

## **AGREEMENT FOR SOLID WASTE DISPOSAL**

**THIS AGREEMENT** (this "Agreement"), is made and entered into this 8<sup>th</sup> day of July, 1996, by and between **NASSAU COUNTY**, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and **SOUTHLAND WASTE SYSTEMS, INC.**, a Florida corporation (hereinafter referred to as "Southland") and supercedes the Agreement for Solid Waste Disposal between Nassau County and Southland dated May 11, 1995.

### **BACKGROUND FACTS**

Nassau County operates the West Nassau Class I Sanitary Landfill (the "Landfill") located on U.S. Highway 1, immediately north of Callahan, Florida.

Southland has developed and will continue to develop business arrangements with commercial, institutional, industrial, manufacturing, governmental and other customers in the geographic area in which the Landfill is permitted to accept Solid Waste. Southland will also develop business with customers in geographic areas adjacent to the Permitted Service Area (hereinafter defined) of the Landfill with the reasonable expectation that the Permitted Service Area may be modified, as provided herein, in order that the Landfill may be authorized to accept solid waste from such areas. Southland desires to dispose of Solid Waste generated by its customers within such area in the Landfill. The County has agreed to accept and dispose of Solid Waste from sources in the Permitted Service Area collected and delivered by Southland.

The parties desire to enter this Agreement to provide for the disposal of Solid Waste generated from sources in the Permitted Service Area and collected and delivered by

Southland to the Landfill and to set forth the terms, conditions, rights and remedies of the parties thereunto appertaining.

### **RECITAL OF CONSIDERATION**

**NOW, THEREFORE**, in consideration of the premises and mutual covenants contained herein, and for other good and valuable consideration, the receipt of which and the adequacy of which are mutually acknowledged, with each party accordingly waiving any challenge to the sufficiency of such consideration, it is mutually covenanted, promised and agreed by the parties hereto as follows:

### **AGREEMENT**

1. **DEFINITIONS.**

- (a) "Ton" means 2,000 pounds.
- (b) "Change in Law" means any amendment to, or promulgation of any federal, state, county, city, or local statute, rule, regulation, or ordinance after the date of this Agreement that imposes, changes, modifies, and/or alters requirements upon:

- (1) the design, construction, operation, maintenance or closure of the Landfill;
- (2) the disposal of Solid Waste by the Landfill, or which statute, rule, regulation, or ordinance requires the County to seek either an amendment or modification to, or reissuance of, any required Permits, licenses, certificates of public convenience and necessity, approval or authorization issued by any Governmental Body entitling the County, or the Landfill to construct, operate, maintain or close, or to dispose of Solid Waste or imposes additional requirements or prohibitions upon such construction, operation, maintenance, closure or disposal;

(3) the legal ability of Southland to deliver Solid Waste to the Landfill, or the legal ability of the Landfill to accept Solid Waste delivered by Southland.

(c) "Class I Solid Waste Disposal Facility" means any Class I landfill so classified under Rule 62-701.340(3)(a) and (c), Florida Administrative Code, or any successor rule or regulation thereto, together with all contiguous land and structures, other appurtenances, and improvements on the land used for Solid Waste management.

(d) "Department" means the Florida Department of Environmental Protection and any successor agency thereto.

(e) "Hazardous Waste" means hazardous waste, as defined in Section 403.703(21), Florida Statutes, or any successor statute thereto, or agency rule(s) promulgated thereunder.

(f) "Permit" means the written authorization issued by a regulatory agency with jurisdiction for the siting, construction and/or operation of a Solid Waste Disposal Facility, provided all procedural standards, performance standards and conditions set forth therein are met.

(g) "Permit Modification" means a change or alteration to the procedural standards, performance standards or conditions of a Permit.

(h) "Permitted Service Area" means the counties or other geographic locations from which the Landfill is authorized to accept Solid Waste under the terms of its Permit issued by the Department as such Permit may be modified from time-to-time.

(i) "Scales" means a platform truck scale weighing device which meets with the design specifications and performance accuracy requirements of the scale code in the

National Institute of Standards and Technologies Handbook 44, and which interfaces directly with a Solid Waste management system.

(j) "Solid Waste" means Class I and other non-hazardous solid waste as described in Section 407.703(13) Florida Statutes permitted to be disposed in a lined Class I landfill under the rules and regulations of the Department.

(k) "Solid Waste Disposal Facility" means any Solid Waste management facility as defined in Section 403.703(11), Florida Statutes, or any successor statute thereto or agency rules promulgated thereunder.

(l) "Landfill" means the Class I Solid Waste Disposal Facility portion of the facility owned by the County located on U.S. Highway 1, immediately north of Callahan, Florida, and all future expansions thereto, and more particularly described in the text and map attached hereto as Exhibit "A" and in the Department's Permit No. SC45-174427, and includes any lands immediately contiguous to said facility which may later be included within the limits of the foregoing Permit or any successor operating Permits for the facility.

2. **TERM.** Unless sooner terminated as provided herein, the initial term of this Agreement shall commence on the date hereof and shall continue thereafter for a period of 120 consecutive calendar months (the "Term"). At anytime after the 60th calendar month Southland may terminate this Agreement by delivering to the County written notice of termination no later than one year prior to the effective termination date.

3. **RIGHTS AND OBLIGATIONS OF SOUTHLAND.**

(a) On the date the initial term of this Agreement commences and continuing throughout the Term of this Agreement, subject to paragraph 4(a) hereof, Southland shall

have the right to deliver to the Landfill, Solid Waste generated in the Permitted Service Area.

(b) Southland shall provide notification to its customers in the Permitted Service Area that Hazardous Waste shall not be placed in Southland's equipment and Southland shall use its best efforts to prevent the delivery of any Hazardous Waste or any waste other than Solid Waste from the generators to the Landfill.

(c) If any Hazardous Waste or any waste other than Solid Waste transported by Southland is delivered to the Landfill, the County shall have recourse against Southland or any third party otherwise responsible.

4. **RIGHTS AND OBLIGATIONS OF NASSAU COUNTY.**

(a) Beginning on the date the Term of this Agreement commences and continuing throughout the Term of this Agreement, the County shall cause to be accepted at the Landfill for disposal therein Solid Waste transported by Southland from generators in the Permitted Service Area. Within 30 days hereof, and thereafter no later than June 1 of each year, beginning June 1, 1997, Southland shall notify the County of its best estimate of the average daily tonnage and the total annual tonnage of Solid Waste to be delivered to the Landfill from generators in the Permitted Service Area during the County's next ensuing fiscal year. Nassau County shall accept at the Landfill all of the Solid Waste estimated by Southland to be delivered to the Landfill each County fiscal year, up to a maximum of 325 tons per day (monthly average based on a six day week) of Solid Waste, beginning the date hereof. Beginning the latter of January 1, 1998 or the date that the County acquires control (by imminent domain, purchase, lease, purchase option or other means) of property adjacent to the Landfill for expansion of the Landfill, Southland shall

have the right to deliver a maximum of 400 tons per day (monthly average based on a six day week) of Solid Waste to the Landfill.

(b) Southland shall make a non-refundable deposit of \$2.00 per ton prior to the beginning of the next fiscal year for the estimated annual tonnage of Solid Waste, subject to the above maximum annual tonnages. The County shall reduce the Disposal Fee by \$2.00 per ton to credit Southland for the deposit until the total amount of the deposit is depleted. In the event that Southland fails to deliver the projected annual quantity of Solid Waste for any reason other than a Change in Law, the remaining balance of the deposit shall be forfeited to the County.

(c) The County shall maintain at the Landfill such Scales as may be required by law and/or any regulatory agency with jurisdiction, and shall cause all Solid Waste delivered by Southland to be weighed thereon. The results of each such weighing shall be permanently and accurately recorded. The County, at its cost and expense, shall test and recalibrate the Scales as may be required by law or rule.

(d) The County shall maintain a weight record containing the weight, date, time, and vehicle identification number of each Southland vehicle that delivers waste to the Landfill. The County shall deliver copies of such weight records to Southland, along with its invoice for disposal for that month, following the end of each calendar month.

(e) In the event that the Scales become inoperable so as to preclude the weighing of vehicles and Solid Waste, then the County shall utilize other reasonable methods mutually agreed to estimate or determine the basis for charging the Disposal Fee for Solid Waste generated in the Permitted Service Area.

(f) Southland shall have the right to periodically review a copy of the County's annual aerial survey and other engineering reports and calculations identifying the capacity remaining at the Landfill.

(g) In no event may the County enter into any agreement, or otherwise permit, the receipt and disposal at the Landfill of Solid Waste generated outside of the Nassau County if the impact thereof encroaches upon the Solid Waste disposal capacity at the Landfill necessarily reserved to Southland under the terms of the Agreement.

5. **CONSIDERATION AND DISPOSAL FEES.**

(a) The fee to be charged to Southland by the County for receiving Solid Waste transported by Southland from generators in the Permitted Service Area for disposal at the Landfill shall be \$28.75 per ton for the first 2,500 tons per month and \$30.50 per ton for all additional tons received during the month (the "Disposal Fee"). If Southland fails to deliver at least 10,000 tons of Solid Waste to the Landfill during any County fiscal year, the Disposal Fee may be increased to the lesser of the then current published or "gate" rate for Solid Waste or \$35.00 per ton, and the Disposal Fee shall remain at such increased amount until Southland can provide reasonable assurances to the County in the form of the \$2.00 per ton deposit that Southland will deliver a minimum of 20,000 tons per year (average of 64 tons per day based on a six day week) of Solid Waste to the Landfill.

(b) On each October 1, beginning in 1997, except during the years when the County shall review the Disposal Fee pursuant to paragraph 5(c) hereof, the Disposal Fee for the immediately ensuing year shall be adjusted upward or downward on the basis of the percentage of upward or downward change, if any, in the Consumer Price Index - South Group - All Urban Customers - All Items (1982-84 = 100), as published by the U.S.

Department of Labor, Bureau of Labor Statistics (the "Index"), from the Index number of the Index most recently published prior to August 31, 1995 (the "Base Index Number"). Utilizing the Index most recently published prior to August 31 thereafter, beginning in 1996 (the "Current Index Number"), the foregoing adjustment shall be calculated and become effective for a particular year on October 1 first occurring after each such August 31, beginning in 1996. If at the time of calculation the Current Index Number is greater or less than the Base Index Number, the Disposal Fee for the immediately ensuing year, beginning on the said October 1, shall be increased or decreased, as the case may be, from the Disposal Fee which was in effect on the Commencement Date of this Agreement by an amount equal to the percentage by which the Current Index Number exceeds or is less than the Base Index Number. In the event the U.S. Department of Labor, Bureau of Labor Statistics, ceases to publish the CPI, the parties hereto agree to substitute another equally authoritative measure of change in the purchasing power of the U.S. dollar as may be then available so as to carry out the intent of this provision.

(c) During the third calendar quarter of 1999 and 2002, the County shall review the amounts of the disposal fees charged to large volume users of lined Class I landfills in Northeast Florida and the equivalent of lined Class I landfills in Southeast Georgia and determine the comparative competitiveness and reasonableness of the Disposal Fees with the disposal fees of the other landfills. In order to maintain the Disposal Fees at a competitive level, the County may take the appropriate action, as follows:

- (1) The County and Southland may renegotiate the Disposal Fees and increase or decrease the amount of the Disposal Fees, provided that the change in Disposal Fees shall not exceed 10.0 percent, or



(2) The County and Southland may agree to forego the annual rate adjustment provided in Section 5(b) hereof for one or more years, or

(3) The County and Southland may agree to implement the annual rate adjustment provided in Section 5(b) hereof.

(d) Payment of the Disposal Fee shall be made within thirty days after Southland receives an invoice from the County. Following the delivery of written notice to Southland that Southland is thirty days delinquent in paying the Disposal Fee, the County may refuse to receive Solid Waste (other than Solid Waste from the Clay County Transfer Station) transported by Southland to the Landfill for disposal until the delinquent Disposal Fee has been paid in full.

(e) Southland shall deliver to the County a payment bond in the amount of the estimated monthly disposal fee for Solid Waste delivered by Southland pursuant to this Agreement, multiplied by three. The amount of such payment bond shall be calculated (i) upon the execution hereof; and (ii) thereafter annually on the anniversary hereof. Such payment bond shall be effective as of the day Southland commences delivery of Solid Waste under this Agreement.

(f) In the event that the Landfill is unable to continue to receive Solid Waste, the County may designate an alternate Solid Waste disposal facility located within Nassau County for receipt and disposal of Solid Waste transported by Southland. In such event, and effective sixty days following delivery of written notice from the County to Southland thereof, the County may unilaterally increase the disposal fees only to the extent of the actual cost increase experienced by the County for the disposal of Solid Waste at such facility. In the event of such increase, Southland, may, at its sole option, declare this

Agreement to be terminated, such termination effective ten days following Southland's written notice thereof to the County. All provisions of this Agreement otherwise applying to the Landfill shall likewise be applicable to said alternate Solid Waste disposal facility to the extent reasonably practicable.

(g) In the event that the County incurs additional capital or operating costs for the design, permitting, construction, operation, maintenance or closure of the Landfill resulting from a Change in Law after the date of this Agreement, the County shall be entitled to increase the Disposal Fee in an amount to compensate the County for such increase in cost. Southland shall have the right to seek reimbursement from its customers for any increase in the Disposal Fee due to a Change in Law. If Southland is unsuccessful in requiring in Southland's sole opinion a sufficient number of customers to pay such increase, Southland shall then have the option to renegotiate the Disposal Fee or to terminate this Agreement at anytime thereafter.

(h) The County, for the duration of this Agreement: (1) shall have the continuing obligation, and shall take all actions necessary, to apply for, timely seek renewal of, and maintain in good standing any and all Permits, including but not limited to those pertaining to construction, operating, stormwater, environmental matters, as may be necessary for the continuous and lawful operation of the Landfill; and (2) shall take no actions which would adversely affect the retention of any and all Permits, including but not limited to those pertaining to construction, operating, stormwater, environmental matters, as may be necessary for the continuous and lawful operation of the Landfill. In the event any such Permit is not in good standing Southland shall have the right to terminate this Agreement immediately upon written notice to the County.

(i) Southland shall not be entitled to deliver to the Landfill Solid Waste generated in any county except those counties within the Permitted Service Area. If Southland desires to deliver Solid Waste generated in a county other than a county in the Permitted Service Area, Southland shall request that the County apply to the Department for all required Permit modifications to include such county in the Permitted Service Area and Southland shall cooperate with and assist the County in obtaining such modifications. Southland shall pay the out-of-pocket expenses (including reasonable consultants fees) incurred by the County in obtaining such modifications.

6. **MISCELLANEOUS.**

(a) **Limitations Upon Consent.** Whenever, under the terms of this Agreement, either party is called upon to give its written consent, and except as provided under subparagraph (g), such written consent will not be unreasonably withheld.

(b) **Form of Consent.** All consents and approvals of any kind required under this Agreement shall be in writing. Whenever under the terms of this Agreement either party is authorized to give consent, such consent may be given and shall be conclusively evidenced by a writing executed by an appropriate officer.

(c) **Notices, Documents, and Consents.** All notices required to be given or authorized to be given by any party pursuant to this Agreement shall be in writing and shall be deemed delivered when served personally, when deposited with the United States Postal Service for delivery by certified mail, or when deposited with nationally recognized overnight delivery service for delivery:

To the County:

County Coordinator  
Nassau County Courthouse  
Post Office Box 1010  
Fernandina Beach, Florida 32034

To Southland:

Southland Waste Systems, Inc.  
Attention: President  
218 Morgan Avenue  
Jacksonville, Florida 32254

With a Copy to:

Director of Solid Waste Management  
Rt. 1, Box 178  
Callahan, Florida 32011

(d) Amendments. This Agreement may be amended from time to time only by written agreement duly authorized and executed by the parties hereto.

(e) Severability. If any provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, and this Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein.

(f) Execution of Documents. Each party agrees that it will execute any and all documents or other instruments, and take such other action as is necessary to give effect to the terms and intent of this Agreement.

(g) Assignment. Neither party may assign, transfer, or otherwise vest in any other person, any of its rights or obligations under this Agreement without the prior written consent of the other party. Except as otherwise expressly provided elsewhere in this Agreement, such consent may be withheld for any or no reason, the provisions of subparagraph (a) to the contrary notwithstanding.

(h) Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

(i) Waiver. No waiver by either party of any term or condition of this Agreement will be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, subparagraph, clause, phrase, or other provision of this Agreement. Making payments pursuant to this Agreement during the existence of a dispute shall not be deemed to and shall not constitute a waiver of any of the claims or defenses of the party making such payment.

(j) Governing Law and Venue. This Agreement shall be governed and construed under and pursuant to the laws of the State of Florida, and the United States of America. Unless the parties otherwise agree, the venue of any action or proceeding brought under the provisions of this Agreement shall be Nassau County, Florida.

(k) Confidentiality. All written materials and oral communications between either party shall be deemed public information and shall remain a matter of public record in perpetuity unless otherwise provided or allowed by law.

(l) Time is of the Essence. Time is of the essence with respect to this Agreement and each of its terms and provisions.

(m) Remedies. Each party shall have the right to seek the judicial enforcement and interpretation of this Agreement, and to avail itself of all remedies available to it arising at law or in equity for the breach of this Agreement. Remedies are mutually available, and include damages and specific performance, as appropriate.

(n) Attorneys' Fees and Costs. In the event of any action or administrative proceeding between the parties arising under this Agreement, the prevailing party will be entitled to an award of reasonable attorneys' fees and costs, including such fees and costs incurred by it in the pursuit of any appellate proceedings, regardless of whether such action or administrative proceeding is pursued before any state or federal court or agency.

(o) Indemnification. The County shall indemnify Southland fully and hold it harmless for and on account of any injuries or damages sustained or costs incurred by the County or any third party, arising under the various and sundry laws, and the rules and regulations promulgated thereunder, of any federal, state, regional or local governmental entity or agency thereof pertaining to environmental protection, as a result of the County's ownership or operation of the Landfill. Such indemnification shall include to the duty on the part of the County (1) to defend Southland, and to pay all attorneys' fees and costs arising from such defense, including those associated with proceedings before regulatory agencies, actions at law or equity, and appeals from decisions rendered thereunder; and (2) to undertake all actions and pay all fines, penalties, damages and costs levied which Southland otherwise is legally obligated to undertake or pay.

(p) Negligence of Southland. The provisions of subparagraph (o) shall not apply to the extent the active negligence on the part of Southland is the proximate cause of the matter(s) to which the indemnification from the County to Southland provided thereunder otherwise would apply.

(q) Transportation Corridor. Except in an emergency, Southland will not transport Solid Waste over that portion of S.R. 200/U.S. Hwy. A1A lying between Yulee and Callahan.

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

NASSAU COUNTY, a political subdivision of the State of Florida, by and through its Board of County Commissioners

By: Jim B. Higginbotham  
Jim B. Higginbotham  
Its Chairman

Attest:

T. J. "Jerry" Greeson  
T. J. "Jerry" Greeson, Clerk of the Circuit Court of Nassau County, and ex-officio Clerk of its Board of County Commissioners

[Nassau County Seal]

Approved as to form for Nassau County:

Michael S. Mullin  
Michael S. Mullin  
Nassau County Attorney

SOUTHLAND WASTE SYSTEMS, INC.

By: James H. Arnold  
Name: JAMES H. ARNOLD  
Title: VICE PRESIDENT

## Exhibit "A"

**1.2 SITE DESCRIPTION**

The West Nassau Landfill is located on U.S. Highway 301 (U.S. Route 1) approximately 3 miles north of Callahan in Nassau County, Florida. Figure 1-1 shows the location of the West Nassau Landfill. The original landfill property encompasses a rectangular area of approximately 65 acres. A 75-acre tract of adjoining property was recently acquired by Nassau County for construction of a new Class I and Class III landfills and associated appurtenances, making the total area of the West Nassau Landfill property approximately 140 acres. Figure 1-2 shows a site vicinity map for the entire 140-acre landfill property.

Within the original 65-acre tract, solid waste has been landfilled within the following areas:

1. An active landfill area of approximately 12 acres located in the north section of the site,
2. An inactive trench and fill landfill area of approximately 15 acres located in the southeast corner of the site, and
3. An inactive asbestos disposal area of approximately 6 acres located adjacent to the active landfill area.

Figure 1-3 shows the approximate boundaries of these three landfill areas at the site. As shown on Figure 1-3, the southwest portion of the 65-acre site has not been used for landfilling. Two borrow pits located in this area are currently being mined for cover material.



<b>Hunter/ESE</b>		REV NO.	DESCRIPTION	BY	DATE
NASSAU COUNTY, FLORIDA		PROJECT NO.	DATE		
SITE LOCATION MAP WEST NASSAU LANDFILL		PROJECT NO. 130206000-0800-2130	12/88		
<b>Figure 1-1</b>					



