

**AGREEMENT FOR CAPITAL CONTRIBUTION,
IMPROVEMENTS, AND DEBT INCURRENCE
BETWEEN THE CITY OF JONESBORO, ARKANSAS AND
THE CRAIGHEAD COUNTY SOLID WASTE DISPOSAL AUTHORITY**

This agreement for the funding of the construction of improvements to a landfill is entered into this 5th day of April, 2005 by and between CITY OF JONESBORO, ARKANSAS ("CITY"), a municipal corporation of the first class, organized under the laws of the State of Arkansas, and CRAIGHEAD COUNTY SOLID WASTE DISPOSAL AUTHORITY ("CCSWDA"), a Public Body and Body Corporate and Politic Pursuant to Arkansas Act 699 of 1979 and Arkansas Act 919 of 1979.

WHEREAS, CITY has filed a closure plan with the Arkansas Department of Environmental Quality to close its Class 4 landfill located at 1624 Strawfloor Drive, Jonesboro, Craighead County, Arkansas (the "Strawfloor Landfill") and must find a new facility that will accept for management and disposal the Class 4 Waste stream generated within the City of Jonesboro; and

WHEREAS, the Jonesboro City Council, pursuant to Resolution No. 2005:12 (February 15, 2005) notified CCSWDA that it will begin directing all or part of the Class 4 Waste currently accepted at the Strawfloor Landfill to CCSWDA's Landfill; and

WHEREAS, CCSWDA operates a Landfill on behalf of the citizens of Craighead County, Arkansas located off Highway 1 South, Craighead County, Arkansas that has an expected useful life in excess of one hundred (100) years; and

WHEREAS, CCSWDA and CITY are committed to working together to ensure that the best and safest waste disposal service is provided to the citizens of Jonesboro and Craighead County, Arkansas, at the most feasible rates possible, and have entered into a Memorandum of Understanding attached hereto as Attachment A evidencing that commitment; and

WHEREAS, CITY currently disposes its Class 1 Waste stream at CCSWDA's Landfill; and

WHEREAS, CITY desires to dispose of, and CCSWDA desires to accept at its Landfill, that portion of the Class 4 Waste stream generated within the City of Jonesboro; and

WHEREAS, to ensure that the best and safest waste disposal service is provided to the citizens of Jonesboro and Craighead County at the most feasible rates possible, CCSWDA must construct new infrastructure and improve existing infrastructure, the cost of which is projected to be approximately 7.3 million dollars (see Exhibit 1) (the “Projected Cost”); and

WHEREAS, CCSWDA will fund the necessary Improvements through a Solid Waste Revenue Bond Issue; and

WHEREAS, CITY desires to provide a portion of the funds necessary to repay the debt encumbered by CCSWDA through the Solid Waste Revenue Bond Issue and has determined that it should contribute roughly seventy percent of the Projected Cost, but not less than Five Million Dollars, except as otherwise expressly agreed to in writing; and

WHEREAS, the Jonesboro City Council, pursuant to Resolution No. ^{2005:30} ___ (April 5th, 2005) authorized the Mayor of Jonesboro to enter into an agreement with CCSWDA for the funding of capital improvements to CCSWDA’s landfill.

NOW, THEREFORE, LET IT BE AGREED BY THE PARTIES AS FOLLOWS:

ARTICLE 1. DEFINITIONS

When used in this Agreement, except where a different definition is clearly and expressly indicated, the following words or phrases, capitalized as shown, shall mean:

1.1 Landfill. The defined term “Landfill” shall mean the landfill located at 238 CR 476 off Arkansas Highway 1 South, north of the Craighead County, Arkansas / Poinsett County, Arkansas line and owned and operated by the Craighead County Solid Waste Disposal Authority, its successors and assigns.

1.2 Class 1 Waste. The defined term “Class 1 Waste” shall mean nonhazardous household, commercial, and industrial solid waste and small quantities of conditionally exempt hazardous wastes as defined by the Arkansas Pollution Control and Ecology Commission’s Regulation No. 22 and the Arkansas Solid Waste Management Act, each as are and may hereafter be amended.

1.3 Class 4 Waste. The defined term “Class 4 Waste” shall mean nonhazardous, bulky, nonputrescible solid wastes that do not degrade, or degrade very slowly, and are permitted by the Arkansas Department of Environmental Quality to be disposed in a Class 4 landfill, including construction and demolition wastes, appliances, furniture, stumps, limbs, and other bulky wastes that are not normally collected with other household, commercial, or industrial waste, as defined by the Arkansas Pollution Control and Ecology Commission’s Regulation No. 22 and the Arkansas Solid Waste Management Act, each as are and may hereafter be amended.

1.4 Effective Date. The defined term "Effective Date" shall mean the date the Office of the City Clerk of Jonesboro, Arkansas attests this Agreement on page 10.

1.5 Improvements. The defined term "Improvements" shall mean any and all roadways, scales, cells, liners, machinery, and structures of any kind and nature, any ameliorations to the Landfill, and any and all other equipment and materials of whatsoever nature required to be constructed or acquired for the handling, processing, and disposing of solid waste.

1.6 Additional Terms. Any terms not expressly defined herein which are assigned a specific meaning by the Arkansas Pollution Control & Ecology Commission's Regulation No. 22 and the Arkansas Solid Waste Disposal Act shall be read to have such meaning as therein defined.

ARTICLE 2. CONSIDERATION

2.1 Amounts Payable. For value received and in return for CCSWDA's obligations to CITY as set forth herein, CITY shall pay and promises to pay to CCSWDA Five Million Dollars and No Cents (\$5,000,000.00), in eleven (11) separate payments as follows ("Payment Obligation"):

- (a) CITY shall make a payment to CCSWDA of One Million Dollars and No Cents (\$1,000,000.00) within fifteen (15) days of the Effective Date; and
- (b) CITY shall fulfill its remaining Payment Obligation by submitting to CCSWDA once annually for a period of ten (10) consecutive years, ten equal payments of Four Hundred Thousand Dollars and No Cents (\$400,000.00) each (the "Annual Payment"). The first Annual Payment shall be due on February 1, 2006. Each succeeding Annual Payment shall be due on February 1 of each succeeding year until CITY's Payment Obligation is paid in full.

In the event CITY should fail to make any of the payments required in this section, the item or installment so in default shall continue as an obligation of CITY until the amount in default shall have been fully paid, and CITY agrees to pay the same.

2.2 Payment Cap. CITY's obligations to make the payments required in section 2.1 hereof and to perform and observe other agreements on its part contained herein, shall be absolute and unconditional, except that CITY shall not be required to fulfill its Payment Obligation if the Improvements are completed at a cost of less than Five Million Dollars and No Cents (\$5,000,000.00), in which event CITY's Payment Obligation shall be reduced to the actual cost of the Improvements. Any reduction of the amount of CITY's Payment Obligation under this Section 2.2 shall only reduce the period of years over which the Annual Payments shall be

made and shall not reduce the amount of the Annual Payment. CCSWDA shall refund to CITY any amount overpaid.

Example: If the total cost of the Improvements is Three Million Four Hundred Thousand Dollars and No Cents (\$3,400,000.00), CITY shall be obligated to make a payment of One Million Dollars and No Cents (\$1,000,000.00) within fifteen (15) days of the Effective Date and then shall make six payments of Four Hundred Thousand Dollars and No Cents (\$400,000.00) each for a period of six (6) years.

2.3 Manner and Place of Payments. All payments shall be made in lawful money of the United States of America which shall be legal tender in payment of all debts, public and private, at the time of payment. All payments shall be paid directly to CCSWDA at the address stated in Section 6.2(a) hereof or other location later specified by CCSWDA.

2.4 Obligations Of City Hereunder Unconditional. Except as set forth in section 2.2 and this section 2.4, CITY's Payment Obligation shall be certainly payable on the dates and at the times specified without notice or demand, and without abatement or set-off, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place, including but without limiting the generality of the foregoing:

- (a) The unavailability of the Landfill, or any part thereof, for use by CITY at any time by reason of the failure to complete the Improvements by any particular time or by reason of any other contingency, occurrence, order, decree, or circumstance whatsoever;
- (b) Damage to or destruction of the Improvements, or any part therein;
- (c) Legal curtailment of CITY's use of the Landfill, or any part therein;
- (d) Failure of consideration or commercial frustration of purposes;

Nothing contained in this section 2.4 shall be construed to release CCSWDA from the performance of any of the provisions of this Agreement on its part to be performed.

2.4.1. Suspension Of Annual Payment For Uncontrollable Cause.

Notwithstanding the foregoing, in the event that during the duration of this Agreement the Landfill is closed and CCSWDA is unable to accept Class 4 Waste for disposal on the date an Annual Payment is due because of war or national defense preemptions, acts of terrorism, acts of God, or governmental restrictions, CITY's Annual Payment obligation shall be suspended until such time that the Landfill is reopened and CCSWDA is capable

of accepting Class 4 Waste for disposal. CCSWDA shall take every reasonable effort to remove any impediment that prevents it from operating the Landfill and accepting Class 4 Waste for disposal as expeditiously as practicable. Further, if, during the duration of this Agreement, a war or national defense preemption, act of terrorism, act of God, or governmental restriction should cause the Landfill to be closed, CCSWDA shall continue to receive the Class 4 Waste stream previously accepted at the Landfill and shall arrange to have such Class 4 Waste materials transported to and disposed at an alternate site until such time as the Landfill is open and capable of accepting Class 4 Waste.

2.4.2. City's Payment Obligation. Nothing in section 2.4.1 shall be construed as providing for a pro rata discount of CITY's Annual Payment obligation during any time while the causes stated in section 2.4.1 prohibit operation of the Landfill. CITY's Annual Payment obligation that had been suspended because of such causes shall be due in full within thirty (30) days after CCSWDA is capable of accepting Class 4 Waste for disposal, and all remaining future Annual Payments shall be due as set forth in section 2.1(b).

2.5 Prepayment of City Obligation. There is expressly reserved to CITY the right, and CITY is authorized and permitted at any time it may choose, to prepay all or any part of the payments payable under this Agreement. All payments so prepaid shall be credited on the payments specified in section 2.1 hereof.

ARTICLE 3. CCSWDA'S OBLIGATIONS, REPRESENTATIONS, AND COVENANTS

3.1 Bond Issue. CCSWDA shall take any and all steps necessary to secure a bond issue to fund the Improvements and shall incur all indebtedness that arises from the issuing of a Solid Waste Revenue Bond. CCSWDA shall be responsible for all requirements, conditions, payments, including principal and interest, and any and all other actions necessary to obtain and secure the financing required to fund the Improvements.

3.2 Construction of Class 4 Complex. CCSWDA shall develop at the Landfill a complex sufficient to accommodate all Class 4 Waste from both commercial and residential haulers previously served by the CITY. The complex shall include and be equipped with all infrastructure and equipment necessary to weigh, process, and dispose of Class 4 Waste in accordance with all applicable federal and state laws, rules, orders, regulations, statutes, codes, and decrees. CCSWDA shall construct safety Improvements to provide a variety of users with safe waste disposal services. Such safety Improvements shall include, but are not limited to: (1) a railroad crossing gate and signal; (2) a left turn lane into the Landfill from Highway 1 South; (3) paved access roads to and from Class 4 residential dumping areas; and (4) separate residential and commercial class 4 dumping areas. It is the understanding of the parties that CCSWDA may be required to obtain a permit, license, certificate, or other form of permission or approval from a private or public entity before constructing some of the safety improvements. Therefore, CITY agrees that CCSWDA shall not be in default of this Agreement, and shall not be required to

construct such safety Improvement if such permit, license, certificate, or other form of permission or approval is withheld or if CCSWDA is required to modify a safety Improvement to a different form than stated herein to receive such approval or permission.

3.3 Exclusive Control. It is an integral part of this Agreement, and the agreement of the Parties hereunder, that CCSWDA, at its sole discretion, shall be solely responsible for developing, constructing, operating, managing, and overseeing all Improvements, including obtaining all financing necessary to construct the Improvements, and shall be responsible for all fees, interest, and other contingencies of whatsoever nature associated therewith. All Improvements constructed shall be owned solely by CCSWDA.

3.4 Compliance With Laws. CCSWDA shall operate the Landfill in material compliance with the requirements of applicable federal and state laws, statutes, rules, regulations, decrees, and orders relating to any matters of pollution, environmental regulation, or protection of human health and the environment.

3.5 Status Report. The CCSWDA Executive Director, or a CCSWDA officer or employee at the Director's direction, shall provide a written status report to the Jonesboro City Council Public Works Committee once a month throughout Improvement design and construction phases. CCSWDA's obligation under this section 3.5 shall cease upon completion of the Improvements.

3.6 Insurance. CCSWDA shall obtain and maintain in full force and effect replacement property insurance with respect to the Improvements written by insurers of recognized financial standing which are authorized to do an insurance business in the State of Arkansas. The policy of insurance provided for in this section 3.6 shall name only CCSWDA as the insured and there shall be no obligation to name CITY or any third party as an insured, except as may be required by separate agreement or by law.

ARTICLE 4. CITY'S OBLIGATIONS, REPRESENTATIONS, COVENANTS

4.1 Duty to Cooperate. CITY shall not object and shall fully and amicably cooperate with CCSWDA in CCSWDA's efforts to construct the Improvements and operate the Landfill. CITY shall provide CCSWDA with any and all documentation, statements, and any authority or any and all other information and/or cooperation CCSWDA may require at no cost to CCSWDA.

4.2 No Interfering Actions. CITY covenants that it will not enter into any contract, indenture, or agreement of any nature whatsoever, or enact any law, ordinance, or regulations, which shall in any way limit, restrict, or prevent CITY from performing any of its obligations under this Agreement.

4.3 Compliance With Laws. CITY represents, covenants, and warrants that execution of this Agreement will not violate any law or ordinance or the terms of any agreements that CITY may have with any other parties and that CITY has the due power and authority to enter into this binding Agreement without the consent or intervention of any other parties.

ARTICLE 5. LIABILITY AND INDEMNIFICATION

5.1 Strawfloor Landfill Liability & Indemnification. It is the agreement of the Parties that nothing in this Agreement shall be construed to require CCSWDA to participate in, or be responsible for in any way, the closure or post-closure management of the Strawfloor Landfill located at 1624 Strawfloor Drive. CCSWDA, its officers, agents, employees and directors, shall not be liable for, and CITY shall indemnify and save CCSWDA harmless from, any and all fines, fees, assessments, penalties, impositions of any kind and whatsoever nature, claims, suits, demands, judgments, costs, interest, and expenses relating in any way to the operation, maintenance, management, closure, or control of the Strawfloor Landfill. Nothing in this section 5.1 shall be construed to require CITY to indemnify, defend and hold harmless CCSWDA from and against any liabilities, obligations, claims, damages, penalties, causes of action, judgments, settlements, orders, and other costs and expenses imposed upon or incurred by or asserted against CCSWDA by any third party by reason of the occurrence or existence of any death, bodily injury, personal injury, or property damage resulting from activities at the Strawfloor Landfill conducted by CCSWDA during the duration of this Agreement.

5.2 Indemnification of CCSWDA. To the extent that insurance coverage is provided for or is available to CITY, CITY shall protect, indemnify, defend and hold harmless CCSWDA from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, settlements, orders, and other costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against CCSWDA by any third party by reason of the occurrence or existence of any death, bodily injury, personal injury, or property damage resulting from activities at the Landfill conducted by CITY or the gross negligence or willful misconduct of CITY, its agents, servants, employees, sublessees, contractors, licensees, invitees, representatives or assigns. In the event any action or proceeding shall be brought against CCSWDA by reason of such claim, the CITY shall defend the same at the CITY's expense by counsel reasonably satisfactory to CCSWDA. Nothing in this section shall be deemed a waiver or mitigation of any immunity which CITY enjoys under Arkansas law.

5.3. Indemnification of CITY. To the extent that insurance coverage is provided for or is available to CCSWDA, CCSWDA shall protect, indemnify, defend and hold harmless CITY from and against all liabilities, obligations, claims, damages, penalties, causes of action, judgments, settlements, orders, and other costs and expenses (including without limitation, reasonable attorneys' fees and expenses) imposed upon or incurred by or asserted against CITY by any third party by reason of the occurrence or existence of any death, bodily injury, personal

injury, or property damage resulting from activities at the Landfill conducted by CCSWDA or the gross negligence or willful misconduct of CCSWDA, its agents, servants, employees, sublessees, contractors, licensees, invitees, representatives or assigns. In the event any action or proceeding shall be brought against CITY by reason of such claim, the CCSWDA shall defend the same at CCSWDA's expense by counsel reasonably satisfactory to CITY. Nothing in this section shall be deemed a waiver or mitigation of any immunity which CCSWDA enjoys under Arkansas law.

ARTICLE 6. MISCELLANEOUS PROVISIONS

6.1 Relationship of Parties. This Agreement does not impose any duties or obligations on either party except as expressly set forth herein. It is the express intention of the parties that this Agreement shall not be construed as creating any relationship hereunder, other than that of obligor and obligee, and no other relationship, such as one of partnership, joint venture, or otherwise shall arise by reason hereof.

6.2 Notices. All notices, approvals, consents, demands and requests which may or are required to be given by one party to the other party shall be in writing and shall be deemed to have been duly given or made when delivered by hand or three days after being deposited in the mail, postage prepaid, addressed as follows:

(a) If to CCSWDA:

Craighead County Solid Waste Disposal Authority
Guy Enchelmayer, Executive Director
P.O. Box 1997
Jonesboro, Arkansas 72403

With a copy of any notice to:

Andy L. Adams
Barrett & Deacon, a Professional Association
300 South Church Street
Jonesboro, Arkansas 72401

(b) If to CITY:

Mayor, City of Jonesboro
515 West Washington Avenue
Jonesboro, Arkansas 72401

or at such place, and to such other persons, as either party may from time to time designate by notice to the other party.

6.3 Successors and Assigns. The covenants and agreements herein contained shall bind and inure to the benefit of CITY, and CITY's successors and assigns, and CCSWDA, and CCSWDA's successors and assigns.

6.4 Integration. This agreement and the documents referred to herein set forth all agreements between CITY and CCSWDA relative to the funding of the construction of improvements to the Landfill, and there are no agreements, either oral or written, between them other than as are herein set forth. It is further understood and agreed that, except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon CITY or CCSWDA unless reduced to writing and signed by them.

6.5 Separability. Each covenant and agreement contained in this Agreement shall be construed to be a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforceable to the extent permitted by law.

6.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

6.7 Captions. The captions of this Agreement are inserted only as a matter of convenience and reference, and they in no way define, limit, or describe the scope of any provisions of this Agreement, or the intent of any provisions of this Agreement, and shall not be used with respect to the interpretation of any provisions of this Agreement.

6.8 Force Majure. Except as expressly provided in section 2.4.1 herein, whenever CCSWDA shall be required by the provisions of this Agreement or by law to perform any contract, act, work, construction, labor or services, or to perform or comply with any laws, rules, orders, plans, or regulations, CCSWDA shall not be deemed to be in default so long as nonperformance shall be directly caused by war or national defense preemptions, acts of terrorism, governmental restrictions, acts of God, or other similar causes beyond the reasonable control of CCSWDA.

6.9 Authority. The officials who have executed this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of CITY and CCSWDA and that their signatures below the terms and provisions hereof constitute valid and enforceable obligations of each.

6.10 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Arkansas.

IN WITNESS WHEREOF, the CITY OF JONESBORO, a municipal corporation, and the CRAIGHEAD COUNTY SOLID WASTE DISPOSAL AUTHORITY, a Public Body and Body Corporate and Politic Pursuant to Arkansas Act 699 of 1979 and Arkansas Act 919 of 1979, have caused this Agreement to be executed as of the date of the attestation by the City Clerk.

**CRAIGHEAD COUNTY SOLID
WASTE DISPOSAL AUTHORITY**



L.M. Duncan, Chairman,
Craighead County Solid Waste
Disposal Authority



Kevan Inboden, Vice-Chairman,
Craighead County Solid Waste
Disposal Authority