

**COMPREHENSIVE AGREEMENT**  
**BETWEEN**  
**BOTETOURT COUNTY, VIRGINIA**  
**AND**  
**COUNTY WASTE OF SOUTHWEST VIRGINIA, LLC**

~~September 25, 2018~~  
October 1, 2018  
JB  
JB

List of Exhibits:

- A. Unsolicited PPEA Proposal
- B. Resolution & Notice for Competing Proposals
- C. Public Hearing Notice
- D. Management Agreement
- E. Host Siting Agreement

**COMPREHENSIVE AGREEMENT  
BETWEEN  
BOTETOURT COUNTY, VIRGINIA  
AND  
COUNTY WASTE OF SOUTHWEST VIRGINIA, LLC**

This Comprehensive Agreement (the “Agreement”) is made and entered into as of September 25, 2018, by and between Botetourt County, Virginia, a political subdivision of the Commonwealth of Virginia (“County” or “Owner”), and County Waste of Southwest Virginia, LLC, a Virginia limited liability company (“County Waste” or “Contractor”).

**Recitals**

R-1. Virginia’s Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) as set forth in the Code of Virginia §§ 56-575.1, *et seq.*, and the Botetourt County Guidelines to the Public-Private Facilities and Infrastructure Act of 2002 (“Guidelines”) provide the County the authority and procedure required to enter into an agreement with a private entity to develop or operate certain qualified public infrastructure or government facility projects and provide certain other public services on a public-private partnership basis.

R-2. Pursuant to the PPEA and Guidelines, on or about February 26, 2018, a private entity, County Waste, submitted to the County an unsolicited conceptual proposal (the “Unsolicited Proposal”) to provide the County certain services related to collection of solid waste, use and closure of the County’s existing landfill, location of a solid waste transfer station (SWTS) in the County, and County Waste becoming the primary provider of municipal solid waste services in the County, as amended June 17, 2018. A copy of the Unsolicited Proposal is attached hereto as Exhibit A.

R-3. On February 27, 2018, the County accepted the Unsolicited Proposal for consideration and thereafter, the County posted and published public notice that it would accept for simultaneous consideration any competing proposals to be submitted by a specified deadline. A copy of the County's public notice is attached hereto as Exhibit B.

R-4. The County also formed a selection committee to advise the Board of Supervisors in making the final decision. The County received one other proposal prior to the end of the advertising period. Following analysis and consideration of the proposals and the comments submitted, the selection committee has recommended to the Board of Supervisors that it accept the proposal from County Waste and move directly into the comprehensive phase of the PPEA Process. Staff has moved forward with negotiation of a draft comprehensive agreement with County Waste.

R-5. The County held a public hearing on the Unsolicited Proposal on July 24, 2018, and provided an opportunity for public comment on the Unsolicited Proposal for a period in excess of thirty (30) days. A copy of the notice with regard to the public hearing is attached hereto as Exhibit C.

R-6. In accordance with the PPEA and the County's Guidelines, this Comprehensive Agreement shall be posted on the County's website, along with the Proposal.

R-7. The County hereby determines that the Work set forth in the Contract Documents serves the public purpose of the PPEA under the criteria of Virginia Code § 56-575.4(C), as amended, and the parties desire to enter into this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises, conditions, and covenants herein set forth, the parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are incorporated herein by reference. The duties of a “private entity” as set forth in the PPEA and as applicable to the contracted work hereunder, are hereby incorporated into this Agreement and imposed upon County Waste.

2. Definitions. The following definitions apply to this Agreement:

(a) “Contract Documents” means this Agreement (together with all of its Exhibits) and any written amendments thereto. “Contract Document” means any one of these documents. In the event of any discrepancies between or among any of the Contract Documents, the more specific document shall control.

(b) “Management Agreement” refers to that certain agreement providing for County Waste to manage and close the Botetourt County Landfill, attached hereto as Exhibit D.

(c) “Host Agreement” refers to that certain agreement providing for County Waste to locate and operate a solid waste transfer station (SWTS) in Botetourt County, subject to certain terms and conditions, attached hereto as Exhibit E.

3. Term. The term of this Agreement shall begin on the date of this Agreement and shall continue until its termination pursuant to Section 5 hereof, any other provision of this Agreement, or any other Contract Document, or by law.

4. Representations and Warranties.

(a) County Representations and Warranties. The County hereby represents and warrants to County Waste as follows:

(i) The County is the responsible public entity, as that term is used in the PPEA and the Guidelines, for the projects contemplated by the Contract Documents. As such, the County has full power, right, and authority to execute, deliver, and perform its

obligations under, in accordance with and subject to the terms and conditions of this Agreement and the other Contract Documents.

(ii) The County has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Contract Documents.

(iii) Each person executing this Agreement or any other Contract Document, or any other agreement, instrument or document on behalf of the County to which the County is a party has been or at such time of execution will be duly authorized to execute each such document on behalf of the County.

(iv) Neither the execution and delivery by the County of this Agreement and the other Contract Documents executed by the County concurrently herewith, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(v) There is no known action, suit, proceeding, investigation or litigation pending and served on the County which challenges the County's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Contract Documents to which the County is a party, or which challenges the authority of the County official executing this Agreement or the other Contract Documents to which the County is a party, and the County has disclosed to County Waste any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the County is aware.

(b) Private Entity Representations and Warranties. County Waste hereby represents and warrants to the County as follows:

(i) County Waste is a duly organized limited liability company created under the laws of the Commonwealth of Virginia. It holds all licenses and certifications necessary to carry out the work contemplated by this Agreement, and it has and will maintain throughout the term of this Agreement the requisite power and all required licenses (or it or its subcontractors will have all required licenses prior to the time activities which require licenses are undertaken) to carry on its present and proposed activities, and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Agreement and the other Contract Documents.

(ii) County Waste has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the other Contract Documents.

(iii) Each person executing this Agreement or any other Contract Document on behalf of County Waste to which County Waste is a party has been or at such time of execution will be duly authorized to execute each such document on behalf of County Waste.

(iv) Neither the execution and delivery by County Waste of this Agreement and the other Contract Documents executed by County Waste concurrently herewith, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(v) There is no action, suit, proceeding, investigation, indictment or litigation pending and served on County Waste which challenges County Waste's authority to

execute, deliver or perform, or the validity or enforceability of, this Agreement and the other Contract Documents to which County Waste is a party, or which challenges the authority of the County Waste official executing this Agreement and the other Contract Documents to which County Waste is a party, and County Waste has disclosed to the County any pending and unserved or threatened action, suit, proceeding, investigation, indictment or litigation with respect to such matters of which County Waste is aware.

5. Termination.

This Contract may be terminated, unless otherwise specified more specifically elsewhere in this Agreement:

(a) If a party to this Agreement defaults or fails or neglects to carry out a material obligation under this Agreement (for purposes of this section, the “Defaulting Party”) and if the other party (for this purposes of this section, the “Non-Defaulting Party”) is not in material breach of this Agreement at the time, the Non-Defaulting party may give written notice to the Defaulting Party that it intends to terminate this Agreement, which notice shall contain a reasonably detailed explanation of the reasons for the proposed termination. The Defaulting Party shall correct the default, failure, or neglect within thirty (30) days after being given such notice; provided, however, if (i) the nature of such default, failure or neglect is such that it is not reasonably capable of being corrected within such thirty (30) day period and (ii) the Defaulting Party notified the Non-Defaulting Party of a reasonable alternative period reasonably acceptable to the Non-Defaulting Party with fifteen (15) days of receipt of such notice, the Defaulting Party shall be allowed such reasonable alternative period to correct the default, failure or neglect so long as the Defaulting Party promptly commences and diligently pursues such corrections to completion. If the Defaulting Party fails to make such corrections within the thirty (30) day



period or fails to commence and diligently pursue to completion such corrections within the alternative period, then the Non-Defaulting Party may, at its sole discretion and without prejudice to any other remedy, terminate this Agreement. Notwithstanding the above, the County may terminate this Agreement if the Board of Supervisors fails to appropriate funds for the project.

(b) If not sooner terminated pursuant to the terms of subsection (a) above, or by mutual agreement, the Agreement shall terminate when all terms and conditions of all the Contract Documents (exclusive of warranty and indemnity obligations) have been satisfied, or otherwise terminate pursuant to the Contract Documents.

6. Cooperation; Resolution of Disputes, Claims and Other Matters.

The parties agree to cooperate to achieve the objectives of this Agreement, and to use reasonable and good-faith efforts to resolve all disputes and disagreements that may arise hereunder. Each party agrees to designate representatives with the authority to make decisions binding upon such party (subject in the case of the County to those matters requiring an appropriate vote) so as to not unduly delay any obligations under the Contract Documents.

7. Financial Statement. On an annual basis, County Waste shall file with the County a statement reflecting the general financial condition of County Waste.

8. Records.

(a) Protected Records. If County Waste believes that any Work Product or any other document or item subject to transmittal to or review by the County under the terms of this Agreement or any other Contract Document contain trade secrets or other information exempt or protected from disclosure pursuant to applicable law, County Waste shall use its reasonable efforts to identify such information prior to such transmittal or review, and the County shall

confer with County Waste on an appropriate means of ensuring compliance with applicable laws prior to transmittal or review.

(b) Requests for Public Disclosure. The County recognizes that certain Work Product and other documents or materials of which the County obtains a copy, may contain trade secrets or other information exempt from disclosure under applicable law, or may include information that is otherwise subject to protection from misappropriation or disclosure. Should any such items become the subject of a request for public disclosure, the County shall respond as follows:

(i) The County shall use reasonable efforts to immediately notify County Waste of such request and the date by which it anticipates responding.

(ii) County Waste must then assert in writing to the County any claim that such items are protected from disclosure.

(iii) If County Waste fails to make such assertion within three (3) business days after the County notifies County Waste of its intended response, the County shall have the right to make such disclosure.

(iv) If County Waste makes a timely assertion that the requested items contain trade secrets or other information exempt from disclosure or otherwise protected under applicable law, the County and County Waste may seek judicial declaration of the rights of the parties. Until such declaration is made, the County will maintain the confidentiality of such items.

(v) If the County's denial of a request for disclosure of items is challenged in court, County Waste shall assist the County in its defense and shall indemnify the County against any award of attorney's fees or fines ordered by the court.

(vi) This paragraph 8 shall survive termination.

9. Conditions Precedent to Agreement's Effectiveness. It shall be a condition precedent to this Agreement's effectiveness that:

(a) Entry into this Comprehensive Agreement and Contract Documents between the County and County Waste following proper approval and under signatures of both parties with actual authority, following all legally necessary actions of their boards, commissions, or other governing bodies of this Comprehensive Agreement and Contract Documents; and

(b) County Waste has certified that all material representations, information and data provided by County Waste to the County in support of, or in connection with, the Proposal are true and correct in all material respects; that such certification has been made by an officer of County Waste who has knowledge of the information provided in the Proposal; and that the executed certification has been delivered to the County.

10. Copy of Agreement to Auditor of Public Accounts. The County shall submit a copy of this Agreement to the Auditor of Public Accounts of the Commonwealth of Virginia within thirty (30) days of its effective date.

11. Miscellaneous.

(a) Successors and Assigns. Except as expressly otherwise provided, all of the terms, covenants, and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Binding Effect. Subject to the limitations of subsection (a) above, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in

this Agreement is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors, and permitted assigns of such party, as if in every case so expressed.

(c) Relationship of Parties. The relationship of County Waste to the County shall be one of an independent contractor, not an agent, partner, joint venturer or employee, and the County shall have no rights to direct or control the activities of County Waste in its performance under this Agreement except as specifically set forth herein or in the Contract Documents.

(d) Third-Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any person or entity not a party to this Agreement unless otherwise provided in the Contract Documents.

(e) Waiver. No waiver by any party of any right or remedy under this Agreement or the other Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under this Agreement or the other Contract Documents. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

(f) Severability. If any term or provision of this Agreement shall be determined to be invalid or unenforceable in any respect, it shall be replaced with a substantially similar provision to the greatest extent possible, and the Agreement shall remain in full force and effect.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of which such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart.

(h) Entire Agreement. This Agreement, the other Contract Documents, and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings between County Waste and the County concerning the Project, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced to writing and signed by each party.

(i) Cooperation. In the event the County is made party to any judicial, administrative, or regulatory proceeding arising out of this Agreement or any of the actions contemplated herein, County Waste agrees to provide, at no cost to the County, any necessary documentation, lay witnesses, consultation, and other assistance as may be necessary or desirable, in the County's discretion, to successfully conclude such proceeding.

(j) Headings. The section and paragraph headings appearing in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provision hereof.

(k) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Venue and jurisdiction for any

action arising out of this agreement shall be in the General District Court or Circuit Court for Botetourt County, Virginia.

IN WITNESS WHEREOF, the parties have executed this Comprehensive Agreement as of the day and year first above written.

COUNTY WASTE OF SOUTHWEST VIRGINIA, LLC:

Delbert Beasley  
Sign

Delbert Beasley  
Name

Member  
Position

BOTETOURT COUNTY, VIRGINIA:

Gary LARROWE  
Sign

GARY LARROWE  
Name

County Administrator  
Position

Michael W. Stechak  
Approved as to legal form  
County Attorney



OF SOUTHWEST VIRGINIA, LLC

***PROPOSAL FOR A LEASING AGREEMENT AND/OR OPERATING AGREEMENT FOR THE BOTETOURT COUNTY LANDFILL AND THE TRANSITIONING TO A NEWLY PERMITTED TRANSFER STATION FOR THE LONG TERM TRANSFER AND DISPOSAL OF THE COUNTY'S NON-HAZARDOUS SOLID WASTE AND TRANSFER AND PROCESSING OF COUNTY'S RECYCLABLE MATERIALS***

## **Botetourt County**

June 17, 2018  
County Waste of Southwest Virginia, LLC  
2410 Mayflower Drive  
Lynchburg, Virginia 24501

County Waste of Southwest Virginia, LLC  
2410 Mayflower Drive  
Lynchburg, Virginia 24501  
(434) 528-5540

June 17, 2018

Mr. Gary Larrowe  
County Administrator  
1 West Main Street, Box 1  
Fincastle, Virginia 24090

**Subject: Unsolicited Proposal for the Operation of the County's Landfill and the Transitioning to a Newly Permitted Transfer Station That Would Handle the County's Long Term Transfer and Disposal of Non-Hazardous Solid Waste and the Long Term Transfer and Processing of Recyclable Materials**

Dear Mr. Larrowe:

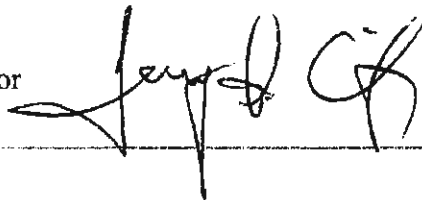
We have previously submitted a check in the amount of \$5,000.00 for payment towards the required unsolicited PPEA proposal fees.

County Waste of Southwest Virginia, LLC ("County Waste" of the "Company") is hereby submitting an unsolicited proposal to Botetourt County (the "County") for the privatization of the operations of the County's Landfill located in Troutville, Virginia. The proposal also includes the construction of a newly permitted transfer station that would begin operations near the point in time that the Landfill's permitted airspace has been fully utilized and exhausted. The purpose of this proposal is to provide the basis for a public private partnership that will provide the Botetourt County with significant financial incentives along with competitive and stable long term disposal costs for the County's non-hazardous solid waste, and long term outlet for the handling and processing of the County's recyclable materials – including residential, commercial and industrial.

County Waste is uniquely positioned to submit this proposal because of our vast experience, our financial resources, and in our ability to successfully perform all required tasks very quickly. Our Company already owns the property at 2045 Lee Highway, Daleville, Virginia 24083 that is ideally suited and situated for a Solid Waste Transfer Station and Residential Convenience Center (the "Transfer Station"). We had already engaged Joyce Engineering (now LaBella Associates) back in April 2017 to provide a preliminary design. We will use the engineering firm of Perkins & Orrison to finalize the design of this Transfer Station, and assist our Company with all required approvals and permitting. Upon all required approvals and with the County's support, this Transfer Station could be constructed and fully operational in approximately eight (8) months.

County Waste is very interested in entering into a long term mutually beneficial partnership arrangement with Botetourt County, and your prompt attention to our proposal would be greatly appreciated.

Sincerely,  
Jerry S. Cifor, Manager & Director





## Company Introduction, Overview and Experience

County Waste of Southwest Virginia, LLC is a Virginia limited liability company that was formed in 2014 with the initial acquisition of Beasley Disposal, Inc. The Company is owned 83% by County Waste of Virginia, LLC (“CWV”), a Delaware limited liability company, and 17% owned individually by Delbert Beasley. The Company’s operations serve the entire southwest Virginia marketplace, and currently include two large waste and recycling collection divisions, and include a recycling facility located in Lynchburg, Virginia.

CWV is a private non-hazardous solid waste management company that provides collection, transfer, processing, recycling, and disposal services in central, southern and southwestern Virginia, specifically Fredericksburg, Culpeper, Charlottesville, West Point, Lynchburg, Roanoke and a large region surrounding the state capital of Richmond as well as northeastern and east central Pennsylvania, specifically the Poconos, Stroudsburg, Bethlehem, Tremont, Mountain Top and Scranton markets. CWV provides residential, commercial and industrial and C&D waste collection services to over 22,000 commercial and industrial customers and over 310,000 residential customers. CWV also serves significant additional residential customers via 37 municipal contracts, with the majority of these contracts in its Pennsylvania markets. CWV’s transfer stations are strategically located in West Point, Troy and Fredericksburg, Virginia, and Frackville, Pennsylvania with a fifth transfer station currently under construction in Hanover, Virginia. CWV also owns a state-of-the-art single-stream material recovery facility (“Recycling Facility”) located in Chester, Virginia.

Although County Waste does not have any experience owning and operating a landfill, it has owners, officers and managers that have significant landfill experience over many years and in several different states. Company key personnel that have landfill experience specific to this project are as follows:

- Jay Zook, State of Virginia General Manager. Jay joined CWV’s management team in October 2016. Prior to joining CWV’s management team, Jay was the landfill manager for the Shoosmith Landfill located in Chester, Virginia for a little over seven years. The Shoosmith Landfill accepts approximately 1.2 million tons of nonhazardous waste materials for disposal each year. Prior to working for the Shoosmith Landfill, Jay had responsibility for four landfills for IESI within the State of Texas, one of which went through its final closure process under Jay’s supervision.
- Delbert Beasley, Southwest Virginia Manager and Member. Delbert has extensive experience in just about all aspects of the nonhazardous waste management business that dates back to 1977. During his career, he has managed and closed several landfills, including several small municipal landfills – including Prince Edward County, Russell County, Amherst County and Fluvanna County – and also including the final closure of Botetourt County’s existing closed landfill.
- Jerry Cifor, CWV Manager and Director. Jerry has extensive experience in developing and managing landfills in several states dating back to 1986, including the development of a current “greenfield” landfill project in central Virginia over the past two years. During his eight years as the senior vice president and chief financial officer years at Casella Waste Systems (NASDAQ: CWST), Jerry was involved with the purchase, development and management of several landfills within the states of New Hampshire, Vermont, New York and Maine.

## Project Description and Proposal

County Waste would assume full administrative, operational and engineering responsibility for the County's Landfill, most likely through a mutually agreeable leasing arrangement (the "Landfill Lease"). County Waste will give preference to Botetourt County residents for any and all job positions need to be hired at the Landfill. The County would maintain responsibility to continue to run its own convenience center located near the Landfill's entrance with its own employees. County Waste is prepared to take control over the Landfill as soon as July or August, 2018. County Waste would be granted the full use of the existing equipment at the site, and also bring in a few new and/or quality used pieces of equipment that will be needed to properly operate the site and eventually close the site. Based upon the estimate of the Landfill's remaining permitted airspace provided to County Waste by the County, it is estimated that this site will continue to operate as an active landfill for approximately 18 months. After the Landfill has fully utilized its remaining permitted airspace, the Landfill will be immediately closed and capped by County Waste. County Waste will assume full responsible for the final capping and closure of the Landfill, but will have absolutely no obligations for any post-closure responsibilities regarding this Landfill. Botetourt County will not have any responsibility (financial or otherwise) for the closure of its Landfill, and County Waste will provide a one-year full warranty on the final closure of the Landfill. County Waste will post a surety bond, in the required amount, to either Botetourt County or the Virginia DEQ in order to guarantee the performance of the proper final closure of this Landfill. Once the Landfill's closure has obtained final certification by the Virginia DEQ, the Landfill Lease will terminate and the surety bond will be immediately returned to County Waste and will be voided. County Waste and Botetourt County will grant joint indemnifications to each other that will cover any Landfill environmental issues (water, air and groundwater pollution) directly related to actions that occurred during the periods of time that either party operated the Landfill.

As part of the Landfill Lease agreement, the County will fully support our Company's Transfer Station via a mutually agreeable host community agreement, which final approval will be contingent upon all required State and local approvals and permits (zoning, building, VDOT, etc.). A preliminary Site Concept Plan for the Transfer Station is attached hereto as Attachment 1. This Transfer Station would be constructed and opened prior to the time that the Landfill reaches its final permitted capacity. County Waste will provide the County at both the Landfill and the Transfer Station with a long term disposal rate (ten years, with three five year renewal options) for nonhazardous solid waste that will be set at the lower of a fixed rate (subject to annual CPI adjustments) or a rate that is ten (10%) percent lower than the prevailing gate rate charged by the RVRA. This disposal rate will only be adjusted once per year, so that both parties can have stability and predictability in their annual budgeting process. Residential recyclables and commercial cardboard will be accepted at both the Landfill and the Transfer Station for free from only Botetourt County residents and commercial establishments, at zero costs to the County.

As part of this proposal, County Waste is offering an optional service to Botetourt County, at its sole option. This optional item that County Waste is willing to provide is a comprehensive bi-weekly residential curbside single-stream recycling collection program for the entire County. Each resident of the County would be provided with a 65 or 95 gallon wheeled recycling cart, and County Waste would collect each resident's single-stream recycling on a bi-weekly schedule. County Waste would charge Botetourt County for providing this service at the rate of \$4.10 per residential unit per month.

### **Project Financing and Funding**

County Waste has significant existing funds available to it and will provide all of the financing and funding needed to perform under this PPEA proposal. Our Company is not dependent nor is looking for any financial support from Botetourt County or from any other third party. Additionally, County Waste would be providing a surety bond in the required amount (as set by VADEQ formula) to Botetourt County or the Virginia DEQ in order to secure its performance requirements for the final closure of the Landfill. The Landfill's closure would be certified by a third party engineering firm (Draper Aden) which should give the County additional comfort that the closure has been completed properly.

### **Project Benefit**

The existing equipment at the Landfill is well worn and antiquated. County Waste will invest in the proper equipment to facilitate the proper operation of the Landfill and its eventual final closure. Botetourt County will additionally save the material cost required to properly close its Landfill by turning over operations to County Waste. Additionally, after the Landfill has been closed, County Waste through its Transfer Station is offering long term stability to Botetourt County at competitive disposal rates for the disposal of its nonhazardous solid waste – along with a free long term outlet for the County's recyclables. Additionally, if the County wants to materially increase its rates of recycling, County Waste has offered a very competitive rate in order to implement a county-wide comprehensive recycling program for the entire County.

**ATTACHMENT A**

**TRANSFER STATION SITE PLAN CONCEPT  
2045 Lee Highway  
Daleville, Virginia 24083**



Exhibit B to Comprehensive Agreement



Botetourt County, Virginia  
*Board of Supervisors*

1 West Main Street, No. 1  
Fincastle, Virginia 24090  
Phone (540) 928 2006  
Fax (540) 473 8225

Board of Supervisors

L. W. Leffel, Jr.  
*Chairman*

Donald M. Scothorn  
*Vice Chairman*

Stephen P. Clinton

Billy W. Martin, Sr.

I. Ray Sloan

The regular meeting of the Botetourt County Board of Supervisors was held on Tuesday, March 27, 2018, in Rooms 226-228 of the Greenfield Education and Training Center in Daleville, Virginia, beginning at 12:45 P. M.

PRESENT: Members: Mr. L. W. Leffel, Jr., Chairman  
Dr. Donald M. Scothorn, Vice-Chairman  
Mr. Steve Clinton  
Mr. I Ray Sloan  
Mr. Billy W. Martin, Sr.

ABSENT: Members: None

Consideration was then held on an unsolicited PPEA conceptual proposal for solid waste and recycling disposal services. Mr. David Moorman, Deputy County Administrator, stated that the County has received an unsolicited conceptual proposal from County Waste of Southwest Virginia, LLC, to enter into a public-private solid waste services partnership under the Public-Private Education Facilities and Infrastructure Act (PPEA).

He noted that County Waste is a private solid waste management company with facilities/operations in Virginia and Pennsylvania which provides collection services to over 22,000 commercial and over 310,000 residential customers. He noted that they have 3 trash transfer facilities in Virginia and one in Pennsylvania and a recycling center in Chester, Virginia.

Mr. Moorman stated that County Waste has offered a public/private partnership with the County which proposes that County Waste assume full administrative and operational control of the landfill. He noted that this proposal would lease the property from the County, with the County continuing the operations of the citizens convenience center with County staff. He noted that it is estimated that the landfill portion of the site would continue to operate as an active landfill disposal area for 18 months and, after that time, County Waste would assume responsibility for closing and capping the landfill as per the Virginia Department of Environmental Quality's requirements.

Mr. Moorman stated that, in exchange, County Waste would ask that the County support the company's application to operate a transfer station on property owned by County Waste along U. S. Route 11 in the southern part of the County. He noted that County Waste proposes to provide a long-term disposal rate for 10+ years that is 10% less than the amount charged by the Roanoke Valley Resource Authority facility. He further noted that this rate would be adjusted once per year.

After discussion, Mr. Moorman stated that County Waste also offered optional services to provide recycling containers for each County residence at an additional fee of \$4.10/month.

Mr. Moorman stated that County Waste would invest in appropriate equipment to operate the landfill. He noted that the County would save the material cost of closing/capping the landfill by turning the facility over to County Waste to operate. Mr. Moorman further noted that the proposal also includes a provision for free long-term recycling for the County.

Mr. Moorman noted that a drawing of the potential transfer station site on Route 11 and a copy of a draft resolution for the Board's consideration written by the County Attorney were included in the agenda item. He then reviewed the resolution's provisions: the Board would accept the proposal from County Waste; direct the County Administrator to advertise notice of receipt of the proposal for 45 days and request competitive proposals from other interested service providers; direct the County Administrator to procure a consultant to evaluate the competing proposals; authorize the County Administrator to provide public information to and meet with other potential proposers; declare that, due to the probable scope and complexity of this project, competitive sealed bidding would not be practical; authorize the County Administrator to form an advisory committee consisting of two Board members, the County Administrator/designee, the Deputy County Administrator, and the County Procurement Officer to review the proposals; and direct the County Administrator to post all proposals on the County website and to advertise for a public hearing to receive public input on the proposals.

Mr. Martin stated that he thinks that this is a good move on the County's part and he would support proceeding with PPEA process.

After questioning by Mr. Clinton, Mr. Moorman stated that County Waste's proposal did not include data on the volume of trash and destination/sources for the transfer station's solid waste.

Mr. Larowe stated that he is pleased that the County is able to work with this company on this proposal in order to reach a potential solution. He noted that the length of time that the County's private trash haulers would spend transporting trash to the transfer station would be reduced under this proposal which would also reduce the haulers' operating costs.

Mr. Leffel stated that this has been an educational process for him and he thinks that this proposal will put the County in a "good place."

There being no further discussion, on motion by Mr. Leffel, seconded by Dr. Scothorn, and carried by the following recorded vote, the Board adopted the following resolution regarding an unsolicited PPEA proposal from County Waste of Southwest Virginia, LLC, pertaining to solid waste services, and appointed Mr. Leffel and Dr. Scothorn to serve as the two Supervisors members on the proposal review advisory committee.

AYES: Mr. Sloan, Mr. Clinton, Mr. Martin, Mr. Leffel, Dr. Scothorn

NAYS: None

ABSENT: None

ABSTAINING: None

#### Resolution Number 18-03-07

**WHEREAS**, the County has adopted guidelines and is a responsible public entity under the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code §§ 56-575.1 et seq. (the "Act"); and

**WHEREAS**, on March 21, 2018, the County received an unsolicited conceptual proposal under the provisions of the Act from County Waste of Southwest Virginia, LLC, proposing to enter a public-private partnership to provide certain solid waste services to the County, to which proposal reference is further details; and

**WHEREAS**, the County has made public that it desires to find a more complete and permanent solution to its solid waste issues than it currently has, and expressly finds that the conceptual proposal is for a “qualifying project,” as that term is used in the Act:

**NOW THEREFORE**, be it resolved by the Board of Supervisors of Botetourt County, Virginia, that:

1. The Board hereby accepts the unsolicited PPEA conceptual proposal submitted by County Waste of Southwest Virginia, LLC, on March 21, 2018; and
2. The Board directs the County Administrator or his designee to cause the unsolicited PPEA conceptual proposal to be posted to the County website and advertised for 45 days in accordance with law, as soon as practicable; and
3. The Board directs the County Administrator or his designee to procure a consultant, appropriate for the purpose, to assist the County in evaluating the competing proposals; and
4. The Board authorizes the County Administrator or his designee to provide public information to, and meet with, other potential proposers during the advertising period upon request; and
5. The Board expressly finds that due to (i) the probable scope, complexity, or priority of the project, risk sharing including guaranteed cost or completion guarantees, (ii) added value or debt or equity investments proposed by the private entity, or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available, use of the competitive sealed bidding process is not advantageous or practicable. In this respect, the Board adopts the rationale provided by the County Administrator in the memorandum attached hereto as Exhibit A, and
6. The Board authorizes the County Administrator to form an advisory committee to evaluate proposals, which shall include:
  - a. Two Board members
  - b. The County Administrator or designee
  - c. The Deputy County Administrator
  - d. The County Procurement Officer

The advisory committee shall meet with the consultant and review proposals. It shall rank the proposals, interview top proposer(s), if any, and make a recommendation to the Board at its earliest convenience of the proposer to enter an interim or comprehensive agreement with. The advisory committee is not a committee or subcommittee of the Board, but a selection committee to assist the County Administrator in making a recommendation to the Board, and is not a public body.

7. In evaluating the proposals, the advisory committee shall consider (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) public input at a public hearing on the matter; and (x) other criteria that the advisory committee deems appropriate, and make a written



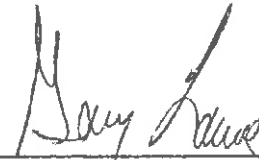
recommendation to the Board of its recommendation. The advisory committee shall recommend the proposal that constitutes the best value, meaning the overall combination of quality, price, and various elements of required services that are optimal relative to the County's needs. The criteria are set forth in more detail in Exhibit B, which is incorporated herein by reference; and

8. The County Administrator is directed to post all proposals to the County website as soon as practical following receipt, and to advertise a public hearing at the next Board meeting following the closing of the advertising period to receive input from the public for the use of the advisory committee; and

9. The County Administrator and County Attorney are authorized to take or cause to be taken such other and further administrative actions as may be necessary to ensure that the processing of this unsolicited proposal complies with law.

10. This resolution is effective upon adoption.

A Copy TESTE:

A handwritten signature in black ink, appearing to read "Gary Larowe", written over a horizontal line.

Mr. Gary Larowe  
Botetourt County Administrator

## **Exhibit A**

**TO: Board of Supervisors**  
**FR: Gary Larrowe, County Administrator**  
**DA: March 27, 2018**  
**CC: Susan Tincher, Procurement Officer**  
**RE: Selection Process for Unsolicited PPEA**

Finding a solution to the County's solid waste issues is a high priority. Our landfill must be closed by 2021. We currently have a short-term contract with the Roanoke Valley Resource Authority (RVRA) through the City of Salem to take the County's solid waste, but this is not a long-term solution. The County needs to reach a long-term solution to its problem. If we are not able to find a solution in the near future, the County will need to undertake investments in machinery and personnel to increase its own in-house solid waste management abilities.

Due to the complexity of the arrangements necessary for finding a solution, I recommend that we use a process consistent with the process for procurement of non-professional services by competitive negotiation. This is because this project is a high priority. It is also complex. We are looking for a private partner that will find us solutions for our own landfill, for our franchised haulers, and provide us long-term solid waste services at a reasonable cost. There are several factors of risk-sharing, guarantees, and pricing that enter into this, including the prices the private partner would charge to franchisees (and therefore ultimately to County citizens), the prices it would charge to citizens who haul trash to their tipping floor (if any), what if any long-term cost guarantees would exist, prices for our landfill space, location and capabilities of any convenience center, transfer station, or other tipping floor or recycling station proposed, and the skill and reputation of the private partner.

It is impossible to hire an engineer to design this so that it could be bid out on a competitive sealed bidding scheme. We also want to encourage proposers to bring to us creative solutions that we and our engineers and consultants might not have thought about.

It is also impossible for the advisory committee to make apples-to-apples price comparisons, due to the complexity of all of the moving parts in this transaction.

Therefore, I recommend to the Board that we move forward on a competitive negotiation model rather than a competitive sealed bidding model. Please let me know if you have any questions.

April 2, 2018

The Fincastle Herald  
P. O. Box 127  
Fincastle, VA 24090

Dear Sir/Madam:

Please publish the following public notice on Wednesday, April 4, and again on Wednesday, April 11, 2018, as a "run of press".

LEGAL NOTICE  
PUBLIC NOTICE  
BY THE  
BOTETOURT COUNTY BOARD OF SUPERVISORS

The Botetourt County Board of Supervisors has received an unsolicited proposal from County Waste of Southwest Virginia, LLC, to enter into a public-private solid waste services partnership under the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) as per Virginia Code §§ 56-575.1 et seq.

The PPEA is an alternative procurement method by which the County may solicit proposals or accept unsolicited proposals for creative and innovative public-private partnerships for solutions to issues of public infrastructure, planning, and provision of services.

This unsolicited proposal is to privatize the operations of the County's landfill located at 259 Landfill Road, Troutville, Virginia, including the construction of a transfer station that would begin operations near the point in time that the Landfill's permitted space has been fully utilized and exhausted. This proposal would provide the County with financial incentives along with competitive and stable long-term disposal costs for the County's non-hazardous solid waste and a long-term outlet for the handling and processing of the County's recyclable materials, including residential, commercial, and industrial.

The County intends to evaluate the proposal, may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and will receive for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA.

Any inquiries regarding this notice or individuals/companies interested in submitting a competing proposal for these services should contact Mr. David Moorman, Deputy County Administrator, or Mr. Gary Larrowe, Botetourt County Administrator, at sfain@botetourtva.gov or at 540-928-2006.

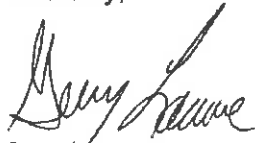
Any competing proposal must be received by 12:00 PM on Monday, May 21, 2018. It is requested that the original and six (6) copies of the proposal be submitted to the Botetourt County Purchasing Office, 2 East Main Street, Fincastle, VA 24090. No electronic copies will be accepted.

A copy of the unsolicited proposal from County Waste of Southwest Virginia, LLC, is available for review on the County's website ([www.botetourtva.gov](http://www.botetourtva.gov)), on the Virginia Business Opportunities website ([www.eva.virginia.gov](http://www.eva.virginia.gov)), is on file in the Botetourt County Administrator's Office and the Botetourt County Purchasing Office between the hours of 8:30 A. M. and 5:00 P. M., and in the Office of the Clerk of the Circuit Court between the hours of 8:30 A. M. and 4:30 P. M., Monday through Friday, for public viewing.

Gary Larrowe  
County Administrator

Thank you, and if you have any questions, please feel free to call.

Sincerely,



Gary Larrowe  
County Administrator

Exhibit C to Comprehensive Agreement

June 8, 2018

The Fincastle Herald  
P. O. Box 127  
Fincastle, VA 24090

Dear Sir/Madam:

Please publish the following public notice on Wednesday, June 13, and again on Wednesday, June 20, 2018, as a "run of press".

LEGAL NOTICE  
NOTICE OF PUBLIC HEARING  
BY THE  
BOTETOURT COUNTY BOARD OF SUPERVISORS

Pursuant to the provisions of Section 56-575.17 of the Code of Virginia of 1950, as amended, the Botetourt County Board of Supervisors will hold a public hearing on Tuesday, June 26, 2018, beginning at 3:15 P. M. in Rooms 226-228 of the Greenfield Education and Training Center located at 57 South Center Drive in Daleville to obtain public comment on PPEA conceptual proposals for solid waste and recycling disposal services.

The Botetourt County Board of Supervisors received an unsolicited proposal from County Waste of Southwest Virginia, LLC, to enter into a public-private solid waste services partnership under the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) as per Virginia Code Section 56-575.1 et seq. The PPEA is an alternative procurement method by which the County may solicit proposals or accept unsolicited proposals for creative and innovative public-private partnerships for solutions to issues of public infrastructure, planning, and provision of services.

This unsolicited proposal is to privatize the operations of the County's landfill located at 259 Landfill Road, Troutville, Virginia, including the construction of a transfer station that would begin operations near the point in time that the Landfill's permitted space has been fully utilized and exhausted. This proposal would provide the County with financial incentives along with competitive and stable long-term disposal costs for the County's non-hazardous solid waste and a long-term outlet for the handling and processing of the County's recyclable materials, including residential, commercial, and industrial.

After advertisement, the County received a competing proposal from the Roanoke Valley Resource Authority.

Copies of both proposals are available for review on the County's website ([www.botetourtva.gov](http://www.botetourtva.gov)), are on file in the Botetourt County Administrator's Office and the Botetourt County Purchasing Office between the hours of 8:30 A. M. and 5:00 P. M., and in the Office of the Clerk of the Circuit Court between the hours of 8:30 A. M. and 4:30 P. M., Monday through Friday, for public viewing. They are also available for public viewing on the County website at <http://botetourtva.gov/news/proposals-received-ppca-request-solid-waste-services/>

Gary Larrowe  
County Administrator

Thank you, and if you have any questions, please feel free to call.

Sincerely,



Gary Larrowe  
County Administrator

## **COMPREHENSIVE AGREEMENT EXHIBIT D**

### **MANAGEMENT AGREEMENT**

This Management Agreement (“Agreement”) dated \_\_\_\_\_, 2018 (the “Effective Date”), between Botetourt County, Virginia, a body politic and political subdivision of the Commonwealth of Virginia (“County”); and County Waste of Southwest Virginia, LLC (“Manager”) (singularly, a “Party” and, collectively, the “Parties”), recites and provides as follows.

**WHEREAS**, the County is the record and beneficial owner of a Sanitary Landfill located in Troutville, Virginia (the “Landfill”);

**WHEREAS**, the owners, officers and managers of Manager have significant experience operating Sanitary Landfills;

**WHEREAS**, the County desires to engage Manager as the operator of the Landfill, and Manager desires to accept such engagement, under the terms set forth in this Agreement;

**WHEREAS**, simultaneously with the execution of this Agreement, the County and Manager are entering into a Host Agreement (the “Host Agreement”) in connection with the Manager’s anticipated construction of a non-hazardous solid waste transfer station (the “Transfer Station”); and

**WHEREAS**, Manager will apply to the Virginia Department of Environmental Quality (“VDEQ”) for, and will seek to obtain, a Virginia Solid Waste Transfer Station Permit for the construction and operation of the Transfer Station as generally depicted on the draft Site Concept Plan attached hereto as Exhibit A.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Manager mutually agree as follows:

#### **1. DEFINITIONS.**

(a) “Adverse Consequences” means all actions, suits, Proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, amounts paid in settlement or claims, obligations, taxes, liens, losses, interest, expenses (including court costs, reasonable costs of investigation and defense and reasonable attorneys’ fees and expenses), whether or not involving a third-party Claim.

(b) “Affiliate” means any Person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another designated Person, as the context may require.

(c) “Construction Waste” means Solid Waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and

other structures. Construction Waste includes, but is not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not Construction Waste for purposes of this Agreement.

(d) “County Government” means agencies, departments, and other entities staffed primarily by County employees; public schools located in the County; and institutions administered and funded by the County, including jails, parks, and playgrounds, but excluding agencies and departments of the Commonwealth of Virginia or the federal government. Notwithstanding the foregoing, for purposes of this Agreement, County Government shall include all governmental or quasi-governmental offices in the County for which the solid waste is collected by County employees.

(e) “Debris Waste” means Solid Waste resulting from land-clearing operations. Debris Waste includes, but is not limited to, stumps, wood, brush, leaves, soil, and road spoils.

(f) “Demolition Waste” means that Solid Waste that is produced by the destruction of structures and their foundations and includes the same materials as Construction Waste.

(g) “Disaster Waste” means any Solid Waste and debris that is generated as a result of, or in connection with, any significant storm or other severe weather occurrence, natural or man-made disaster, war, act of terrorism, or other similar occurrence or event, and such similar Solid Waste generated in connection with clean-up and/or reconstruction activities resulting from any such occurrences or events.

(h) “Environmental, Health and Safety Liabilities” means any and all costs, damages, Adverse Consequences, expenses, Liabilities and/or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to (i) any environmental, health or safety matter or condition (including on-site or off-site contamination, and/or occupational safety and health regulation of any chemical substance or product), (ii) any fine, penalty, judgment, award, settlement, Proceeding, damages, Adverse Consequence, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law, (iii) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions (“Cleanup”) required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages, and/or (iv) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law. For purposes of this definition, the terms “removal,” “remedial” and “response action” include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).



(i) “Environmental Law” means any legal requirement that requires or relates to (i) advising appropriate governmental bodies, employees or the public of any intended Release, actual Release or Threat of Release of pollutants or Hazardous Materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment, (ii) preventing or reducing to acceptable levels the Release of pollutants or Hazardous Materials into the Environment, (iii) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated, (iv) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of, (v) protecting resources, species or ecological amenities, (vi) reducing to acceptable levels the risks inherent in the transportation of pollutants, Hazardous Materials or other potentially harmful substances, (vii) cleaning up pollutants that have been Released, preventing the threat of Release or paying the costs of such clean up or prevention, (viii) making responsible Persons pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets; or (ix) governing or regulating any Hazardous Activities.

(j) “Hazardous Material” means any substance or material which is or will foreseeably be regulated by any governmental body, including any material or substance which is defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic waste” or “toxic substance” under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

(k) “Liability” means with respect to any Person (including any Party), any indebtedness, liability, penalty, damage, loss, cost or expense, obligation, claim, deficiency, or guaranty of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person, including any liability for taxes.

(l) “Municipal Solid Waste” means that Solid Waste that is normally composed of residential, commercial, institutional, approved industrial, or approved special Solid Waste, and residues derived from combustion of these wastes.

(m) “Occupational Safety and Health Law” means any legal requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

(n) “Operation” means all waste management activities at a Sanitary Landfill beginning with the initial receipt of solid waste for treatment, storage, disposal, or transfer and ceasing with the initiation of final closure activities at the Landfill subsequent to the final receipt of Solid Waste.

(o) “Permit” means all necessary approvals from VDEQ to operate and maintain a Sanitary Landfill.

(p) “Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body, court, or arbitrator.

(q) “Reasonable attorney’s fee” or similar language means a fee which is reasonable for attorneys in the Roanoke-Blacksburg metropolitan area.

(r) “Recycling materials” means materials recognized in the solid waste industry as recyclable and containing less than ten percent (10%) of contaminated materials.

(s) “Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

(t) “Regulations” or “VDEQ Regulations” means VDEQ regulations pertaining to the permitting, operation, monitoring, and closure of a Sanitary Landfill.

(u) “Person” means any individual, partnership, corporation, trust, limited liability company or other entity.

(v) “Sanitary Landfill” means an engineered land burial facility for the disposal of Municipal Solid Waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. For purposes of this Agreement, a Sanitary Landfill may receive only those types of Solid Waste permitted pursuant to the terms hereof.

(w) “Sludge” means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

(x) “Solid Waste” means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining, agricultural operations, or community activities, but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by

the Federal Atomic Energy Act of 1954, as amended. Solid Waste also includes approved special waste.

(y) “SWTS” means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery, defined as a “Transfer Station” under the Regulations. The SWTS or Transfer Station that is the subject of this Agreement is generally depicted on the draft Transfer Station Site Concept Plan attached as Exhibit A.

**2. APPOINTMENT OF MANAGER.** On and subject to the terms and conditions of this Agreement, the County hereby retains Manager commencing on the Effective Date to manage and operate the Landfill, subject to any modifications and approvals by the VDEQ to the existing Permit, and the County and Manager will cooperate to obtain any such necessary modifications or approvals. Manager shall assume full administrative, operational and engineering responsibility for the operation of the Landfill, upon approval by the VDEQ, if necessary.

**3. TERM.** The term of this Agreement shall commence as of the Effective Date and shall remain in full force and effect until one (1) year following the closing of the Landfill after the Landfill’s permitted airspace has been fully utilized and exhausted.

**4. DISPOSAL FEES.** In consideration of the performance by Manager of its duties and obligations hereunder, Manager shall be entitled to keep all disposal fees paid in connection with the delivery of Acceptable Waste and recycling materials to the Landfill, at rates Manager deems appropriate in its absolute discretion, subject to the following terms and conditions:

(a) Solid Waste. During the term of this Agreement while Manager is managing the Landfill, subject to any adjustments that may be set forth in Section 4d. of this Agreement, Manager shall apply the following fee schedule:

Solid Waste .....	\$49.50 per ton
Minimum Fee to Cross Scales, passenger car with less than 80 pounds of solid waste and recycling material .....	\$3.00 per vehicle
Minimum Fee to Cross Scales, pickup truck or larger vehicle with less than 500 pounds of solid waste and recycling material.....	\$10.00 per vehicle
Tire Less than 20 inches in diameter, residential, in-county customers only .....	\$5.00 per tire
Tire 20 inches or more in diameter, residential, in-county customers only .....	\$10.00 per tire
Appliance or white goods, without Freon.....	\$5.25 per item
Appliance or white goods, with Freon.....	Reasonable, at County Waste’s complete discretion.

Out-of-County waste or in-County waste not identified in fee schedule, all acceptable types ..... At County Waste's complete discretion.

Heavy equipment tires are prohibited.

This fee schedule is applicable only to Acceptable Waste delivered to the Landfill by residents of the County or waste from County Government and for residential waste originating in the County and being delivered by Government franchised haulers in Botetourt County (the "Gate Rate"); provided, however, that in the event the Manager charges any of its customers, other than its own affiliates and subsidiaries, a lower disposal rate for Compensable Waste for which the Manager charges a disposal fee at the Landfill than the disposal rate then in effect, the disposal rate paid by the County or waste from County Government, and Government franchised haulers for Botetourt County Residential Waste shall immediately be reduced to such lower amount while such pricing term remains in effect.

(b) Franchised Haulers. In its capacity as Operator of the Landfill, the Manager shall not engage in any anticompetitive or discriminatory practice, as defined in Section 59.1-9.7 of the Code of Virginia, 1950, as amended, with respect to the County's franchised haulers, or in any activity conflict with the County's existing agreements with franchised haulers. The County warrants that it has provided Manager copies of the existing franchise agreements, and Manager warrants that it understands and is willing and able to comply with them as Manager of the Landfill.

(c) Recyclables. There will be no charge to residents of the County and to County Government for acceptable recycling materials (materials recognized in the industry as recyclable material that contains less than ten (10%) percent of contaminated materials) delivered to the Landfill by residents of the County and from County Government facilities.

(d) Governmental Fees. The disposal rate shall at all times during the term of this Agreement include all fees, taxes and other similar assessments imposed by all governmental authorities which are in effect as of the date of this Agreement, including without limitation recycling fees, post-closure fees, host fees and royalties (collectively, the "Fees"). The Parties acknowledge and agree that any additional Fees or increases in current Fees imposed subsequent to the date of this Agreement shall cause the disposal rate to be immediately increased by the amount of any such increase in Fees or additional Fees.

**5. AUTHORITY AND RESPONSIBILITIES OF MANAGER; OPERATION OF LANDFILL.**

(a) Independent Contractor. In the performance of its duties hereunder, the Manager shall be and act as an independent contractor, with the sole duty to supervise, manage, operate, control and direct performance of the details of its duties incident to the specified duties and obligations hereunder, subject to the rights of the County, as described herein. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture between Manager and the County or to create any liability for one party with respect to indebtedness, liabilities or obligations of the other party except as otherwise may be expressly set forth herein.

(b) Standard of Care. Manager shall perform its duties and obligations in a professional, competent, businesslike and efficient manner as would a first class operator of Sanitary Landfills similar to the Landfill.

(c) Acceptable Waste. The Landfill shall be permitted and operated, and will continue at all times to operate, as a Sanitary Landfill and shall be authorized to accept Municipal Solid Waste, Construction Waste, Debris Waste, Demolition Waste, and Disaster Waste so long as the said Disaster Waste is not of any type identified herein as Unacceptable Waste, as defined in Section 5d. below (hereinafter such authorized waste is referred to a “Acceptable Waste”), which is permitted under the Landfill’s existing Permit. Manager will operate the Landfill as a Sanitary Landfill and will accept those wastes authorized by the Act and Regulations as they may from time to time be amended, and by the Landfill Permit, including subsequent Permit(s) and Permit modifications that may be issued from time to time; provided, however, Manager has the right to refuse to accept any waste that it deems unreasonably hazardous, toxic or dangerous.

(d) Unacceptable Waste. County Waste shall not accept for disposal in the Landfill any materials not allowed under the Permit (“Unacceptable Wastes”).

(e) Equipment; Convenience Station. Manager shall be granted full use of the existing equipment at the Landfill. The Manager may bring in new or quality used equipment necessary to properly operate, cap, and close the Landfill at no cost to the County. The County shall continue to maintain responsibility for operating its convenience center located near the Landfill’s entrance with employees of the County.

(f) Manager’s Employees. Manager shall use its best efforts to have in its employ at all times a sufficient number of employees to enable it to professionally manage the Landfill in accordance with the terms of this Agreement. Manager shall prepare, execute and file all forms, reports and returns required by applicable laws in connection with the operation and management of the Landfill. All payroll costs for on-site employees shall be at Manager’s expense. All matters pertaining to the employment and supervision of such employees shall be the sole responsibility of the Manager, which in all respects shall be the employer of such employees, and the County shall have no liability with respect to such matters. County residents shall be given preference for positions for which they have applied and are qualified.

Notwithstanding the foregoing, the County shall provide Weigh Master labor during the fill time of the Landfill in order to review contents of the Landfill and to provide third-party weight tickets for haulers. Labor costs shall be the responsibility of the County.

(g) Manager's Insurance. Manager will obtain and maintain in effect comprehensive general liability insurance and pollution liability insurance with minimum coverage limitations of \$2,000,000 per occurrence and \$5,000,000 annual aggregate; employer's liability/workers' compensation insurance as required by statute, but in any case no less than a minimum coverage limitation of \$1,000,000 per accident; property and casualty insurance on a replacement value basis, with minimum coverage limitation of \$5,000,000 per occurrence; and such other insurance for the Landfill as may be required by law. The County, its elected and appointed officials, and its employees, shall be listed as additional insureds on the comprehensive general liability and pollution insurance policies in connection with any event or occurrence arising from the Landfill.

(h) Financial Assurance. Manager will post financial assurances in accordance with the requirements of the Act and VDEQ Regulations for the guarantee of the performance of the final closure associated with the Landfill. Manager shall post any bond necessary for the Operation of the Landfill prior to the closure of the Landfill. Immediately following the closure of the Landfill and upon receipt of final certification from the VDEQ of the proper closure of the Landfill, any bond posted by the Manager shall be immediately returned to Manager and voided.

Within thirty (30) days after commencement of its operation of the Landfill, Manager shall provide the County a performance bond in the amount of \$250,000 for compliance with the VDEQ Regulations and permit; and a mechanics' and materialmen's payment bond in the amount of \$250,000.

(i) Cooperation on Closure & Permitting. The County shall fully cooperate with Manager in Manager's efforts to close and cap the portions of the Landfill designated by VDEQ Permit Nos. 519 and 582. Manager shall diligently pursue all necessary governmental permits for the SWTS. If Manager receives all necessary local approvals to construct and operate the Transfer Station (to include any necessary rezonings, special exceptions, and final site plans), but Manager is unable to construct the Transfer Station due to failure to obtain any necessary state or federal permits (or the Final Site Plan is denied only because of failure of a non-local agency to give approval that both Manager diligently pursues and with which the County fully cooperates), Manager shall pay the County one million five hundred thousand dollars (\$1,500,000) toward the cost of the closing and capping of the Landfill. Payment would be made within sixty (60) days of Manager's receipt of invoices or similar documents from the County documenting expenditures that equal or exceed one million five hundred thousand dollars (\$1,500,000).

As set forth in Paragraph 5(k)(i), if Manager is required to post a bond or provide surety in connection with the closing and capping of the Landfill before Manager receives all necessary approvals for a Transfer Station on Property identified on the Transfer Station Site Concept Plan, and Manager does not receive all such approvals, then the County shall reimburse Manager for all Manager's costs, expenses, damages, claims, reimbursements or payments relating to the bond or surety and the closing and capping of the Landfill, subject to the \$1,500,000 payment set forth above if the Transfer Station does not open because Manager does not receive necessary approvals of State and non-local agency approvals despite the County's cooperation, and not because of the inability to receive necessary local approvals.

If Manager is not required to close and cap the Landfill, then Manager shall provide copies to the County of all engineering studies, plans, and similar documents relating to the closing and capping of the Landfill, and Manager will assign to the County all rights it has in such studies, plans, and documents.

(j) Permit Amendments. Manager has the right to seek and obtain any amendments or modifications to the Permit that it reasonably deems necessary, or desirable or appropriate including, without limitation, (1) increasing the daily disposal limit from 150 tons a day to 300 tons a day, and 2) modifying the design and composition of the approved cap system and modifying the existing closure plan from a bench system to a 3:1 slope without benches. The County will cooperate fully with Manager in obtaining any such amendments and modifications that Manager reasonably deems appropriate or necessary.

(k) Landfill Closure and Post-Closure.

(i) Landfill Closure. The closure and capping of the Landfill shall be in compliance with all applicable federal and state laws, regulations, and permits and shall take place promptly following the full utilization of the Landfill's remaining airspace. The final closure plan must be approved by VDEQ or its successor regulatory authority prior to initiating closure. The closure and capping of the Landfill shall be at the sole expense of the Manager; provided, however, that Manager is not obligated to cap any portion of the Landfill disposal area that is unlined or which has been previously capped. Manager hereby warrants to the proper closing of the Landfill for a period of one (1) year following the closure of the Landfill. Notwithstanding the foregoing or any other provision of this Agreement, the Manager shall have no responsibility for closing or capping the landfill, providing any warranty related thereto or for any post-closure matters related to the Landfill unless and until the Manager receives the final Permit from VDEQ and approval of all applicable zoning regulations and site plans for the operation of the Transfer Station as a SWTS (as that term is defined in the Host Agreement) authorized to accept each of Municipal Solid Waste, Construction Waste, Debris Waste, Demolition Waste, and Disaster Waste on conditions and proffers acceptable to Manager by the time of full utilization of the Landfill's remaining airspace. If Manager is required to post a bond or provide surety in connection with the closing and capping of the Landfill before Manager receives all such approvals for a SWTS, and Manager does not receive all such approvals, County shall reimburse Manager for all Manager's costs, expenses, damages, claims, reimbursements or payments relating to the bond or surety and the closing and capping of the

Landfill. The County will fully cooperate with Manager in Manager's efforts to close and cap the Landfill.

(ii) Post-Closure of Landfill. The County, at the County's expense, shall be responsible for all post-closure care for the Landfill, which shall be in compliance with all applicable federal and state laws, regulations, and permits. The County will post all financial assurances in accordance with the requirements of the Act and VDEQ Regulations for the post-closure obligations associated with the closing of the Landfill. Manager shall have no obligations in connection with the post-closure responsibilities following the closing of the Landfill. Provided, further, under no circumstances shall Manager be responsible for any expenses, damages or remediation measures arising from or relating to underlying geological formations, conditions, or processes.

(k) Maintenance of Records. Manager agrees to keep and maintain at all times all necessary books and records relating to the operation of the Landfill. If requested by the County, an annual audit report shall be prepared at the County's expense. All such books and records shall be reconciled with any weight records provided to VDEQ or other regulatory agency. All books, correspondence and data pertaining to the operation of the Landfill shall at all times be safely preserved. Such books, correspondence and data shall be available to the County at all reasonable times, and shall, upon the termination of this Agreement be delivered to the County within (30) days of such termination. Manager shall maintain files of all original documents relating to the business of the Landfill in an orderly fashion at the Landfill, which files shall be the property of the Manager and shall at all times be open to the County's inspection.

**6. REPRESENTATIONS OF MANAGER.** Manager represents, warrants, covenants and agrees that:

(a) it has the authority to enter into and to perform this Agreement, to execute and deliver all documents relating to this Agreement, and to incur the obligations provided for in this Agreement;

(b) when executed, this Agreement, together with all documents executed pursuant hereto, shall constitute the valid and legally binding obligations of Manager in accordance with its terms;

(c) Manager has all necessary licenses, consents and permissions to enter into this Agreement, manage the Landfill, and otherwise comply with and perform Manager's obligations and duties hereunder. Manager shall comply with any conditions or requirements set out in any such licenses, consents and permissions, and shall at all times operate and manage the Landfill in accordance with such conditions and requirements;

(d) during the term of this Agreement, Manager will be a valid limited liability company, duly organized under the laws of the Commonwealth of Virginia, and shall have full power and authority to manage the Landfill, and otherwise comply with and perform Manager's obligations and duties under this Agreement; and



(e) Manager shall use its best efforts to comply with any requirements under applicable environmental laws, regulations and orders which affect the Landfill.

**7. REPRESENTATIONS OF THE COUNTY.** The County represents and warrants that:

(a) The County has the authority to enter into and to perform this Agreement, to execute and deliver all documents relating to this Agreement, and to incur the obligations provided for in this Agreement;

(b) When executed, this Agreement, together with all documents executed pursuant hereto, shall constitute valid and legally binding obligations of the County, in accordance with their terms; and

(c) During the term of this Agreement, the County shall not interfere with Manager's supervision of the Manager's employees or contractors.

**8. MANAGER'S RIGHT TO ACCEPT AND DISPOSE OF SOLID WASTE IN LANDFILL.**

While Manager operates the Landfill, the County shall not limit Manager's rights to accept for disposal at the Landfill residential and any other Acceptable Solid Waste regardless whether the Solid Waste originates in the County or outside the County. The County further agrees to modify and amend any franchise hauling agreements with Manager or its subsidiaries and affiliates to eliminate any limitations on the origin of Solid Waste that may be disposed at the Landfill, and County further agrees not to place any requirement on Manager or its subsidiaries and affiliates directing what facility Manager and its affiliates and subsidiaries must use in disposing of any Acceptable Solid Waste.

**9. INDEMNIFICATION.**

(a) Indemnification of the County. Manager shall indemnify, protect, defend and hold harmless the County, together with its respective officers, directors, agents, employees, contractors, and affiliates (collectively "County Indemnitees") from and against any and all claims, demands, actions, liabilities, losses, costs, expenses, damages, penalties, interest, fines, injuries and obligations, including reasonable attorneys' fees, court costs, and litigation expenses ("Claims") incurred by any County Indemnitee as a result of (a) any act by Manager (or any officer, agent, employee or contractor of Manager) outside the scope of Manager's authority hereunder, (b) any act or failure to act by Manager (or any officer, agent, employee or contractor of Manager) constituting negligence, misconduct, fraud, or breach of this Agreement, (c) any Environmental, Health, and Safety Liabilities arising out of or relating to (A) the conduct of any activity by the Manager, or any employee, contractor, or agent thereof, or relating to the Operation of the Landfill by the Manager; or (B) any Hazardous Materials or other contaminants that arrive on the Landfill at any time following the commencement of the Operation of the Landfill by the Manager, or (d) any act or omission by Manager, its employees, officers, agents,

or contractors in violation of any applicable law. Provided, however, under no circumstances shall Manager be required to indemnify County for any acts or claims relating to or arising from any underlying geological formation, process, or condition.

(b) Indemnification of Manager by the County. To the extent permitted by law, and without waiving or intending to waive the doctrine of sovereign immunity or assume any liability for any claim for which the County would have sovereign immunity if it were itself sued, the County shall indemnify, protect, defend, and hold harmless Manager and its officers, directors, agents, employees, and affiliates (“Manager Indemnitees”) from and against any and all Claims incurred by Manager Indemnitees as a result of (a) any act by the County (or any officer, agent, employee or contractor of County) outside the scope of the County’s authority hereunder, (b) any act or failure to act by the County (or any officer, agent, employee or contractor of the County) constituting negligence, misconduct, fraud, or breach of this Agreement, (c) any Environmental, Health and Safety Liabilities arising out of or relating to (A) the conduct of any activity by the County, or any employee, contractor, or agent thereof, or relating to the Operation of the Landfill prior to Manager taking over the Operation of the Landfill; or (B) any Hazardous Materials or other contaminants that were present on the Landfill at any time on or prior to the Operation of the Landfill by the Manager, or (d) any act or omission by Manager, its employees, officers, agents, or contractors in violation of any applicable law. To the fullest extent permitted by law, the above exclusion for claims that would be barred by the doctrine of sovereign immunity does not apply to any claim or demand brought by a governmental agency, and the exclusion only applies to claims by non-governmental third party claims that would be barred by sovereign immunity.

(c) Survival. The provisions of this Paragraph 9 shall survive the termination of this Agreement.

## **10. DEFAULT.**

(a) Manager’s Event of Default. Manager shall be deemed to be in default hereunder upon the happening of any of the following (“Manager’s Event of Default”):

(1) The failure by Manager to keep, observe or perform any covenant, agreement, term or provision of this Agreement and the continuation of such failure, in full or in part, for a period of thirty (30) days after written notice thereof by the County to Manager, or if such default cannot be cured within such fifteen (15) day period, then such additional period as shall be reasonable, provided Manager commences to cure such default within such thirty (30) day period and proceeds diligently to prosecute such cure to completion.

(2) Notwithstanding paragraph (1), the occurrence of any of the following shall be a Manager’s Event of Default and Manager shall not have the right to cure such default: The making of a general assignment by Manager for benefit of its creditors, the filing by Manager with any bankruptcy court of competent jurisdiction of a voluntary bankruptcy petition, the filing by Manager of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or

similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, Manager being the subject of any order for relief issued under the United States Bankruptcy Code, as amended from time to time, or the dissolution or liquidation of Manager.

(b) Remedies of the County. Upon a Manager's Event of Default, the County shall be entitled (i) to terminate in writing this Agreement effective as of the date designated by the County (which may be the date upon which notice is given), and/or (ii) to pursue any remedy available at law or in equity, including without limitation, specific performance. All of the County's rights and remedies shall be cumulative.

(c) County's Event of Default. The County shall be deemed to be in default hereunder (a "County's Event of Default") if the County shall fail to keep, observe or perform any covenant, agreement, term or provision of this Agreement to be kept, observed or performed by the County, and such default shall continue for a period of thirty (30) days after written notice thereof by Manager to the County, or if such default cannot be cured within such thirty (30) day period, then such additional period as shall be reasonable, provided the County commences to cure such default within such fifteen (15) day period and proceeds diligently to prosecute such cure to completion.

(d) Remedies of Manager. Upon the County's Event of Default, Manager shall be entitled (i) to terminate in writing this Agreement effective as of the date designated by the Manager which is at least 10 days after receipt of such notice of termination by the County provided the County's Event of Default has not then been cured or such cure commenced, and/or (ii) to pursue any remedy available at law or in equity, including without limitation, specific performance. All of Manager's rights and remedies shall be cumulative.

## **11. TERMINATION RIGHTS.**

(a) Expiration of Term. If not sooner terminated, this Agreement shall terminate on the expiration of its term set forth in Section 3 hereof.

(b) Termination By the County Upon Manager's Event of Default. Upon a Manager's Event of Default, the County may terminate this Agreement as specified in Section 10(b) hereof.

(c) Termination By Manager Upon the County's Event of Default. Upon the County's Event of Default, Manager may terminate this Agreement as specified in Section 10(d) hereof.

**12. NO JOINT VENTURE.** This Agreement is entered into solely for the purposes set forth herein and shall not be construed to create a joint venture or partnership between Manager and the County.

**13. SURVIVAL OF AGREEMENT.** All indemnity obligations set forth herein, all obligations to pay earned and accrued fees and expenses, all confidentiality obligations, and all

obligations to perform and duties accrued prior to the date of termination shall survive the termination of this Agreement.

**14. ENFORCEMENT OF AGREEMENT.** This Agreement, its interpretation, performance and enforcement, and the rights and remedies of the parties hereto, shall be governed and construed by and in accordance with the law of the Commonwealth of Virginia. In any dispute pertaining to, or litigation or arbitration arising from to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including those incurred in connection with all appellate levels, bankruptcy, mediation or otherwise to maintain such action, from the losing party.

**15. ASSIGNMENT.** Except for a subsidiary or wholly-owned affiliate of Manager, no assignment of this Agreement or any right accruing under this Agreement shall be made in whole or in part by Manager without the express written consent of the County, which consent shall not be unreasonably withheld. In the event of any consented assignment, the assignee shall assume the liabilities of the Manager. Such assignment will not release the Manager from its obligations under the terms of this Agreement. Any assignment, other than to a permitted subsidiary, without the consent of the County shall be void.

**16. NOTICES.** All notices, demands, requests or other communications ("Notices") to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or by sending by facsimile or email transmission, addressed as follows:

As to Manager:

Jerry Cifor  
4 Enterprise Avenue  
Clifton Park, New York 12065

With a copy to:

William H. Shewmake, Esquire  
LeClairRyan PLCC  
919 East Main Street  
Twenty-Fourth Floor  
Richmond, Virginia 23129

As to the County:

Gary P. Larrowe  
County Administrator  
One West Main Street  
Box 1  
Fincastle, Virginia 24090

With a copy to:

Michael W.S. Lockaby  
County Attorney  
Guynn & Waddell, P.C.  
415 S. College Ave.  
Salem, Virginia 24153

All Notices shall be effective upon such personal delivery, upon being deposited in the United States mail or upon facsimile or email transmission as required above. However, with respect to Notices so deposited with the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run three (3) days following any such deposit in the United States mail. By giving to the other parties hereto at least fifteen (15) days' written notice in accordance with the provisions hereof, a party may change its address for notice purposes.

#### 17. PUBLIC PROCUREMENT REQUIREMENTS

- (a) Manager's Representations. The Manager represents and warrants to the County that during the Contract Period it:
- (1) Will comply and conform with the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
  - (2) Not employ illegal alien workers or otherwise violate the provisions of the Immigration Reform and Control Act of 1986, as amended; and
  - (3) Comply with all federal, state, and local laws and regulations applicable to the performance of its obligations under this Agreement.
- (b) The Manager Further Agrees:
- (1) During the term of this Agreement, the Manager will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by local, state, or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Manager;
  - (2) Provide a drug-free workplace for its employees, and otherwise comply with the Drug Free Workplace Act of 1988, as amended;

- (3) Post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in its workplace and specify the actions that will be taken against any employee for a violation;
- (4) State in all of its solicitations or advertisements for employees that the Vendor maintains a drug-free workplace;
- (5) Include all provisions of this sub-section in every subcontract or purchase order over \$10,000, so as to make said provisions binding upon each subcontractor or subvendor.

## 18. MISCELLANEOUS.

(a) Captions. The captions of this Agreement are inserted only for the purpose of convenient reference and do not define, limit or prescribe the scope or intent of this Agreement or any part hereof.

(b) Modifications and Changes. This Agreement cannot be changed or modified except by another agreement in writing, signed by the parties sought to be charged therewith.

(c) Entire Agreement. This Agreement embodies the entire understanding of the parties, and there are no further agreements or understandings, written or oral, in effect between the parties relating to, the subject matter hereof.

(d) Construction of Document. This Agreement has been negotiated at arms' length and has been reviewed by counsel for the parties. No provision of this Agreement shall be construed against any party based upon the identity of the drafter.

(e) Severability. If any provision of this Agreement or the application thereof, is held to be invalid or unenforceable, such defect shall not affect other provisions or applications of this Agreement that can be given effect without the invalid or unenforceable provisions or applications, and to this end, the provisions and applications of this Agreement shall be severable.

(f) Waiver of Jury Trial. To the fullest extent permitted by law, each party to this agreement severally, knowingly, irrevocably and unconditionally waives any and all rights to trial by jury in any action, suit or counterclaim brought by any party to this Agreement arising in connection with, out of or otherwise relating to this Agreement.

(g) No Continuing Waiver. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach.

(h) Counterparts; Facsimile and Email Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be effective upon the execution and delivery by any party of facsimile and email copies of signature pages hereto duly executed by such party; provided, however, that any party delivering a facsimile or email signature page covenants and agrees to deliver promptly after the date hereof two (2) original copies to the other parties hereto.

*[Remainder of this page is intentionally left blank]*

IN WITNESS WHEREOF, the Parties have executed and delivered this Management Agreement as of the date first written above.

BOTETOURT, VIRGINIA

Date: 9/27/2018

By: [Signature]  
County Administrator Title

COUNTY WASTE OF SOUTHWEST VIRGINIA, LLC

Date: 9-28-2018

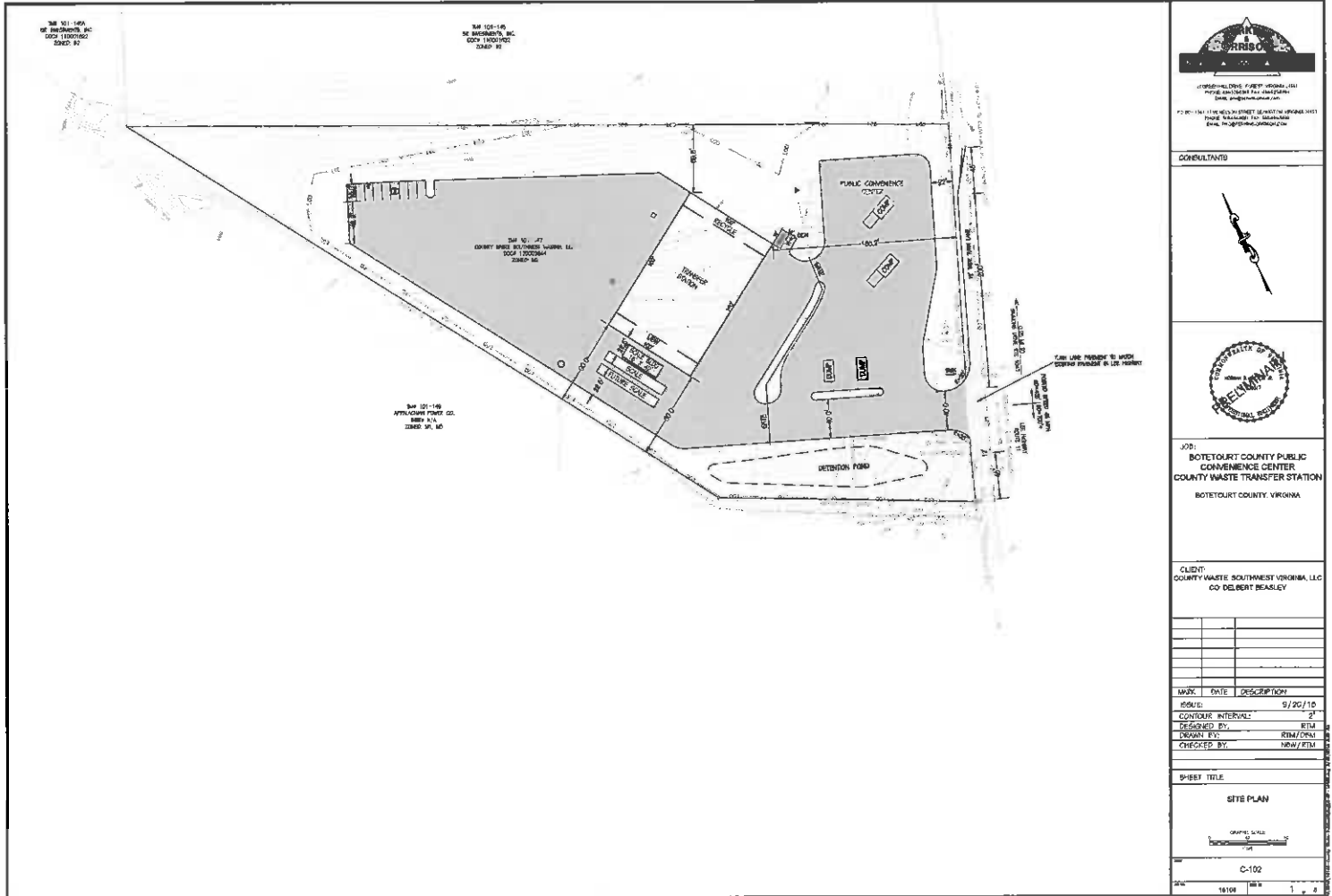
By: [Signature]  
~~Jerry S. Cifor, Manager~~ <sup>BB</sup> <sup>AD</sup>  
Delbert Beasley  
Member

Approved as to Form:

[Signature]  
Michael W.S. Lockaby  
Botetourt County Attorney



Exhibit A to Management Agreement



STATE OF VIRGINIA  
DEPARTMENT OF TRANSPORTATION  
DIVISION OF HIGHWAYS

---

CONSULTANTS

---

JOB:  
**BOTETOURT COUNTY PUBLIC  
 CONVENIENCE CENTER  
 COUNTY WASTE TRANSFER STATION**  
 BOTETOURT COUNTY, VIRGINIA

---

CLIENT:  
 COUNTY WASTE, SOUTHWEST VIRGINIA, LLC  
 CO-DELBERT BEASLEY

---

DATE	DESCRIPTION

---

DATE	DESCRIPTION
9/20/10	ISSUE
	CONTAINS INTERVAL: 2"
	DESIGNED BY: ETL
	DRAWN BY: RIM/DRL
	CHECKED BY: HRW/ETL

---

SHEET TITLE

**SITE PLAN**

---

C-102

16108 1 of 2

**COMPREHENSIVE AGREEMENT EXHIBIT E**

**HOST AGREEMENT**

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## ***COMPREHENSIVE AGREEMENT EXHIBIT E***

### **HOST AGREEMENT**

This Host Agreement (“Agreement”) dated \_\_\_\_\_, 2018, between Botetourt County, Virginia, a body politic and political subdivision of the Commonwealth of Virginia (“Botetourt” or “County”); and County Waste of Southwest Virginia, LLC (“County Waste”) (singularly, a “Party” and, collectively, the “Parties”), recites and provides as follows:

### **RECITALS**

R-1. County Waste owns certain real property located in the County on which County Waste intends to construct a non-hazardous solid waste transfer station (the “Transfer Station”). The said property is more fully described on a plat which is attached hereto as Exhibit A, and to which plat reference is hereby made for a more complete and accurate description of the Transfer Station real property.

R-2. Simultaneously with the execution of this Agreement, the County and County Waste are entering into a Management Agreement whereby County Waste will operate the County’s landfill located in Troutville, Virginia (the “Landfill”) for the remainder of the life of the Landfill.

R-3 County Waste will apply to the Virginia Department of Environmental Quality (“VDEQ”) for, and will seek to obtain, a Virginia Solid Waste Transfer Station Permit for the construction and operation of the Transfer Station.

R-4. After the Permit is issued to County Waste and at approximately the same time as the Landfill’s permitted airspace has been fully utilized and exhausted, County Waste will commence operations of the Transfer Station under the Permit and in accordance with applicable zoning regulations, and this Agreement shall govern certain aspects of the operation of the Transfer Station during the term of the Agreement.

NOW, THEREFORE, in consideration of the mutual obligations and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following:

### **DEFINITIONS**

“Act” shall mean the Virginia Waste Management Act, Va. Code §§ 10.1-1400 *et. seq.*

“Authority” means Roanoke Valley Resource Authority.

“Board of Supervisors” means the Board of Supervisors of the County.

“Compensable Solid Waste” means all Solid Waste received at the Transfer Station except: 1) material that originates from within the geographic boundaries of Botetourt County, and 2) recycling materials, and 3) other Solid Waste for which County Waste does

## ***COMPREHENSIVE AGREEMENT EXHIBIT E***

not receive payment which is approved by the Board of Supervisors to constitute an exemption from Compensable Solid Waste.

“Construction Waste” means Solid Waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction Waste includes, but is not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids and garbage are not Construction Waste for purposes of this Agreement.

“Container” means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

“Convenience Center” means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a Convenience Center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A Convenience Center shall be on a system of regularly scheduled collections.

“County Government” means agencies, departments, and other entities staffed primarily by County employees; public schools located in the County; and institutions administered and funded by the County, including jails, parks, and playgrounds, but excluding agencies and departments of the Commonwealth of Virginia or the federal government. Notwithstanding the foregoing, for purposes of this Agreement, County Government shall include all governmental or quasi-governmental offices in the County for which the solid waste is collected by County employees.

“Debris Waste” means Solid Waste resulting from land-clearing operations. Debris Waste includes, but is not limited to, stumps, wood, brush, leaves, soil, and road spoils.

“Demolition Waste” means that Solid Waste that is produced by the destruction of structures and their foundations and includes the same materials as Construction Waste.

“Municipal Solid Waste” means that Solid Waste that is normally composed of residential, commercial, institutional, approved industrial, or approved special Solid Waste, and residues derived from combustion of these wastes.

“Operation” means all waste management activities at a SWTS beginning with the initial receipt of solid waste for storage, collection, or transfer and ceasing with the initiation of final closure activities at the SWTS subsequent to the final receipt of Solid Waste.

“Permit” means all necessary approvals from VDEQ to design, construct, operate and maintain a SWTS.

## ***COMPREHENSIVE AGREEMENT EXHIBIT E***

“Recycling materials” means materials recognized in the solid waste industry as recyclable and containing less than ten percent (10%) of contaminated materials.

“Regulations” or “VDEQ Regulations” means VDEQ regulations pertaining to the permitting, operation, monitoring, and closure of a SWTS.

“Sludge” means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

“Solid Waste” means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid, or contained gaseous material, resulting from industrial, commercial, mining, agricultural operations, or community activities, but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended. Solid Waste also includes approved special waste.

“SWTS” means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery, defined as a “Transfer Station” under the Regulations. The Transfer Station which is the subject of this Agreement, as depicted on the draft Site Concept Plan (the “Transfer Station Concept Plan”) attached hereto as Exhibit A is a SWTS.

### **SECTION 1. OPERATIONS**

**1.1 Acceptable Waste.** The Transfer Station shall be permitted and operated, and will continue at all times to operate, as a SWTS and shall be authorized to accept Municipal Solid Waste, Construction Waste, Debris Waste, Demolition Waste, and Disaster Waste so long as the said Disaster Waste is not of any type identified herein as Unacceptable Waste, as defined in Section 1.2 below (hereinafter such authorized waste is referred to a “Acceptable Waste”). County Waste will operate the Transfer Station as a SWTS and will accept those wastes authorized by the Act and Regulations as they may from time to time be amended, and by the Transfer Station Permit, including subsequent Permit(s) and Permit modifications that may be issued from time to time.

**1.2 Unacceptable Wastes.** County Waste shall not accept for disposal in the Transfer Station any of the following (“Unacceptable Wastes”):

a. Any material the disposal of which at the time of acceptance would violate the then-existing Permit or any then-current federal, or state, laws, rules or regulations pertaining to a SWTS;

b. Any “Hazardous Waste” which shall be deemed to be: (i) any waste defined as “hazardous waste” by Section C of the Resource Conservation and Recovery Act; (ii) any waste defined as “hazardous material” or identified as hazardous waste and

**COMPREHENSIVE AGREEMENT EXHIBIT E**

described and regulated by VDEQ’s Hazardous Waste Management Regulations; (iii) solid waste, which because of its quantity, concentration or physical, chemical or infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health, the Transfer Station, or the environment when treated, stored, transported, disposed of, or otherwise managed; (iv) potentially infectious medical waste; (v) regulated levels of polychlorinated biphenyls as defined by the Toxic Substances Control Act, 15 U.S.C. § 2601-2629, or regulations adopted thereunder; and (vi) radioactive waste or low-level radioactive waste as defined by the Atomic Energy Act, 42 U.S.C. § 2011, et seq., or the Southeast Interstate Low-Level Radioactive Waste Management Compact, or the implementing regulations of either;

c. Any nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923); and

d. Sludge.

**1.3 Removal of Unacceptable Wastes.** In the event Unacceptable Wastes are deposited in the Transfer Station, County Waste shall promptly remove or cause to be removed the Unacceptable Waste from the Transfer Station and cause the same to be disposed of in accordance with all applicable laws and regulations.

**1.4 Convenience Center for Residential Waste.** County Waste shall operate on its SWTS property or on an adjacent property a Convenience Center or drop-off station open to County residents. Consistent with paragraph 1.5, the Convenience Center/drop-off station shall be open at reasonable times to be determined in County Waste’s discretion.

**1.5 Gate Rate.**

a. Solid Waste. During the term of this Agreement, subject to any adjustments that may be set forth in Section 1.6 and of this Agreement, County Waste shall apply the following fee schedule:

Solid Waste* .....	\$55.00 per ton
Minimum Fee to Cross Scales* .....	\$10.00 per vehicle
Tire Less than 20 inches in diameter, residential, in-county customers only* .....	\$5.00 per tire
Tire 20 inches or more in diameter, residential, in-county customers only* .....	\$10.00 per tire
Appliance or white goods, without Freon*.....	\$5.25 per item
Appliance or white goods, with Freon.....	Reasonable, at County Waste’s complete discretion.
Out-of-County waste or in-County waste not identified in fee schedule, all acceptable types .....	At County Waste’s complete discretion.

Heavy equipment tires are prohibited.

## ***COMPREHENSIVE AGREEMENT EXHIBIT E***

This fee schedule is applicable only to Acceptable Waste originating in the County delivered to the Transfer Station by residents of the County, from County Government facilities, and for Residential waste originating from within the geographic boundary of Botetourt County and delivered to the Transfer Station by Government franchised haulers (the "Gate Rate"); provided, however, that (i) for those categories of waste labeled with an asterisk (\*), this fee shall be recomputed in accordance with the Consumer Price Index (CPI-U) published by the Bureau of Labor for the Roanoke, Virginia, Metropolitan Statistical Area (the "CPI") to reflect increases during the period from the Effective Date of this Agreement and the beginning of Operation of the Transfer Station; (ii) the Gate Rate for all categories shall thereafter be adjusted annually, beginning on July 1 after the beginning of Operation of the Transfer Station, and on each July 1 thereafter, to reflect increases in CPI, with a maximum increase of two and one-half percent (2.5%), on each anniversary, and (iii) in the event County Waste charges any of its customers other than one of its subsidiaries or affiliates a lower disposal rate for Compensable Waste for which County Waste charges a disposal fee at the Transfer Station than the Gate Rate then in effect, the Gate Rate shall immediately be reduced to such lower amount while such lower pricing term for the customer remains in effect. County Waste may charge for any other waste in any amount it determines in its complete discretion.

b. Recyclables. There will be no charge to the County for recycling materials delivered to the Transfer Station for the County and for recycling materials by residents of the County and from County Government Facilities.

**1.6 Governmental Fees**. The Gate Rate shall at all times during the term of this Agreement include all fees, taxes and other similar assessments imposed by all governmental authorities which are in effect as of the date of this Agreement, including without limitation recycling fees, post-closure fees, host fees and royalties (collectively, the "Fees"). The Parties acknowledge and agree that any additional Fees or increases in current Fees imposed subsequent to the date of this Agreement shall cause the Gate Rate to be immediately increased by the amount of any such increase in Fees or additional Fees.

**1.7 Scales**. County Waste shall operate scales at the Transfer Station entrance or at such other location as may be determined by County Waste to ensure the proper weighing of vehicles entering the Transfer Station. Scales will be of a type and quality customarily used in the industry and shall be properly maintained and operated. The scales shall be recalibrated for accuracy not less than once every 60 days to within original manufacturer accuracy specifications. Scale data will be reported monthly to the County in such form and at such time as the Parties hereto agree, and scale data will also be available for review by the County at the Transfer Station during normal business hours upon reasonable notice.

## **SECTION 2. HOST FEE; LABOR**

**2.1 Host Fee**. Upon Commencing Operation of the Transfer Station, County Waste will pay to the County a Host Fee of \$1.50 per ton for each ton of Compensable Solid Waste accepted for disposal at the Transfer Station. The Host Fee shall be calculated and paid on a calendar month basis and payment shall be made to the County on or before

## ***COMPREHENSIVE AGREEMENT EXHIBIT E***

the fifteenth (15th) day of the month immediately following the month for which the fee is calculated. Calculation shall be made based on the books and records mentioned in Section 3, and shall match any weight records provided to VDEQ. The Host Fee shall be adjusted annually, beginning on each July 1, to reflect increases in the Consumer Price Index (CPI-U) published by the Bureau of Labor for all urban consumers in the Roanoke Metropolitan Statistical Area, with a maximum increase of two and one-half percent (2.5%) on each anniversary.

**2.2 Insurance.** County Waste may deduct from the Host Fee fifty percent (50%) of any insurance premiums it pays on a pollution liability and a five (5) year tail insurance policy or policies (the "Insurance Policy") relating to County Waste's or its affiliates' or subsidiaries' Operation of the County Landfill, as identified in Exhibit D to the Comprehensive Agreement. The maximum amount that County Waste may deduct from the Host Fee in any one year is \$12,500, but County Waste may continue to deduct fifty percent (50%) of policy premiums until it is reimbursed for fifty percent (50%) of the aggregate premiums on the Insurance Policy. In no case shall the maximum deduction exceed the lesser of fifty percent (50%) of the aggregate policy premiums or \$125,000. County Waste shall cause the County to be named as an additional insured on the Insurance Policy.

**2.3 Labor.** The County shall not be required to provide any labor in connection with the operation of the Transfer Station. Provided, however, the County may provide labor at no cost to County Waste in connection with a Convenience Center if County Waste determines, in its discretion, that the personnel being provided by the County are qualified to perform the tasks assigned.

### **SECTION 3. CONSTRUCTION AND ADMINISTRATION**

#### **3.1 Books and Records.**

a. **Quarterly Reports.** County Waste shall keep accurate records of Solid Waste received and the County shall have the right to inspect and audit the same insofar as they pertain to the operation of the Transfer Station. The records shall show the type, weight, and volume of Solid Waste received. Such record shall also specify the amount of Solid Waste received from County residents' convenience waste drop off stations and from County Government facilities disposed of at the Transfer Station. County Waste shall prepare reports on a quarterly basis, certified by an officer of County Waste and send such reports the County on or before the fifteenth (15<sup>th</sup>) day of the month immediately following the end of such quarter.

b. **Annual Report.** County Waste shall prepare and furnish to the County an annual report which shall provide a summary of the information required in the quarterly report.

c. **Annual Certificate.** County Waste shall prepare an annual certificate of its Transfer Station operations showing annual tonnages and receipts, which certificate shall be issued by an officer of County Waste with copies being furnished to the



## ***COMPREHENSIVE AGREEMENT EXHIBIT E***

County. County Waste shall deliver such certificate to the County no later than March 1 of each year following the previous calendar year of such operations. The County will hold in confidence and not disclose nor use any information furnished or disclosed to it without the express written approval of County Waste unless the release of such information is required under the Virginia Freedom of Information Act or court proceedings.

### **3.2 Permits and Approvals.**

a. As part of the process to obtain approval to construct, own, and operate the Transfer Station, County Waste shall apply to the County to receive rezoning to include any necessary conditional use permit, conditional use and/or special exception for the Transfer Station property in accordance with the County ordinances regarding Transfer Stations. The rezoning, including special exceptions, conditional uses, or conditional use permit, shall state the terms and conditions upon which the Transfer Station may be operated by County Waste. Nothing herein shall guarantee approval or continuation of any rezoning; provided, however, this Agreement is contingent upon County Waste receiving any necessary zoning approvals, including a conditional use permit, conditional use, or special exception, with proffers and conditions acceptable to County Waste and not imposed on County Waste over its objection.

b. As part of the consideration for this Agreement, the County will cooperate fully with County Waste's efforts to obtain the Permits and/or Permit amendments authorizing the Transfer Station construction, including the performance of infrastructure studies, traffic studies, zoning approvals, need surveys and other information necessary for preparation of a complete application. The County will make available to County Waste upon request access to all records and data in its possession or control pertaining to the Transfer Station. The County will use its best efforts to support and cooperate with County Waste in obtaining the Transfer Station Permit and any necessary amendments to the Transfer Station Permit for the Transfer Station construction, and will process expeditiously requests for zoning, rezoning, permits and other approvals required by County ordinances. Nothing herein shall be construed to require the Board of Supervisors to exercise any legislative function in favor of County Waste.

## **SECTION 4. CLOSURE**

**4.1 Facility Closure; Financial Assurance.** County Waste will post financial assurances in accordance with the requirements of the Act and VDEQ Regulations for the closure and post-closure obligations associated with the Transfer Station.

## **SECTION 5. DEFAULT**

**5.1 No Joint Venture.** This Agreement is entered into solely for the purposes set forth herein and shall not be construed to create a joint venture or partnership between County Waste and the County.

## ***COMPREHENSIVE AGREEMENT EXHIBIT E***

### **5.2 Cooperation by County.**

a. The Board of Supervisors will work with County Waste to advance the interests of the County financially and to promote clean, healthy waste disposal facilities.

b. The County will encourage new businesses locating in Botetourt County to utilize the services of County Waste to haul waste to the Transfer Station.

c. During the term of this Agreement or any renewal thereof, the County shall not place or impose any restriction on County Waste that would limit the ability of County Waste and/or its affiliates and subsidiaries from delivering Acceptable Solid Waste for transfer to the Transfer Station regardless of the origin of the Acceptable Waste.

## **SECTION 6. MISCELLANEOUS**

**6.1 Insurance.** County Waste will obtain and maintain in effect comprehensive general liability insurance and pollution liability insurance with minimum coverage limitations of \$2,000,000 per occurrence and \$5,000,000 annual aggregate; employer's liability/workers' compensation insurance with a minimum coverage limitation of \$1,000,000 per accident; property and casualty insurance on a replacement value basis, with minimum coverage limitation of \$5,000,000 per occurrence; and such other insurance for the Transfer Station as may be required by law. The County, its elected and appointed officials, and its employees, shall be listed as additional insureds on the comprehensive general liability and pollution insurance policies in connection with any event or occurrence arising from the Transfer Station.

### **6.2 Term; Modification.**

a. This Agreement shall become effective only upon receipt of the final Permit from VDEQ and approval of all applicable zoning and site plan regulations applicable to all Permits for the operation of the Transfer Station as a SWTS authorized to accept each of Municipal Solid Waste, Construction Waste, Debris Waste, Demolition Waste, and Disaster Waste on conditions and proffers acceptable to County Waste. Provided further, any Host Fees and obligations of County Waste to accept waste or recyclable materials are also contingent upon County Waste's actual operation and continued operation of the Transfer Station. County Waste will use its reasonable best efforts to construct and operate the Transfer Station.

b. Upon this Agreement becoming effective, this Agreement shall remain in effect until the earlier of (i) 20 years from the initial Operation of the Transfer Station, with two 10-year renewal options at the discretion of the County or County Waste with the renewals automatically occurring unless the County or County Waste gives written notice to the other Party at least one hundred eighty (180) days prior to the end of the existing term and (ii) such time as Solid Waste is no longer accepted at the Transfer Station, unless sooner terminated as permitted under the terms of this Agreement, or by a subsequent written agreement of the Parties.

***COMPREHENSIVE AGREEMENT EXHIBIT E***

c. County Waste will notify the County, in writing, at least one hundred eighty (180) days prior to ceasing acceptance of Solid Waste at the Transfer Station.

d. This Agreement may be modified only by an instrument in writing, executed by the Parties.

e. Following the termination of this Agreement, County Waste may continue to operate the Transfer Station in accordance with the Transfer Station Permit in its sole discretion.

f. This Agreement contains the entire Agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes any prior written or oral agreements and understandings between the Parties as to the subject matter hereof.

**6.3 Transferability of Agreement.** Except for a subsidiary or wholly-owned affiliate of County Waste or County Waste of Virginia, LLC, no assignment of this Agreement or any right accruing under this Agreement shall be made in whole or in part by County Waste without the express written consent of the County, which consent shall not be unreasonably withheld. In the event of any consented assignment, the assignee shall assume the liabilities of County Waste. Such assignment will not release County Waste from its obligations under the terms of this Agreement. Any assignment, other than to a permitted subsidiary, without the consent of the County shall be void.

**6.4 Breaches and Defaults.**In the event of a default under this Agreement, if a Party has not cured its default after thirty (30) days of receiving written notice of the default from the non-defaulting Party, the non-defaulting Party shall have the right, but not the obligation, to cure such default and to charge the defaulting Party for the cost of curing such default, including the right to offset said costs of curing the default against any sums due or which become due to the defaulting Party under this Agreement. Such non-defaulting Party shall, in its reasonable judgment, attempt to use the most economically reasonable method of curing any such default.

b. This Agreement may be terminated by a non-breaching Party in the event of a material breach of this Agreement by the other Party that has not been cured within thirty (30) days of written notice thereof being sent to the breaching Party by the non-breaching Party. If a dispute exists as to whether an amount is owed or a Party has otherwise breached or failed to comply with this Agreement, either Party may seek a declaratory judgment in Botetourt Circuit Court and submit the disputed amount, if any, to the Clerk of the Botetourt Circuit Court, and the cure period and any termination of this Agreement shall be tolled pending a decision of the Circuit Court.

c. To be effective under this Agreement, written notice by the Parties shall be delivered by hand or by certified mail, return receipt requested, as follows unless and until a Party is notified by the other of a change in recipient and/or address:

As to County Waste:

***COMPREHENSIVE AGREEMENT EXHIBIT E***

Jerry Cifor  
4 Enterprise Avenue  
Clifton Park, New York 12065

With a copy to:

William H. Shewmake, Esquire  
LeClairRyan PLCC  
919 East Main Street  
Twenty-Fourth Floor  
Richmond, Virginia 23129

As to the County:

Gary P. Larowe  
County Administrator  
One West Main Street  
Box 1  
Fincastle, Virginia 24090

With a copy to:

Michael W.S. Lockaby  
County Attorney  
Guynn & Waddell, P.C.  
415 S. College Ave.  
Salem, Virginia 24153

d. In the event of a breach and the appropriate notice thereof to County Waste by the County, the cure periods noted above may be extended at the sole discretion of the County without the County waiving its right to terminate the Agreement at any time prior to the cure being made by County Waste.

e. If the County files a lawsuit to enforce any provision of this Agreement, and the County substantially prevails on any substantive count of the lawsuit, the County is entitled to all reasonable attorneys' fees, litigation expenses, and court costs on the counts it asserted, except for those counts or claims that are resolved in County Waste's favor on demurrer, a motion to dismiss, or summary judgment. In no event shall County Waste be entitled to an award of attorneys' fees or litigation expenses against the County under this Agreement. County Waste will only be entitled to litigation expenses and court costs, including reasonable attorneys' fees where such entitlement is expressly required by statute or other law or rule.

**6.5 No Third Party Beneficiaries.** This Agreement is solely for the benefit of the named Parties and no third party beneficiaries are created or intended to be created hereby.

***COMPREHENSIVE AGREEMENT EXHIBIT E***

**6.6 Severability.** If any provision of this Agreement shall be declared void or unenforceable, the remaining provisions shall not be affected but shall continue in full force and effect.

**6.7 Force Majeure.** Any delay or failure of performances by either Party hereunder shall not constitute a breach or give rise to any claim if and to the extent such delay or failure is caused by an act, event, or condition beyond the Party's reasonable control.

**6.8 Environmental and Community Protection/Assurance.** County Waste will perform this Agreement and provide services to County in a manner that places the safety and welfare of the County, its residents, and their properties at the forefront. County Waste will operate the Transfer Station in a manner that compliments the aesthetics of the surrounding area and neighborhood. It is the mutual goal of the County and County Waste that the Transfer Station be a source of pride for the County, its citizens, and the greater Roanoke Valley community.

**6.9 Contingency.** Nothing in this Agreement guarantees zoning approval for the Transfer Station, and the rights and obligations of the Parties are contingent upon the initial zoning, site plan and Permit approvals (including conditional use permit) necessary to construct and operate the Transfer Station on the property described in Exhibit A.

*[Signatures Appear on the Following Page]*

**COMPREHENSIVE AGREEMENT EXHIBIT E**

WHEREFORE, the undersigned, having been duly authorized to bind their respective principals, do set their hands to this Host Agreement this 27<sup>th</sup> day of September, 2018.

Date: 9/27/2018

BOTETOURT, VIRGINIA

By: Gary P. Larowe  
Gary P. Larowe, County Administrator

COUNTY WASTE OF SOUTHWEST VIRGINIA,  
LLC

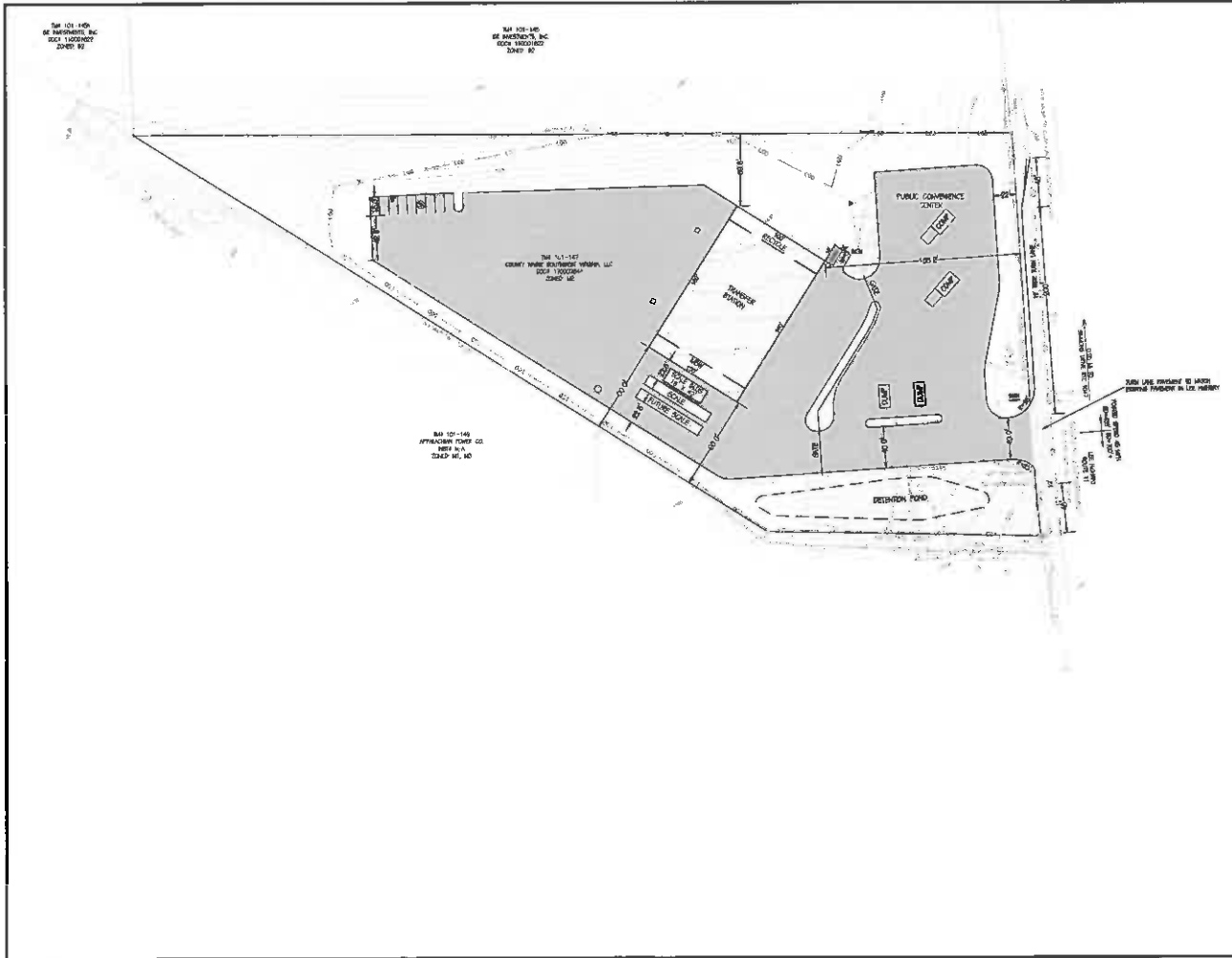
Date: 9-28-2018

By: Delbert Beasley  
~~Jerry S. Cifer, Manager~~ JB B2  
Delbert Beasley  
Member

Approved as to Form:

Michael W.S. Lockaby  
Michael W.S. Lockaby  
Botetourt County Attorney

Exhibit A to Host Agreement



**KIM HERRING**  
 CONSULTANTS  
 110 WEST MAIN STREET, SUITE 300  
 RICHMOND, VIRGINIA 23294  
 TEL: (804) 353-8888  
 FAX: (804) 353-8889  
 WWW.KIMHERRINGCONSULTANTS.COM

CONSULTANTS

SEAL OF THE  
 STATE OF VIRGINIA  
 PROFESSIONAL ENGINEER  
 DAVID M. BEASLEY  
 No. 9312  
 10/26/2009

JOB:  
 BOTETOURT COUNTY PUBLIC  
 CONVENIENCE CENTER  
 COUNTY WASTE TRANSFER STATION  
 BOTETOURT COUNTY, VIRGINIA

CLIENT:  
 SOUTH WEST VIRGINIA, LLC  
 CO: DELBERT BEASLEY

DATE	DESCRIPTION
9/20/10	ISSUE
9/20/10	CONTOUR INTERVIEW
	DESIGNED BY: ETM
	DRAWN BY: ETM/DBS
	CHECKED BY: NBY/RTM

SHEET TITLE

**SITE PLAN**

GRAPHIC SCALE  
 1" = 100'  
 0 20 40

SHEET: C-102  
 OF 1