

DISPOSAL AGREEMENT FOR LANDFILL
BETWEEN ST. JOHN THE BAPTIST PARISH AND
RIVER BIRCH INCORPORATED

THIS AGREEMENT is made and entered into this 2nd day of October, 2000, by and between St. John the Baptist Parish ("Parish") and River Birch, Incorporated, a Louisiana Corporation ("Contractor"), the operator of the River Birch Landfill ("Landfill").

WHEREAS, the Contractor is the owner and operator of that property known as the River Birch Landfill located near Waggaman in Jefferson Parish, Louisiana; and

WHEREAS, the Contractor is currently permitted to operate the Landfill pursuant to the Louisiana Department of Environmental Quality's approval and the approval of the Jefferson Parish Council; and

WHEREAS, the Parish desires to satisfy its responsibility to assure the proper management and disposal of all of the solid wastes generated within its jurisdiction; and

WHEREAS, the Contractor has offered to provide the Parish with a properly permitted, environmentally secure location to dispose of non-hazardous solid waste and the Parish has determined that accepting such offer is in the best interests of the citizens of St. John the Baptist Parish.

NOW, THEREFORE, in consideration of these premises, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by each party hereto, the Parish and the Contractor do hereby agree as follows:

1 **DEFINITIONS.** The following items and phrases shall have the meanings set forth below:

- 1.1 **CPI** shall mean the CPI in accordance with Section 10.2 herein.
- 1.2 **Effective Date** shall mean the date on which this Agreement is executed by both the Contractor and Parish; if this Agreement is executed by the Parish on a date different than that date on which the Contractor executes this Agreement, the Effective Date is the later date of execution.
- 1.3 **EPA** shall mean the United States Environmental Protection Agency, or any successor agency.
- 1.4 **Excluded Waste** shall mean automobiles; unshredded tires (but only to the extent of disposal of tires that is prohibited under applicable Laws); infectious waste (including untreated medical waste, hospital waste, and dead poultry or other animals which do not comply with federal and state regulations and Contractor's acceptance guidelines for treatment prior to disposal); materials which are radioactive, volatile, highly

flammable, explosive or toxic; Hazardous Waste; or any other waste or material which is prohibited from disposal in the Landfill by Laws and by any of the terms and conditions of any permits, licenses, or approvals related to the River Birch Landfill and Contractor's operation of the same. Excluded Waste shall also mean that waste which is suitable for a Type I and/or a Type III facility, as defined by LDEQ regulations.

- 1.5 **Fees** shall mean the Gate Fee established by Contractor for the disposal of Solid Waste at the River Birch Landfill, as annually adjusted as set forth herein.
- 1.6 **Force Majeure** shall mean any act, event or condition which is without the fault and beyond the reasonable control of Contractor or its agents relying thereon, including, without limitation: (i) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence, an act of public enemy, war, blockage, insurrection, riot, general arrest or restraint of government and people, civil disturbance or disobedience, sabotage or similar occurrence; (ii) a strike, so long as labor practices do not precipitate or prolong the strike, work slowdown or similar industrial or labor action; (iii) the order or judgment or other act of any federal, state, county or local courts, administrative agency or government office or body; (iv) so long as such is not caused by the fault of the Contractor, the denial, loss, suspension, expiration, termination, delay or failure of renewal of any permit, license or other government approval required to operate (including, without limitation, those required to operate the Sanitary Landfill); (v) any federal, state, county or local law, rule, permit, regulation or ordinance after the date hereof applicable to the River Birch Landfill, Contractor or Contractor's affiliates; or (vi) if Contractor is for any reason (not a result of any act or omission on the part of Contractor) delayed or barred by governmental or judicial action from all or a significant percentage of the Fees, as may be from time to time adjusted, and any other payments that may become due and owing. In the event of disruption of services under any such circumstances, Contractor will make every reasonable effort to reopen the Landfill Site to accept Solid Waste as soon as practicable after the cessation of the cause of suspension of services, and it will take reasonable steps to overcome the cause of cessation of service.
- 1.7 **Gate Fee** shall have the meaning set forth in Section 10 of this Agreement.
- 1.8 **Hazardous Waste** shall mean all waste defined or characterized as hazardous waste or hazardous substances by EPA or any other agency pursuant to the federal solid Waste Disposal Act (42 U.S.C. 6901 ff), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 ff) or solely for the purpose of this Agreement, as a toxic substance or mixture regulated pursuant to Section 6 of the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), and all future amendments to any of the foregoing, and all regulations promulgated

thereunder, or any other applicable federal law, rule or regulation, as such are amended from time to time, and all waste defined or characterized as a hazardous waste or hazardous substance by Louisiana Laws.

- 1.9 **Landfill** shall mean the River Birch Landfill.
- 1.10 **Laws or Law** shall include valid and applicable federal, state, and local statutes, ordinances, rules, regulations, orders, decrees and permit conditions.
- 1.11 **LDEQ** shall mean the Louisiana Department of Environmental Quality, an agency of the State of Louisiana, and any successor agency, including the U.S. Environmental Protection Agency if it assumes compliance, monitoring and enforcement functions currently delegated to LDEQ.
- 1.12 **Parish** shall mean St. John the Baptist Parish, Louisiana.
- 1.13 **Qualified Franchised Haulers** shall mean a person(s) or entity(ies) with whom Parish contracts, engages, or otherwise authorizes to transport Solid Waste to River Birch Landfill.
- 1.14 **River Birch Landfill** shall mean the sanitary landfill owned and operated by the Contractor at its Site and operated pursuant to Permit No. D-051-6741/P-0321 issued by LDEQ and any renewals or modifications thereof or successor permits.
- 1.15 **Service Area** shall mean the geographic area composed of the specific Louisiana Parishes as set forth in the operating permit issued and administered by LDEQ with respect to the River Birch Landfill, including any future additions.
- 1.16 **Service Commencement Date** shall mean January 1, 2001.
- 1.17 **Site** shall mean the geographic area encompassing the Landfill.
- 1.18 **Solid Waste** shall mean only municipal solid waste suitable for a Type II facility, as defined by LDEQ regulations. Solid Waste does not include any Excluded Waste or Special Waste as defined herein.
- 1.19 **Special Waste** shall mean those wastes requiring specific processing, handling or disposal techniques as determined necessary by LDEQ, which are different from the techniques normally utilized for handling or disposal of municipal solid waste. Examples of such waste types include, but are not limited to: mining waste; fly ash; bottom ash; sludges; drilling fluids and drill cuttings; asbestos; industrial waste; liquid waste; large dead animals and residue; or medical waste.

- 1.20 **State** shall mean the State of Louisiana.
- 1.21 **Subtitle D** shall mean 4 CFR, Part 258, as promulgated by EPA and published in the Federal Register at 56 Fed. Reg. 50978 on October 9, 1991, and corresponding LDEQ regulations, as may from time to time be revised by EPA and/or LDEQ.
- 1.22 **Taxes** shall mean any expenditures of the Contractor which are required or assessed as a result of any and all taxes, fees, assessments or surcharges levied or assessed by Law and arising out of or attributable to the disposal of Solid Waste which shall be assessed or levied after the Effective Date of this Agreement.
- 1.23 **Ton** shall mean 2,000 pounds.
- 1.24 To the extent not defined herein, all words, terms, phrases, used in this Agreement that relate to solid waste management or sanitary landfills and that are defined in the LDEQ Solid Waste Regulations, as amended, shall have the respective meanings as defined in said act.

2. **SCOPE OF WORK.**

- 2.1 **General.** As of the Service Commencement Date, Contractor agrees to furnish at the Site all labor, material, equipment and land for the disposal of Solid Waste at the Site. Subject to Section 10.4 and 10.5 hereof, all costs of the landfill operation will be borne by the Contractor. Subject to the terms and conditions of this Agreement, the Contractor shall provide to the Parish access to the Site for disposal of Solid Waste generated within the jurisdiction of the Parish, and delivered by the Parish in vehicles owned and operated by the Parish, a municipality within the Parish, or an independent hauler arranged for by the Parish, or other designee or assignee of the Parish.
- 2.2 **No Hauling Obligation.** This Agreement in no way creates any duty upon or obligation of Contractor to haul any Solid Waste to its Landfill Site for disposal.
- 2.3 **Operation and Maintenance Responsibilities.** The Contractor shall, at its sole cost and expense, furnish all labor and material, equipment and land necessary to operate and maintain in a good, clean and orderly condition consistent with the normal operation of a landfill and shall comply with all legally enforceable requirements imposed by regulatory agencies.
- 2.4 **Disposal.** Subject to the terms and conditions of this Agreement, Contractor shall at the River Birch Landfill provide to the Parish disposal services for all Solid Waste generated within the Parish.

2.5 **Closure.** Contractor acknowledges its responsibility to comply with the closure and post-closure requirements established by LDEQ and EPA for the River Birch Landfill and agrees to perform and pay for the same.

3. **TERM: TERMINATION**

3.1 **Term.** The term of this Agreement shall begin on the Service Commencement Date. This Agreement shall be for a period of twenty (20) years from that Service Commencement Date.

4. **HOURS.** Subject to (i) Force Majeure and (ii) temporary closing due to inclement weather, equipment problems, safety concerns and similar events beyond Contractor's reasonable control, the River Birch Landfill shall be open not longer than between the hours of 5:00 AM. and 5:00 PM., local time, Monday through Friday, and 6:00 AM. and 2:00 PM., local time, Saturday, excepting holidays.

5. **HOLIDAYS.** Contractor shall deliver the holiday schedule at the River Birch Landfill on an annual basis to Parish. The holiday schedule shall be set by Contractor at its sole discretion.

6. **APPLICABLE LAWS.** The Contractor and the Parish shall comply, in all material respects, with all Laws applicable to this Agreement. The parties to this Agreement stipulate and agree that the Laws of the State of Louisiana shall govern the validity, construction, interpretation and effect of this Agreement.

7. **OPERATION STANDARDS**

7.1 **Permits.** The Contractor shall use its reasonable efforts to maintain all necessary permits, licenses and approvals required by all governmental entities having jurisdiction over the Landfill and to operate same in accordance with the terms and conditions of this Agreement.

7.2 **Operation of the Landfill.** Nothing in this Agreement shall be construed as giving to the Parish or any other person or entity the right to exercise control over the business or operations of the Contractor (including, without limitation the operation of the Landfill) or to direct in any respect the manner in which Contractor's business and operations (including, but not without limitation, the operation of the Landfill) are conducted. Contractor shall have full, complete, and sole discretion and control over all aspects of the operation of the Landfill.

8. **INSURANCE.**

8.1 The Contractor shall obtain the following types of insurance naming the Parish as an additional insured, in at least the limits specified below:

8.1.1 General Liability: \$500,000 per each occurrence;

8.1.2 Automobile Liability: \$500,000 bodily injury and property damage, combined single limit per each occurrence;

8.1.3 Property Damage: \$500,000 each occurrence;

8.1.4 Workmen's Compensation: Statutory;

8.2 Contractor shall meet the financial requirements for landfill operations, landfill closure, landfill post-closure care, and any other financial requirements related to landfill operation established by LDEQ and/or EPA.

8.3 All policies evidencing the insurance required by the terms of the preceding paragraph shall be acquired and maintained in generally recognized responsible insurance companies, qualified under the laws of the State of Louisiana and may be written with co-insurance provisions and deductible amounts comparable to those applicable to similar policies carried by persons engaged in businesses of like size and type as the Contractor with respect to properties similar to the River Birch Landfill.

8.4 The Contractor may self-insure for all or any part of the above coverages with the prior written consent of the Parish, which consent shall not be unreasonably withheld.

8.5 Any policies required by this Agreement may be contained in blanket policies.

8.6 The Contractor shall comply with the provisions of all applicable Worker's Compensation laws. Contractor shall supply or cause to be supplied to the Parish, upon request, certificates of insurance evidencing such coverage as described herein.

9. **LANDFILL RULES AND REGULATIONS**

9.1 The Contractor shall have the right to establish other reasonable rules, regulations, standards and policies necessary, appropriate or desirable for the operation of the Landfill, including regulations concerning access, safety, operation and types of substances to be deposited in the Landfill; provided that nothing herein shall permit the Contractor to establish or change any rule, regulation, standard or policy

established in this Agreement to allow Hazardous Waste to be disposed of at the Landfill.

- 9.2 All rules, regulations and policies established by the Contractor shall be delivered to the appropriate offices of the Parish. However, non-receipt by the Parish of such rules, regulations or policies shall not affect the validity or effectiveness of the same.
- 9.3 When entering the Site or delivering Solid Waste to the Landfill, the Parish and its officials, agents and employees and Qualified Franchised Haulers shall comply with all rules, regulations, standards and policies established by the Contractor or otherwise applicable to the Landfill.

10. COMPENSATION AND BILLING

- 10.1 The Gate Fee for the Solid Waste generated within the Parish, whether collected by the Parish or a solid waste hauler, and delivered to the Landfill pursuant to this Agreement, shall be at the following rates:

For Solid Waste delivered during the calendar year 2001 - \$22.00 per ton.

For Solid Waste delivered during the calendar year 2002 - \$26.00 per ton.

For Solid Waste delivered during the calendar year 2003 - \$27.00 per ton.

- 10.2 For 2004 and beyond, the Gate Fee shall be adjusted annually on the first day of each year (beginning January 1, 2004) to reflect the change in the CPI. The Gate Fee shall be adjusted effective January 1 of 2004 and each year thereafter by using the then most currently available CPI and applying it by the previous year's Gate Fee to establish the Gate Fee for that current year. The Gate Fee as so adjusted, shall be effective for that entire year. For example, the Gate Fee in 2004 shall be \$27.00 as adjusted for the most recent (as of January 1, 2004) CPI; the Gate Fee in 2005 shall be the 2004 Gate Fee as adjusted for the most recent (as of January 1, 2005) CPI; the Gate Fee in 2006 shall be the 2005 Gate Fee as adjusted for the most recent (as of January 1, 2006) CPI and so on and so forth. *The CPI adjustment shall not exceed 6% annually. Albert*

- 10.3 The CPI is the Consumer Price Index, as published by the United States Department of Labor, which is most applicable to this geographical area. (If this CPI computation is discontinued during the term of this Agreement, then a similar type of index which is published and available during the remainder of the term of this Agreement shall be applied.) *Patrick Monice*

- 10.4 The Contractor shall provide, maintain and operate suitable truck scales at the Site. For each load of Solid Waste delivered to the Landfill, the Contractor shall determine the weight thereof and shall compute the applicable Gate Fee, and shall give a copy of the receipt to the driver or other person delivering such load and shall maintain a copy of such receipt.

- 10.5 The Gate Fee shall be adjusted annually to reimburse the Contractor for any expenditures required by all Taxes, fees, assessments or surcharges levied or assessed by Law and arising out of or attributable to the disposal of Solid Waste which shall become effective after the Effective Date of this Agreement.
- 10.6 In addition, Contractor shall be entitled to additional compensation based upon the following events:
- 10.6.1 Parish will also reimburse Contractor for its proportionate share of any expenditures (whether capital or operational) required solely by Federal, State or local law, regulation, rule, ordinance, order, permit or permit condition that becomes effective after the Effective Date of this Agreement and that was not imposed solely because of the action or inaction of the Contractor. Contractor may amortize any required capital expenditures, with interest at then current rates for financing, over the remaining useful life of the Site or the useful life of the improvement whichever is less. Contractor may include any additional required operating expenditures as an adjustment to the Gate Fee as adjusted. Contractor will furnish to Parish calculations showing the basis for any such increases.
- 10.6.2 Parish will also pay to Contractor an amount ("Tax Escalation Amount") equal to its proportionate share of the amount by which the Taxes assessed in each tax year exceed the amount of all Taxes paid or accrued by Contractor in the Calendar year of the Effective Date. Within 120 days of the Effective Date, Contractor will provide Parish with a statement of the Taxes for the first calendar year. One-Twelfth (1/12th) of the Tax Escalation Amount will be added each month to the invoice of the Parish. Alternatively, Contractor may, in its sole discretion, increase the Gate Fee to provide for such payment.
- 10.6.3 Parish will also reimburse, or pay as the case may be, any additional fees, charges, assessments (other than for Taxes) imposed by Federal, State or local law, regulation, rule, ordinance or order, permit or permit conditions that become effective or applicable after the Effective Date; and
- 10.6.4 Within ten (10) days after receiving an invoice from the Contractor, Parish shall pay the amount of said invoice to Contractor.

11. NOTICES.

- 11.1 Notices of conditions or situations affecting the work to be performed under this Agreement shall be given in writing between designated personnel of the Contractor, and the Parish.

11.2 All notices shall be given in writing, to be delivered by certified mail, return receipt requested, to the parties as set forth below:

11.2.1 If to the Contractor: River Birch, Incorporated
Post Office Box 1938
Gretna, Louisiana 70054

11.2.2 If to the Parish: Parish President
Parish of St. John the Baptist
1801 W. Airline Hwy
LaPlace, Louisiana *70068*

12. **WASTE OWNERSHIP.** The Parish agrees that all Solid Waste deposited into the Landfill shall be the property of the Contractor.

13. **DISPOSAL RIGHTS AND OBLIGATIONS.** During the Term of this Agreement or any renewal thereof, the Parish shall cause all Solid Waste - (a) which is collected within the Parish, which collection is under the control (active or constructive) of the Parish or (b) which is generated within the Parish and which is under the control (active or constructive) of the Parish or (c) of which the Parish has control (active or constructive) over the disposal thereof - to be disposed of at River Birch Landfill.

14. **DISPOSAL BY PARISH RESIDENTS.** Any resident of the Parish who can show a valid driver's license with his/her address in the Parish and a current water bill from the Parish will be allowed to dump Solid Waste at the Landfill at the same rate charged to the Parish.

15. **RIGHT OF INSPECTION AND AUDIT.**

15.1 The Parish agrees that the Contractor has the authority to inspect any vehicle, load or volume of waste brought to the Landfill for violations of Laws or violations of this Agreement. It shall be the responsibility of the transporter of such Solid Waste to manage the rejected load in a prudent and legal manner. The Parish shall have the right to inspect at any reasonable time those records of Contractor which relate to the Parish.

16. **HAZARDOUS AND INFECTIOUS WASTE.**

16.1 The parties hereto agree that the Landfill will not be licensed, permitted or intended for the disposition of Hazardous Waste or Infectious Waste. The Contractor agrees that it will not accept any hazardous wastes or any substances prohibited from disposition in sanitary landfills by Law.

17. **CONTRACTOR'S STATUS.** Contractor is an independent contractor and not any agent or representative of the Parish.
18. **LDEQ PERMIT.** Contractor agrees to use its reasonable efforts to maintain all necessary permits or approvals require by Law for the operation of the Landfill.
19. **REMEDY ON DEFAULT.** If either party breaches any of the material provisions of this Agreement and remains in default for a period of thirty (30) days after receiving written notice setting forth a detailed description of such default, the non-defaulting party may, at its option, either sue for damages and/or sue for specific performance of this Agreement and/or sue to cancel this Agreement.
20. **ATTORNEY'S FEES.** If, as a result of a breach or default hereunder, any party hereto shall be caused to employ attorneys or incur other expenses in or about the collection of amounts due from the other party under this Agreement or the enforcement of any other obligation, covenant, or agreement contained in this Agreement, the non-prevailing party shall pay to such other party reasonable attorney's fees and other reasonable expenses so incurred.
21. **SEVERABILITY.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not effect 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.
22. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.
23. **REPRESENTATIONS.**
 - 23.1 The Parish makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement.
 - 23.1.1 It has been granted by statute and Law the power and authority to enter into the transactions contemplated by this Agreement and to fulfill and carry out its obligations hereunder; and
 - 23.1.2 The execution and delivery of this Agreement on its part has been properly authorized by its governing body and the Parish has made its best efforts to undertake all other actions necessary to authorize this Agreement.
 - 23.2 The Contractor makes the following representations and warranties as the basis for its undertakings pursuant to this Agreement.

23.2.1 The Contractor is a corporation organized under the laws of the State of Louisiana and qualified to do business in the State of Louisiana, and has the power to enter into and to perform and observe the agreements and covenants on its part contained in this Agreement; and

23.2.2 The execution and delivery of this Agreement on the part of the Contractor have been duly authorized by all necessary corporate action.

24. **NON-DISCRIMINATION.** The Contractor shall not discriminate against any person because of race, sex, creed, color, age, religion or national origin.

25. **ENTIRE AGREEMENT: EFFECTIVE DATE.**

25.1 This Agreement contains the entire Agreement of the parties and supersedes all prior negotiations, agreements and oral understandings, if any, between the parties hereto. Any amendments to this Agreement must be reduced to writing and duly signed by each party to this Agreement.

25.2 This Agreement is effective upon its execution by the Parish and the Contractor (the Effective Date), and shall be binding upon and shall inure to the benefit of the Parish and the Contractor, and the Contractor's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in multiple copies, each of which shall be deemed to be an original, as of the date and year first written in this Agreement.

RIVER BIRCH INCORPORATED

By: _____

ALBERT J. WARD, JR.

Title: President

Attest: _____

Joy Cannon

ST. JOHN THE BAPTIST PARISH

By: _____

Parish President

Parish President
St. John the Baptist Parish

Attest:

COUNCIL SECRETARY
ST. JOHN THE BAPTIST PARISH

APPROVED:

DIRECTOR OF LEGAL SERVICES
ST. JOHN THE BAPTIST PARISH

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