

## D R A F T

### AN ORDINANCE MODIFYING A FRANCHISE TO WASTE MANAGEMENT OF CAROLINAS, INC. TO PERMIT, CONSTRUCT AND OPERATE A SANITARY LANDFILL IN RANDOLPH COUNTY

#### SECTION 1. Grant of Franchise

- (a) Randolph County is responsible for providing long-term, cost-effective means of waste disposal for the citizens of Randolph County. The County has decided to open a regional Subtitle D solid waste landfill facility to serve its citizenry and surrounding counties and municipalities.
- (b) Pursuant to authority established in N.C. Gen. Stat. §§ 153A-136 and 130A-294, and pursuant to the procedures and requirements established in N.C. Gen. Stat. §§ 153A-46, 130A-294(b1)(2), and the Randolph County “Ordinance Establishing Procedures for the Application and Issuance of Franchises for Solid Waste Facilities,” Randolph County (“County”) granted a franchise for the construction and operation of a solid waste landfill to Waste Management of Carolinas, Inc., (“Waste Management”) subject to the conditions herein, on April 7, 2014.
- (c) Upon application by Waste Management and after a duly noticed public hearing and second reading, the County hereby removes the Section entitled “Renewal” and modifies (i) new Section 6(a) to clarify that this franchise applies only to the eastern portion of the total site; (ii) new Sections 6(b) and 8(a) to modify daily tonnage allowances; (iii) Section 4 and new Section 9 to change the term of the franchise to life-of-site; and (iv) new Section 11 to clarify limits on posted gate rates. All other terms and provisions of the original ordinance adopting this franchise not modified herein are reaffirmed.
- (d) This modification of franchise is contingent upon the execution of appropriate revisions to the Operating Agreement between the County and Waste Management.

#### SECTION 2. Extent and Limits on Franchise

- (a) The County grants Waste Management an exclusive franchise for the following activities:
  - (i) the permitting, construction and operation of a solid waste landfill within Randolph County;
  - (ii) the operation and maintenance of the county’s convenience centers and recycling centers, subject to existing contracts;

- (iii) the hauling of solid waste from within and outside Randolph County for disposal at the County's landfill facility;
  - (iv) the recycling and resource recovery of materials in the waste stream.
- (b) The exclusive rights and privileges established in this franchise do not extend to the following: existing landfills; construction and demolition debris landfills; land clearing and inert debris landfills; or to decisions reserved by statute to Randolph County municipal corporations to control the hauling and disposal of waste within their municipal boundaries.
- (c) The County does not grant Waste Management a franchise for the conversion of landfill gas energy or any other waste-to-energy activities within the landfill facility. Any activity involving (i) the collection, transport, disposal or processing of solid waste or (ii) the conversion of solid waste into energy or for any secondary use that is not specifically covered by this franchise is expressly excluded from this franchise.

SECTION 3. Acceptance of Franchise

The execution by Waste Management of the Operating Agreement between the County and Waste Management shall constitute an acknowledgement by Waste Management that it accepts the terms and provisions contained herein.

SECTION 4. Term

Pursuant to N.C. Gen. Stat. §130A-294(b1), this franchise shall commence on and extend to the life of the site as defined in Section 6(a) below from June 2, 2014, the date that Waste Management and the County first executed an Operating Agreement for the permitting, construction and operation of a solid waste landfill.

SECTION 5. Territory and Population to be Served

Waste Management may collect and receive permitted waste that is transported from within the State of North Carolina for recycling or disposal within Randolph County. The population to be served shall not exceed the population of the State of North Carolina as it increases or decreases from time to time.

SECTION 6. General Description of the Proposed Sanitary Landfill

- (a) The proposed Randolph County landfill facility is located in central Randolph County adjacent to the existing closed Randolph County MSW Landfill, North Carolina Solid Waste Permit (NCSWP) #76-01. The center of the proposed Randolph County MSW landfill is located at Latitude: 35.752822°N and Longitude: 79.755992°W. The proposed disposal site is bordered to the north by

the Deep River, to the west by the closed Randolph County landfill, to the south by Henley Country Road, and to the east by Old Cedar Falls Road. The proposed landfill is composed of several undeveloped parcels comprising approximately 667 acres, approximately 200 acres of which are proposed as the waste disposal unit. The footprint of the first phase of the proposed landfill is approximately 34 acres and is located on the southeastern side of the subject property. The first phase of the proposed landfill will be designed to contain approximately ten years of waste disposal and will occupy approximately 34 acres of the total 190-acre waste footprint. The facility entrance will be located off of Old Cedar Falls Road at the eastern corner of the landfill. This franchise extends to and covers only the 115 acre eastern portion of the landfill and does not extend to the western side of the power lines crossing the facility.

- (b) The landfill facility shall be served by an entrance road leading to scales for all incoming waste. Waste will be deposited into lined cells, compacted, and covered daily as required by law. Waste Management may receive, on average, up to 4,000 tons per day. Recycling and/or resource recovery is expected to occur within the landfill facility. The beneficial use of landfill gas is also an expected future activity. The proposed landfill facility will be permitted, constructed, and operated in accordance with state and federal rules and regulations governing Subtitle D facilities. The landfill shall have protective geo-membrane liner systems, leachate collection, and environmental monitoring systems as required by state and federal rules and regulations and the County issued Special Use Permit.
- (c) The County also owns four convenience centers and expects to have two more constructed. The convenience centers shall be managed as local collection centers for county citizens. This franchise extends to and includes these convenience centers which are located in areas outside the landfill facility.

#### SECTION 7. Types of Waste Allowed

- (a) The types of waste allowed in the waste stream shall be wastes defined by the State of North Carolina as “municipal solid waste” and any other wastes allowed by law and permit to be disposed of in a fully permitted municipal solid waste landfill. Municipal solid waste shall include any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service.
- (b) If the facility permit provides for limitations on the types of solid waste allowed, Waste Management shall strictly abide by the permit requirements.
- (c) Limitations on waste types contained in the Special Use Permit shall apply.

SECTION 8. Description of the Volume and Characteristics of the Waste Stream

- (a) The volume of waste disposed shall not exceed an average daily intake and disposal rate of 4,000 tons per day or a maximum daily intake and disposal rate of 5,500 tons per day to account for times when intake rates may peak, including periods when emergency debris management is required after floods, hurricanes, tornados or other such events.
- (b) The characteristics of the waste stream entering the landfill facility may include all solid waste allowed by law, subject to limitations imposed by the facility's Special Use Permit and the facility permit. Unless limited by permit, Waste Management may accept all typical waste streams for a fully permitted Subtitle D landfill. Subject to limitations imposed by the facility permit and Operating Agreement, Waste Management may construct a solidification pit that enables Waste Management to accept liquid waste streams for treatment and disposal. Recovered and recyclable materials and any recycled products shall be diverted from the solid waste disposal facility to the extent reasonably feasible and required by the County, state laws or the operating permit.

SECTION 9. Projection of the Useful Life of the Landfill

Based upon engineering calculations and other data, the useful life of the site as defined in Section 6(a) above is projected to be approximately 12 to 15 years based upon an average daily intake of 4,000 tons per day, with this franchise covering the life-of-site of the eastern 115 acres described in Section 6(a). Waste Management accepts this estimate and acknowledges that this calculation is based upon information currently available and assumes any risks that the useful life could be less than projected.

SECTION 10. Procedures for Governmental Oversight

- (a) The Randolph County Planning Department, acting in the normal course of business, shall oversee compliance with the Special Use Permit issued by the Randolph County Planning Board pursuant to authority bestowed by both general statute and the Randolph County Zoning Ordinance.

- (b) NCDEQ, pursuant to its own policies and schedules, shall oversee compliance with the Permit to Construct and the Permit to Operate.
- (c) The North Carolina Department of Transportation shall oversee compliance with the terms of the landfill facility driveway permit and, in cooperation with the Randolph County Planning Department, shall oversee road improvements as required by the Special Use Permit.
- (d) Randolph County shall regularly oversee compliance with the Operating Agreement and this franchise.

#### SECTION 11. Regulation of Fees and Rates

Waste Management shall be responsible for setting landfill fees and rates. Fees and rates charged for disposal of waste in the landfill facility may change from time to time and shall be fees and rates determined by Waste Management to be commercially reasonable and competitive within the industry as reflected by rates at privately owned or operated facilities in North Carolina. Posted gate rates shall not exceed an approximate average of posted gate rates at similar, privately owned or operated facilities in Piedmont North Carolina.

#### SECTION 12. Payments to Randolph County

Waste Management shall pay Randolph County such payments, host fees, closure and post-closure costs and other fees as set forth in the Operating Agreement.

#### SECTION 13. Compliance with Laws

Waste Management shall comply with all federal, state and local laws and permits regarding the hauling and transport of solid waste and the construction and operation of the landfill and convenience and recycling centers. Waste Management's willful or intentional violation of federal, state or local laws may grounds for revocation of this franchise.

#### SECTION 14. Franchise Non-Transferable

- (a) This franchise is issued exclusively to Waste Management upon the County's determination that Waste Management has the requisite experience and financial strength to permit, construct and operate a regional municipal solid waste landfill. This franchise cannot be sold, transferred, leased, assigned, acquired or disposed of, including, but not limited to, by force or voluntary sale, merger, consolidation, acquisition, bankruptcy, receivership or other means to any other person or entity except upon consideration and approval of the Board of Commissioners following procedures established by law.
- (b) Waste Management shall promptly notify the county of (1) any actual or proposed change in or transfer of its ownership or (2) acquisition by any other party of control of the company. The word "control" as used herein is not limited to

majority ownership but also includes operational control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by Waste Management, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation devise or otherwise, of at least 50 percent ownership or controlling interest at one time or cumulatively over the term of the franchise to a person or group of persons, corporation, partnership, limited partnership, trust, limited liability, or company association. Any two or more persons or entities which cumulatively own more than fifty (50) per cent of the company and act in concert shall be considered one entity owning a majority interest.

- (c) The transfer, sale, lease, assignment or disposition of control of Waste Management, including, but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means, shall make the franchise subject to cancellation unless and until the county shall have consented thereto. For the purpose of determining whether it shall consent to such transfer, sale, lease, assignment or disposition of control of Waste Management, the county may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the proposed grantee shall assist the county in any such inquiry. Failure to provide all information reasonably requested by the county as part of its inquiry may be grounds for denial of the proposed franchise transfer. After considering the legal, financial, character, technical, and other public interest qualifications of the applicant, the county may transfer and assign the rights and obligations of such franchise as may be in the public interest. The consent of the county to such transfer shall not be unreasonably withheld, conditioned or delayed.
- (d) Any approval by the county or transfer shall be contingent upon the prospective controlling party becoming a signatory to the franchise and any Operating Agreement or other agreement as required by the county.
- (e) The requirements of the State of North Carolina pertaining to the transfer of ownership or control of an entity possessing a solid waste permit are separate requirements.

#### SECTION 15. No Recourse

Waste Management shall have no recourse whatsoever against the county or its officials, boards, commissions, agents, subcontractors, vendors, or employees for any loss, cost, expense or damage arising out of any provision or requirements of the franchise or because of the enforcement of the franchise. This section does not apply to equitable relief.

#### SECTION 16. Forfeiture and Revocation

- (a) This franchise may be revoked in its entirety or with respect to certain rights and privileges upon (1) Waste Management's default in the performance of any of the

material obligations under this franchise or the Operating Agreement after notice and opportunity to cure as provided in the Operating Agreement; (2) Waste Management's willful violation of any orders or rulings of any regulatory body having jurisdiction over Waste Management's operation of the landfill after notice thereof, continuing and not being remedied or reasonably addressed within 60 days of notice; (3) Waste Management's commission of fraud or any unfair or deceptive act or practice in its application for this franchise or as to the County under this franchise or the Operating Agreement; (4) Waste Management's insolvency, inability, or unwillingness to pay any debts; or Waste Management is adjudicated bankrupt; (5) Waste Management's misrepresentation of a material fact in the application for, or negotiation of the franchise or any extension or renewal thereof.

- (b) The procedures to be followed in the event of any of the reasons or bases for default established in Section 16(a) above shall be the procedures set forth in Section 8(b) of the Randolph County Ordinance Establishing Procedures for the Application and Issuance of Franchises for Solid Waste Facilities. The decision which results after completion of appeal procedures as set forth in Section 8(b) shall constitute an exhaustion of administrative remedies.

SECTION 17. Effective Date

This Ordinance shall become effective on \_\_\_\_.

Clerk's Certificate,

I, \_\_\_\_\_, Clerk to the Randolph County Board of Commissioners, do hereby certify that the foregoing ordinance was first introduced at the \_\_\_\_ regular meeting of the Randolph County Board of Commissioners, a quorum being present, and passed \_\_\_\_\_. The Ordinance was presented for a second reading at the Commissioners' \_\_\_\_ regular meeting, a quorum being present, and was duly adopted by a vote of \_\_\_\_\_.

This the \_\_\_\_ day of \_\_\_\_, 2019.

\_\_\_\_\_  
Clerk to the Board