

[Legal Entity Name
and Division Logo]

DISPOSAL AGREEMENT
MUNICIPAL SOLID WASTE,
CONSTRUCTION AND DEMOLITION DEBRIS



Customer Billing Information

Name: Austell Public Works
Address: 5000 Austell-Powder Springs Road, Ste 101
City: Austell
State: Georgia Zip: 30106
Phone: (770) 944-4325 Fax: (678) 264-1522
E-mail: duane@austell.org
Contact: Duane R. Demeritt

Address of Company Disposal Facility

Lee Industrial Transfer Station
107100 Delta Circle
Austell GA 30108
770-948-5069

Generator Information (only if different than Customer)

- DISPOSAL SERVICES.** Subject to the terms and conditions contained in this Agreement (this "Agreement"), Company agrees to accept, at the disposal Facility set forth above (the "Facility"), Waste (as defined in Section 5 hereof) delivered by Customer. Each calendar month during the Term (as defined in Section 3 hereof), Customer shall deliver to the Facility for disposal on (i) each weekday, not less than the Minimum Units Per Weekday of the Type(s) of Waste(s) designated below, and (ii) each Saturday (assuming the Facility accepts Waste for disposal on such day), not less than the Minimum Units Per Saturday of the Type(s) of Waste(s) designated below. Waste disposed pursuant to this Agreement may be recycled by Company in its sole discretion.
- RATES FOR DISPOSAL.** The following Waste is the only Waste that Company will accept at the Facility for the Disposal Rate Per Unit set forth below, and Customer agrees that it shall not dispose of any (i) waste at the Facility not specifically listed below, or (ii) Unacceptable Waste (as defined in Section 5 hereof) at the Facility.

| Type of Waste | Minimum Units Per Weekday | Minimum Units Per Saturday | Disposal Rate Per Unit | Maximum Daily Volume | |
|--|------------------------------|-------------------------------|---|----------------------|---------------------|
| | | | | Weekday | Saturday |
| <input checked="" type="checkbox"/> Municipal Solid Waste | Tons Cubic yards | Tons Cubic yards | \$ <u>37</u> per ton <u>App. Fee</u> <u>plus Environmental Fee</u> \$ <u>N/A</u> per cubic yard | Tons Cubic yards | Tons Cubic yards |
| <input checked="" type="checkbox"/> Construction and Demolition Debris | Tons Cubic yards | Tons Cubic yards | \$ _____ per ton \$ _____ per cubic yard | Tons Cubic yards | Tons Cubic yards |
| <input type="checkbox"/> Other <u>Est TNS Annual 85</u> | Tons Cubic yards | Tons Cubic yards | \$ _____ per ton \$ _____ per cubic yard | Tons Cubic yards | Tons Cubic yards |

For purpose of this Agreement, "Municipal Solid Waste" means solid waste from households, businesses, government, and industries including garbage, trash, and other non-hazardous/non-special waste that the Facility may legally accept for disposal and as approved by Company.

For purpose of this Agreement, "Construction and Demolition Debris" means waste building materials such as wood, bricks, mortar, metal, wall board, paper, cardboard, plastic and land clearing debris that the Facility may legally accept for disposal and as approved by Company.

Origin of Waste: County, State and Transfer Station, if applicable:

- TERM OF AGREEMENT.** This Agreement is effective for 12 months, commencing 1/1/2010 (the "Effective Date") and shall automatically be renewed for additional terms of _____ months thereafter unless either party shall give written notice (via certified mail) of non-renewal to the other party at least sixty (60) days prior to the expiration of the then existing term (the "Term").
- ADDITIONAL TERMS.**

COMPANY AND CUSTOMER, IN CONSIDERATION OF THE MUTUAL OBLIGATIONS CONTAINED HEREIN, AGREE THAT THIS IS A LEGALLY BINDING AGREEMENT WHICH IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE AND PAGE TWO OF THIS AGREEMENT.

CUSTOMER

Joe Jerkins
SIGNATURE (AUTHORIZED REPRESENTATIVE)
Joe Jerkins
NAME (PLEASE PRINT)
Mayor
TITLE

COMPANY

[Signature]
SIGNATURE (AUTHORIZED REPRESENTATIVE)
TALL PERRO
NAME (PLEASE PRINT)
ANCA President
TITLE

**TERMS AND CONDITIONS OF DISPOSAL AGREEMENT - MUNICIPAL SOLID WASTE,
CONSTRUCTION AND DEMOLITION DEBRIS**

5. DEFINITIONS:

- (a) "CPI" means the Consumer Price Index for all Urban Consumers (CPI-U), U.S., City Average, all items, as published by the U.S. Department of Labor, Bureau of Labor Statistics.
- (b) "Company" means the legal entity set forth in the upper left-hand corner on page one (1) of this Agreement and includes all successors and assigns of such entity.
- (c) "Customer" means the customer identified under Customer Billing Information on page one (1) of this Agreement.
- (d) "Facility" means the landfill or transfer station identified under Address of Company Disposal Facility on page one (1) of this Agreement.
- (e) "Force Majeure" means any event relied upon by Company as justification for delay in or excuse from complying with any obligation required of Company hereunder, which event is beyond the reasonable control of Company, including, without limitation: (i) act of God or similar occurrence; (ii) impassable roadways; (iii) labor disputes; (iv) any act of any governmental entity that adversely affects this Agreement; (v) a change of law or regulation applicable to Company's obligations hereunder; (vi)(A) the denial, loss, suspension, expiration, termination, failure of renewal, or (B) attainment of any maximum disposal amounts within any applicable time period, of any permit, license, or other governmental approval required to accept and/or dispose of Waste.
- (f) "Unacceptable Waste" means highly flammable substances, Hazardous Waste (as defined herein), liquid wastes, special wastes, certain pathological and biological wastes, explosives, toxic materials, radioactive materials, material that the Facility is not authorized to receive and/or dispose of, and other materials deemed by state, federal or local law, or in the reasonable discretion of Company, to be dangerous or threatening to health or the environment, or which cannot be legally accepted. "Hazardous Waste" means waste defined as, or of a character or in sufficient quantity to be defined as, a "Hazardous Waste" by the Resource Conservation and Recovery Act, as amended, or any federal, state or local laws or regulations with respect thereto, or a "toxic substance" as defined in the Toxic Substance Control Act, as amended, or any regulations with respect thereto, or any reportable quantity of a "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, or any federal, state or local laws or regulations with respect thereto. The term "Hazardous Waste" also includes any waste whose storage, treatment, incineration or disposal requires a special license or permit from any federal, state or local government entity, body or agency and any substance that, after the Effective Date, is determined to be hazardous or toxic by any judicial or governmental entity, body or agency having jurisdiction to make that determination.
- (g) "Waste" means any Construction and Demolition Debris, Municipal Solid Waste or other waste as specified in Section 2 hereof that may be disposed at the Facility, but not including any Unacceptable Waste. Subject to the previous sentence, Customer agrees that no waste, other than the type specifically provided for in Section 2 hereof, will be disposed of at the Facility by Customer or its agents. In addition, all Waste delivered to Company for disposal must conform to all applicable federal, state and local laws, regulations, rules and orders relating at any time to the transport and disposal of Waste.

- 6. TERMINATION AND DEFAULT:** Company may terminate or suspend this Agreement at any time, without damage or fee, (i) upon 30 days written notice to Customer, or (ii) immediately upon (a) Customer's failure to pay service fees when due, (b) an event of Force Majeure, (c) a petition for reorganization or bankruptcy filed by or against Customer, (d) any breach by Customer under this Agreement (including, without limitation, a breach of Customer's delivery obligations set forth in Section 1 hereof), or (e) a breach or termination of any other written or verbal agreement between Company (or affiliate) and Customer (or affiliate) ("Other Agreement"). Upon termination under (a), (c), (d) and (e) of the foregoing sentence, Company shall have the right to recover any damages against Customer, including, without limitation, to recover from Customer as damages any unpaid amounts due at the time of such termination plus interest thereon and any other amount necessary to compensate Company for all damages caused by Customer's failure to perform its obligations under this Agreement or which in the ordinary course of things would be likely to result therefrom, including, without limitation, as liquidated damages and not as a penalty, an amount equivalent to the sum of the Minimum Waste Volume (as defined in Section 8 hereof) and the Saturday Minimum Waste Volume (as defined in Section 8 hereof) multiplied by the Disposal Rate Per Unit, as such has been adjusted under this Agreement, for one half of the number of months remaining under the Term not to exceed six (6) months (the "Termination Fee"). Customer and Company agree that Company's actual damages for Customer's early termination of this Agreement, or Company's termination of this Agreement due to (a), (c), (d) or (e) above would be difficult or impossible to accurately calculate and the amount stipulated in this paragraph as the Termination Fee is a fair and reasonable pre-estimate of the probable loss that Company would sustain in the event of such termination. Company may offset any amount that it owes Customer under any Other Agreement by any amount owed hereunder.
- 7. SERVICE FEES:** Customer shall pay Company monthly the Disposal Rate Per Unit, as such has been adjusted under this Agreement, multiplied by the amount of Waste delivered in accordance with Section 2 hereof, plus all federal, state, and local taxes, fees and other assessments (including franchise fees), whether in existence as of the Effective Date or thereafter, imposed upon the services provided ("Fees and Taxes"). Customer shall pay in full to Company any amounts due hereunder upon receipt of invoice, but no later than 30 days after receipt of an invoice. All unpaid invoices shall carry interest at a rate of 1.5% per month or, if lower, the maximum rate permitted by applicable state law, until the balance is paid in full. Customer agrees to pay a 5% late charge for each payment not received within 30 days after receipt of Company's invoice. In the event that this Agreement is terminated by Company due to Customer's failure to timely pay any amounts due hereunder, Customer shall, in addition to all accrued and unpaid fees, interest and costs, be liable for any damages (including lost profits). In lieu of terminating or suspending this Agreement, Company may require Customer to pay for all services on a cash on delivery (C.O.D.) basis, and upon the failure to pay on C.O.D. terms, Company may terminate or suspend this Agreement and recover any damages and any amounts due and owing (including interest) as provided herein. If services are reinstated, Customer shall pay any amounts outstanding plus a \$35.00 reinstatement fee. Customer shall pay a \$25.00 charge for each returned check. On or following the first anniversary of the Effective Date and at any time each year thereafter for the duration of this Agreement, the Disposal Rate Per Unit set forth in Section 2 hereof shall be increased by the greater of: (a) 4% or (b) the percentage increase in the CPI during the immediately preceding twelve month period. Company may either send notice of such increase to the Disposal Rate Per Unit to Customer, or place notice of such increase to the Disposal Rate Per Unit on the invoice sent to Customer, prior to the effective date of such disposal rate increase. In addition to any annual adjustment to the Disposal Rate Per Unit, Company reserves the right to increase the Disposal Rate Per Unit at any time upon any of the following occurrences: (v) adoption or change (including a change in interpretation or enforcement) in any federal, state, county or local law, permit, regulation or ordinance that increases Company's costs of performing the contractual obligations herein; (w) increases in direct and indirect costs incurred by Company for various items, including, without limitation, increases in Fees and Taxes, disposal, fuel, labor, insurance, equipment, landfill acquisition, landfill development, landfill expansion, landfill construction, landfill remediation, landfill capping and landfill closure and post-closure; (x) performance of services by Company outside normal working hours or services requested by Customer not covered by this Agreement; (y) increases in operational costs due to an event of Force Majeure; or (z) increases in the average weight per container of Waste or changes in the composition or density of the Waste. In connection with any increase to the Disposal Rate Per Unit pursuant to this Agreement, Company may include as part of such increase (i) processing or handling costs incurred in connection with such increase, and (ii) an amount which permits Company to maintain an acceptable operating margin and/or an acceptable return on investment with respect to the services performed hereunder.
- 8. DELIVERY COMMITMENT SHORTFALL PAYMENTS:** Notwithstanding anything to the contrary (including any additional Company remedies) set forth in this Agreement, if for any calendar month during the Term Customer fails to deliver: (i) the Minimum Units Per Weekday for any of the Type(s) of Waste(s) designated in Section 2 hereof multiplied by the number of Facility operating weekdays for such month (the "Minimum Waste Volume"), Customer agrees to pay Company an amount determined by subtracting the amount of such Type(s) of Waste(s) which Customer actually delivered to the Facility during the weekdays of such calendar month from the Minimum Waste Volume for such Type(s) of Waste(s) (the "Weekday Delivery Commitment Shortfall Amount"), and then multiplying the Weekday Delivery Commitment Shortfall Amount by an amount equal to the Disposal Rate Per Unit, as such has been adjusted under this Agreement, for such Type(s) of Waste(s); and/or (ii) the Minimum Units Per Saturday for any of the Type(s) of Waste(s) designated in Section 2 hereof multiplied by the number of Facility operating Saturdays for such month (the "Saturday Minimum Waste Volume"), Customer agrees to pay Company an amount determined by subtracting the amount of such Type(s) of Waste(s) which Customer actually delivered to the Facility during Saturdays of such calendar month from the Saturday Minimum Waste Volume for such Type(s) of Waste(s) (the "Saturday Delivery Commitment Shortfall Amount"), and then multiplying the Saturday Delivery Commitment Shortfall Amount by an amount equal to the Disposal Rate Per Unit, as such has been adjusted under this Agreement, for such Type(s) of Waste(s).
- 9. WARRANTIES AND TITLE:** Customer warrants that Waste disposed by Customer will not contain any Unacceptable Waste. Ownership of Waste shall pass to Company when Waste is properly disposed of at the Facility. Notwithstanding anything set forth in this Agreement or otherwise to the contrary, ownership and liability for Unacceptable Waste shall always remain with Customer, irrespective of delivery to, inspection by, and/or acceptance by, Company, and such ownership and liability shall survive the termination of this Agreement. Customer acknowledges that Company may remove any Unacceptable Waste and assure its proper disposal at Customer's expense. Customer agrees to indemnify and hold harmless Company, its corporate affiliates, employees, officers and directors, from and against all damages and any litigation costs (including, without limitation, attorney's fees, collection agency fees, court costs and any other costs of litigation or collection of past due amounts) caused by or arising out of Customer's negligence, Customer's delivery of Unacceptable Waste, and/or any breach of any of Customer's representations, warranties or agreements contained in this Agreement.
- 10. INSURANCE:** Customer agrees to maintain at all times during the Term the following types of insurance in at least the limits specified as follows: Worker's Compensation (statutory limit); Automobile Liability (\$500,000/occurrence); and General Liability (\$500,000/occurrence). All insurance will be issued by insurers authorized to do business in the state in which the Facility is located prior to Customer being allowed on the Facility's premises. The insurance policies required hereunder, with the exception of workers' compensation policies, shall name Company, its affiliated entities and successors and assigns as additional insureds. Customer agrees that all insurance policies intended to meet the requirements of this section shall contain a clause providing that the issuing insurance company waives all rights of recovery by way of subrogation against any and all additional insureds under the policy in connection with any claims and/or damages covered by the policy. Insurance coverages that are required to be maintained by Customer pursuant to this section are not intended by the parties to be dependent in any way upon any indemnification or similar provision of this Agreement, but instead are intended to be governed by the terms of the insurance policies providing such coverages. Customer shall provide Company with certificates of insurance or other satisfactory evidence that such insurance has been procured and is in force. Customer warrants that it will secure the above minimum amounts of insurance from any transportation contractor it may utilize prior to transportation of Waste to the Facility. Customer warrants that if the insurance coverages listed above carry a deductible or "self-retained limits" applicable to any insured named in the policy, that such deductible or "self-retained limit" shall not apply to Company, and Customer agrees to indemnify, save harmless, and defend Company, its corporate affiliates, employees, officers and directors, from and against any and all such deductibles or "self-retained limits."
- 11. NONPERFORMANCE:** Customer shall provide Company with written notice by certified mail and return receipt request of any matter which it believes constitutes a failure by Company to fully perform its obligations under this Agreement. Customer must send Company such notice within 30 days of the time Customer or its agents first have knowledge of the alleged failure by Company to comply with its obligations under this Agreement. Company shall have 30 days from receipt of such notice to cure the alleged problem where such problem constitutes a failure by Company to fully perform its obligations under this Agreement. In the event Customer does not notify Company of any matter which it believes constitutes a failure by Company to fully perform its obligations hereunder, the continuing alleged failure by Company to perform its obligations for such specific matter shall be waived by Customer and such matter shall, under no circumstances, constitute a breach of this Agreement.
- 12. MISCELLANEOUS:** This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the subject matter of this Agreement and supercedes all representations or warranties (or other agreements), whether oral or written, by any representative of either party hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective subsidiaries, successors and assigns. In the event any legal action or proceeding is necessary to enforce the terms and conditions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to an award of reasonable attorneys' fees and costs, including any expert witness or consulting fees and other out-of-pocket litigation expenses borne by the prevailing party. Customer may not assign (whether by operation of law or otherwise) its rights or obligations under this Agreement without the prior written consent of Company. Company may subcontract any obligations under this Agreement to another entity, and may assign this Agreement without Customer's consent. No waiver by Company shall be effective unless it is in writing and is signed by an authorized representative of Company. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any provision may be invalid or unenforceable in whole or in part. This Agreement shall be construed and enforced in accordance with the laws of the state in which the Facility is located. If any conflict exists in this Agreement between terms on page two (2) of this Agreement and on page one (1) of this Agreement, the terms on page two (2) of this Agreement shall govern. In the event Customer has a third party deliver Waste to the Facility, Customer agrees, and will require, that such third party fully comply with all the terms and conditions of this Agreement. All of Customer's warranties and indemnifications contained herein shall survive the termination of this Agreement. Both parties hereby waive their rights to a jury trial. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. The delivery by facsimile of the signature of a party on this Agreement shall represent the legal, valid and binding signature of such party and evidence such party's agreement to be bound by the terms and conditions hereof.