

ORIGINAL

SANITARY LANDFILL OPERATION AGREEMENT

BETWEEN

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

AND

SANTEK ENVIRONMENTAL, INC.

AS OF JULY 1, 2007

SANITARY LANDFILL OPERATION AGREEMENT

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SANITARY LANDFILL OPERATION AGREEMENT

THIS SANITARY LANDFILL OPERATION AGREEMENT (this "Agreement") is entered as of the 1st day of July, 2007 by and between **LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION** (the "Commission"), an entity created under the laws of the State of Tennessee and the entity having legal jurisdiction over the ownership and management of the Matlock Bend Landfill, and **SANTEK ENVIRONMENTAL, INC.**, a corporation organized under the laws of the State of Tennessee ("Contractor").

RECITALS:

WHEREAS, the Commission was formed by an agreement entered into under the Interlocal Cooperation Act (T.C.A. § 12-9-101 *et seq.*) among Loudon County, Lenoir City and the City of Loudon to provide efficient operations of the Matlock Bend Class I Landfill. As part of the Commission's responsibility for overall supervision of the Matlock Bend Class I Landfill, the Commission is also given the authority to develop policy and to make all decisions about solid waste management disposal in Loudon County and is required to provide periodic review and study of the solid waste disposal problems and needs of Loudon County and its cities; and

WHEREAS, the Commission is empowered to perform solid waste management tasks within Loudon County, and in connection therewith, owns and operates a sanitary landfill known as the Matlock Bend Landfill, as more specifically defined hereinafter;

WHEREAS, the Commission desires and the Contractor is willing to manage the landfill for the Commission pursuant to the terms and conditions of this Agreement,

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing premises and the other mutual covenants between the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

I. DEFINITIONS

1.1 **Definitions.** The following terms shall be defined in the following manner throughout this Agreement.

Agreement Year. A successive twelve-month period commencing for the first year on the Commencement Date and thereafter annually on the anniversary of the Commencement Date.

Area Governmental Users. Loudon County, the City of Lenoir City, and the City of Loudon, and which shall also be construed to include each of their related boards and agencies.

Closure. The taking of those actions to close a landfill that are necessary to meet the closure requirements of Tennessee Rule 1200-1-7-.04(8), or such subsequent regulation that replaces or supersedes such rule.

Commencement Date. October 1, 2007, or such other date as may be agreed to in writing between the parties.

County. Loudon County, Tennessee.

Demolition Waste. Non-Hazardous waste resulting from construction, remodeling, repair and demolition of structures and from road building. Demolition wastes include but are not limited to bricks, concrete and other masonry materials, soil, rock and lumber, road spoils, rebar, paving material.

EPA. The United States Environmental Protection Agency, which is the administrative agency for the United States of America that issues various environmental permits, including Solid Waste Permits, and oversees the enforcement of the environmental laws of the United States.

Environmental Laws. Any and all laws, statutes, regulations and judicial interpretations thereof of the United States and any state in which the Landfill is located, or of any other government or quasi-government authority having jurisdiction, that relate to the prevention, abatement or elimination of pollution and/or protection of the environment, including but not limited to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, the Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.*, the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f *et seq.*, the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.*, and the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 *et seq.*, together with any state statutes or local ordinances or other requirements serving any similar or related purposes.

Garbage. Solid Waste that includes animal and vegetable matter from handling, preparation, cooking and serving foods, but does not include industrial waste from food-processing operations.

Hauler. Any individual, firm, entity or other person who transports or otherwise performs hauling services of Solid Waste to the Landfill.

Hazardous Waste. Any waste meeting the classification "Hazardous Waste" as defined in Tennessee Rule 1200-1-11-02-(1)(c), or other subsequent regulation that replaces or supersedes such rule, and that is regulated pursuant to Tennessee Rule 1200-1-11-03 through 12-1-11-07.

Infectious Waste. Those wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are wastes resulting from the operation of medical clinics, hospitals, and other facilities producing wastes which may consist of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, contaminated clothing, and surgical gloves.

Landfill. The Matlock Bend Sanitary Landfill, which includes the landfill and approximately 151 acres of real estate, including the real estate within the legal boundaries of real property to be operated under the Landfill Permit, and as more particularly described in Exhibit "A" attached hereto, located off of Highway 72 in Loudon County, Tennessee.

Landfill Permit. The solid waste permit issued by TDEC, permit number SNL #53-103-0203, related to the Landfill, and any modifications, renewals, supplements, replacements or amendments of any of the foregoing.

Leachate. A liquid that has passed through or emerged from Solid Waste and contains soluble, suspended, or miscible materials removed from such waste.

Performance Security. Security for performance of all or a portion of the obligations of the Contractor under this Agreement, as the case may be. This security may be provided by either surety bond, an irrevocable letter of credit in form reasonably acceptable to the party receiving the security, or other manner acceptable to the party receiving the security. Such security instruments shall cover claims during the entire term of the Agreement. If the party providing the security gives a surety bond, the providing party shall be responsible for giving the party receiving the security satisfactory evidence that all such security is in full effect throughout the term of the obligations for which the security is being provided. Surety bonds will be accepted only from sureties on the current U.S. Treasury list of approved sureties as published in the U.S. Treasury Department Circular 570. Attorneys-in-fact who sign a surety bond must file with the bond a certified and dated copy of their power of attorney. A security bond may be in full force and effective initially for a one (1) year period, but it must be renewed annually thereafter upon written consent of the surety by issuance of a continuation certificate no later than ninety (90) days prior to the renewal date.

The Performance Security shall be in effect throughout the term of this Agreement and for a period of one (1) year thereafter. The provider of the Performance Security shall give the Commission at least ninety (90) days prior notice of the cancellation or non-renewal of the Performance Security. No claim against Performance Security shall be initiated after the first (1st) anniversary of the end of the term of this Agreement, and no suit, action or proceeding with respect to such a claim shall be brought on a surety bond after the surety bond expires or is terminated. Failure to renew a surety bond shall be an event of default under this Agreement. For the purposes of this Agreement, the Contractor has agreed in Section 12.6 hereof to provide Performance Security during the term of this Agreement.

To the extent any portion of the Work shall be construed to be a "public work" pursuant to T.C.A. § 12-4-201, the parties agree that the Performance Security shall apply towards the bonding requirements of T.C.A. § 12-4-201 et seq.

Post-Closure Care. The taking of those actions after Closure of a landfill or a landfill property, or portion thereof, that are necessary to meet the post-closure care requirements of Tennessee Rule 1200-1-7-.04(8), or such subsequent regulation that replaces or supersedes such rule.

Process Waste. Solid Waste or other waste which is generated by or produced by or results from an industrial or commercial operation or activity.

Refuse. All Non-hazardous Solid Waste originating at residences and commercial establishments, including industrial, institutional, commercial, municipal and medical sites, which is not Process Waste, including without limitation, wastes such as discarded materials from dwelling places, households, apartment houses, stores, office buildings, restaurants, hotels, and institutions, including Garbage, paper, cardboard, wood, cans, glass, ashes and boxes, cuttings from trees, lawns and gardens. The term "Refuse" as used herein does not include Hazardous Waste or Infectious Waste, including, but not limited to acids, explosives, radioactive materials, toxic industrial wastes; nor shall it include any materials that are, or in the future may be, prohibited from dumping by the regulations of TDEC or the State of Tennessee, or by any other public agency, or by operation of law.

Roads.

Access Road - A paved all-weather road located outside the Landfill property, which terminates at the gate to the Landfill.

Haul Road - A paved or unpaved road in the Landfill which is provided to allow users of the Landfill to operate vehicles from the gate of the Landfill to the tipping area at the active face of the Landfill.

Service Road - All roads in the Landfill other than Haul Roads.

Solid Waste. Any Garbage, Refuse, including without limitation recyclable materials when they become discarded, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011). This term includes Special Waste and other materials approved by TDEC for disposal at the Landfill, but this term expressly excludes Hazardous Waste and Infectious Waste.

Solid Waste Laws. The Tennessee Solid Waste Disposal Act, T.C.A. §68-211-101, *et seq.* and the rules promulgated thereunder, both as may be amended from time to time.

Special Waste. Those wastes that include sludges, bulky wastes, pesticide wastes, non-infectious medical wastes, industrial wastes, hazardous wastes that are not subject to regulations under Tennessee Rules 1200-1-11-.03 through 1200-1-11-.07, liquid wastes, friable asbestos wastes, combustion wastes, and other solid wastes that are either difficult or dangerous to manage and require extraordinary management, including without limitation any waste (solid or otherwise) that have a density equal to or greater than 800 pounds per cubic yard. However, discarded automotive tires and dead animals shall not be included in this term. For purposes of this definition, industrial wastes means solid wastes produced in, or generated by, industrial or manufacturing processes, as provided in Tennessee Rule 1200-1-7-.01.

State Regulatory Agencies. The State of Tennessee agencies that have the responsibility of regulating the operation and maintenance of a sanitary landfill, including without limitation, TDEC.

TDEC. The Tennessee Department of Environment and Conservation, an agency of the State of Tennessee, designated to oversee the environmental activities in Tennessee, which, among other duties, regulates the disposal of Solid Waste.

Unacceptable Waste. All Solid Waste which is Hazardous, Infectious or otherwise not included in Garbage, Refuse, and Demolition Waste or any waste excluded by the Landfill Permit.

Work. Contractor's work obligations, in conformance with the terms of Sections 3.1 and 3.2 hereof, during the term of this Agreement, which in general consist of the following:

- (a) Manage, operate and maintain the Landfill;
- (b) Design, construct and finance the operation of the Landfill;
- (c) Manage, construct and finance Closure and Post-Closure Care of the closed portions of the Landfill during the term of this Agreement;
- (d) Operate and maintain equipment as necessary to perform the Work;
- (e) Provide and train personnel as necessary to perform the Work;
- (f) Furnish all supplies, materials, and equipment necessary to perform the Work;
- (g) Pay the expenses of all utilities needed to perform the Work;
- (h) Conduct all billings and collection of revenue for the disposal of waste at the Landfill;

- (i) Undertake good faith efforts to develop markets for Solid Waste for disposal at the Landfill;
- (j) Maintain and renew or modify the Landfill permit, as required or necessary in order to perform the Work; and
- (k) Administrative activities to assist the Commission, such as reports and minutes of meetings, and such additional duties as more specifically prescribed herein.

II. WARRANTIES AND REPRESENTATIONS

2.1 Warranties and Representations of the Commission. Commission hereby warrants, represents and covenants that, as of the date of the execution of this Agreement:

- (a) The Commission owns the Landfill and is the Landfill Permit holder; and
- (b) Commission is duly authorized and empowered to enter into and fully perform this Agreement according to its terms; and
- (c) There is no known decree, judgment, or administrative order of any kind threatened or in existence enjoining or restraining the Commission from taking any action required under this Agreement; and
- (d) All of the Commission's representations and warranties contained in this Agreement and any written statements and exhibits prepared or supplied by the Commission in connection with this Agreement, are true and correct as of the date of the execution hereof.

2.2 Warranties and Representations of Contractor. Contractor hereby warrants, represents, and covenants that, as of the date of the execution of this Agreement:

- (a) All of the Contractor's representations and warranties contained in this Agreement and any written statements and exhibits prepared or supplied by the Contractor in connection with this Agreement, are true and correct as of the date of execution hereof, and
- (b) The Contractor is a duly authorized corporation organized under the laws of, and is authorized to do business in, the State of Tennessee and empowered to enter into and fully perform this Agreement according to its terms; and
- (c) Contractor has the requisite expertise and financial ability to fully, completely, and satisfactorily perform its obligations hereunder in full compliance with applicable law; and

- (d) To the best of its knowledge, the Contractor has disclosed to Commission its knowledge of all facts, information and data pertinent to its capacity to perform its duty and obligations under this Agreement.

III. SCOPE OF WORK

- 3.1 **Intent.** In order to assure viability for the Landfill, the parties hereto intend to develop markets for Solid Waste to increase the anticipated volume to be received at the Landfill. The Contractor shall perform all Work hereunder in compliance with all applicable federal, state, county, and municipal laws, ordinances and regulations. It shall be the financial responsibility of the Contractor to maintain any and all existing permits and/or licenses, and timely pay any and all fees required by said permits and/or licenses, and, utilize its reasonable efforts to obtain in the Commission's name any and all new permits and/or licenses and/or renewals or modifications of any existing permits and/or licenses as may be required in order to operate said Landfill as anticipated by this Agreement. Subject to the requirements of this Agreement, it is further intended that the Contractor shall have maximum flexibility in performing the landfill operations and other solid waste management operations contemplated by this Agreement, which includes, without limitation, performance of the Work, the ability to accept Solid Waste and other wastes allowed by TDEC and/or EPA, for disposal at the Landfill, and the discretion to make and implement at Contractor's expense design improvements and changes to enhance the capacity of the Landfill, including on-site vertical and horizontal expansions of the Landfill cells; provided, that any such activity that involves a material modification of the Landfill or the Landfill Permit will be subject to the Commission's review and approval per Section 4.1.
- 3.2 **Contractor's Solid Waste Responsibilities.** Except as otherwise set forth in this Agreement, Contractor agrees to conduct the Work in accordance with the Solid Waste Laws, and in accordance with applicable standards of care, and to receive, process, dispose of and otherwise handle Solid Waste, and to receive other wastes allowed by TDEC and/or EPA.
- 3.3 **Commission's Responsibilities.** Except as otherwise set forth in this Agreement, the Commission shall work in good faith with Contractor to facilitate Contractor's performance of its obligations hereunder, including without limitation the efforts to enhance the efficiency and capacity of the Landfill, and the intent of the parties. Subject to the Commission's reservations of rights set forth in this Agreement, including without limitation its right to operate a Demolition Waste landfill on the Landfill site pursuant to Subsection 5.5(b) of this Agreement, the Commission agrees that Contractor shall be entitled to use any and all facilities and resources on the Landfill and on any other properties and interests acquired to support the Landfill, in order for Contractor to perform its obligation hereunder. To fulfill such responsibilities, the Commission agrees to exercise, at Contractor's reasonable expense, any and all lawful means available to it, including without limitation, the obtaining of all necessary permits, licenses and approvals, or any

amendments, modifications or supplements to existing permits, licenses and approvals, and the causing of any and all needed utilities to be available for the operation and/or development of the Landfill. To fulfill such responsibilities, the Commission agrees to exercise any and all lawful means available to it, for the acquisition, at Contractor's reasonable expense, of additional interests in real estate, such as rights of ingress or egress, rights of way, easements, access to utilities, and soil for cover material. All interests purchased pursuant to this Section shall be titled to the Commission.

3.4 Designated Representatives. The Commission designates the Chair of the Commission as the initial Contract Administrator, who shall serve as the Commission's primary liaison with the Contractor. The Contract Administrator shall be required to devote only the time and effort to the administration of this Agreement that the Commission shall require. The Commission may from time to time permanently change the designated Contract Administrator by providing the Contractor thirty (30) days advanced written notice. The Commission may from time to time temporarily change the designated Contract Administrator by providing the Contractor three (3) days advanced written notice (identifying the temporary Contract Administrator and setting the beginning and end of the temporary period). After the end of any such temporary designation period, the previously designated permanent Contract Administrator shall return to the position. Contractor also shall from time to time designate in writing an individual (the "Liaison Representative") to serve as its primary liaison with the Contract Administrator. The Liaison Representative shall administer this Agreement on behalf of Contractor. Instructions and/or representations from the Contract Administrator and the Liaison Representative shall be deemed to be instructions and/or representations from the Commission and the Contractor, respectively. The Contract Administrator is authorized by the Commission to execute any and all documents relating to the day-to-day performance of Work under this Agreement, provided, that such authorization does not apply to (a) applications for modifications and/or amendments to the Landfill Permit, or (b) amendments of this Agreement, unless either such circumstance is specifically authorized by the Commission and documented in its minutes.

3.5 Agreement Period.

- (a) This Agreement shall be effective upon execution by the parties hereto, the Contractor shall commence the Work on or before the Commencement Date, and the term of this Agreement shall be for a term of twenty (20) years commencing from the Commencement Date and shall provide Commission with two (2) one-year extension periods, each of which may be exercised by the Commission's written notice received by Contractor at least 120 days prior to the Agreement's termination date, or (if applicable) the extension period's termination date. Except as provided in Subsection (b) below, the Contractor shall be required to provide a minimum of two (2) years' cell capacity at the end of the Agreement's initial term based on the average tonnages received during the two (2) years immediately

preceding the Agreement's termination (but in no event less than 120,000 tons of capacity).

- (b) Notwithstanding any provision in this Agreement to the contrary, the Commission shall have a unilateral right after the first three (3) Agreement Years to terminate this Agreement in the event the tonnages received at the Landfill should fall below 5,000 tons per month, based on a rolling six month average using the most recent six months, or below 60,000 tons per any fiscal year of the Commission (either event hereafter being referred to as a "Early Termination Event"). In such event, for a period of 365 days immediately following the Early Termination Event, the Commission shall have the right in its sole discretion to terminate this Agreement by providing a written termination notice to the Contractor at least sixty (60) days prior to the date of termination; provided that such right to terminate shall require the prior written consent of the Contractor if during the Early Termination Event the Commission continues to receive the minimum Host Fee pursuant to Section 10.6 of this Agreement and the Contractor reasonably determines that the Landfill continues to be financially viable. Commission's decision or failure to terminate this Agreement in the event of an Early Termination Event shall not affect its right of termination for any later Early Termination Event. During any period in which the Commission shall be entitled to terminate this Agreement following an Early Termination Event, the Contractor shall not be required to construct new cells in the Landfill or otherwise expand the Landfill to extend its life beyond the possible early termination date of this Agreement, unless the Commission gives the Contractor a waiver of its early termination right for that respective Early Termination Event.
- (c) In the event that the Commission is dissolved, one or more of the Area Governmental Users withdraws from the Commission, or the Commission is otherwise rendered unable to fully perform under this Agreement, and one or more of the Area Governmental Users either fail to continue the Commission or do not fully and directly assume the obligations of the Commission and, in either event, honor the rights of the Contractor under this Agreement, the Contractor may terminate this Agreement early, upon sixty (60) days prior written notice to the Commission. Termination under this Subsection will not impair the Contractor's rights to enforce the terms of this Agreement or its rights hereunder.

IV. PERMITTING AND LICENSING

- 4.1 **Permits.** The Contractor shall be responsible, at its expense, for procuring, modifying and renewing all permits, orders and licenses required for the Landfill to be fully operational as of the Commencement Date. All permits, orders and licenses applicable to the Landfill shall be issued in the name of the Commission. The Contractor shall materially comply with the provisions of all such permits, orders and licenses. The Commission shall supply to the Contractor a copy of all

permits, orders and licenses and TDEC waste discharge requirements for the Landfill, including without limitation any and all documents, instruments and other writings concerning and/or related to the Commission's efforts to maintain and/or modify the Landfill Permit. The Commission agrees to cooperate with the Contractor in the review and approval of any proposed changes to the Landfill Permit or other modifications to the Landfill so long as the proposed change or modification does not materially adversely affect the Commission. Subject to the foregoing, the Commission agrees to support and assist the Contractor in obtaining any and all permits or permit amendments/modifications necessary hereunder. The Commission will timely cooperate with Contractor in the scheduling of and having appropriate representatives available for public hearings and meetings in connection with the approval of the modification of the Landfill Permit.

- 4.2 **Title to Landfills and Permits.** At all times hereunder, title to the Landfill and all applicable permits shall remain in the name of the Commission.

V. **OPERATION, ADMINISTRATION AND MAINTENANCE OF LANDFILL**

Except as otherwise provided herein, the Contractor shall, at its expense, conduct the Work, including, but not limited to, the specific items listed below:

- 5.1 **Required Reporting and Minutes.** The Contractor shall report monthly to the Commission on its operations and, unless otherwise excused by Commission, shall send an employee or representative familiar with Contractor's operations at the Landfill to attend all meetings of the Commission, including all regular meetings and any special called meetings and workshops. A monthly operations report shall be submitted to the Commission at its regular meetings, or by mail to the members of the Commission if no regular meeting is held for a particular month. The monthly operations report shall also be promptly mailed or delivered by the Contractor to each member of the Commission who is not in attendance at the meeting at which the report is presented. The monthly operations report shall include the following reports and information for the reporting period: (i) Tonnage Report showing the total amount of tons received and the source of such tonnage and respective fees charged therefore; (ii) Inspections Report detailing any inspection activity, findings and responses to any inspections conducted by regulatory authorities, including copies of any inspections reports issued by such authorities; (iii) Tire Report showing the tonnages of tires received; (iv) Engineering and Legal Report providing the estimated capacity of the active cells at the Landfill (which shall be based on an annual physical or aerial survey and estimated monthly during the interim based on the tonnages received) and any significant engineering or legal issues of concern relative to the operations of the Landfill that the Contractor becomes aware of during the reporting period including without limitation notice of any litigation filed during the period involving the Landfill or arising from its operations; (v) financial report showing the calculation of fees required to be paid under this Agreement to the Commission; and (vi) such additional information or reports as are required to

properly inform the Commission of the ongoing operations and management of the Landfill by Contractor under this Agreement.

Contractor shall also be responsible for preparing a set of draft minutes of all meetings of the Commission for submittal to the members of the Commission prior to its next regular meeting. The minutes shall be prepared in the form reasonably required by the Commission.

Each calendar year, the Contractor shall also timely prepare and submit for Commission approval, the Annual Solid Waste Report required to be filed with TDEC. The Contractor shall also be responsible for timely filing the report with the proper regulatory authority upon its approval by the Commission.

On or before February 1 of each year during the term of this Agreement, Contractor shall report to the Commission the compaction and density achieved and air space used during preceding calendar year, as well as the remaining air space capacity of the Landfill (only the permitted portion) as of the end of such fiscal year. Contractor may provide the same report it provides to TDEC in satisfaction of this requirement.

Contractor shall provide to the Commission or its designee a copy of all reports filed with TDEC with respect to the status of Contractor's operations and compliance with the Landfill Permit and other required permits and licenses, and maintain at the Landfill a copy of such reports as well as a copy of the Landfill Permit and any other required permits or licenses for operation of the Landfill.

Contractor shall report to the Contract Administrator any violations of the Landfill Permit or applicable law with respect to which it has received notice, and with respect to such violations occasioned by acts or omissions of Contractor, report all action taken or to be taken to correct such violations within seventy-two (72) hours after receipt of notice of violation. Contractor shall also furnish to the Contract Administrator all written reports and evaluations of the operation of the Landfill received by Contractor from TDEC or any other regulatory authority as a result of any inspection of the Landfill and the responses of Contractor.

- 5.2 Hours of Operation.** Haulers and the public shall only deliver Solid Waste at the Landfill according to the hours set forth in this Section and the days and hours set forth by law and in all relevant permits. Subject to the foregoing, the Landfill will be open for business, at a minimum, Monday through Friday from 7:00 a.m. to 3:00 p.m., and on Saturdays between 7:00 a.m. to 12:00 noon, Eastern Time. The Landfill may be closed on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. The Contractor shall obtain prior written approval from the Contract Administrator if the Contractor temporarily reduces the operating hours below the above-stated minimum. The Contractor shall obtain prior written approval from the Commission if the Contractor permanently reduces the operating hours below the above-stated minimum. The Contractor shall be at the Landfill operating during scheduled

hours and such additional time as necessary to fulfill the requirements of the Agreement.

- 5.3 **Personnel and Customer Service.** The Contractor shall assign personnel to perform operations at the Landfill on such days and during such hours that Solid Waste is being delivered and disposed of on the premises, as may be reasonably required to assure a smooth and efficient operation. The Contractor shall employ for the Work only such superintendents, supervisors and workers who are careful, competent, and fully qualified to perform the duties or tasks assigned to them, including the operation of equipment, and shall dismiss any person employed by the Contractor, who in performance of the Work, engages in misconduct, or is incompetent, dishonest, or neglectful in the proper performance of his or her duties, or who neglects or refuses to comply with or carry out the directions of the Contractor. Contractor's superintendents must: (a) Work at the Landfill full-time; (b) obtain and maintain all legally required certifications and comply with all other legal or regulatory requirements. The Contractor shall file with the Contract Administrator the names, addresses and telephone numbers of the Liaison Representative and any other authorized representatives of the Contractor who can be contacted at any time regarding the Contractor's Landfill operations. These authorized representatives must maintain offices within the County and be fully authorized and be equipped to respond to reasonable requests of the Contract Administrator. If the Contract Administrator finds it necessary to give directions to assure compliance with the provisions of this Agreement, the Contract Administrator shall give such directions in writing to the authorized representative of the Contractor.

Contractor shall provide its employees involved with the Work with adequate training to perform the job responsibilities assigned to them and to assure their safety in the performance of their work activity. Contractor's employees shall be required to wear a clean uniform bearing the Contractor's name. Such employees shall additionally bear some means of individual identification as a name tag or identification card. At no time shall a Contractor's employee in any way identify or represent him/herself as an employee of the Commission. Contractor shall also abide by all applicable federal, state and local laws and regulations pertaining to employment, employee selection, compensation, and such other matters as relate to the performance of the Work.

Contractor shall provide good customer service to its customers in accordance with generally accepted standards for the operation of a Landfill and treat all customers fairly and endeavor to respond to customer complaints in a timely and reasonable manner. Contractor shall post information at the Landfill about how to lodge a complaint. The Contractor shall notify the Commission monthly of complaints received at the Landfill.

- 5.4 **Landfill Monitoring.** During the term of this Agreement, Contractor shall establish, maintain, test and analyze all groundwater monitoring wells in conformance with the Landfill Permit and all other requirements or orders of

TDEC. Contractor shall be responsible for all regulatory compliance during this Agreement, such as monitoring well installations and maintenance thereof, whether related to an existing or new monitoring well station and whether required by the Landfill Permit or regulatory action. Notwithstanding the foregoing, except as may be provided by Subsection 12.3(a), in no event shall Contractor be responsible for the investigation and/or remediation under any federal, state or local law, including without limitation the federal and state "superfund," hazardous waste, air pollution or water pollution laws.

5.5 Leachate Collection; Methane and Salvage Rights.

- (a) The Contractor shall provide a passive landfill gas monitoring program for methane migration as required by applicable law. The Contractor shall maintain an on-site leachate collection system for the removal of leachate from the Landfill. The Contractor shall be responsible for the actions of removal, storage, handling, transportation, and disposal of leachate generated by the Landfill. The Commission shall use its reasonable efforts to assist Contractor in maintaining a cost effective means of leachate removal, storage, handling, transportation and disposal; provided, that the maintenance, replacement and improvement thereof shall be at Contractor's expense.

- (b) The Commission expressly retains all (i) rights to operate a Demolition Waste landfill on the Landfill site (in cell(s) separate from the sanitary landfill cells comprising the Landfill); (ii) salvage or recycling rights with respect to Solid Waste at the Landfill, and (iii) all methane gas rights and related beneficial use of such gas resulting from Landfill operations (collectively, the "Reserved Rights"); provided, that any exploitation of any such Reserved Rights by the Commission shall not (i) be performed in a manner that will unreasonably interfere with Contractor's Work; (ii) increase the costs of performance of Contractor's obligations under this Agreement without adequate compensation; or (iii) otherwise impede Contractor's ability to perform hereunder. The Contractor shall have no entitlement to the same and is prohibited from exploiting any such Reserved Rights without the prior written consent of the Commission; except to the extent necessary for Contractor to comply with applicable law. Contractor has a right of first refusal to participate in each and every Reserved Rights operations by the Commission on substantially similar terms to that being offered by the Commission to any other contractor or service provider; and, if such right of first refusal is exercised, the Contractor shall be entitled to be the exclusive provider of such services to the Commission. Except as may be mutually agreed to between the parties in a separate written agreement, the Contractor shall have no obligations to perform services or incur costs related to or arising from the Reserved Rights, and any such activities by or on behalf of the Commission shall not unreasonably interfere with Contractor's operations at the Landfill.

5.6 Use of Landfill and Facility Accessibility.

- (a) Subject to the terms of this Agreement, the Commission hereby grants to the Contractor the exclusive right of possession and control of the Landfill and all improvements thereon, and Contractor may utilize during the term of this Agreement at no charge, any and all of the natural resources of the Landfill property, including without limitation the rights to minerals, the rights to crops and timber, and all rights to and use of soils for cover; provided, that Contractor shall not commit waste. Contractor shall maintain buildings, structures, and all other facilities, including the entry gate, scale, fences and other barriers, and other structures and improvements reasonably required for the operation of the Landfill in accordance with the Landfill Permit or by TDEC. Contractor shall not be required to fence the Landfill but will maintain all existing fences in good condition. All permanent real property improvements to the Landfill made by the Contractor during the term of this Agreement shall remain on the property and become the property of the Commission after the term of this Agreement, except to the extent that such improvements must be removed to conduct Closure.
- (b) Upon written notice from the Contract Administrator, Contractor shall have the authority to and in its discretion may deny access to the entity or person designated in such notice, whether for non-payment of charges, attempts to deliver Unacceptable Waste, or any other valid reason. Contractor shall ensure that the Landfill is accessible during normal operation hours to Commission, state and federal officials for any purpose, including inspection, official tours or any other reasonable activity as determined by the Contract Administrator to be appropriate. The Contractor shall promptly notify the Contract Administrator of any inspections by EPA and/or State Regulatory Agencies.
- (c) The Contractor is responsible for taking commercially reasonable steps to provide 24-hour site security, 365-days a year, to avoid unauthorized site entry and or facility misuse; provided that the Contractor shall not be responsible for security breaches resulting from the Commission's use of the Landfill pursuant to its reservations of rights under this Agreement. The Contractor shall not allow scavenging or salvage operations at the Landfill unless (i) the person doing so has the approval of the Contractor, TDEC and the Commission, (ii) such operations do not impede the normal routine disposal operations, and (iii) such operations are conducted by personnel working under the immediate and direct control of Contractor.
- (d) The Commission, or its designated agent, shall have the right to inspect the Landfill during all operating hours and at such other times as may be deemed necessary to protect the interests of the Commission. This right to inspect and audit the Landfill includes, but is not limited to the inspection of loads, scales, monitoring records, and all other records Contractor is

required to maintain, including without limitation, injury and environmental incident reports and such other environmental or contractual compliance related records as the Commission deems necessary or as required by applicable regulatory authority. During groundwater or other monitoring, the Commission may have a representative present to inspect Contractor's procedures and to receive split samples for independent testing, at Commission's expense. In addition to the foregoing, the Commission shall have the right, on prior written notice to Contractor, to require Contractor to conduct such procedures and acquire such samples from permit monitoring points or other monitoring points required by regulatory authorities, including groundwater and gas monitoring wells, at such times and in such manner as it deems necessary, provided any such discretionary inspections (not required by the Landfill Permit or regulatory authorities) shall not interfere with Contractor's operations and shall be at the Commission's sole cost and expense. In order to insure that the Contractor meets or exceeds all contractual obligations under this Agreement, the Commission shall have the right to review and approve (which approval shall not be unreasonably withheld) all proposed design, construction and operational plans, permit applications or other documents that are submitted to regulatory authorities, including requests for modifications, addenda or other additions. Contractor shall promptly provide to the Commission all such information and supporting data requested for review.

- 5.7 **Litter, Dust and Noise Control; Open Burning.** The Contractor shall use all reasonable efforts to maintain and keep free of litter and other foreign material all areas within the Landfill and on all Access Roads within one-quarter mile of the gate to the Landfill. Contractor shall, in accordance with industry standards, be solely responsible for maintaining the Landfill in a clean, vector-free, and sanitary condition (normal wear and tear excepted). The Contractor shall furnish, maintain and use such dust control equipment as may be reasonably necessary to protect employees, the public and adjacent properties and to minimize the creation of dust at the Landfill. No open burning on the Landfill shall be permitted unless specific approval of the Contract Administrator has been received.
- 5.8 **Wind Screens (Temporary).** The Contractor shall furnish portable wind screens which Contractor shall use during periods of high wind to contain blowing waste, such as paper and other light debris. Suitable equipment and adequate personnel shall be provided to collect windblown waste, as needed, to keep the screens cleared of such waste and to relocate screens cleared of such waste.
- 5.9 **Placement and Compaction of Solid Waste.** Unless otherwise required by the State Regulatory Agencies and confirmed by the Contract Administrator, all Solid Waste delivered to the disposal area shall be placed, compacted, and covered daily by the Contractor in a manner to best achieve operating efficiencies and maximum obtainable densities, including utilizing such techniques as spoils disposal, relocation of roads and the sequencing of space utilization within each

major disposal cell. Contractor reserves the right to use synthetic or any other acceptable alternative daily cover, per TDEC regulations.

5.10 Demolition Waste. Demolition Waste may be placed in the sanitary fill area at the Landfill.

5.11 Unacceptable Waste Procedures. The Contractor shall exert all reasonable efforts to enforce applicable laws, regulations and orders regarding the unlawful disposal of Unacceptable Wastes at the Landfill, and to prevent deposits of Unacceptable Waste at the Landfill, and to prevent the burying of any Unacceptable Waste at the Landfill other than those permitted by TDEC and permitted by this Agreement. It is recognized that some Unacceptable Wastes, including Hazardous and Infectious Waste, may occasionally be unloaded at the Landfill by waste generators and Haulers. The Contractor shall train appropriate employees to recognize such Unacceptable Waste and shall use diligent efforts to observe the procedures set forth below:

- (a) The active operation of unloading, compacting and covering Solid Waste shall be suspended in the immediate vicinity of the identified Unacceptable Waste. Safety measures shall be instituted as necessary.
- (b) If the vehicle that transported the Unacceptable Waste can be identified and is still at the Landfill, the Contractor's employees shall record the license number and any other identifying signs or features of the vehicle and shall request the operator of the vehicle to remain at the Landfill, and shall immediately notify TDEC and the other agencies and officials as required by law. The Contractor's employees shall endeavor to get the operator of the vehicle that delivered the Unacceptable Waste to take appropriate actions to dispose properly of the Unacceptable Waste. Regardless of Contractor's success in having the offending party remove the Unacceptable Waste, Contractor shall make formal demand upon the responsible party that it remove the Unacceptable Waste or any portion remaining from the Landfill in accordance with procedures approved by TDEC.
- (c) If no responsible party can be identified or if a responsible party refuses to remove and properly dispose of Unacceptable Waste delivered to or deposited at the Landfill, the Contractor shall remove the Unacceptable Waste from the Landfill cells within forty-eight (48) hours of the discovery of such Unacceptable Waste, and thereafter promptly and properly dispose of the Unacceptable Waste at its costs with full right of recovery against the responsible party. The Commission hereby assigns to Contractor any and all of its cost recovery rights under CERCLA, 42 U.S.C. § 9601 *et seq.*, against such responsible party when Contractor removes and disposes of such Unacceptable Waste.

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

5.12 Load Checking. Contractor shall operate a program of spot-checking loads of Solid Waste delivered to the Landfill in compliance with all applicable laws, regulations and ordinances.

5.13 Tire Disposal Program. Except as otherwise provided in this Section, the Contractor shall administer and operate on behalf of the Commission a tire collection and disposal program at the Landfill throughout the term of the Agreement. The tire collection and disposal program shall conform to all applicable laws and shall to the extent possible be administered and operated in such a manner as to allow Loudon County and/or the Commission to continue receiving grants from the State of Tennessee for such program. Any grants received by the Commission from the State of Tennessee during the term of this Agreement for periods of time when the Contractor is administering and operating the program for the Commission shall be promptly reported to the Contractor by the Commission, and Contractor shall be given a credit in an amount equal to the grant received by the Commission against any future host fees to be paid to the Commission by Contractor under this Agreement. The credit shall be applied to any host fees due the Commission by the Contractor for the month first following the Commission's receipt of the grant funds. The Commission neither warrants nor guarantees that any future grants are available from the State of Tennessee for such program or that Loudon County or the Commission shall be entitled to the same under the terms of this Agreement. Whether or not any such grants are available, and notwithstanding the amount of such grants in the future, Contractor shall continue to be responsible for administering and operating the tire disposal program in accordance with the remaining requirements of this Section. The Commission will cooperate with the Contractor and use reasonable efforts to apply for and obtain any available grants for such program. Notwithstanding the above stated requirements of this Section, the Commission reserves the right to terminate the Contractor's obligation to accept and dispose of tires that are delivered to the Landfill upon ninety (90) days written notice to Contractor. Such right of termination may be exercised from time to time throughout the term of this Agreement. In the event of any such termination, Contractor shall resume its tire acceptance and disposal services at the Landfill upon 120 days prior notice to the Contractor by the Commission. Such resumed services shall be commenced

by the Contractor without any startup charge, implementation fee or other expense to the Commission except for its right to a future credit against host fees as provided above.

- 5.14 **Flow Limitations and Special Restrictions.** Unless otherwise expressly permitted in writing by the Commission, the Contractor shall not be permitted to accept more than 800 tons of waste per day at the Landfill, as calculated on a daily average for any running thirty (30) day period. Contractor shall also be prohibited from accepting waste at the Landfill that is transported from a location that is outside a radius of 150 miles from the Landfill without the prior written approval of the Commission. Contractor is also prohibited from accepting sanitary sewage sludge at the Landfill, unless previously authorized by the Commission under terms and conditions prescribed by the Commission. Contractor shall provide such periodic reports as may be reasonably requested by the Commission to verify Contractor's compliance with these flow and waste restrictions.
- 5.15 **Surface Drainage.** All surface drainage at the Landfill shall comply at all times with all applicable regulatory requirements and all applicable permits. Due to the configuration of the side slopes, surface runoff flowing from above the working level must be directed around the perimeter of the area being filled. Unless otherwise required by applicable regulations or the Landfill Permit, the top of the working level shall be sloped toward either one or both side slopes at a minimum of two percent (2%) and not exceed five percent (5%).
- 5.16 **Restriction of Certain Wastes.** The Commission reserves the right to regulate or restrict any and all Special Waste disposed of at the Landfill that causes any abnormal or unusual smells or creates a public safety concern such that the continued disposal of such Special Waste would (a) result in obnoxious odors to the surrounding neighbors of the Landfill, (b) create adverse facility conditions that were outside of the Landfill's prior operating history, or (c) pose a public safety threat, all as reasonably determined by the Commission.

VI. **ACCESS AND SAFETY**

- 6.1 **Haul Roads and Service Roads.** It shall be the Contractor's responsibility to provide and maintain, at its expense, all Haul Roads and Service Roads within the Landfill required for the purposes of transporting Solid Waste to the actual point of disposal, or transporting earth materials for fill within the property, and such other roads within the Landfill as may be required for its convenience. Haul Roads shall be well maintained and shall provide safe all-weather access at all times.
- 6.2 **Access Roads.** As of the date of this Agreement, the Contractor acknowledges that access to the Landfill is adequate to perform its obligations under this Agreement. The Commission shall cooperate with the Contractor to maintain adequate Access Road(s) for ingress to and egress from the Landfill. The

Contractor shall not be responsible for the maintenance of public roads outside the Landfill property.

- 6.3 **Fire Protection**. The Contractor shall have the right to use and maintain existing water lines and/or water storage at the Landfill as may be required for fire fighting. Contractor shall be responsible for payment of utilities on the Landfill (if operating the same) incidental to operation. In the event of a fire, the Contractor shall immediately notify the local fire fighting agency, and shall diligently work to extinguish the fire.
- 6.4 **Access to Tipping Area**. The Contractor shall ensure that vehicles may have clear and safe access to the tipping areas at all times.
- 6.5 **Signs and Traffic**. The Contractor shall provide and maintain all existing and future signs displaying rules applicable to the Landfill in a clean and readable condition. The Contractor shall provide and maintain signs for the convenience of the vehicles using the Landfill and for safe and efficient traffic flow to and from the tipping areas.
- 6.6 **Gate Control**. Contractor shall provide a gate control program at the Landfill as required by applicable state regulations.

VII. DEVELOPMENT OF LANDFILL FACILITY

- 7.1 **Contractor's Responsibility**. The Contractor shall, at its cost, develop the Landfill in accordance with the Landfill Permit and shall obtain all licenses, permits and approvals necessary to construct and operate the Landfill on behalf of the Commission. The Landfill, as it is developed, will continue to be owned by the Commission and all permits for this facility shall be issued in the name of the Commission.
- 7.2 **Commission's Responsibility**. The Commission shall, as needed, and at Contractor's reasonable expense, assist the Contractor (a) in obtaining any and all permits, licenses and approvals necessary or advantageous to construct and operate the Landfill in accordance with the Landfill Permit, and (b) to acquire any property interests (e.g., soil and other cover material, rights-of-way, easements, rights of ingress and egress) necessary or advantageous to construct and operate the Landfill, and to dispose of Solid Waste at the Landfill. The Commission shall exercise any and all of its rights to provide such assistance to Contractor.
- 7.3 **Contractor's Rights**. Subject to Section 5.5(b) of this Agreement, the Contractor may design and construct the Landfill in its discretion using the property within the Landfill boundaries, as long as Contractor complies with all laws and the Landfill Permit. The Contractor may contract for and accept any and all Solid Waste for disposal at the Landfill as expanded; provided it complies with all laws, rules and regulations governing the Landfill and the terms of this Agreement.

- 7.4 **Compliance with Contracting Law for Improvements.** Prior to the commencement of any portion of the Work at the Landfill that constitutes a public work as contemplated by T.C.A. § 12-4-201, the Contractor shall provide the Commission with a payment bond for the payment of all labor and materials in the amount of one hundred percent (100%) of the contract amount for such work. The bond shall be issued in compliance with T.C.A. § 12-4-201 et seq. and in a form satisfactory to the Commission by a surety licensed to do business in the state of Tennessee. Bonds will be accepted only from sureties on the current U.S. Treasury list of approved sureties as published in the U.S. Treasury Department Circular 570. A valid Power of Attorney must be attached to the bond.

VIII. CLOSURE OF LANDFILL

- 8.1 **Final Cleanup.** Upon completion of this Agreement or Closure of the Landfill, the Contractor shall remove from, and dispose of, all surplus and discarded materials, rubbish, temporary structures, construction equipment and debris which may have accumulated at or upon the Landfill during the term of this Agreement.
- 8.2 **Closure/Post-Closure Care of Existing Landfill.** The Contractor shall be responsible for compliance and all costs associated with interim closure requirements under the Solid Waste Laws with respect to those cells receiving Solid Waste during the term of this Agreement. The Contractor shall be responsible for compliance with Post-Closure Care for all closed portions of the Landfill during the term of this Agreement. After the term of this Agreement, the Commission shall assume responsibility for Post-Closure Care. Notwithstanding the foregoing, except as may be provided by Subsection 12.3(a), in no event shall Contractor be responsible for the investigation and/or remediation under any federal, state or local law, including without limitation the federal and state "superfund," hazardous waste, air pollution or water pollution laws.
- 8.3 **Financial Assurances.** The Commission acknowledges that the bond/security requirements of the State of Tennessee for the Closure and Post-Closure Care of Phases I and II/IV of the Landfill are currently the responsibility of the Commission, which with the pledge of the County's share of state taxes, is in compliance with all current state requirements relating to Closure/Post-Closure Care security. The Commission will continue to meet such annual financial assurance obligations with the State during the term of this Agreement. Any increased bonding requirements related to the opening of new phases of the Landfill beyond Phase II/IV by the Contractor during the term of this Agreement resulting from a modification of the existing Landfill Permit shall be the responsibility of the Contractor.
- 8.4 **Early Termination of Agreement.** In the event that this Agreement is terminated during and/or prior to the end of the Landfill's operational life, the Commission shall immediately assume full responsibility for Closure and Post-Closure Care for the Landfill. Upon such termination, Contractor shall be relieved of any further responsibility for Closure of and Post-Closure Care for the

Landfill. If the early termination is exercised by the Contractor pursuant to Subsection 3.5(c) of this Agreement, then the Contractor shall conduct Closure on any portion of the Landfill that has accepted waste, unless the Commission provides written instructions to the Contractor to not conduct such activities within sixty (60) days of the termination of the Agreement.

IX. DEFAULT

- (a) In addition to any other right of termination provided for under this Agreement, if the Contractor:
 - (i) Violates any provision or condition of this Agreement;
 - (ii) Fails to begin the Work under this Agreement within the time specified therein;
 - (iii) Fails to perform the Work with sufficient workers and equipment or with sufficient materials to assure the prompt and proper execution of the Work;
 - (iv) Fails to perform the Work suitably or neglects or refuses to remove materials or to perform anew such Work as may be rejected as unacceptable and unsuitable;
 - (v) Discontinues the prosecution of Work;
 - (vi) Fails to resume Work which has been discontinued within a reasonable time after notice to do so;
 - (vii) Fails to maintain the required contract performance security or to timely increase the amount of such security upon notice from the Commission;
 - (viii) Dissolves, becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency;
 - (ix) Makes an assignment for the benefit of creditor; or
 - (x) If any other cause whatsoever, fails to carry on the Work as required by this Agreement, the Commission will give notice to the Contractor as follows:
 - 1. A verbal notification from the Contract Administrator to the Contractor (documented by the Commission) that one or more of the above infractions have occurred; and
 - 2.. A written notification from the Commission stating the infraction(s), as were given in the verbal notification, and that if

such infractions cannot be corrected the Commission will proceed to take full power and authority from the Contractor for default of this Agreement. A copy of such notification shall be sent to the Contractor's surety.

- (b) The Contractor or its surety shall, within a period of ten (10) days after such notice, proceed to initiate cure of the noticed infractions in accordance therewith.
- (c) An "Event of Default" occurs when Contractor fails to materially perform any provisions of this Agreement including, but not limited to the items listed in clause (a) above, and Contractor fails to cure its default within forty-five (45) days after its receipt of the written notification by the Commission as provided in clause (a) above; provided, that if such default cannot be cured within forty-five (45) days, an Event of Default does not occur if the Contractor promptly initiates steps to cure the default and diligently pursues correcting the default until cure is achieved, which cure must be achieved as soon as practicable, but in no event more than one hundred-eighty (180) days after the Commission's written notice. Upon the occurrence of an Event of Default, the Commission shall have the right, in addition to any other rights and remedies as provided in Section (f) below, to terminate this Agreement by sixty (60) days written notice to Contractor, and in the alternative has the right, but not the obligation, to cure said event of default, at Contractor's expense.
- (d) In the event the Commission terminates this Agreement as provided in Section (c) of this Article IX, the Commission shall have the right to assume control over the operations on the Landfill, and all or a portion of the Performance Security shall be forfeited to the Commission to the extent of actual damages.
- (e) Contractor shall have the right to terminate this Agreement in the event of a material breach of this Agreement by the Commission, which, after forty-five (45) days following written notice from Contractor, has not been cured.
- (f) The rights and remedies of the parties provided in this Article IX shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Failure on the part of either party to exercise any right or remedy granted to it hereunder for previous default shall not constitute a waiver to exercise any right or remedy granted to it hereunder in the event of a subsequent default.

X. REVENUE COLLECTION & COMPENSATION

- 10.1 Revenue Collection; Billing.** Subject to the Commission's Reserved Rights and the revenue related thereto, the Contractor will be responsible for and have the right of collection of all revenue, including tipping fees, for use of the Landfill. The Contractor will be responsible for the operation of the entry gate to the Landfill, scale house and computer in accordance with the permit and applicable law, collect cash at the Landfill, and for the billing and collecting of all revenue

for the disposal of waste at the Landfill under its control. The Contractor will be responsible for the payment of all state or federal fees and/or surcharges assessed on such waste.

The Contractor shall bill the Area Governmental Users on a monthly basis for service rendered within ten (10) calendar days following the end of the calendar month for which the services are provided, and the Area Governmental User shall pay the Contractor on or before the fifteenth (15th) calendar day of the next month without incurring any penalties or interest (e.g., an invoice for services rendered in March shall be issued by April 10th and shall be paid by May 15th). Such billing and payment shall be based on the rates permitted by this Agreement.

- 10.2 Service Fee.** Contractor shall receive all revenue, fees, charges, assessments or other income collected for activities conducted at the Landfill under its control, from and after the Commencement Date, as Contractor's fees for services rendered under this Agreement.
- 10.3 Tipping Fees and Other Charges.** The Contractor shall assess reasonable per ton tipping fees to all users of the Landfill during the term of this Agreement so as to adequately perform the Work. Such tipping fees shall comply with the requirements of this Section and shall include a general tipping fee, an Area Government Users tipping fee, and custom tipping fees for volume users and Special Wastes. The per ton general tipping fee shall reflect market conditions for the area and be charged to all users including the general public except for Area Governmental Users and those users who are charged a custom tipping fee as provided in this Section. For at least the initial two Agreement Years, the general tipping fee shall be \$28.00. Area Governmental Users shall be charged a discounted general tipping fee that for at least the initial two Agreement Years shall be \$19.85. Contractor may discount its general tipping fee to volume users or for Special Waste in accordance with area market conditions but shall report such discounts to the Commission each year. Once established, the general tipping fee and the Area Governmental Users tipping fee shall only be changed during the term of this Agreement in accordance with the changes in the cost of doing business, as measured by fluctuation in the Consumer Price Index (CPI), as further described hereinafter. The general tipping fee and the Area Governmental Users tipping fee shall each be adjusted as of each July 1 following the initial two Agreement Years, to reflect increases, if any, during the previous twelve (12) month period ending on each May 31, in the Consumer Price Index, all urban users, as issued by the Bureau of Labor Statistics of the United States Department of Labor (the "Price Index"). Such adjusted rates shall each be established for the next twelve (12) months, based on the result of multiplying the then current rate for each by a fraction, the numerator of which shall be the Price Index ending on May 31 immediately preceding the July 1 for which the rates are to be adjusted, and the denominator of which shall be the Price Index ending on May 31 for the previous year:

current rate X Price Index for May 31 of current year
Price Index for May 31 of preceding year

In the event that the parties mutually agree in good faith that the Price Index ceases to incorporate a significant number of items, or if a substantial change is made in the method of establishing the Price Index, then the Price Index used herein shall be adjusted to the figure that would have resulted had no change occurred in the matter of computing the Price Index. In the event that an index (or a successor or substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information thereto for use in determining this Agreement's Price Index shall be used in lieu of the consumer price index.

Subject to the other requirements of this Section, increases to the general tipping fee and the Area Governmental Users in excess of the Price Index, or adjustments to such fees at any time during the term of this Agreement other than that provided for above, may be authorized by the Commission only after the Contractor's filing of a petition for extraordinary relief with Commission containing such facts and information as the Commission may reasonably require to consider and decide whether such extraordinary relief is warranted under the circumstances. The Commission shall consider and decide all matters related to any such petition in its sole discretion and shall have no obligation to grant any relief under any circumstance; provided, that such decision by the Commission shall not otherwise affect the Contractor's rights under this Agreement. Notwithstanding the foregoing, Contractor may also obtain from the Contract Administrator approval of a tipping fee for any Special Wastes in excess of the general tipping fee at any time during the term of this Agreement other than that provided for above. Such increases for Special Waste may be authorized by the Contract Administrator only after the Contractor's provision of such facts and information as the Contract Administrator may reasonably require to consider and decide whether such extraordinary relief is warranted under the circumstances. The Contract Administrator shall consider and decide all matters related to any such Special Waste request in his or her sole discretion and shall have no obligation to grant any relief under any circumstance; provided, that such decision by the Contract Administrator shall not otherwise affect the Contractor's rights under this Agreement. Contractor shall report all such increases for Special Waste to the Commission each year at the time it reports its discounted tipping fees as required above.

The Commission agrees that any rate increases requested by Contractor in the event that federal, state, or local laws, rules, regulations or ordinances become effective after (or have been construed differently subsequent to) the Commencement Date, and such effect and/or interpretation results in a materially

adverse impact on the Contractor, shall be rate increases that are reasonably requested.

The Commission shall not impose, approve or advocate the imposition by the County or any local governments with the County of, any surcharge, fee, duty, tax or other charge upon the operation or management of the Landfill. In the event that such charges are imposed, in addition to any rights available to it under this Agreement or under applicable law, the Commission agrees that any rate increases requested by Contractor in response to such surcharge, fee, duty, tax, or other charge the Contractor shall be rate increases that are reasonably requested.

- 10.4 Verification of Weights.** Quantities of Solid Waste delivered to the Landfill for processing, handling or disposal shall be measured by scale ton, based on weight slips for each load weighed. Such weight slips shall show the gross weight of the truck, including that of the Solid Waste, the tare weight of the truck and the net weight of the Solid Waste. Weight slips and minimum load slips obtained when the Solid Waste is received and weighed at the Landfill shall be used as the basis of payment. In the event the scales are inoperable, a vehicle or container will be charged based on the historical net weight in tons of such vehicle or container. Weigh-out may be optional if Contractor has a current tare weight on file for the vehicle or container.
- 10.5 Payment Terms.** For all waste delivered by Haulers, Contractor shall negotiate acceptable payment terms, including appropriate deposits, with such Haulers.
- 10.6 Host Fees.** The Contractor shall pay the Commission a per ton host fee for all Solid Waste disposed of at the Landfill during the term of this Agreement in an amount equal to three and three-quarters percent (3.75%) of the tipping fee received from the customer by Contractor, subject to the minimum fee provisions provided hereinafter in this Section. The host fee shall increase (or decrease) in dollar amount per ton as the tipping fee per ton increases (or decreases) during the term of this Agreement. Notwithstanding anything else to the contrary in this Agreement, beginning on the Commencement Date, Contractor shall guarantee the Commission a monthly host fee minimum of \$10,000 per month, which minimum fee shall be increased each July 1 the Contractor increases its tipping fees by the same Price Index percentage adjustment provided in Section 10.3 above. The Contractor shall be entitled to an offset against the monthly minimum host fee equal to the host fees paid to the Commission for that month. All host fees (including any amounts required to pay the minimum host fee amount) shall be paid to the Commission on or before the 20th day of the following month for which they are due. Notwithstanding the foregoing, the Contractor shall not pay a host fee for waste disposed of at the Landfill property pursuant to the Commission's Reserved Rights unless specifically provided for by a subsequent written agreement between the Commission and Contractor.
- 10.7 Closure and Post-Closure Security Fees.** The Contractor shall pay the Commission a per ton closure and post-closure security fee for all Solid Waste

disposed of at the Landfill during the term of this Agreement in an amount equal to the greater of \$1.00 per ton or five percent (5%) of the tipping fee received from the customer by Contractor. The security fee shall be used by the Commission to establish and maintain adequate financial reserves for the payment of Closure and Post-Closure Care required at the Landfill. The payment of the security fee shall not relieve Contractor of any of its obligations for Closure and Post-Closure Care under this Agreement, and Contractor shall have no entitlement to the same. The Commission reserves the right to use excess reserves accumulated from said security fee, in such amounts as it shall determine, for any lawful purpose. Notwithstanding the foregoing, the Contractor shall not pay a closure and post-closure security fee for waste disposed of at the Landfill property pursuant to the Commission's Reserved Rights unless specifically provided for by a subsequent written agreement between the Commission and Contractor.

- 10.8 Household Hazardous Waste Event.** Subject to funding from TDEC to fully cover the expenses of the hazardous waste contractor and the disposal costs of the hazardous wastes collected, once each calendar year, the Contractor shall also manage, organize and staff on behalf of the Commission the annual Household Hazardous Waste disposal day for Loudon County and shall provide such information and technical assistance at such event related to the Landfill's operation and procedures as directed by the Commission to the extent that TDEC funds permit. Each year, prior to the actual event and after TDEC funds have been committed, the Contractor shall submit a written organizational plan to the Commission for review and input that will detail how the Contractor proposes to organize, manage, publicize, staff and report the results of the event to the Commission.

XI. NO ENCUMBRANCES

- 11.1 Sale or Encumbrance of the Landfill.** This Agreement and all the rights of Contractor hereunder shall run with the real property of the Landfill, and the Commission will not in any manner sell, alienate, mortgage or encumber the Landfill, unless such purchaser, transferee or lien holder takes such interest subject to all the terms and conditions of this Agreement, evidence of which shall be furnished in advance to the Contractor, in form and substance satisfactory to the Contractor; and any attempt to sell, alienate, mortgage or encumber the Landfill contrary to the provisions hereof shall not affect Contractor's rights under this Agreement.
- 11.2 No Liens.** The Contractor agrees that it shall not cause or allow any liens, encumbrances, charges or assessments to be placed or levied upon the Landfill or any interest therein, and further agrees that, in the event of such occurrence, it will promptly and fully discharge the same.

XII. GENERAL PROVISIONS

- 12.1 **Independent Contractor; No Partnership.** The Contractor is, for all purposes arising out of this Agreement, an independent Contractor and shall not be deemed an employee, agent or manager of the Commission. It is expressly understood and agreed that the Contractor shall in no event as a result of this Agreement be entitled to any benefits to which the Commission employees are entitled, including, but not limited to, overtime, any retirement benefits, worker compensation benefits, any injury leave or other leave benefits. The provision of the Work under this Agreement or any service required hereunder shall not create a partnership or joint venture between the parties.
- 12.2 **Assignment and Subcontracting; Notice of Other Actions.** This Agreement or any portion thereof may not be assigned by the Contractor without the expressed prior written consent of the Commission, which consent may be granted or withheld on terms and conditions as reasonably determined by the Commission. In the event of an approved assignment, the assignee shall assume the liability of the Contractor and the Contractor shall remain liable thereunder unless otherwise released in writing by the Commission. For purposes of this Agreement, an assignment shall include both a voluntary transaction by the Contractor and a voluntary or involuntary transfer or assignment of this Agreement, whether direct or indirect, by operation of law or pursuant to any bankruptcy, insolvency, receivership or similar proceeding.

An assignment on this Agreement on its existing terms and conditions shall be considered reasonable if the proposed assignee is at least as qualified as Contractor to operate the Landfill and at least as financially viable as the Contractor, and in such event (and in any event where a proposed assignment is reasonable), the Commission shall not unreasonably withhold its consent, and the Commission's approval shall be given within forty-five (45) days of receipt of prior written notice of such assignment.

Contractor shall have the right to subcontract all or a substantial portion of any or all of the Work; provided, that any subcontract of a substantial portion of the Work shall be approved by the express written consent of the Commission, which approval shall not be unreasonably withheld and timely given. For purposes of this provision, substantial portion of the Work means the subcontracting of the obligations to manage and oversee the operation of the Landfill. The Contractor shall give its personal attention to the fulfillment of the Agreement and shall keep the Work under its control. All persons engaged in the Work shall be considered as employees of the Contractor, and Contractor shall be held responsible for a subcontractor's Work, which shall be subject to the provisions of the Agreement.

In addition to the forgoing provisions governing assignment and subcontracting, Contractor agrees to provide the Commission written notice of the following other actions: (a) any merger, consolidation or other change of business form of the Contractor (whether or not the Contractor is the surviving entity); or (b) the

transfer of 50% or more of the ownership or other beneficial interest in the Contractor or other transfer of the right to control the operations and business of the Contractor.

12.3 Hold Harmless Clause.

- (a) The Contractor agrees to indemnify and hold harmless the Commission, and its officers, agents, servants, and employees, from, against, and with respect to any and all third-party suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incurred by or asserted against the Commission arising due to any negligence or intentional misconduct of the Contractor or any of its officers, agents, servants, employees in the performance of the Work at the Landfill, or the failure of the Contractor to comply with the Environmental Laws in performing the Work, except for those claims directly caused by the award of the Agreement or the negligence or intentional misconduct of the Commission, its officers, agents, servants, or employees.
- (b) The Commission agrees to indemnify, hold harmless and reimburse the Contractor, and its officers, agents, servants, and employees, from, against and for any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees incurred by or asserted against the Contractor, arising due to any negligence or intentional misconduct of the Commission or any of its officers, agents, servants or employees or which is assessable against the Commission because of its ownership of the Landfill; but such indemnity shall specifically exclude without limitation those claims directly caused by the negligence or intentional misconduct of (i) the Contractor in the performance of Work at the Landfill or (ii) third parties using or accessing the Landfill during the term of this Agreement.
- (c) Notwithstanding any other term of this Agreement, claims that give rise to indemnity rights in favor of both the Commission and the Contractor under this Section 12.3 shall be apportioned between Contractor and Commission under a theory of comparative negligence.

12.4 Taxes, Assessments and Fees. The Contractor shall be responsible for all taxes, fines, penalties and fees resulting from its performance of the Work, including without limitation all surcharges and other tipping fees required to be paid to the state or other government pursuant to T.C.A. § 68-211-835, as may be amended from time to time, or any other provision of law; provided, that the Commission shall be responsible for the payment of any such taxes, assessments, fines, penalties, permit and/or license fees or other fees that are imposed by the Commission or which are collected on behalf of the Commission and remitted to the Commission for its use. All such taxes, fines, penalties and fees shall be paid when due by the Contractor subject to Contractor's right of protest or appeal to the taxing or assessing authority for any such tax, fine, penalty or fee the

Contractor reasonably determines to have been unjustly levied or assessed against it. The Contractor shall have no responsibility for the payment of any taxes assessed for periods prior to the Commencement Date, nor shall Contractor be liable for any fines or penalties that are directly attributable to the actions or omissions of the Commission or its agents (other than Contractor) or actions or omissions that occurred prior to the Contractor's commencement of work (including both the Work under this Agreement and any work performed by it prior to the Commencement Date) at the Landfill.

12.5 Insurance. The Contractor shall secure and maintain throughout the term of this Agreement the following types of insurance with limits as shown to protect the Commission, the Contract Administrator and the authorized agents and employees of all the above, from any damage claims, including exemplary or punitive damages, for damage such as bodily injury, death or property damage, which may arise from the Contractor's operations under this Agreement, whether such operations be by Contractor, a subcontractor, an agent of Contractor, or anyone employed by Contractor directly or indirectly. The Commission shall be named as an additional insured on all insurance policies providing coverage as to the Landfill site and all activities conducted thereon:

- (a) Worker's Compensation Insurance. The Contractor shall procure and maintain during the term of this Agreement Worker's Compensation Insurance for all of its employees to be engaged in the Work under this Agreement in accordance with statutory limits. In case any class of employees engaged in the Work under this Agreement is not protected under the Workers Compensation Statute, the Contractor shall provide employer's liability insurance for the protection of such of its employees as are not otherwise protected. Employer's Liability Insurance shall be a minimum of \$1,000,000 each occurrence.
- (b) Contractor's General Liability Insurance. The Contractor shall procure and maintain in full force and effect during the term of this Agreement and including completed operations and coverage for underground explosion or collapse, a Comprehensive Liability Policy on an occurrence basis. Comprehensive Liability Insurance shall be a yearly minimum of \$2,000,000 per occurrence and \$5,000,000 in the aggregate.
- (c) Comprehensive Automobile Liability Insurance. The Contractor agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability on an occurrence basis and providing Property Damage Liability on an accident basis. The policy shall protect the Contractor against all liability arising out of the use of automobiles, both private, passenger, and commercial, regardless of whether such vehicle shall be owned by the Contractor, owned by others, or hired. Limits of Liability for Comprehensive Automobile Liability Insurance shall be \$ 1,000,000 per occurrence combined single limit.

- (d) Professional Error and Omissions. The Contractor agrees to maintain professional liability coverage in the minimum amount of \$1,000,000.
- (e) Environmental Liability Insurance. The Contractor shall procure and maintain in full force and effect during the term of this Agreement Environmental Liability Insurance in the amount of \$1,000,000 per occurrence.
- (f) Excess Umbrella Liability. The Contractor shall procure and maintain in full force and effect during the term of this Agreement Excess Umbrella Liability in the amount of \$5,000,000 per occurrence.
- (g) Certificate(s) of Insurance. Before commencement of the Work, the Contractor agrees to furnish the Commission certificate(s) of insurance or other evidence satisfactory to the Commission to the effect that such insurance has been procured and is in force. The certificate(s) shall contain the following expressed obligation:

“This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder (including all named additional insureds).”
- (h) Other Requirements. The foregoing insurance policies shall be carried with responsible insurance companies authorized to transact business in the State of Tennessee and reasonably acceptable to the Commission, and (with the exception of worker’s compensation coverage) shall name the Commission and its commissioners, officers, agents and employees as an additional insureds.

12.6 Performance Security. The Contractor shall provide to the Commission at Contractor’s expense Performance Security, and maintain it during the entire term of the Agreement and for a period of one year after the termination of this Agreement. The amount of Performance Security on the Commencement Date shall be \$1,000,000; provided that the Commission reserves the right after the first two (2) Agreement Years to increase the amount of the Performance Security throughout the term of this Agreement upon one hundred-eighty (180) days prior written notice to the Contractor to an amount that reflects the estimated annual expense of Contractor for the operating services to be provided under this Agreement for that Agreement Year. The Performance Security shall remain in effect to fully indemnify and save harmless the Commission from all costs and damages, which the Commission may suffer by reason of an act or omission of Contractor in its performance under this Agreement.

12.7 Cooperation; Non-Compete.

- (a) Whenever the consent, approval or cooperation of one party is expressly or implicitly required or is necessary by the terms of this Agreement or to the effective and successful performance of the other party, such consent, approval or cooperation shall not be unreasonably withheld, denied, or delayed. The Commission will support the efforts of the Contractor in obtaining any additional permit modifications and approvals and will cooperate with Contractor in the scheduling of and having appropriate representatives available for public hearings and meetings. Subject to (i) the Reserved Rights (ii) the Commission's right to establish a Demolition Waste landfill off the Landfill property, and (iii) its obligations under the Solid Waste laws to reduce generation of Solid Waste, the Commission agrees that it shall not take any action or omission that would unreasonably impair or interfere with the performance of the Contractor's obligations under this Agreement or the benefits and rights of the Contractor hereunder, including without limitation the creation, operation, or encouragement of a competing solid waste landfill or alternative technologies or processes for waste disposal or treatment in the County or within any solid waste region that includes the Commission, or the assignment of this Agreement to any party other the Commission, or the sale, transfer or unreasonable encumbrance of its interest in the Landfill. The Contractor recognizes the Commission's responsibility to encourage recycling and source reduction of all solid waste generated within Loudon County. This recycling and source reduction is mandated by EPA and encouraged by TDEC, and the Commission's duty to carry out such activity shall not be construed as interference in the Contractor's rights or obligations granted in this Agreement. The Commission agrees that it shall not impose (or approve or advocate that the County or any other local government impose) any fee, surcharge, duty, tax or other charge of any nature against the Contractor, the Landfill, and/or the Landfill Permit, which is payable from revenues generated under this Agreement, the operations conducted by the Contractor, and/or the operation of the Landfill.
- (b) The parties to this Agreement agree that they will cooperate with each other in all matters that are reasonable necessary or desirable to facilitate the performance of their respective obligations under this Agreement with a minimum of expense, trouble and interference with service; and each party agrees to comply with the reasonable requests of the other party in connection therewith.

12.8 Audit and Inspection of Records. Contractor shall permit any duly authorized representative of the Commission, upon receipt of advance written notice, to examine during normal business hours and on a nondisruptive basis any and all records as is reasonably necessary to ensure Contractor's compliance with this Agreement, including without limitation Contractor's financial and accounting

records and those records required to be maintained under this Section. Such notice shall specifically reference the subsection of this Agreement that is under review so that the Contractor may organize the necessary books and records for easy access by the Commission. The Contractor shall not be required to maintain any books and records for contract compliance purposes longer than three (3) years after the calendar year for which the record pertains. The Commission agrees to treat as confidential any books or records that constitute proprietary or confidential information to the extent Contractor makes the Commission aware of such confidentiality, but only to the extent the Commission or its representatives may do so under law. If the Commission believes it must release any such confidential books or records in the course of enforcing this Agreement, or for any other reason, it shall advise Contractor in advance so that Contractor may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Commission agrees that, to the extent permitted by state and federal law, it shall deny access to any of Contractor's books and records marked confidential, as set forth above, to any person requesting or attempting to review the same that is not acting as Commission's representative.

- 12.9 Control of the Work.** The Contractor shall not be assessed with damages for delay in performance of Contractor's obligations hereunder where such delay is caused by the Commission's failure to perform its obligations under this Agreement.
- 12.10 Force Majeure.** Notwithstanding the foregoing, either party shall not be assessed with damages during any delay in the performance of its respective obligations hereunder, except for the payment of money, caused by events beyond the reasonable control of such party, including without limitation: acts of God, war, riot, explosion, sabotage fires caused by an unrelated third party, floods, earthquakes, epidemics and quarantine restrictions, labor strikes, suppliers' or vendors' strikes, freight embargoes and severe weather conditions, legislative action, regulatory action or inaction, provided that such events are not the result of such party's material fault or negligence. At the date of such delay or hindrance, the party excused from performance shall provide notice to the other party of the reason for such delay or hindrance. During such force majeure, performance shall be excused for the period of the delay and the period for the performance shall be extended for a period equivalent to the period of delay.
- 12.11 Compliance with Laws.** Contractor agrees to comply with all laws and regulations federal, state and local laws and regulations now in force and which may hereafter be in force during the term of this Agreement, including compliance with all applicable permits, licenses, testing, reporting and inspections, or regulations as amended.
- 12.12 OSHA.** To the extent applicable, Contractor shall comply with the Department of Labor Safety and Health Regulations promulgated under the Occupational Safety and Health Act of 1970 (PL-596) and under Section 107 of the Agreement Work

Hours and Safety Standard Act (PL-9154) and under corresponding Tennessee statutes and regulations.

- 12.13 Discrimination.** Contractor shall not discriminate against any person because of race, sex, age, creed, color, religion or national origin.
- 12.14 Notices.** All notices or other communications required or permitted hereunder shall be sent by telecopier, facsimile, certified mail or by express mail, addressed as follows or to such other addresses as may be designated from time to time:

Contractor: Santek Environmental, Inc.
650 25th Street, NW, Suite 100
Cleveland, TN 37311
Attn: President
Fax: (423) 303-7150

With copy to: Bass, Berry & Sims PLC
315 Deaderick Street, Ste. 2700
Nashville, TN 37238-3001
Attn: G. Scott Thomas
Fax: (615) 742-6243

Commission: Loudon County Solid Waste Disposal Commission
100 River Road, Box 100
Loudon, Tennessee 37774
Attn: Chair

With copy to: Kennerly, Montgomery & Finley, P.C.
550 Main Street, 4th Floor
Knoxville, Tennessee 37902
Attn: C. Coulter "Bud" Gilbert
Fax: (865) 524-1773

- 12.15 Affirmative Action and Equal Employment Opportunity.** Contractor shall comply with all affirmative action and equal employment opportunity requirements as set forth herein or as required by applicable laws, rules or regulations.
- 12.16 Drug Testing.** Contractor shall adopt appropriate drug testing procedures for employees at the Landfill and shall administer drug testing in compliance with such procedures.
- 12.17 Time is the Essence/Survival or Terms.** Time is of the essence in this Agreement and in each of its provisions. The provisions of this Agreement regarding any indemnity or any other covenant to which a party would have a reasonable expectation of continuance shall survive the termination of this Agreement.

12.18 Prohibition Against Collusion. The Contractor represents and agrees that it has not conveyed or offered or promised, directly or indirectly, to any member of the Commission, employee, agent or representative of the Commission, or any person representing or purporting to represent the Commission, or any family member including spouse, parents, or children of the foregoing group, any remuneration, property, service, advantage or other consideration or benefit of value, to improperly influence or obtain the award of this Agreement to Contractor. Contractor further agrees that it shall not employ as an employee, agent, consultant or independent contractor any member of such group for a period of five (5) years from the Commencement Date. Contractor's violation of this requirement shall constitute a material breach of this Agreement, in which event the Commission may terminate this Agreement upon notice to the Contractor.

XIII. MISCELLANEOUS

13.1 Complete Agreement; Amendments. This Agreement, including its Exhibit, represents the complete agreement between the parties, and it supersedes all prior agreements, requests for proposals, proposals, and all prior written or oral commitments, arrangements or understandings with respect thereto. There are no representations, restrictions, agreements, promises, inducements, statements of intentions, warranties, covenants or undertakings with respect to the transactions contemplated thereby other than those expressly set forth therein. This Agreement cannot be amended, modified or supplemented by any of the parties in any respect except by a subsequent written contract entered into by both parties

13.2 Section Headings. The section or paragraph headings are used only for convenience and are not to be used in determining the intent of the parties or in otherwise interpreting this Agreement.

13.3 Provisions Unenforceable. If any provision of Agreement shall be declared illegal, void or unenforceable, the other provisions shall not be affected but shall remain in full force and effect, unless the resulting interpretation of the Agreement shall materially alter the obligations of either party so as to work an unfair hardship on such party (the "Burdened Party"), in which case the Burdened Party shall have the option to request a renegotiation of the Agreement and/or to terminate this Agreement upon ninety (90) days advance written notice to the other party. This Agreement may be modified, amended, discharged or waived only by an agreement in writing signed by both parties.

13.4 Successors and Assigns. This Agreement shall be binding upon and will inure to the benefit of the successors and assigns of the respective parties hereto.

13.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

- 13.6 **Attorney's Fees.** If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs and all reasonable costs of collection, in addition to any other relief to which that party may be entitled.
- 13.7 **Governing Laws.** This Agreement will be governed by and construed according to the laws of the State of Tennessee.
- 13.8 **Waiver.** The failure of either party under this Agreement to give notice of default or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by authorized parties in writing.
- 13.9 **Gender.** As used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders, as the context requires.
- 13.10 **Further Assurances.** Each party to this Agreement agrees that, when requested to do so by the other party, such party will furnish to the other party certified extracts from the minutes of each board or legislative body required to approve this Agreement in order to make the same binding upon the party furnishing such certified extracts. Each of the parties to this Agreement further agrees to do any act or thing and execute any and all instruments that are necessary and proper to make effective the provisions of this Agreement.
- 13.11 **Specific Performance.** To the extent that the right of specific performance is mutually enforceable against the parties, the parties hereto recognize that any breach of the terms of this Agreement may give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly agree that, in addition to all other remedies available to the parties, any non-breaching party shall be entitled to enforce the terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy.

[Space left blank intentionally, Signature Page next]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the day and year first above written.

LOUDON COUNTY SOLID WASTE DISPOSAL COMMISSION

By: 
Steve M. Field, Chair

SANTEK ENVIRONMENTAL, INC.

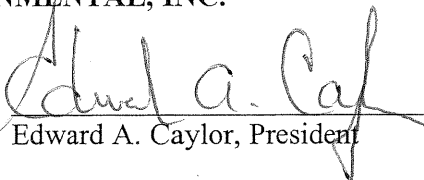
By: 
Edward A. Caylor, President

EXHIBIT A

Legal Description of Matlock Bend Landfill

[Taken from Quit Claim Deed dated April 15, 1994 from Loudon County
to the Loudon County Solid Waste Disposal Commission of record in the Loudon County
Registers Office at Deed Book 212, Page 216]

LOCATED in the First Civil District of Loudon County, Tennessee, and being the part of the former Kate Wilson Mott farm inherited by her daughters, and being more particularly described as follows:

BEGINNING at a new iron pin in the North right-of-way line of old State Highway 72 (River Road), the said point of beginning being located 0.96 miles from the center line of Matlock Bend access road West along State Highway 72; thence with State Highway 72 North 51 deg. 30 min 36 sec. West 72.05 feet to a new iron pin; thence with Highway 72 North 56 deg. 18 min. 57 sec. West 95.84 feet to a new iron pin; thence with Highway 72 North 72 deg. 18 min. 15 sec. West 60.65 feet to a new iron pin, corner to Ray Purdy; thence with Purdy North 04 deg. 57 min. 15 sec. East 1172.58 feet to a new iron pin; thence with Purdy North 13 deg. 39 min. 33 sec. East 1353.83 feet to a new iron pin (passing the Purdy-Ryan-Barrett corner which touches captioned line); thence with John Barrett III, North 13 deg. 20 min. 02 sec. East 2175.23 feet to a new iron pin corner to Jesse Ridenour; thence with Ridenour North 89 deg. 30 min. 41 sec. East 712.93 feet to an iron pin; thence with Ridenour North 85 deg. 41 min. 34 sec. East 606.7 feet to an existing iron pin, corner to AMFAC Foods Monterey, Inc.; thence with AMFAC South 00 deg. 36 min. 44 sec. West 2108.28 feet to a new iron pin; thence with AMFAC South 01 deg. 36 min. 54 sec. East 529.03 feet to an existing iron pin; thence with AMFAC South 41 deg. 54 min. 16 sec. West 1895.81 feet to an existing axle; thence with AMFAC South 53 deg. 09 min. 49 sec. West 492.95 feet to an existing iron pin; thence with AMFAC South 57 deg. 05 min. 39 sec. West 244.759 feet to a new iron pin; thence with AMFAC South 32 deg 22 min. 13 sec. West 126.705 feet to a new iron pin; thence with AMFAC South 29 deg. 34 min. 35 sec. 212.62 feet to the point of BEGINNING, according to the survey by M.C.I. Consulting Engineers, Inc., dated March 10, 1986, this being a Class A survey with bearings based on magnetic north, the said tract containing 150.849 acres, more or less.

THIS BEING the same property wherein John A. Mott (Widower) conveyed a stated one-half interest to Mary Alexandra Mott Hirsch, by deed dated May 8, 1965, and recorded in the Register's Office of Loudon County, Tennessee, in Deed Book 78, Page 425. However, reference is also made to deed from Mary Alexandra Mott Hirsch to John A. Mott (Widower) and Martha Jan Mott Powell, dated June 2, 1959, and recorded in Deed Book 56, Page 324.

THIS BEING the same property conveyed to Loudon County by Order and Judgment of the Circuit Court for Loudon County, Tennessee, in the cause styled Loudon County vs. Mary Alexandra Mott Hirsch and Martha Jan Mott Powell, being cause number 3904, the certified judgment being recorded in Deed Book 166, Page 4, Loudon County Register of Deeds office.