

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

TRAIL RIDGE LANDFILL, INC.,
a Delaware corporation, and
WASTE MANAGEMENT HOLDINGS,
INC., a Delaware corporation,

Plaintiffs,

v.

CIVIL ACTION NO.:
3:09-cv-440-J-20MCR

CITY OF JACKSONVILLE, a
Florida municipal corporation,

Defendant.

_____ /

MEDIATED SETTLEMENT AGREEMENT

This Mediated Settlement Agreement (the "Agreement") is made this _____ day of March, 2010, by and between Plaintiffs, Trail Ridge Landfill, Inc. and Waste Management Holdings, Inc., and Defendant, City of Jacksonville.

In order to avoid the expense of uncertainty of continuing the litigation, the parties now desire to settle their disputes, without admission of any kind, in the manner set forth herein.

1. **Subject to Approval by City.** The parties understand and agree that this Settlement Agreement is subject to approval by the City Council and Mayor of the City of Jacksonville and the appropriate approvals within Plaintiffs' companies. The undersigned make no representation that it will be finally approved. Unless the entire Settlement Agreement is approved, with no amendment or change, the Agreement is void. Should the Agreement not receive final approval by 5:00 p.m. on April 30, 2010, it is void. In the event the Agreement

does not receive final approval within the time provided neither party will use the fact that an Agreement was proposed and pending for a period of time as an argument in support of a motion to delay the trial date.

2. **Settlement Terms.**

A. As of July 1, 2010, this Agreement requires that the Landfill Operation Agreement Between the City of Jacksonville and Trail Ridge Landfill, Inc. dated June 26, 1991 will be replaced by the Landfill Operation Agreement in the form attached hereto as Exhibit A, in full and complete satisfaction of Counts II and III of the Amended Complaint.

B. Within thirty days of the date of final approval of the Settlement Agreement by the City of Jacksonville, the City will pay Trail Ridge Landfill, Inc. the sum of \$1,000,000, in full and complete satisfaction of the Gas Collection Claim made by Count I of the Amended Complaint.

C. Within thirty days of the date of final approval of the Settlement Agreement by the City of Jacksonville, the City will pay Trail Ridge Landfill, Inc. the sum of \$625,000 in full and complete settlement of all disputes between the City and Refuse Services, Inc., d/b/a Jacksonville Waste Control relating to residential hauling, including charges for such services, alleged noise violations, fuel surcharge adjustments, commingling residential and/or commercial waste, liquidated damages and civil penalties. At the time of payment the parties will exchange limited releases with respect to these claims which shall incorporate or include all claims raised in Waste Management's letters of 7/24/09 and 11/25/09 and the City's letter of 01/22/10.

D. Upon completion of the terms set forth in 2 (A), (B) and (C) above, the claims made by Plaintiffs in Count IV of the Amended Complaint (sometimes referred to as the

“excess land cost” dispute, and sometimes referred to as the “arbitrary rate reduction” dispute) will be fully discharged and settled.

3. **Status Quo.** With respect to the current 2009 RFP process, the City agrees that it shall not move forward in the process beyond evaluation of pending proposals and selection of the third-party contractor, but not enter into a contract, prior to either approval of the potential settlement agreement by the City Council and the Mayor or the rescheduled hearing on Plaintiffs’ Motion for Preliminary Injunction whichever occurs first.

4. **Attorneys Fees and Costs.** Each party shall bear their own attorneys’ fees and costs.

5. **Dismissal With Prejudice.** Within 5 days of the date of the final approval of the Settlement Agreement by the City of Jacksonville, counsel for plaintiffs shall file a dismissal with prejudice of this case.

6. **Continuing Jurisdiction.** The parties agree that the Court shall retain jurisdiction for the purposes of enforcing this Agreement.

7. **Binding Effect.** This Agreement shall be binding on the parties, their heirs, affiliates, assigns and successors in interest.

8. **Entire Agreement.** This Agreement embodies the entire understanding of the parties hereto with respect to the subject matter hereof.

9. **Counterparts.** This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

**BEDELL, DITTMAR, DeVAULT,
PILLANS & COXE, P.A.**

TANNER BISHOP

John A. DeVault, III
Florida Bar No. 103979
Courtney K. Grimm
Florida Bar No. 953740
Amanda Eaton Ferrelle
Florida Bar No. 0913251
The Bedell Building
101 East Adams Street
Jacksonville, Florida 32202
Telephone: (904) 353-0211
Facsimile: (904) 353-9307

Counsel for Plaintiffs

Michael G. Tanner
Florida Bar No. 0261300
Thomas E. Bishop
Florida Bar No. 956236
Stuart F. Williams
Florida Bar No. 670731
One Independent Drive
Suite 1700
Jacksonville, Florida 32202
Telephone: (904) 598-0034
Facsimile: (904) 598-0395

OFFICE OF GENERAL COUNSEL

Cindy A. Laquidara
Florida Bar No. 0394246
Loree L. French
Florida Bar No. 962465
Joel B. Toomey
Florida Bar. No. 378976
117 West Duval Street
Suite 480
Jacksonville, Florida 32202

Counsel for Defendant

LANDFILL OPERATION AGREEMENT BETWEEN THE CITY OF JACKSONVILLE
AND
TRAIL RIDGE LANDFILL, INC.

THIS AGREEMENT, made and entered into in duplicate this ___ day of April, 2010, by and between the City of Jacksonville, a municipal corporation in Duval County, Florida, hereinafter referred to as the CITY, and Trail Ridge Landfill, Inc., an indirect subsidiary of Waste Management, Inc., hereinafter referred to as the TRL (the "Agreement").

WITNESSETH:

WHEREAS, the CITY has negotiated this Landfill Operation Agreement with TRL to allow for the expansion of the present landfill with minimal interruption of existing operations, and to provide certainty for this long-term and complex matter while protecting the public's investment in the present landfill; and

WHEREAS, this Landfill Operation Agreement shall be a designation of a sole landfill site as identified in Jacksonville Municipal Ordinance Code 386.201 for Residential Solid Waste Collected by the City or its contractors and solid waste collected under Franchise Agreements.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter contained, the parties agree as follows:

1.0 DEFINITIONS

The following words, phrases or terms as used in this document shall have the following meaning unless the context indicates otherwise:

"Application for Payment" means the form which is to be used by TRL in requesting payments and which is to include such supporting documentation as the CITY reasonably requests.

"Biohazardous waste" has the meaning given it in Rule 62-712, F.A.C. as amended from time to time.

"Bonds" means proposal, performance and payment bonds and other instruments of security.

"Change in Law" means any change in the laws, regulations, ordinances, permits (including as to the off-site borrow area, wetlands, Facility water discharges and other such related activities), City approvals or agreements applicable to the Facility since June 30, 2010, including any change in conditions contained in any permit issued to the Facility (other than as a result of the TRL's negligence or other fault), or any change in the judicial or agency interpretation of such laws, regulations or permit conditions. Said term as used herein shall not

include changes in tax laws or workers' compensation laws. However, in the event that a federal, state or local authority at any time in the future imposes a fee, charge or tax on landfills or landfill operations per se, any such fee, charge or tax shall be treated as a Change in Law.

"Clean debris" means any solid waste which is virtually inert, which is not a pollution threat to ground water or surface waters, is not a fire hazard, and is likely to retain its physical and chemical structure under expected conditions of disposal or use. The term includes brick, glass, ceramics, and uncontaminated concrete including embedded pipe or steel.

"Closing" means the time at which a solid waste management facility ceases to accept wastes.

"Closure" means the preparation for and implementation of all design, permitting, construction, monitoring, maintenance and financial responsibility assurance required by or reasonably associated with the closure and post-closure requirements set forth at F.A.C. 62—701.600 through F.A.C. 62-701.630. Closure includes, but is not limited to, preparation of final surveys and as-built drawings, installation and vegetation of final cover, leachate collection and disposal, installation and maintenance of an active gas control system as set forth in the requisite closure permits, and such other functions as may be required from time to time by the Department.

"Closure plan" means written reports and engineering plans detailing those actions that will be taken to effect proper closure of the facility.

"Construction and demolition debris" means materials generally considered to be not water soluble and non-hazardous in nature, including but not limited to steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation or maintenance of a structure. The term includes rocks, soils, tree remains, trees, and other vegetative matter which normally results from land clearing or land development operations for a construction project. Mixing of construction and demolition debris with other types of solid waste, including material which is not from the actual construction or destruction of a structure, will cause it to be classified as other than construction and demolition debris.

"Contract price" means the moneys payable to the TRL.

"Department" means the State of Florida Department of Environmental Protection.

"E.P.A." means the United States Environmental Protection Agency.

"F.A.C." means the Florida Administrative Code as amended from time to time.

"Facility" means the landfill or landfills to be operated pursuant to this Agreement.

"Final cover" means the material used to cover the top and sides of a landfill when fill operations cease.

"Garbage" means all kitchen and table food waste, animal or vegetative waste that is

attendant with or results from the storage, preparation, cooking or handling of food materials.

“Generation” means the act or process of producing solid or hazardous waste.

“Ground water” means water beneath the surface of the ground, whether or not it is flowing through known and definite channels.

“Hazardous waste” means a solid waste identified by the Department as a hazardous waste in Rule 17—730, F.A.C.

“Implement” means to carry out, accomplish, give practical effect to and ensure actual fulfillment by concrete means or by providing instruments or means of accomplishment.

“Implementation schedule” means a timetable for carrying out a plan.

“Initial cover” means a six—inch layer of compacted earth, or other suitable material as approved by the Department, used to enclose a volume of solid waste prior to intermediate or final cover.

“Intermediate cover” means a layer of compacted earth one foot in depth applied to a solid waste disposal unit.

“Landfill” or “Sanitary landfill” means the solid waste disposal facility described on Exhibit “2010-1,” and as expanded pursuant to this Agreement from time to time,

“Leachate” means liquid that has passed through or emerged from solid waste and may contain soluble, suspended or miscible materials.

“Local agency” means any special district, authority, county, municipality or any other political subdivision.

“Materials recovery” means any process by which one or more of the various components in solid waste is separated, concentrated and reused.

“Monitoring wells” are wells from which water samples are drawn for water quality analysis.

“On-site” means on the same or geographically contiguous property, which may be divided by a public or private right-of-way.

“Operating day” means any calendar day during which the landfill is operating and is open for receipt of waste from CITY and contract haulers, private commercial haulers and/or the public. Normal operating days shall be six days per week, Sundays excluded. Thanksgiving Day and Christmas Day shall not be operating days. If Christmas Day falls on a Sunday, the following Monday shall not be an operating day.

“Operating hours” means from 6:00 A.M. to 7:00 P.M. Monday – Friday and 6:00 A.M. to 1:00 P.M. on Saturday, unless otherwise agreed between the parties, on each operating day.

“Operating year” means the twelve month period commencing with the day on which

solid waste is first received at the facility, or any subsequent twelve month period having the same beginning month and day.

“Person” means any and all persons, natural or artificial, including any individual, firm, association or corporation.

“Processing” means any technique designed to change the physical, chemical or biological character or composition of any solid waste so as to render it safe for transport; amenable to recovery, storage or recycling safe for disposal; or reduced in volume or concentration.

“Project” means the operation of the solid waste disposal facility as provided for by this Agreement.

“Recovered materials” means those materials which have been diverted or removed from the solid waste stream for sale, use or reuse, by separation, collection or processing.

“Recyclable material” means those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

“Recycling” means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed and reused or returned to use in the form of raw materials or products.

“Residential waste” means a mixture of garbage and trash resulting from the normal housekeeping activities of a residential unit.

“Sanitary nuisance” means the commission of any act, or the keeping, maintaining, propagation, existence or permitting of anything by any person by which the health or life of another may be seriously threatened or impaired, or by or through which, directly or indirectly, disease may be caused.

“Shredding” means a process of reducing the particle size of solid waste through the use of grinding, milling or rasping machines.

“Site” means the area designated on Figure 2010-1 attached hereto and by this reference made a part hereof.

“Solid waste” means garbage, refuse, yard trash, clean debris, white goods, special waste, ashes, sludge, tires or other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from domestic, industrial, commercial, agricultural or governmental operations. Materials not regulated as solid waste include nuclear source or byproduct materials regulated under Chapter 404, Florida Statutes or under the Federal Atomic Energy Act of 1954, as amended; suspended or dissolved materials in domestic sewage effluent or irrigation return flows or other regulated point source discharges; regulated air emissions; and fluids or wastes associated with natural gas or crude oil exploration or production.

“Solid waste disposal facility” means any solid waste management facility which is the

final resting place for solid waste, including landfills and incineration facilities that produce ash from the process of incinerating solid waste.

“Solid waste disposal unit” means a discrete area of land used for the disposal of solid waste, consisting of one or more cells.

“Solid waste management” means the process by which solid waste is collected, transported, stored, separated, processed or disposed of according to an orderly, purposeful and planned program.

“Solid waste management facility” means any solid waste disposal area, volume reduction plant, transfer station or other facility, the purpose of which is resource recovery or the disposal, recycling, processing or storage of solid waste. The term does not include facilities which use or ship recovered materials unless such facilities are managing solid waste.

“Special wastes” means any waste described in Exhibit “2010-2” attached hereto and by this reference made a part hereof.

“State program” means the Solid Waste Management Program described in Sections 403.705 and 403.706, Florida Statutes and Chapter 62-701, F.A.C. as amended from time to time.

“Subcontractor” means an individual, firm or corporation having a direct contract with TRL for the performance of a part of the work at the site.

“Supplier” means a manufacturer, fabricator, distributor, materialman or vendor.

“Ton” means, 2,000 pounds (.9078 metric tons).

“Trash” means combinations of yard trash and construction and demolition debris along with other debris such as paper, cardboard, cloth, glass, street sweepings, plastic and other like matter.

“Unacceptable Waste” means any waste which cannot legally be disposed of at a Class I or Class III landfill, respectively, under applicable law, regulations, or permit conditions.

“Waste tire” has the meaning given it in Chapter 62-701.200 (126) F.A.C. as amended from time to time.

“White goods” means inoperative and discarded refrigerators, ranges, washers, water heaters, freezers and other similar domestic and commercial appliances.

“Working face” means that portion of a sanitary landfill where waste is deposited, spread and compacted prior to placement of initial cover.

“Yard trash” means vegetative matter resulting from landscaping maintenance or land clearing operations and includes materials such as tree and shrub trimmings, grass clippings, palm fronds, trees and tree stumps.

2.0 RESPONSIBILITIES OF TRL

2.1 Permits. In conjunction with the City, TRL shall maintain the existing operating permit from the Department and shall maintain an operating plan approved by the Department, and the City, with the assistance of TRL, shall obtain a construction and operation permit for the expansion of the Landfill with TRL as the permittee. After the City obtains the foregoing permits and TRL exhausts the disposal capacity in the existing Landfill cell as set forth in Section 4.2 below or ten (10) years from the effective date of this Agreement, whichever is earlier, TRL shall transfer the Landfill operating permit to the City.

2.2 Regulatory Compliance. TRL shall operate the Facility in strict conformance with the provisions of all permits as issued. In addition thereto, TRL shall comply with all zoning and land use provisions, the Certificate of Public Convenience and Necessity issued by the City and consent orders, if any, which may be entered into from time to time.

In conjunction with the City, including City's payment of permitting costs TRL shall assist the City in obtaining all permits, with TRL as the permittee except as provided above in Section 2.1, required for performing site operations consistent with the approved operating plan, laws, ordinances, rules and regulations. TRL shall respond promptly to all citations, notices of violation and emergency orders with respect to TRL's operations issued by any regulatory agency with jurisdiction. TRL shall pay all costs of responding to all such citations, notices of violation and emergency orders and shall pay all costs of correcting deficiencies and achieving compliance with all such citations, notices of violation and emergency orders and shall pay any fines assessed as a result of TRL's non-compliance, but TRL shall not be responsible for any City or City contractor failure to comply with law, permit or other legal requirement.

2.3 Superintendence of Operations. TRL shall employ an operator trained and examined in accordance with Department requirements to be present at all times when the Facility is in operation to superintend operations. Changes in operating hours sought by TRL may be approved by the Department Head for the City directing solid waste with concurrence from the City's Chief Administrative Officer. If emergency conditions, including, but not limited to, extreme windstorm or extraordinary rainfall with resulting flooding render it impractical to dispose of the resultant volume of solid waste within the normal operating hours of the Facility, TRL shall open the Facility on other days and times as reasonably requested by the CITY without additional charge to the CITY other than as may be occasioned by any increase in the volume of solid waste delivered to the Facility.

Except as to any requirement associated with a Change in Law, the Closure and Post-Closure obligations on the Landfill and as otherwise set forth in this Agreement, TRL shall at its expense perform all operations for the Landfill including, but not limited to, placement and compaction of solid wastes; excavation, transport and placement of on-site borrow material, if any, and also of off-site borrow material from the City's real property adjacent to the Landfill as set forth below in this Section, as initial and intermediate cover; furnish and install alternate daily cover tarps, if utilized at the site; leachate collection, temporary storage and conveyance to approved point of off-site disposal; active gas control wellfield operation and maintenance except as otherwise provided in the Three Party Contract among the City, TRL and LES; on-site erosion control measures and stormwater management facilities; control of on-site fires; on-site utilities; required maintenance of equipment and facilities (except maintenance and calibration of the scales and repair and/or replacement of the entry road); and incidental operations and

maintenance. During the term of this Agreement, TRL shall be responsible for performing those activities necessary to maintain (not including capital replacement costs as consistent with past practices) areas of the Landfill which have received final cover until the Landfill ceases to receive solid waste.

TRL'S obligation to excavate, transport and place off-site borrow material shall be subject to TRL'S exclusive and continuing permitted use of a portion of a borrow site that the CITY purchased from ICI Villages, LLC, ("ICI") (the "Borrow Site"), adjacent to the Landfill, see Exhibit "2010-6". In the event that any third party attempts to interfere with TRL's borrow area operation, the CITY, as owner and permittee, shall defend TRL'S right to remove soil. TRL will only have use and access to the portion of the Borrow Site designated by the City, and TRL shall not have access to any other portion of the Borrow Site without the CITY'S prior written consent. The Accessible Borrow Area shall be fully permitted by the CITY for use as a borrow site, including the necessary water discharge permits_(and any other required permits) that are substantially equivalent to the water discharge permits that TRL had for the operation of TRL'S former borrow area. TRL shall only use the soil from the Accessible Borrow Area for Landfill operations at the Site (initial and intermediate cover). At such time as soil is no longer readily accessible through use of an excavator and haul trucks or soil is no longer needed from the Accessible Borrow Area for use at the Facility, TRL shall no longer have access to the Accessible Borrow Area, its obligation to provide soil under this Agreement shall terminate and CITY shall have exclusive use of, and access to, the Accessible Borrow Area after such time. If after the Accessible Borrow Area becomes available to TRL, TRL is unable to access or use the Accessible Borrow Area for purposes of removing sufficient soil for Landfill operations (initial and intermediate cover) after using diligent and good faith efforts to do so, then the CITY shall supply the soil for Landfill operations at the Site. TRL shall not be responsible for supplying any soil necessary for daily or intermediate cover that is not available from the Accessible Borrow Area.

TRL shall at its expense provide all superintendence, including but not limited to labor, including operators, spotters, maintenance mechanics and incidental labor (excluding scale operators); and materials (including alternate daily cover tarps), equipment, tools, supplies and utilities required for operation of the Landfill. TRL's staffing and equipment shall have capacity adequate to operate the Landfill at the daily permitted capacity, which may change over time of 4,000 tons per day upon reasonable notice from the CITY.

TRL shall at its expense collect samples from the groundwater monitoring wells and submit them to the CITY's designated laboratory for analysis. Numbers and locations of the wells shall be in accordance with construction drawings documenting the construction permit application and as shown in the operating plan and ground water monitoring plan as approved by the Department. Number and frequency of samples, sampling and analytical procedures, parameters analyzed and test reporting requirements shall comply fully with applicable provisions of the approved operating and ground water monitoring plans. The CITY shall pay the laboratory fees for quarterly analysis of groundwater samples. TRL shall pay the laboratory fees if more frequent groundwater analysis is required due to commitments TRL has made or due to TRL's operation of the Facility.

2.4 Contaminated Soil and Ash Contaminated Soil Handling. TRL shall accept and utilize, for initial cover, contaminated soil and ash contaminated soil generated by the CITY and approved by the Department and the City of Jacksonville Solid Waste Division Chief. All

such material shall be weighed by the City, delivered only as needed for initial cover to the location directed by TRL. TRL shall document the volume used as cover. Should the City desire to deliver additional volumes of ash or other contaminated soil, the CITY shall obtain written approval from TRL as to the amount of such materials to be stored and the storage location as approved by the Department, all at no cost to TRL. TRL shall use all such waste for initial cover only as allowed by applicable permits and regulations. CITY shall reimburse TRL for its costs of maintaining any ash stockpile on the Site.

2.5 Airspace Consumption Guarantee. TRL shall guarantee the rate of airspace consumption during the term of this Agreement for the existing Landfill Cell and any expansion cells but, as to any expansion cells, such guarantee shall only apply commencing with the two Operating Years after the third (3rd) full year of operation thereof. For each 1,000 tons of incoming waste, TRL shall guarantee the volume of airspace that will be consumed. Airspace consumption will include all in place initial, intermediate, and alternative cover material plus solid waste. TRL guarantees a maximum of 1428 cubic yards of airspace consumed per 1,000 tons of incoming solid waste. The airspace guarantee, as applicable, will be calculated, and non-compliance determined, if any, at the end of each Operating Year based upon the prior two Operating Years' calculations. TRL shall measure the amount of airspace consumed using aerial topography (or other agreed upon approach) to determine consumption. Materials such as stockpiles, berms and temporary roads and other relevant circumstances (e.g., stored intermediate cover within the footprint of the Facility), if properly documented, will not be counted as airspace consumed.

TRL shall provide at its expense an aerial topography survey measurement to the CITY at the end of each Operating Year, with survey and computations performed, signed and sealed by a land surveyor or professional engineer. Where TRL is not averaging 1428 or less cubic yards of airspace per 1,000 tons of incoming waste, then TRL has consumed more airspace than TRL guaranteed, and TRL shall pay liquidated damages as provided herein. The liquidated damages shall be calculated by determining the cubic yards of air space that were consumed in excess of the guarantee, multiplied times \$1.00 per cubic yard. Where the CITY's right to liquidated damages has been established and prior to payment, TRL shall have one (1) year to return to an average of 1428 or less cubic yards of airspace per 1,000 tons of incoming waste over the prior two Operating Years and, where the same is accomplished, no liquidated damages shall be due and owing.

2.6 Unacceptable and Special Waste. TRL shall not accept any Unacceptable Waste as herein defined. TRL shall use its utmost efforts to prevent the receipt of Unacceptable Waste at the Facility. In the event, however, that Unacceptable Waste is received at the Facility, TRL shall attempt to have the transporter remove such waste within a reasonable time, not exceeding twenty four (24) hours after delivery. If such waste is not removed during said time period, TRL shall dispose of said waste in the least expensive legal manner available and shall bill the transporter for the actual cost of disposal together with a surcharge of one hundred percent (100%). The CITY shall assist TRL in collecting said bills in any reasonable manner, but shall not guarantee the payment of said bills nor the recovery of the cost of disposal.

TRL shall not accept any Category I and II Special Waste as defined in Exhibit "2010-2" unless the generator executes a Special Waste Agreement with TRL in the form set forth in Exhibit "2010-3" or as reasonably modified with the consent of the City. Acceptable Category I and II Special Waste delivered under a signed Special Waste Agreement shall be

handled by TRL in any lawful manner that TRL elects. The CITY shall be notified of all deliveries received and the action taken in the next monthly report from TRL. The CITY shall pay TRL for handling said Category I and II Special Waste at the rate in the manner set forth herein and in Exhibit "2010-2". If TRL knowingly accepts Category I and II Special Waste without securing an executed Special Waste Agreement, TRL shall handle such Special Waste at its expense.

TRL shall not dispose of any Category III Special Waste as defined in Exhibit "2010-2" unless it has been processed in a manner which would allow lawful disposal. The CITY shall pay TRL the rates set forth in Exhibit "2010-4" for Category III Special Waste deposited in the working face if TRL identifies the transporter in question that delivered the Category III Special Waste. Any transporter that frequently, regularly or repetitively disposes of Category III Special Waste in the working face may be deemed a "Special Waste Habitual Violator". TRL may charge said violator a surcharge of one hundred percent (100%) for future receipt and disposal of Category III Special Waste for a period mutually agreed upon between TRL and the CITY. The CITY shall make reasonable efforts to discourage the deposit of Category III Special Waste in the working face of the landfill.

TRL shall accept Category IV Special Waste as defined in Exhibit "2010-2" at the Facility at a location mutually agreeable to both the CITY and TRL. City payment to TRL for Category IV Special Waste shall be in accordance with Exhibit "2010-4."

TRL may require laboratory analysis of a sample of any waste proposed for delivery to the Landfill when TRL is in reasonable doubt concerning the nature or composition of said waste. Said analysis shall be performed by a laboratory acceptable to TRL and the CITY at the expense of the generator or the transporter. Said waste shall be held on site during performance of the said analysis unless other provisions are agreed to by the CITY and TRL. If the transporter refuses to cooperate with the said procedure, TRL shall not accept the waste in question at the Facility. TRL shall report each unaccepted load to the CITY at the time that it is rejected.

2.7 Cooperation with CITY. In the performance of its operating responsibilities, TRL's operations will necessarily interact with (1) duties of the CITY's scale operators, and (2) waste haulers. TRL shall be responsible for devising, implementing and ensuring coordinated methods for accommodating complete, effective and efficient ingress, on-site movement, temporary storage (as required), tipping and egress of waste haulage vehicles. TRL's methods and procedures shall be subject to review and approval by the CITY.

2.8 Right of Access. TRL shall provide right of access at any time during routine operations to representatives of CITY, State and Federal regulatory agencies with jurisdiction. TRL shall also provide means for access for such persons during non-operating hours in the event of emergencies.

2.9 Safety and Security. TRL shall provide for on-site personal safety of its personnel, CITY scale operators, operators of waste haulers, CITY and regulatory agency inspectors, and the public. TRL may require that all persons entering the site comply with reasonable safety rules established by TRL. TRL shall provide means of controlling access to the site and of site security to prevent unauthorized access and clandestine dumping. Safety and security measures shall be detailed in TRL's operations plan as submitted for approval prior to initial operations, and in any plan modifications as may subsequently be submitted for approval.

Means provided by TRL shall be in strict conformance with the current approved operating plan at all times.

2.10 Records and Reports. TRL shall maintain onsite, readily retrievable for reference, and in clean and usable condition, at least one copy each of Department approved construction drawings, specifications, reports, construction permit and operating plan, the prior 24 month's operations reports and correspondence with the CITY and regulatory agencies regarding Facility operations, in both hard copy and electronic form. TRL shall submit monthly operations reports to the CITY including at a minimum the following:

- (a) Days (dates) of operations; hours actually operated each date.
- (b) Numbers of truckloads and tonnage per truckload of waste received each date.
- (c) Numbers of truckloads and gallons of leachate hauled each date.
- (d) Description, keyed to designations on approved construction drawings, of landfill cells and borrow areas where operations have been conducted during the month.
- (e) Description of unusual or emergency operation events and steps taken to correct each and return to normal operation. Said description shall include date and time of occurrence or discovery of each such event and date and time normal operation was restored.
- (f) Dates of any regulatory agency inspections with name of agency and inspector. A copy of any concurrent or subsequently written inspection report, notice of violation, or citation shall be supplied to the CITY upon receipt. A copy of any report submitted by TRL to any regulatory agency, whether in response to such notices of violation and/or citations or not, shall be supplied to the CITY upon submission.
- (g) The last monthly report for each operating year shall be expanded at TRL's expense to include an aerial survey and volume computations to determine the volumes of landfill airspace and on-site borrow utilized in the prior year's operations. The survey and computations shall be performed, signed and sealed by a land surveyor or professional engineer licensed in the State of Florida.

2.11 Payment of Operating Expenses. Except as otherwise specifically and expressly provided for herein, TRL shall be solely responsible for and shall pay all costs and expenses incurred in the performance of its operating responsibilities. Provided, however, the CITY shall pay for all costs of CITY-approved construction at, and of, the Facility, including those capital costs necessary for accomplishing capital improvements and the costs of capital replacements of Facility components and materials.

2.12 Closure and Additional Construction. When Closure or additional design and/or construction is required, the parties shall either agree upon a price to be charged to the CITY by the TRL or implement the proposal and bidding procedures set forth in the CITY's Purchasing Code. In the case of construction, but not partial closure, TRL shall be allowed a reasonable oversight/management fee on construction costs of .10%. In addition, TRL shall have the right to review and comment on the design specifications and plan of work for each individual project

and shall be paid a fee of 2 ½ percent of the project design contract price for such project review. For partial or complete solid waste disposal unit closures, TRL shall be paid a ten percent (10%) management fee of the construction costs plus the 2½ percent of the project design costs for TRL's review and comment. The minimum acceptable standard for each such project shall be the more stringent of (a) the requirements of federal, state and local laws, rules and regulations at the time the work is to be performed, or (b) the requirements of the then current permits for the Landfill.

3.0 RESPONSIBILITIES OF CITY

3.1. Waste Haulage. The CITY shall with its own forces and equipment, or under separate contract, deliver Solid Waste to the Landfill. The CITY shall control the flow of Solid Waste to the Landfill, and use best efforts to maximize the delivery of Solid Waste to the Facility while honoring all existing contracts that designate whether solid waste shall go to the Facility or to other facilities of any type, whether publicly or privately owned. TRL shall not accept any solid waste from outside the City of Jacksonville at the Landfill unless directed or authorized to do so by the CITY in writing.

3.2 On Site Personnel. The CITY shall provide scale operators to weigh and record the tonnage of solid waste delivered to the Landfill. The CITY scale operators shall retain the original weight records. The CITY shall provide a copy of weight records to TRL daily

The CITY may at its option and at its expense assign one or more inspectors to observe TRL's operations. TRL shall cooperate with said inspectors in the performance of their duties.

3.3 Leachate Disposal. The CITY shall accept, or cause the acceptance of, leachate and/or condensate (including hereafter any combination thereof) generated at the Landfill from TRL at such wastewater treatment facility or facilities as the CITY may from time to time designate, with the CITY currently using the Buckman waste treatment facility and, should that facility become unavailable, the CITY shall use the next closest disposal facility permitted, and such facility shall process such liquids at the CITY'S expense and without charge to TRL.

3.4 Maintenance and Calibration of Scales. The CITY shall perform all required maintenance and calibration of the scales or shall arrange for such services to be performed by an independent contractor at the CITY's expense. The scales shall be calibrated at least annually. The CITY shall provide TRL with copies of all relevant documents verifying calibration of the scales.

3.5 Prompt Review and Comment. Where TRL's discharge of its responsibilities is dependent on prior CITY review, comment and/or approval, the CITY shall respond promptly in writing to TRL's written submittals of information and requests for review. CITY responses may be either:

- a) Unqualified approval or concurrence; or
- b) Enumeration of specific items or issues which are unacceptable or non-approvable to the CITY and the grounds for the determination of non-

acceptability.

- c) In the event of non—approval for a matter for which TRL needs such approval, the CITY response shall either (1) establish a date for TRL's resubmittal, or (2) instruct the TRL to modify its plan to incorporate CITY review comments consistent with the provisions of this Agreement and waive the requirements for formal resubmittal and review.

3.6 Notification of Operating Deficiencies. The CITY shall notify TRL in writing when aspects of its operations are observed by the CITY to be in violation of terms of this Agreement or of applicable provisions of governing law or regulations. However, the CITY's failure to notify TRL of any specific item of non-performance or violation shall not serve to relieve TRL of its responsibility to operate the Facility in accordance with this Agreement and in compliance with governing laws, ordinances, regulations and permits.

3.7 Payments to TRL. The CITY shall make periodic payments to TRL for landfill operation as provided in this Agreement.

The CITY shall be responsible for the costs and expenses associated with the permitting of the Facility, and the costs and expenses of Closure and Post-Closure of the Facility.

Closure does not include the maintenance of side slopes which have been capped prior to the date when the Facility ceases to receive solid waste. If the CITY chooses to pre—cap such side slopes, maintenance thereof shall be considered as part of normal operations until the Facility ceases to receive solid waste.

3.8 Financial Responsibility. The CITY shall be the party responsible under Rule 62-70.630 to provide financial assurances in compliance with applicable laws. The CITY shall comply with all other Federal, State and local laws, rules, regulations and ordinances concerning the financial responsibility for expenses and costs associated with the closure and post-closure of the Landfill.

3.9 Ownership and Use of Site. The City owns the Landfill, and the surrounding acreage as set forth on Exhibit "2010-7." Any use of the property shall not unreasonably interfere with the landfill operations for which TRL has been engaged under this Agreement.

4.0 TERM OF AGREEMENT

4.1 Effective Date. This Agreement shall become effective on July 1, 2010, and the 1991 Landfill Operation Agreement shall remain in full force and effect until the effectiveness of this Agreement.

4.2 Term of Agreement. For purposes of calculating this Agreement's term and end date, the Parties wish to resolve their differences over the continued application of the operations agreement beyond what they believe to be the likely cessation of operation of the existing 148 acres. The Landfill has a remaining capacity of between approximately 5 and 7 million tons, which capacity shall be established for purposes of this Agreement based upon the annual flyover to occur in March or April of 2010 (the "2010 Capacity"). Accordingly, TRL's

exclusive landfill operations at the Site shall terminate nineteen (19) years after the earlier of (i) TRL's receipt at the Landfill of the number of tons equal to the 2010 Capacity or (ii) June 30, 2020, unless sooner terminated pursuant to the termination provisions set forth in Article 7 hereof. The parties may, upon mutual agreement, extend the term of this Agreement for one six-year term beyond the termination date set forth above.

In the event this agreement is terminated through no fault of TRL prior to TRL's use of the current capacity in the existing Landfill cell, the stipulated damages applicable only to TRL's loss of an average of \$2.00 per ton for the life of the existing Landfill cell shall be as follows. With remaining tonnage capacity at the existing Landfill cell of approximately 5 to 7 million tons, TRL is giving up the right to receive approximately \$12 million in revenues that it would have received at the higher per ton rate under the 1991 Landfill Operation Agreement. The agreed upon damages pertaining to the existing Landfill cell only shall be the 2010 Capacity less the actual number of tons of waste disposed of after July 1, 2010, multiplied by \$2.00 per ton (the "Existing Cell Lost Revenues"). If such a termination occurs before the date that the Existing Cell is full, then TRL shall be entitled to: (a) liquidated damages in the amount of the Existing Cell Lost Revenues and any damages allowed by law as to the remaining term of this Agreement, and (b) a release from any and all liabilities and indemnification obligations, except that TRL will not be released from any liabilities related to the negligent acts or omissions of TRL, its employees, agents, representatives and subcontractors. Additionally, the City shall be entitled to Landfill capacity damages for any TRL failure to meet the airspace consumption guarantee as set forth in Section 2.5.

4.3 Closure. TRL shall provide all records, data, drawings, maps, test reports and similar such information as may reasonably be requested by the CITY in support of required closure procedures, whether or not TRL is to provide closure.

5.0 PAYMENTS TO TRL

5.1 Determination of Fee. TRL's fee shall be \$10.58 per ton for non-Special Wastes. As to Category III Special Wastes, that is, wastes prohibited by law or regulation from landfill disposal (i.e., whole tires, white goods and lead acid batteries), which nevertheless are deposited at the Landfill working area and are removed from the working area by TRL for on-site storage and further handling by TRL, the CITY shall pay TRL for such wastes excepting tires at the applicable rates set forth in Exhibit "2010-4." TRL shall charge any hauler identified as delivering waste tires the fee set forth in Exhibit "2010-4," provided that such charge for tires shall only apply for any and all tires received at the Landfill in excess of 30,000 (on an annual basis) dumped at the working face. The City hereby assigns its rights to obtain payment from persons and entities illegally disposing of waste tires in excess of the 30,000 annual allotment to TRL, and TRL shall be entitled to keep 95% of the gross proceeds from such collection and TRL is to return 5% to the City.

The rates to be applied to all Solid Waste are set forth in Exhibit "2010-5" attached hereto and by this reference made a part hereof.

5.2 Annual Adjustment of Fee. On July 1 of each year, the then current rates shall be adjusted by a factor which shall be the product of one (unity) and a decimal fraction equal to

0.70 times the preceding twelve-month change in the Consumer Price Index (CPI), said change being expressed as a decimal fraction. The CPI utilized shall be for the most current twelve-month period immediately preceding each annual adjustment date for which published final figures are available. Adjusted rates shall be the product of the then current rates and the modifier and shall be expressed correct to the nearest whole cent (\$0.01).

The Consumer Price Index used herein shall be the revised Consumer Price Index for Urban Wage Earners and Clerical Workers for all items - U.S. City Average, published by the Bureau of Labor Statistics, U.S. Department of Labor, 1982-84 = 100. In the event that the U. S. Department of Labor, Bureau of Labor Statistics ceases to publish the said Index, the parties shall 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 Section.

5.3 Changes in Law. In the event of any Change in Law (as herein defined) which directly and materially increases TRL's costs of operating the Facility and is not addressed pursuant to Section 5.2 hereof, the CITY shall adjust the then current fees to compensate TRL for such increased costs plus a profit margin of fifteen percent (15%) of such increased costs. Provided, however, in addition to the City's obligation to fund capital and replacement costs, capital expenditures and directly related costs of installation and replacement caused by Subtitle D of the Resource Conservation and Recovery Act, Title V of the Clean Air Act and other changes in law since June 26, 1991 shall be borne by the City.

If such increased costs consist, in whole or in part, of payments to a subcontractor, the costs used in calculating the amount of the adjustment shall be restated as if all costs had been incurred directly by TRL. Under no circumstances shall the aggregate profit margin of all contractors exceed a total of fifteen percent (15%) of the actual costs exclusive of profit. No pyramiding or multiplication of profit margins shall be included in the adjustment of then current fees provided for by this Section.

The parties shall notify each other of any Change in Law which the party believes will require an adjustment in the then current fees as soon as becoming aware of said Change in Law. The parties shall cooperate in challenging the application of laws which increase costs of operation upon the decision by either to do so.

TRL shall present its formal request for an adjustment pursuant to this Section as soon as the necessary documentation is reasonably available to it and any challenge to the Change in Law has been determined. TRL's formal request shall cite the specific Change in Law upon which TRL relies and shall include full documentation establishing the resulting material increase in operating costs. The CITY shall be entitled to audit TRL's financial and operational records to verify the impact of the Change in Law on TRL's operating costs. If the request and any additional information reasonably requested by the CITY is provided in a timely manner, any resulting adjustment shall be retroactive to the date when TRL first incurred materially increased operating costs as a result of the Change in Law.

In the event that any Change in Law which results in an adjustment of the then current fees pursuant to this Section is subsequently overruled, reversed or withdrawn, in whole or in part, the CITY shall eliminate or modify the previous adjustment to reflect said subsequent event. TRL shall be entitled to retain all sums received as a result of the original adjustment for the period during which the Change in Law was in force and TRL sustained documented

material increases in operating costs as a result thereof.

5.5 Monthly Payments. For each month of operations, the CITY shall pay TRL the then applicable per ton fee, as adjusted from time to time, times the number of tons delivered to the Landfill. For each payment the amount shall correspond to the actual amount of solid waste delivered to the Facility during the previous month. Each payment shall also include payment for all Special Waste handled at the Facility during the previous month.

Monthly payments as provided for by this Section shall be delivered or mailed to the TRL within seven (7) calendar days after the completion of each month of operations. Each monthly payment shall be accompanied by a copy of the calculations by which the amount of that payment was determined.

5.6 Advances in Solid Waste Management. The parties have agreed to eliminate the CITY'S minimum annual disposal volume guarantee at the Landfill and, therefore, the parties agree to work together to reduce the Operating Hours of the Facility, if it is no longer necessary to keep the Facility open during such hours due to a substantial reduction in the disposal volume. In the event that recycling, a reduction in the generation of Solid Waste or other factors result in a decline below 310,000 tons of accepted waste volume in any year (excluding therefrom volumes generated during periods of extreme or emergency conditions and their after effects in excess of 100,000 tons per year), the parties agree to meet and discuss whether efficiencies may be obtained with the goal of reducing costs and expenses for TRL as well as the City. Should no mutually agreeable resolution be achieved, TRL may petition the City Council for an equitable adjustment, which shall not be unreasonably denied. However, the parties shall first engage in mediation during which process TRL shall provide the detailed documentation to evaluate the request.

TRL and CITY shall use reasonable efforts to enter into an agreement for the establishment of an operation at the Site to recover materials from the current waste stream being delivered to TRL. Such an operation may be located on real property at the Site outside of the boundary of the Facility, and will by necessity interact with TRL. For example, the non-recyclable output of such operation will be delivered to TRL for disposal at the Landfill. However, such operation shall not interfere with any Facility operations or any obligations of TRL hereunder. CITY and TRL shall first enter into a mutually acceptable written agreement containing the terms and conditions for TRL's operation of such facility (including without limitation CITY's capital contribution and revenue sharing between the parties), and such agreement must be pre-approved by the Jacksonville City Council. If CITY and TRL cannot agree on a mutually acceptable agreement for such an operation, CITY shall be entitled to competitively bid the establishment and operation of such an operation, provided that any residual Solid Waste shall be disposed of at the Landfill at the applicable rate. TRL shall have the exclusive right to operate any such new technology requested by the CITY at the Site and for which the CITY shall provide the capital required to acquire and implement such technology, provided that TRL secures the lawful rights to do so.

5.7 Document Retention. All documents required to be maintained for City use, information, or review, shall be maintained in both paper and electronic form for a period of three (3) years, unless otherwise required by law.

6.0 HOLD HARMLESS, INSURANCE AND AGREEMENT SECURITY

6.1 Hold Harmless. TRL shall hold harmless, indemnify and defend the CITY, its officers, employees, representatives and agents, from and against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorney’s fees and court costs) arising out of injury (whether mental or corporeal) to persons, including death, or damage to property, including any and all costs resulting from environmental contamination, arising out of or incidental to any negligent act or omission of TRL in the operation of the Facility. In the event of joint negligence on the part of the CITY and the TRL, any loss shall be apportioned in accordance with the provisions of Section 768.31, Florida Statutes, the Uniform Contribution Among Tortfeasors Act, as it exists on the date first above written. Nothing herein contained shall be interpreted as waiving or abrogating the CITY’s right of sovereign immunity pursuant to Section 768.28, Florida Statutes, or any successor statute.

At its option, TRL shall have the right to actively participate in the defense of any action in which damages are sought which might be its ultimate responsibility. If TRL elects to exercise said right, it shall bear all of its defense costs, including attorneys’ fees.

In addition thereto, as to any damage claim for alternate disposal costs, TRL shall indemnify the CITY for any and all costs in excess of the fees for disposal provided for herein (as adjusted from time to time) incurred by the CITY in providing alternative means of solid waste disposal in the event that any negligent act or omission of TRL results in an administrative order, court order or injunction requiring permanent cessation or temporary interruption of use of the Facility before it has received a total volume equivalent to the estimated remaining capacity in the existing landfill, that is, 5,518,097 tons, of Solid Waste. TRL’s said obligation to indemnify the CITY for the excess cost of alternative means of solid waste disposal shall not exceed 5,518,097 2 tons of solid waste less the volume received at the Landfill after July 1, 2010 and prior to cessation of operations. TRL shall have the right at its option to make other arrangements for the legal disposal of the amounts of solid waste provided for herein in lieu of making the payments otherwise required by this paragraph.

6.2 Insurance. Without limiting its liability under this Agreement, TRL shall procure and maintain at its sole expense during the life of the Agreement, insurance of the types and in the minimum amounts stated below:

<u>Schedule</u>	<u>Limits</u>
<u>Workers’ Compensation</u>	
Florida Statutory Coverage & Employer’s Liability (including appropriate federal acts)	Statutory/\$100,000
 <u>Commercial General Liability</u>	
Premises-Operations Products-Completed Operations Contractual Liability Independent TRLs	\$500,000 Combined Single Limit

Environmental Liability

\$10,000,000 Combined Single Limit

Automobile Liability

All Autos — Owned, Hired or Used

\$300,000 Combined Single Limit

TRL's commercial general liability policy shall include contractual liability on a blanket or specific basis to cover the indemnification contained in Section 6.1 hereof. It shall also name the CITY as an additional insured for liability arising out of operations performed by the TRL for the CITY pursuant to this Agreement.

All insurance shall be written by a company or companies licensed to do business in the State of Florida and shall be in a form reasonably satisfactory to the CITY. Prior to commencing any work under this Agreement, certificates evidencing the maintenance of said insurance shall be furnished to the CITY and shall be subject to the approval of the CITY's Office of Insurance and Risk Management.

All insurance shall provide that no material alteration or cancellation, including expiration and non-renewal, shall be effective until thirty (30) days after receipt of written notice by the CITY, addressed to Office of Insurance and Risk Management, Room 605, City Hall, 220 East Bay Street, Jacksonville, Florida 32202, as may be changed from time to time.

6.3 Agreement Security. TRL shall obtain and maintain at his expense for the term of this Agreement both a Performance Bond and a Payment Bond. Each Bond shall be written by a surety licensed in the State of Florida and acceptable to the CITY. Amounts of bonds shall be as follows:

Performance Bond - Two hundred percent (200%) of the projected annual payment to the TRL under this Agreement, computed based on 558,000 tons per year quantity and fees currently in effect as updated annually.

Payment Bond — Twenty—five percent (25%) of the projected annual payment to the TRL under this Agreement, computed based on 558,000 tons per year quantity and fees currently in effect as updated annually.

7.0 TERMINATION

7.1 For Cause. Except as otherwise provided herein, if either party breaches this Agreement or defaults in the performance of any of the covenants or conditions contained herein for thirty (30) days after the other party has given the party breaching or defaulting written notice of such breach or default, the other party may: (i) terminate this Agreement as of any date; (ii) cure the breach or default at the expense of the breaching or defaulting party; and/or (iii) have recourse to any other right or remedy to which It may be entitled by law or equity.

In the event that in the exercise of due diligence during the aforesaid thirty (30) day period a cure cannot reasonably be effected, such thirty (30) day period shall be extended to include such additional time as is reasonably necessary to effect cure provided the defaulting party exercises continuous diligent efforts to cure such default during such extended cure period. In the event either party waives default by the other party, such waiver shall not be

construed or determined to be a continuing waiver of the same or any subsequent breach or default.

7.2 Repeated Defaults. In the event that TRL’s record of performance shows that TRL has frequently, regularly or repetitively defaulted in the performance of any of the material covenants and conditions required herein to be kept and performed by TRL and regardless of whether TRL has corrected each individual condition of default, TRL may be deemed a “habitual violator” and all of said defaults may be considered collectively to constitute a condition of default. The CITY may thereupon issue TRL a final warning citing the circumstances therefore, and any single material default by TRL within one year after said warning shall be grounds for termination of this Agreement. In the event of any such single subsequent default within one year, the CITY may terminate this Agreement upon the giving of written final notice to TRL.

7.3 Interim Operations. In the event that this Agreement is terminated pursuant to either Section 7.1 or Section 7.2, TRL shall continue operations for an interim period of up to one hundred twenty (120) calendar days if requested to do so by the CITY in order to allow the CITY to obtain the services of a successor TRL or to make arrangements to undertake operation of the Facility with its own forces. TRL shall be paid for its services during said interim period at the rates and factors set forth in the last payment schedule in effect prior to issuance of written final notice of termination.

8.0 GENERAL CONDITIONS

8.1 Notices. Notices of conditions or situations affecting the work to be performed under this Agreement shall be given in writing between designated operating personnel of TRL and the CITY All other notices shall be given in writing, to be delivered by certified mail, to the parties at their respective addresses as set forth below:

If to TRL, at:

with a copy to:

Trail Ridge Landfill, Inc.
Waste Management
Jacksonville, Florida

Assistant Secretary
Suite 700
1000 Parkwood Circle
Atlanta, GA 30339

If to CITY, at:

Director of Public Works
City of Jacksonville
214 Hogan Street Suite 1000
Jacksonville, Florida 32202

8.2 Force Majeure. Neither party shall be liable for its failure to perform hereunder if its performance is rendered impossible by any act, event or condition beyond its reasonable control which by the exercise of due diligence it shall be unable to overcome. Such acts, events or conditions shall include, but not be limited to, the following:

- (a) strike, work stoppage or slowdown;
- (b) acts of God (except normal weather conditions for the Jacksonville, Florida area), hurricane, tornado, lightning, or earthquake;
- (e) acts of war, civil insurrection or terrorism;
- (c) fire or flood not caused by the party unable to perform; or
- (d) failure to issue or to renew any permit essential to the operation of the Facility if said failure to issue or renew is not due to improper conduct or to any negligent or intentional act or omission on the part of the party unable to perform.

8.3 Assignment. This Agreement is assignable only upon the written consent of the other party made with the formalities applicable to this Agreement, and subject to such consent, shall be binding upon, and inure to the benefit of, the assignor's successors and assigns.

8.4 Amendment. This Agreement may be amended only by written instrument specifically referring to this Agreement and executed with the same formalities as this Agreement.

8.5 Governing Law and Venue. This Agreement shall be interpreted and enforced pursuant to Florida law. Any action to Interpret and/or enforce this Agreement shall be brought and maintained in either the Circuit Court, Fourth Judicial Circuit in and for Duval County, Florida, or the United States District Court, Middle District of Florida, Jacksonville Division.

8.6 Order of Precedence. In the event of any conflict between the provisions of this Agreement and those of the Exhibits attached hereto, the provisions of this Agreement shall govern.

8.7 Construction. Both parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Therefore, any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared this Agreement. The rule sometimes referred to as "Fortius Contra Proferentum" shall not be applied to the interpretation of this Agreement.

8.8 Savings Clause. In the event that one or more of the provisions contained in this Agreement shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

8.9 Authority. The CITY represents and warrants that it has the power and authority to enter into this Agreement, that all necessary ordinances, resolutions and other approvals have been duly enacted or obtained, and that upon execution hereof by the CITY and approval by the City Council, this Agreement shall become a valid and binding obligation of the CITY.

8.10 Performance Guarantee. In the event that Trail Ridge Landfill, Inc. fails to fulfill any of the responsibilities of TRL set forth herein within the time limits specified or, if no time limit is

specified, within a reasonable time, Waste Management Holdings, Inc. shall fulfill said responsibilities and thereafter shall be treated as "TRL" hereunder for all purposes.

8.11 Financial Guarantee. In the event Waste Management Holdings, Inc. fails to fulfill the Performance Guarantee set forth in Section 8.10 hereof within the time limits specified or, if no time limit is specified, within a reasonable time, Waste Management, Inc. shall provide the financial support and resources necessary to allow Trail Ridge Landfill, Inc. and/or Waste Management Holdings, Inc. to fulfill their responsibilities and/or to pay any damages the CITY may incur as a result of their failure to perform their responsibilities.

8.12 Grant of Easement. So long as TRL operates the Facility, TRL shall provide a relocatable access license to the City over the parcels owned by Trail Ridge Landfill, Inc. and adjacent to the City's TRLF property (parcels #'s 24-3S-22-0000-0000-0020 and 13S-3S-22-0000-0000-0030) totaling approximately 24.02 acres.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

[insert signature blocks for the parties]

Approvals, subject to city and corporate authorizations:

CITY OF JACKSONVILLE

By: _____

Title: _____

TRAIL RIDGE LANDFILL, INC.

By: _____

Title: _____

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EXHIBIT "2010 - 1"
DESCRIPTION OF LANDFILL,

[to be attached]

3/15/2010: TRL needs to see this ASAP and prior to finalization of the Agreement.

EXHIBIT "2010-2"
SPECIAL WASTE

Category I Special Wastes are wastes that are light, difficult to handle, subject to airborne dust and as such create potentially unsafe or unhealthy conditions for employees and which require pre-acceptance site preparation and special handling procedures during disposal (i.e., asbestos, fly ash, powdery chemicals, etc.). The charge for Category I Special Waste is \$23.22 per ton

Category II Special Wastes are wastes requiring special acceptance procedures and monitoring pursuant to TRL's Special Waste management policies, but which require no special site preparation for disposal on the landfill working area. This Category includes contaminated soil generated by the City. The charge for Category II Special Waste is \$23.22 per ton.

Category III Special Wastes which are wastes prohibited by law or regulation from landfill disposal (i.e., whole tires, white goods, lead acid batteries) but which nevertheless are deposited at the landfill working area and are removed from the working area by the TRL for on-site storage and further handling by the TRL.

Category IV Special Waste include tires, white goods, lead acid batteries and motor oil received in bulk at the Landfill or at the designated Citizen's Drop-Off Recycling Facility at the Facility.

EXHIBIT "2010-3"
SPECIAL WASTE ADDITIONAL TERMS AND CONDITIONS

1.1 DEFINITIONS

- 1.1.1 Unless otherwise indicated herein, capitalized terms shall have the meaning set forth in the Agreement.
- 1.1.2 "Environmentally Sensitive Wastes" shall mean those wastes which contain constituents listed in current groundwater monitoring parameters or initial groundwater monitoring parameters (see Appendix VIII of 40CFR261), or polychlorinated biphenyls (PCBs).

2.1 SUSPENSION OR TERMINATION OF DISPOSAL PRIVILEGES

- 2.1.1 The CITY and the TRL shall each have the right to suspend or terminate disposal privileges of those persons who deliver or attempt to deliver to the Facility unacceptable wastes or environmentally sensitive wastes without prior written approval. Disposal privileges may be suspended or terminated for either total or specific waste streams. Termination or suspension action shall be exercised uniformly for all disposers.
- 2.1.2 Upon determination by either the CITY or the TRL that disposal privileges have been terminated, the Party responsible for the determination shall notify in writing the other Party of such determination. Notification shall include the following:
- Name, address and phone number of individual whose disposal privileges are being terminated
 - Nature of action (suspension or termination)
 - Effective date of action
 - Reason for action
- 2.1.3 Reinstatement of disposal privileges shall be effective only upon the written consent of both the CITY and the TRL. Any request for reinstatement of disposal privileges must contain the information required in the above paragraph 2.1.2 and the justification for reinstatement of disposal privileges.

3.1 SPECIAL WASTE

- 3.1.1 Special Wastes shall not be accepted for disposal outside of the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday, nor will they be accepted on Saturday, Sundays or legal holidays as observed by the CITY, except for asbestos, which will be accepted one (1) day per week, such day to be mutually agreed upon by the CITY and TRL.
- 3.1.2 Special Wastes shall not be accepted for disposal unless accompanied by a properly issued manifest in a form approved by the CITY, except as provided herein.

4.1 ENVIRONMENTALLY SENSITIVE WASTE

- 4.1.1 The CITY, after consultation with the TRL, may make and revise such policies and procedure as it deems necessary to document or restrict the disposal of Environmentally Sensitive Wastes.
- 4.1.2 The CITY and the TRL shall each have the right to suspend or terminate disposal privileges of any person disposing of Environmentally Sensitive Wastes as provided for in paragraph 2.1.
- 4.1.3 The CITY will develop and provide to the TRL a listing of those Environmentally Sensitive Wastes which do not require additional CITY review prior to acceptance for disposal. The CITY may at any time modify this listing provided that if materials or substances are removed from the listing, neither the CITY nor the TRL shall be responsible for the removal and disposal of any such materials or substances that have been previously disposed of at the Facility.

THE WASTESTREAM APPROVAL DECISION TREE AND THE APPROVED FORM OF SPECIAL WASTE DISPOSAL AGREEMENT ARE ATTACHED TO THIS EXHIBIT 2010-3

EXHIBIT "2010-4"
RATES FOR CATEGORY III AND CATEGORY IV SPECIAL WASTE

1. Category III Solid Waste removed from the Landfill

- a. Tires (removal from the working face of the Landfill, storage on-site, and for periodic shredding and disposal)
- First 30,000 tires (per Operating Year):
No charge to City
 - Tires in excess of 30,000 (per Operating Year) :
\$ 13.69 each
- b. White goods: \$41.13 each (for the removal from working face, removal and disposal of capacitors and removal from site).
- c. Lead acid batteries: \$27.42 each (for the removal from working face, storage and removal from site).

2. Category IV Special Waste received in bulk:

- a. Tires (for receipt, storage on-site and for periodic shredding) plus \$8.35 each for disposal fees:
- Passenger Tires: \$1.38 each
 - Truck Tires: \$6.88 each
 - Other Tires: \$13.69 each
 - Bulk Tires \$114.30 per ton
- b. White goods: \$20.55 each (for receipt, removal and disposal of capacitors and removal from site).
- c. Lead acid batteries: \$13.69 each (for receipt, storage and removal from site).
- d. Motor-oil: no charge.

EXHIBIT "2010-5"
RATES PAID BY COJ FOR ALL SOLID WASTE DISPOSAL

1. Municipal Solid Waste: \$10.58 per ton (Initial Rate)

2. Citizen's Drop-Off/Recycling Facility - For manning, maintaining and operating the citizen's drop-off/recycling facility:
 - Rolloff Pulls to Landfill: \$68.55 per ton
 - Recycling Attendant: \$171.45 per day (if not provided by the City)
 - Rolloff Box Lease: \$61.74 each per month
 - Extended Hours \$836.51 per hour

3. Categories I and II Special Waste: \$23.22

4. Categories III and IV Special Waste as set forth in Exhibit "2010-4".

5. Flat Rates (charged if scales are not operational): Equitable rates to be agreed upon by City and TRL.

EXHIBIT "2010-6"
DESCRIPTION OF ACCESSIBLE BORROW PIT AREA

[To be provided]

EXHIBIT "2010-7"
OWNERSHIP AND USE OF SITE

[To be provided]

EXHIBIT B TO EXHIBIT "2010-3"

SPECIAL WASTE DISPOSAL SERVICES AGREEMENT

Customer:	Company: Trail Ridge Landfill, Inc.
By: Authorized Signatory	By: Authorized Signatory
Name:	Name:
Title:	Title:
Date:	Date:
Effective Date:	Initial Term: _____ Months

This Special Waste Services Agreement, consisting of the terms and conditions set forth herein, and Exhibit A, Confirmation Letter(s) and the Profile Sheet(s) entered into from and after the date hereof from time to time (all of the foregoing being collectively referred to as the "Agreement"), is made as of the Effective Date shown above by and between the Customer named above, on its and its subsidiaries and affiliates behalf (collectively, "Customer") and Trail Ridge Landfill, Inc., on behalf of and as agent and attorney-in-fact for, its subsidiaries and affiliates providing the services to Customer (such subsidiaries and affiliates are individually and collectively, as the context requires, hereinafter referred to as "the Company")

TERMS AND CONDITIONS

1. SERVICES PROVIDED. The Company will provide Customer with collection, management, transportation, disposal, treatment and recycling services ("Services") for Customer's Special Waste, as described on Exhibit A, Confirmation Letter(s) and/or applicable Profile Sheets. **Special Waste** includes polychlorinated biphenyl ("PCB") wastes, Special process wastes, asbestos containing material, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, demolition debris and other materials requiring special handling in accordance with applicable federal, state, provincial or local laws or regulations. When Company handles Special Waste for Customer, Customer will provide Company with a Generator's Waste Profile Sheet ("Profile Sheet") describing all Special Waste, and provide a representative sample of such waste on request. In the event this Agreement includes transportation by Company, Customer shall, at the time of tender, provide to Company accurate and complete documents, shipping papers or manifests as are required for the lawful transfer of the Special Waste under all applicable federal, state or local laws or regulations. Tender of delivery shall be considered nonconforming if not in accordance with this Paragraph.

2. CUSTOMER WARRANTIES: Customer hereby represents and warrants that all waste material delivered by Customer to Company shall be in accordance with waste descriptions given in this Agreement and shall not be or contain any Nonconforming Waste. "Nonconforming Waste" means: (a) non-hazardous Solid Waste that contains regulated Special Waste or Hazardous Waste; (b) waste that is not in conformance with the description of the waste in Exhibit A, the Confirmation Letter(s) or the Profile Sheet incorporated herein; (c) waste that is or contains any infectious waste, radioactive, volatile, corrosive, flammable, explosive, biomedical, biohazardous material, regulated medical or hazardous waste or toxic substances, as defined pursuant to or listed or regulated under applicable federal, state or local law, except as stated on the Profile Sheet or Confirmation Letter; or (d) waste that is prohibited from being received, managed or disposed of at the designated disposal facility by federal, state or local law, regulation, rule, code, ordinance, order, permit or permit condition. Customer (including its subcontractors) represents and warrants that it will comply with all applicable laws, ordinances, regulations, orders, permits or other legal requirements applicable to the Special Waste.

3. TERM OF AGREEMENT. The Initial Term of this Agreement shall commence on the Effective Date all set forth above. This Agreement shall automatically renew thereafter for additional terms of twelve (12) months each ("Renewal Term") unless either party gives to the other party written notice of termination at least ninety (90) days prior to the termination of the then-existing term; provided however, that the terms and conditions of this Agreement shall remain in full force and effect, in accordance with its terms, with respect to any uncompleted or unfinished Service provided for in an Exhibit A, Confirmation Letter and/or Profile Sheet until such Service is completed

4. INSPECTION; REJECTION OF WASTE. Title to and liability for Nonconforming Waste shall remain with Customer at all times. Company shall have the right to inspect, analyze or test any waste delivered by Customer. If Customer's Special Waste is Nonconforming Waste, Company can, at its option, reject Nonconforming Waste and return it to Customer or require Customer to remove and dispose of the Nonconforming Waste at Customer's expense. Customer shall indemnify, hold harmless (in accordance with Section 9) and pay or reimburse Company for any and all costs, damages and/or fines incurred as a result of or relating to Customer's tender or delivery of Nonconforming Waste or other failure to comply or conform to this Agreement, including costs of inspection, testing and analysis.

5. SPECIAL HANDLING; TITLE If Company elects to handle, rather than reject, Nonconforming Waste, Company shall have the right to manage the same in the manner deemed most appropriate by Company given the characteristics of the Nonconforming Waste. Company may assess and Customer shall pay additional fees associated with delivery of Nonconforming Waste, including, but not limited to, special handling or disposal charges, and costs associated with different quantities of waste, different delivery dates, modifications in operations, specialized equipment, and other operational, environmental, health, safety or regulatory requirements. Title to and ownership of acceptable Special Waste shall transfer to Company upon its final acceptance of such waste.

6. COMPANY WARRANTIES. Company hereby represents and warrants that: (a) Company will manage the Special Waste in a safe and workmanlike manner in full compliance with all valid and applicable federal, state and local laws, ordinances, orders, rules

and regulations; and (b) it will use disposal facilities that have been issued permits, licenses, certificates or approvals required by valid and applicable laws, ordinances and regulations necessary to allow the facility to accept, treat and/or dispose of Special Waste. Except as provided herein, Company makes no other warranties and hereby disclaims any other warranty, whether implied or statutory.

7. LIMITED LICENSE TO ENTER. When a Customer is transporting Special Waste to Company's facility, Customer and its subcontractors shall have a limited license to enter a disposal facility for the sole purpose of off-loading Special Waste at an area designated, and in the manner directed, by Company. Customer shall, and shall ensure that its subcontractors, comply with all rules and regulations of the facility, as amended. Company may reject the Special Waste, deny Customer or its subcontractors entry to its facility and/or terminate this Agreement in the event of Customer's or its subcontractors' failure to follow such rules and regulations.

8. CHARGES AND PAYMENTS. Customer shall pay the rates established by the City of Jacksonville ("City") and agreed to by Company, which may be modified from time to time by the City as allowed by law

9. INDEMNIFICATION. The Company agrees to indemnify, defend and save Customer harmless from and against any and all liability (including reasonable attorneys fees) which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by Company's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Company or its employees, which occurs (1) during the collection or transportation of Customer's Special Waste by Company, or (2) as a result of the disposal of Customer's Special Waste, after the date of this Agreement, in a facility owned by a subsidiary or affiliate of Waste Management, Inc., provided that the Company's indemnification obligations will not apply to occurrences involving Nonconforming Waste.

Customer agrees to indemnify, defend and save the City and the Company harmless from and against any and all liability (including reasonable attorneys fees) which the City and/or the Company may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law to the extent caused by Customer's breach of this Agreement or by any negligent act, negligent omission or willful misconduct of the Customer or its employees, agents or contractors in the performance of this Agreement or Customer's use, operation or possession of any equipment furnished by the Company. Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance of this Agreement.

10. UNCONTROLLABLE CIRCUMSTANCES. Except for the obligation to make payments hereunder, neither party shall be in default for its failure to perform or delay in performance caused by events beyond its reasonable control, including, but not limited to, strikes, riots, imposition of laws or governmental orders, fires, acts of God, and inability to obtain equipment, permit changes and regulations, restrictions (including land use) therein, and the affected party shall be excused from performance during the occurrence of such events.

11. ASSIGNMENT. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns.

12. ENTIRE AGREEMENT. This Agreement represents the entire understanding and agreement between the parties relating to the management of waste and supersedes any and all prior agreements, whether written or oral, between the parties regarding the same; provided that, the terms of any national service agreement between the parties shall govern over any inconsistent terms herein.

13. TERMINATION; LIQUIDATED DAMAGES. Company may immediately terminate this Agreement, (a) in the event of Customer's breach of any term or provision of this Agreement, including failure to pay on a timely basis or (b) if Customer becomes insolvent, the subject of an order for relief in bankruptcy, receivership,

reorganization dissolution, or similar law, or makes an assignment for the benefit of its creditors or if Company deems itself insecure as to payment ("Default"). Notice of termination shall be in writing and deemed given when delivered in person or by certified mail, postage prepaid, return receipt requested. In the event Customer terminates this Agreement prior to the expiration of any Initial or Renewal Term for any reason other than as provided herein, or in the event Company terminates this Agreement for Customer's Default, liquidated damages in addition to the Company's legal fees shall be paid and calculated as follows: 1) if the remaining Initial Term under this Agreement is six or more months, Customer shall pay its most recent monthly charges multiplied by six; 2) if the remaining Initial Term under this Agreement is less than six months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Term; 3) if the remaining Renewal Term under this Agreement is three or more months, Customer shall pay its most recent monthly charges multiplied by three; or 4) if the remaining Renewal Term under this Agreement is less than three months, Customer shall pay its most recent monthly charges multiplied by the number of months remaining in the Renewal Term. Customer acknowledges that the actual damage to Company in the event of termination is difficult to fix or prove, and the foregoing liquidated damages amount is reasonable and commensurate with the anticipated loss to Company resulting from such termination and is an agreed upon fee and is not imposed as a penalty. Collection of liquidated damages by Company shall be in addition to any rights or remedies available to Company under this Agreement or at common law.

14. MISCELLANEOUS. (a) The prevailing party will be entitled to recover reasonable fees and court costs, including attorneys' fees, in interpreting or enforcing this Agreement. In the event Customer fails to pay Contractor all amounts due hereunder, Company will be entitled to collect all reasonable collection costs or expenses, including reasonable attorneys fees, court costs or handling fees for returned checks from Customer; (b) The validity, interpretation and performance of this Agreement shall be construed in accordance with the law of the state in which the Services are performed; (c) If any provision of this Agreement is declared invalid or unenforceable, then such provision shall be deemed severable from and shall not affect the remainder of this Agreement, which shall remain in full force and effect; (d) Customer's payment obligation for Services and the Warranties and Indemnification made by each party shall survive termination of this Agreement

Agreed and Accepted:

Company: _____
Signature & Date

Customer: _____
Signature & Date

**Special Waste Service Agreement
Exhibit B to Exhibit "2010-3"**

WM Profile #	
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CWM Profile #	
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CUSTOMER BILLING ADDRESS	CUSTOMER CONTRACTING ADDRESS <i>(if different from Billing Address)</i>	CUSTOMER SERVICE LOCATION <i>(if different from Billing Address)</i>
Contact Phone:	Contact Phone:	Contact Phone:
WM Customer Service Phone Number:	WM Contact:	

Service Information	
Generator:	
Ground Transporter	
Rail Transporter:	
General Contractor:	
Disposal Cost:	
Profile Fee:	
Additional Cost: Describe	
Additional Cost: Describe	
Taxes: Does not include California BOE taxes.	
Transportation Fee:	
Containers provided by WM	size: size: size:
Pick-up frequency:	
Contract Expiration Date:	
Additional Information:	Payment terms: Per invoice
Salesperson Code:	State 2 digit code:
Waste CAT: BA EV	Waste Type: MD SP ID HZ

THE WORK CONTEMPLATED BY THIS EXHIBIT A IS TO BE DONE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE SPECIAL WASTE & DISPOSAL SERVICES AGREEMENT BETWEEN THE PARTIES DATED _____.

EXHIBIT "A"
WASTESTREAM APPROVAL DECISION TREE

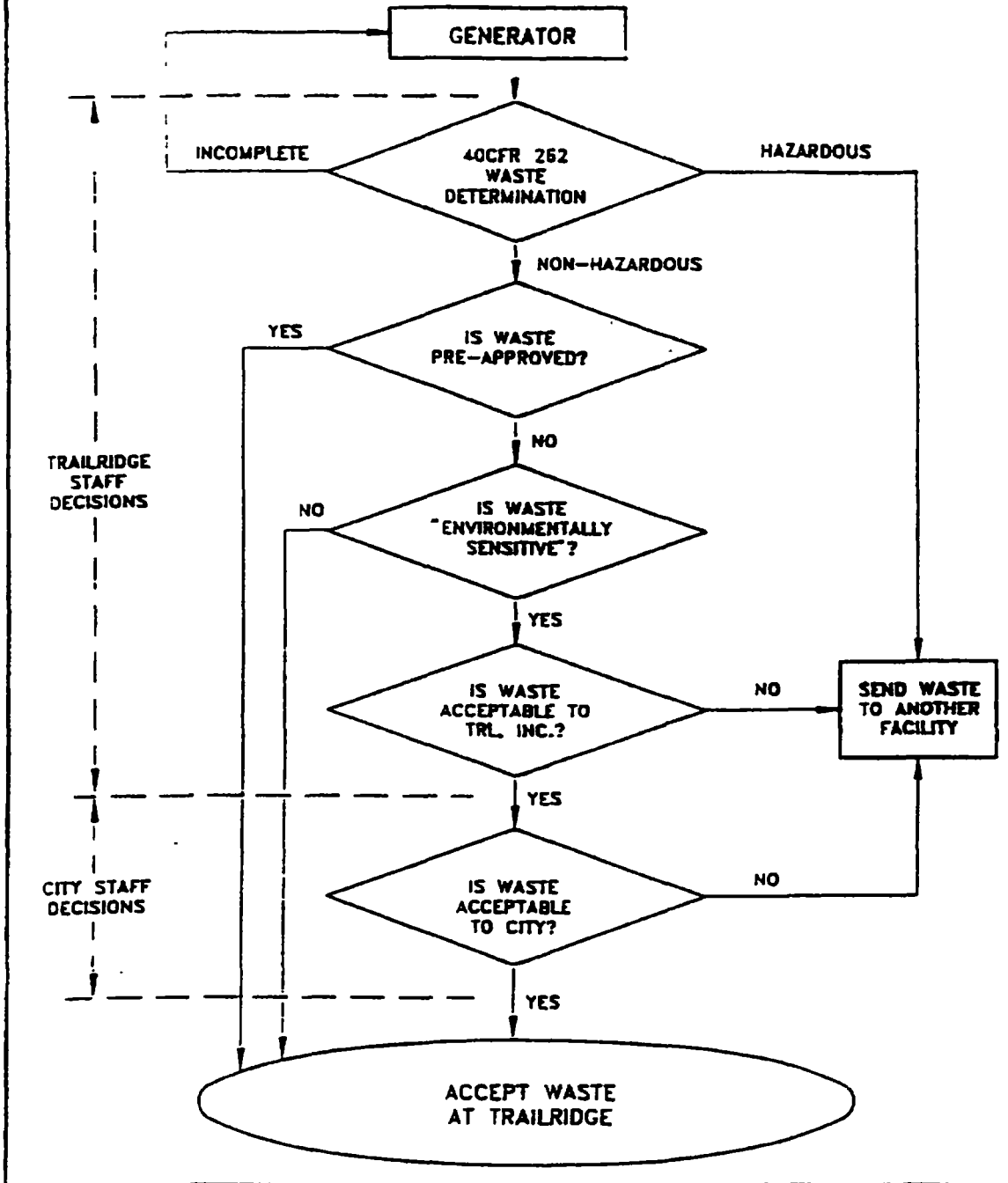
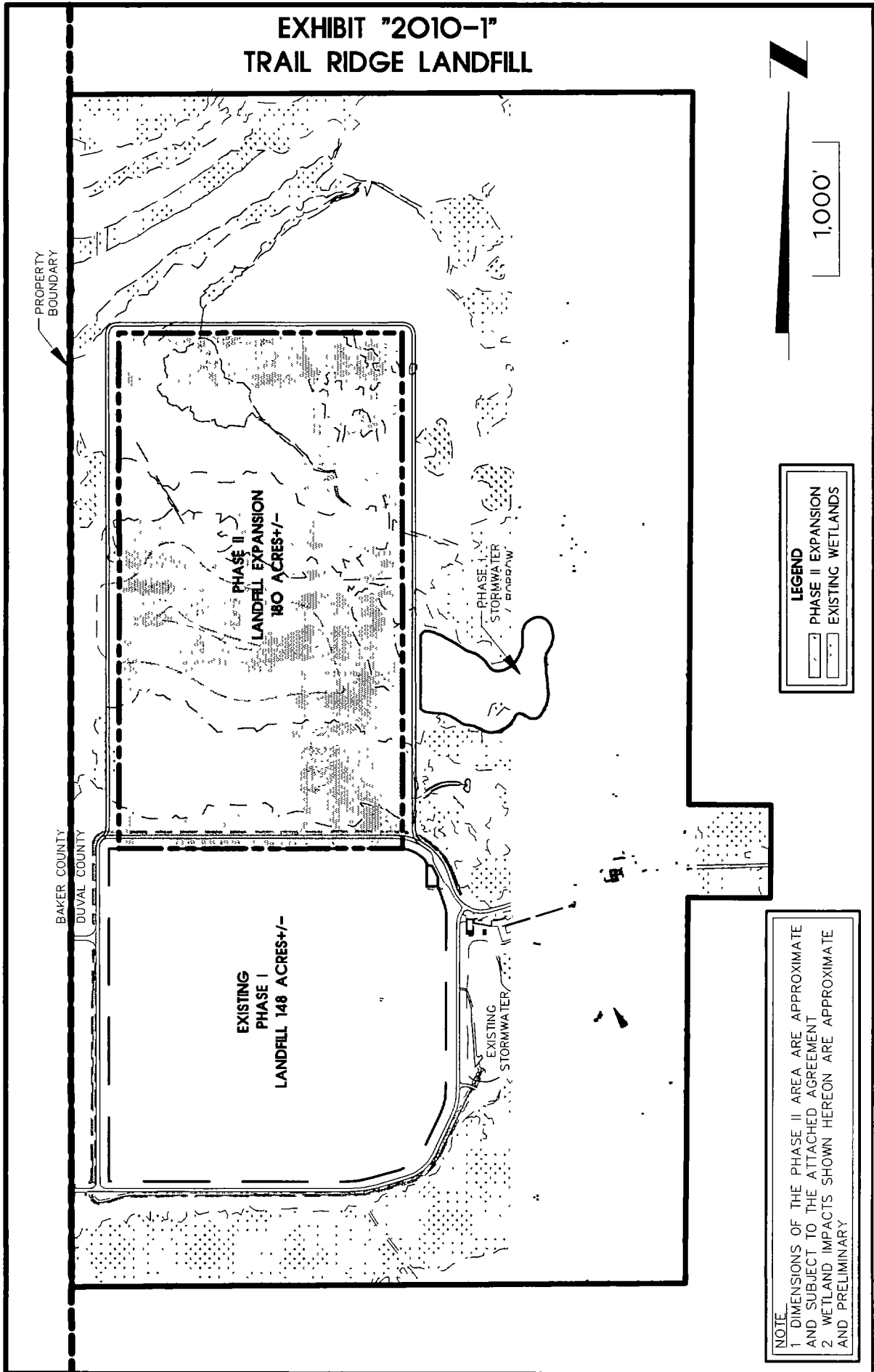


EXHIBIT "2010-1" TRAIL RIDGE LANDFILL



NOTE:
1. DIMENSIONS OF THE PHASE II AREA ARE APPROXIMATE AND SUBJECT TO THE ATTACHED AGREEMENT
2. WETLAND IMPACTS SHOWN HEREON ARE APPROXIMATE AND PRELIMINARY

England-Thims & Miller, Inc.
ENGINEERS - PLANNERS SURVEYORS - LANDSCAPE ARCHITECTS
14775 Old St. Augustine Road
Jacksonville, Florida 32258
Phone No. (904) 642-8890
Fax No. (904) 646-9485

**TRAIL RIDGE LANDFILL EXPANSION
SITE LAYOUT**

TRAIL RIDGE LANDFILL EXPANSION
FOR
CITY OF JACKSONVILLE, FLORIDA

ETM NO	E 07-044
DATE	March 15, 2010
DRAWN BY	S Lockwood
DRAWING NO	1 of 1