for four (4) years each.

7. The Authority shall not accept delivery of waste at any solid waste landfill or other municipal solid waste management facility without payment of the tipping fee established by the Authority. The tipping fee shall be the same for all members of the Authority and no non-member transporter of waste shall pay a tipping fee less than that paid by the members. The Authority shall be solely responsible only for the transportation cost of all waste from designated transfer stations to the landfill.

8. The Authority shall not pay for, assist, or otherwise become responsible for the closure of any landfill presently existing. Its sole responsibility for closure being for the landfill or landfills to be owned and operated by the Authority. Each member shall be responsible for the closure and all liabilities of all existing landfills owned or operated by them in the respective jurisdictions of the units of local government.

9. In the event of dissolution, all the real property and all other property owned by the Authority upon dissolution shall be sold and after fulfillment of all obligations of the Authority, all remaining funds shall be divided between the members pro rata in accordance with Exhibit "A". However, the Authority may upon dissolution if any real property remains unsold transfer such property to the County in which it is located.

10. The Authority shall be solely responsible as owner of the facility or facilities. In no event shall the members of the Authority be considered to be owners or operators of the facilities. The units of local government members of the Authority shall not be subject to any liability resulting from the design, construction, ownership, maintenance, operation or management of a project or facility of the Authority. The units of local government members of the Authority shall share the ultimate financial responsibility of the Authority on a pro rated basis, being the same basis as the voting percentages of said members as set out on Exhibit "A". Said responsibility shall include but not be limited to cost of dissolution, clean-up in the event of post-dissolution requirements, and such contractual obligations that may be incurred by the Authority.

11. Under no circumstances shall the Authority have the right to cause any tax to be levied against any member without the expressed consent of the member.

12. The Board of Commissioners shall meet not less than once per month and as many additional times as may be necessary to reasonably conduct the business of the Authority. Any executive committee appointed by the Board of Commissioners shall not have binding authority without the expressed authority being extended to the Executive Committee by the vote of the Board of Commissioners.

13. This Incorporation Agreement may be amended or modified from time to time in accordance with the procedure set forth in the



Act. However, no amendment or modification shall be made which would alter the purpose for which this Authority is operated unless authorized by the Act, or to alter, modify or change any bond covenants unless pursuant to the bond resolution or trust indenture, which would have the effect of altering, diminishing or limiting any outstanding obligation of the Authority; or without mutual agreement to alter, limit or diminish any rights, responsibilities or obligations of any existing contracts for services with a participating member.

Norman Treadway  
INCORPORATOR REPRESENTING UNION  
COUNTY

Walter F. Johnson  
INCORPORATOR REPRESENTING CITY  
OF NEW ALBANY

STATE OF MISSISSIPPI

COUNTY OF UNION

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid Norman Treadway, designated representative of Union County, who acknowledged that he, for and on behalf of said Union County, as the act and deed of said Union County, and after having been duly authorized so to do, signed and delivered the above and foregoing instrument on the day and year therein written.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this the 10<sup>th</sup> day of September, 1992.

Kayson Grubbs  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

April 28, 1993

REVISED VOTING STRENGTH  
THREE RIVERS REGIONAL SOLID WASTE MANAGEMENT AUTHORITY

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COUNTIES

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CALHOUN	6.02%
ITAWAMBA	6.71%
LAFAYETTE	8.81%
LEE	14.02%
MONROE	8.92%
PONTOTOC	16.90%
UNION	6.04%

CITIES

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FULTON	
OXFORD	1.36%
TUPELO	4.01%
ABERDEEN	16.90%
AMORY	2.91%
PONTOTOC	2.83%
NEW ALBANY	1.85%
	2.72%

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STATE OF MISSISSIPPI

COUNTY OF UNION

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid Walter F. Johnson, designated representative of City of New Albany, who acknowledged that he, for and on behalf of said City of New Albany, as the act and deed of said City of New Albany, and after having been duly authorized so to do, signed and delivered the above and foregoing instrument on the day and year therein written.

GIVEN UNDER MY HAND AND OFFICIAL SEAL this the 10<sup>th</sup> day of September, 1992.

Kayron Grubbe  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

April 28, 1993

## **Schedule 3 – Host County Agreement**

82967746.v1

Schedule 6

HOST COUNTY AGREEMENT

THIS HOST COUNTY AGREEMENT (the "Agreement"), is made and entered into this 10th day of November, 1992, between Three Rivers Solid Waste Management Authority, a political subdivision organized and existing under the laws of the State of Mississippi (the "Authority") (§17-17-301 et. seq. Miss. Code of 1972 as amended) (the "Act"), and Pontotoc County (the "County").

BACKGROUND

Whereas, the Authority will design, construct, start up, own, operate and maintain or cause to be designed, constructed, operated and maintained, a Facility to be located in a site in Pontotoc County for the purpose of disposing Acceptable Solid Waste all in accordance with the terms and conditions hereof.

Whereas, the Host County is willing to enter into this Agreement with the Authority and to serve as the Host for the site of the Three Rivers Solid Waste Disposal Facility in reliance on the Authority, to provide such disposal services and to produce a completed and operational Facility in accordance with this Agreement and the Solid Waste Disposal Service Agreement.

Whereas, the Host County enters into this Agreement and does hereby declare, confirm and ratify its intent to serve as the host for the Three Rivers Solid Waste Disposal Facility and to assist the Authority in the permitting and siting of the Facility subject to all rights and obligations as set forth in the Act,

the Incorporation Agreement, the Solid Waste Disposal Service Agreement, and this Agreement.

1. Site. The Site of the Three Rivers Solid Waste Disposal Facility selected and designated by the Authority shall be on property in Pontotoc County as described in Exhibit "A" to this Agreement. Pontotoc County has been designated by the Authority as the Host County for the Facility.

2. Host County Agreement. In addition to the other terms and conditions as contained in the Solid Waste Disposal Service Agreement the Authority and Pontotoc County, as the Host County, have agreed to the following terms and conditions:

a. The Host County will be paid 60% of whatever host fee the Authority establishes on the acceptance and disposal of Acceptable Solid Waste received from outside the Three Rivers Region with a maximum to be paid the Host County of \$2.00 per ton. Provided however, that such payment shall only be made to the Host County on that portion of out of region waste which when added to the current volume of Acceptable Solid Waste at the Facility would exceed 153,000 tons per year.

b. The Authority shall not accept any out of region waste at the Facility if such Acceptable Solid Waste shall cause the Authority's total yearly volume of waste actually buried at the landfill to exceed 153,000 tons per year, unless approved by the Host County.

c. The Authority shall construct a new access road to the Facility.

d. The Authority will pay the County a one time payment of \$250,000.00 for agreeing to serve as the Host County for the Facility. Such payment to be made no later than the Construction date.

e. Any resident of Pontotoc County shall be allowed to deliver household garbage which is Acceptable Solid Waste to the Facility at a delivery point within the Facility designated by the Authority during normal operating hours at no charge or fee to the resident or the County.

f. The Authority shall make the Facility available for inspection, during normal operating hours, by the Pontotoc County Board of Supervisors, or any official or committee designated by the Board of Supervisors. The Board of Supervisors shall provide the Authority with reasonable notice of such inspection so as not to interfere or disrupt normal operations. The results of any such inspection shall be provided to the Authority.

g. The Authority shall provide twenty-four-hour-a-day, seven-days-a-week security to the landfill site. The site shall be fenced, access controlled and monitored with such measures as the Authority deem proper and necessary to secure the site.

h. Once the landfill is closed by the Authority and ceases to be used for the disposal of Acceptable Solid Waste, Pontotoc County shall be granted exclusive use of that portion of the site used for landfilling. Provided however, that the ownership of such property shall remain in the Authority and that any use by the County shall not be detrimental or interfere in

any way with post closure care or corrective action nor alter or change the use of that portion of the site which may be used for resource recovery or other industrial purposes. The Authority shall retain an easement over the property and the right of access to the property for post closure care and monitoring activities.

i. If the Authority at any time during the term of this agreement determine to sell the Facility, Pontotoc County shall have the right of first refusal by assuming any outstanding indebtedness at the time of sale. Provided however, such sale to Pontotoc County would be subject to the assumption of all other contractual obligations of the Authority and such easements as may be necessary for post closure care and monitoring. The Authority shall remain responsible only for that portion of the landfill used and closed prior to such sale and transfer of title.

j. The county, as Host County, shall be required to only pay one-half (1/2) of the tipping fee set by the Authority for all other members of the Authority; further, that the Authority shall reimburse the Host County any and all amount or sums of ad valorem taxes for which the Host County grants unto landowners a fifty (50%) percent reduction, said landowners to live within one (1) mile of the site. The the Authority shall reimburse to the Host County said sum or sums on not less than a yearly basis and within thirty (30) days after a written request therefor by the Host County.



IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first above written. This Agreement is intended to take effect as a sealed instrument.

*Ronald E. Bell*

Chairman  
Three Rivers Solid Waste  
Management Authority

*Keith Herring*

President  
Board of Supervisors  
Pontotoc County