

**PENDLETON COUNTY / RUMPKE
HOST AGREEMENT**

*Not 6/13/06
and effective
as of
June 15,
2006
HWB
JUN 13, 2006*

This Host Agreement is made and entered into this the 13th day of June 2006, by and between the County of Pendleton, a political subdivision of the Commonwealth of Kentucky by and through the Pendleton County Fiscal Court ("the County"), of 233 Main Street, Falmouth, Kentucky 41040, and Rumpke, variously doing business as Rumpke of Kentucky, Inc., a Kentucky corporation ("Rumpke").

Recitals

- A. The Pendleton County Fiscal Court is responsible for developing and implementing a Solid Waste Management Plan pursuant to the provisions of KRS 224.43-340 and KRS 224.43-345.
- B. Rumpke owns and operates a solid waste disposal facility in Pendleton County known as Pendleton County Landfill, which is authorized by the Kentucky Natural Resources and Environmental Protection Cabinet to dispose of solid waste pursuant to Permit # 096-00001.
- C. The County and Rumpke desire to enter into this Host Agreement setting forth their respective rights and obligations regarding the maintenance of disposal capacity for non-hazardous solid waste generated within the County

1.0 Definitions

The provisions in this Host Agreement shall be governed by the following definitions:

- 1.01 **Acceptable Waste** means solid waste meeting all permit, statutory and regulatory requirements for disposal in the Facility (as defined below), which has been lawfully transported and delivered to the Facility.
- 1.02 **Agreement** means this Host Agreement, any amendments subsequently agreed to by both parties and any schedules attached hereto.
- 1.03 **Cabinet** means the Kentucky Natural Resources and Environmental Protection Cabinet, an agency of the Commonwealth of Kentucky.
- 1.04 **Conditions** means the issuance (and expiration of any appeal or revocation period) of all permits, licenses, authorizations and approvals necessary for the construction and operation of the Expansion.
- 1.05 **Commercial Solid Waste** means commercial solid waste as defined in KRS 224.01-010
- 1.06 **County** means Pendleton County, Kentucky.
- 1.07 **Consumer Price Index** means the consumer price index-U.S. City Average for all items for all urban consumers as publicized by the Bureau of Labor Statistics, United States Department of Labor ("CPI-U").
- 1.08 **Effective Date** means the date the agreement is signed by the last party.
- 1.09 **Environmental Performance Standards** means those standards defined in 401 Kentucky Administrative Regulation 47:030.

- 1.10 **Expansion** means an expansion of the Facility in the locations shown on Exhibit A. The approximate acreage of the Expansion is 61 acres +/-, shall consist of approximately 8,500,000 cubic yards of waste disposal capacity and shall not exceed an elevation of 970.
- 1.11 **Facility** means the Pendleton County Landfill, as identified and defined in permit # 096-00001 as same may be amended, supplemented or expanded from time to time.
- 1.12 **Fiscal Court** means the Pendleton County Fiscal Court.
- 1.13 **Force Majeure** means any act, event or condition reasonably relied upon by Rumpke or the County as justification for delay in or excuse from performing or complying with any obligation, duty or agreement required of Rumpke or the County under this Agreement, which act, event or condition is beyond the reasonable control of Rumpke or the County, including, without limitation, an act of God, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; war, riot, blockade or restraint of government and people; civil disturbance or disobedience, sabotage or similar occurrence; strike, work slowdown or similar labor action; the denial, loss suspension, termination or failure to renew any permit, license or other governmental approval or determination which does not result from any act or omission of the party asserting Force Majeure. Notwithstanding, "Force Majeure" shall not be deemed to include any constraint resulting from any action or failure of action by either party in violation of its duties under state or federal law or regulations under this contract.
- 1.14 **Hazardous Waste** Shall be defined as set forth in KRS 224.01-010(31)(b)
- 1.15 **Municipal Solid Waste** means municipal solid waste as defined in KRS 224.01-010.
- 1.16 **Open Dump** Shall be defined as set forth in KRS 224.01-10(38).
- 1.17 **Operating Hours** Operating Hours shall mean the normal reasonable operating hours of the Facility as reasonably approved from time to time by the Fiscal court, provided however, that unless otherwise agreed in writing between the parties, operating hours shall be twenty-four (24) hours each day except operations shall cease at midnight on Saturdays and not resume until 3:00 a.m. on Mondays.
- 1.18 **Out of Area** means solid waste generated outside of the County of Pendleton.
- 1.19 **Plan** means the Solid Waste Management Plan prepared by the County and submitted to the Cabinet pursuant to KRS 224.43-345 and any other applicable law, and approved by the Cabinet.
- 1.20 **Solid Waste** shall be defined as set forth in KRS 224.10-010(31)(a)
- 1.21 **Solid Waste Management Plan** means the plan prepared by the County and submitted to the Cabinet pursuant to KRS 224.43-345 and any other applicable law, and approved by the Cabinet.
- 1.22 **Special Waste** means special waste as defined in KRS 224.50-760.
- 1.23 **Unacceptable Waste** Any material or substance other than Acceptable Waste, including but not limited to: (a) any material or substance which, by reason of its composition or characteristic is toxic or hazardous as defined by federal or state laws; (b) special nuclear or bi-product materials within the meaning of the Atomic Energy Act of 1954; naturally occurring radioactive material including but not limited to oil production pipe scale and other NORM waste;(c) untreated infectious waste as defined in KAR 47.005, which has not been rendered noninfectious in accordance with prevailing public health standards and practices.

2.00 Representations and Warranties.

2.01 Representations and Warranties of Rumpke. Rumpke represents and warrants as follows:

- a. "Rumpke" does, in fact, refer to all that entity set out in the opening paragraph hereof, and that such entity, its successors, and assigns shall be bound by this agreement.
- b. Rumpke has full power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof have all required approval and will not violate any judgment, order, law or regulation applicable to Rumpke; and
- c. This Agreement has been authorized, voluntarily executed and delivered by Rumpke, was not executed by Rumpke under duress, and constitutes a legal, valid, binding obligation of Rumpke, enforceable in accordance with its provision.
- d. Rumpke represents that the persons who sign herein below have full authority to sign on behalf of Rumpke and to bind all such entities by authority of their respective boards of directors or otherwise.

2.02 Representations and Warranties of the County. The County represents and warrants as follows:

- a. The County is a political subdivision duly organized, existing and in good standing under the laws of the Commonwealth of Kentucky. The County has primary responsibility for solid waste management in the County.
- b. The County and Fiscal Court have full power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof have all required approvals and will not violate any judgment, order, law or regulation applicable to the County.
- c. This Agreement has been duly authorized, executed and delivered by the County and Fiscal Court, was not executed by the Fiscal Court under duress and constitutes a legal, valid binding obligation of the County, enforceable with its provisions.

3.00 Disposal Capacity for Pendleton County

3.01 Capacity Assurance. Beginning upon the Effective Date and continuing for the Term of this Host Agreement, Rumpke shall make disposal capacity available in the Facility for the disposal of all municipal solid waste generated in Pendleton County which shall constitute the specific provisions and contractual agreement for reservation and use of the disposal capacity at the Facility within the meaning of KRS 224.43-345.

3.02 Payment of Costs and Alternative Disposal Obligations. If Rumpke is unable or unwilling to dispose in the Facility of all municipal solid waste generated in Pendleton County during the Term of this Host Agreement except due to and during a Force Majeure event as defined in Section 1.13, Rumpke shall provide for the disposal of municipal solid waste generated in the County at another permitted disposal facility. The cost for disposal of municipal solid waste generated in the County at another facility, including any costs for additional transportation to or disposal at another facility, shall be paid by Rumpke, to the extent such costs exceed the last prevailing cost, including transportation, for disposal at the Facility.

3.03 During the term of the Agreement, Rumpke shall not accept for disposal at the Facility more than 730,000 tons of total waste per calendar year.

3.04 Rumpke shall apply to the Cabinet for all construction and/or expansion permits necessary to provide capacity assurances to the County in accordance with this Agreement. Prior to submitting an application for construction or expansion to the Cabinet, Rumpke shall submit the application to the County and petition the County for a determination that the application is consistent with the Solid Waste Management Plan. The County shall make its determination under KRS Chapter 224 and Pendleton County Ordinance Regulating Solid Waste consistent with this Agreement. The above notwithstanding, the County reserves the right to review the technical design and standards for construction and operation of the landfill and to comment on or challenge the permit application in order to assure that the design meets applicable regulatory standards.

3.05 Should the County or State at any time during the life of this Agreement, enact Mandatory Collection (defined as requiring 100% participation), the parties shall renegotiate the terms of 3.03, increasing the tonnage to accommodate the increase required by same, if elected by Rumpke.

4.00 **Landfill License Fee**

4.01 **Amount of Fee.** Beginning on the effective date, Rumpke shall pay to the County as a license fee levied per ton of Solid Waste disposed of at the Facility, unless otherwise provided herein, as follows:

One (\$1.00) dollar per ton through December 31, 2006.

Beginning January 1, 2007 the fee shall be as follows:

One and 40/100 (\$1.40) dollars per ton through June 30, 2007.

On July 1, 2007 the fee shall increase to:

One and 65/100 (\$1.65) dollars per ton, for the balance of the terms of the agreement, subject only as set out immediately below.

Beginning on July 1, 2008 and on each July 1 thereafter during the term of the Agreement, the license fee shall be increased by an amount to be determined by application of the annual Consumer Price Increase most recently reported, to the then current fee, effectively compounding the increase annually. Beginning on July 1, 2017 and on each July 1 thereafter during any carry over period pursuant to Section 20.00, the license fee shall be increased by the greater of (1) an amount to be determined by application of the annual Consumer Price Increase most recently reported, to the then current fee, effectively compounding the increase annually, or (2) A constant percentage calculated by taking the average of the most recently reported Statewide average disposal rate ("Gate Rate") and Statewide average franchise fees ("Collection Rate") as published by the Kentucky Natural Resources Cabinet in its Kentucky Environmental and Public Protection Cabinet Statewide Solid Waste Management Report as of July 1, 2008 ("The Average") The Average will be divided by \$1.65. The resulting percentage will be the Constant and will be consistently utilized in the following years.

4.02 The fees required under this part 4.00 shall be paid monthly. The amounts owed for a given month shall be due no later than the fifteenth (15th) day of the following month. The County shall have the right, upon reasonable notice to Rumpke, to have qualified employees or agents of the County inspect and/or audit the records upon which landfill license fee payments are based.

4.03 **Records and Reporting.** In accordance with KRS 224.883, Rumpke shall maintain accurate records of and report monthly to the County the amount of waste measured in tons received at the Facility and the geographic source of the waste. Such records shall be the same as

those submitted to State or Federal authorities, or be based upon same. The County shall be afforded such State or Federal records upon request.

6.00 Service Area Restriction. Rumpke shall not accept for disposal at the Facility waste which is generated outside of the following areas without the prior written consent of the County. Approved areas for contained landfill: Kentucky-Bath, Boone, Bourbon, Bracken, Campbell, Carroll, Clark, Fayette, Grant, Gallatin, Harrison, Henry, Jefferson, Kenton, Lewis, Madison, Mason, Montgomery, Nicholas, Owen, PENDLETON, Robertson, Scott and Trimble Counties; Ohio-Butler, Clermont, Hamilton, Montgomery and Warren Counties; Indiana-Dearborn County. Approved areas for the CD&D landfill: Kentucky-all counties, Indiana-all counties, Ohio-Butler, Clermont, Franklin, Hamilton, and Warren.

7.00 Operation of the Facility. During the term of this Agreement, Rumpke agrees to do the following with respect to the operation of the Facility.

7.01 Compliance with laws. Rumpke agrees to completely follow and abide by all Commonwealth of Kentucky, federal and local laws and regulations in the operation of its facility in Pendleton County, KY. The Facility shall be designed, constructed and operated in compliance with all applicable laws and regulations, whether currently existing and enacted or adopted in the future.

7.02 Vehicle Regulation. Rumpke shall cooperate with County and state law enforcement officials and with waste haulers to enforce speed limits and any weight limits on County roads. Rumpke shall use reasonable efforts to ensure that the vehicles are empty when leaving the Facility in order to avoid windblown litter. All vehicles transporting waste shall enter the Facility from Bryan-Griffin Road. At the discretion of the Solid Waste Coordinator (SWC), any Rumpke truck is subject to being checked for purposes of comparing the actual tare weight of the vehicle to the tare weight of the vehicle as "posted" in the scale house. Any significant variation shall justify further inquiry as to accuracy of the fleet tare weights and any appropriate remedy; further, any such variation may be subject, but not limited, to a remedy as prescribed by Section 17.00, hereinbelow.

7.03 Litter Cleanup. Rumpke shall be responsible for collecting and removing litter from the start of U.S. Highway 17 at the intersection with Highway 27 to the landfill, not less frequently than weekly.

7.04 Scavengers. Rumpke agrees to use all reasonable and practicable means in the operation of its Facility to prevent scavengers from becoming a nuisance or a problem to the public.

7.05 Dust Control. Rumpke shall ensure that adequate dust control is employed to keep dust from leaving the Facility. Careful attention will be made by Rumpke to ensure dust does not impede drivers at the Facility and Bryan-Griffin Road. Dust may be controlled with roadway spraying provided that it shall not contaminate groundwater or increase leachate flow.

7.06 Odor Control. Rumpke shall minimize odor from the Facility.

7.07 Emergency. Rumpke may, in the event of a natural disaster or other emergency conditions, accept deliveries at times other than its regular Operating Hours. Emergency circumstances shall include, by way of example, but not be limited to, accidents that prevent timely delivery of waste to the landfill; failure of equipment; or weather related events. In the event of such disaster or emergency, Rumpke shall promptly notify the Pendleton County Judge Executive and/or the Pendleton County Solid Waste Coordinator of the details of the emergency, including the expected duration of same and the efforts to be employed to eliminate the emergency. However, in no event shall waste be accepted that is not weighed; and no emergency shall reduce Rumpke's duty to scan for and reject impermissible waste. See below 7.09.

7.08 Prohibition of Wastes. Rumpke shall not knowingly accept any Unacceptable Waste for disposal at the Facility.

7.09 Rumpke shall perform random daily inspections of wastes entering the Facility so that the detection and rejection of wastes prohibited under this section may be accomplished. Rumpke shall maintain sufficient documentation to identify the source of all wastes entering the Facility. In the event Rumpke discovers that any prohibited wastes were disposed of in the Facility it shall promptly notify the Pendleton County Judge Executive and the Pendleton County Solid Waste Coordinator of such fact and promptly take any and all remedial action required, at its own expense.

7.10 **Disclosure Statements.** Rumpke shall promptly notify the County if there is any planned change in: the ownership of the Facility; the operator name listed on the operating permit of the Facility; or, in the "key personnel" of the Facility, as such term is defined in KRS 224.005 (44). Rumpke shall submit to the County any background disclosure statement submitted to the Cabinet pursuant to KRS 224.861.

7.11 **Closed Cells.** Rumpke shall, during the operating life of the Facility and the post closure care period established by 401 KAR 48:090, maintain the cap, continue to perform groundwater monitoring and perform necessary corrective action for all areas of the Facility used for the disposal of Waste that have been closed. Wherever possible and feasible Rumpke must cover exposed surface soil with grass or like material.

7.12 **Daily Cover.** Rumpke shall not use any material for daily cover not approved by the Cabinet for such use at the Facility. Cover materials should be stored in a manner that will not violate Federal, State or local environmental performance standards, environmental standards, health hazard standards, County Ordinances, and so as to avoid creation of a public or private nuisance.

7.13 **Notice of Closure.** Rumpke shall, to the extent practicable, give notice to the County not less than sixty (60) days prior to the date that Rumpke will cease to accept Waste for disposal in the Facility.

7.14 **Notice of Violation.** In the event Rumpke receives a notice of violation or any other violation from the Commonwealth of Kentucky or any other overseeing entity, Rumpke shall immediately notify the Pendleton County Solid Waste Coordinator and provide him with copies of the notice of violation, as well as Rumpke's response and any supporting documentation.

8.00 Disposal Rates

8.01 The rate for disposal of municipal solid waste generated in Pendleton County and cities in PENDLETON County delivered to the Facility for disposal by non-commercial haulers during the term of this agreement shall be 20% off of the posted gate rate at the Facility, exclusive of fees and surcharges.

9.00 Education Fund

9.01 Rumpke shall during the term of this Agreement pay to the County five (\$0.05) cents per ton for all solid waste disposed of at the Facility to fund an Education Fund. Said sums shall be paid in the same manner as provided for in Section 4.02. The County shall deposit such sums into a separate account and fund which shall not be used for General Fund type expenditures for general county government but shall use the same for scholarships, educational programs, public information initiatives and/or similar purposes dealing with conservation, environmental, and similar such concerns.

9.02 Notwithstanding the foregoing no such fee shall accrue or be paid for solid waste disposed of pursuant to Section 10.00 ("free day").

10.00 Free Disposal of Certain Pendleton County Waste

10.01 Each year during the Term of the Agreement, Rumpke shall provide without charge, disposal of up to 250 tons of waste generated from open dump cleanups, roadway litter removal, dead animals or other county/city operations which is delivered to the Facility by the County, City of Butler, City of Falmouth, or Commonwealth of Kentucky. Such activities shall be designated by the Pendleton County Solid Waste Coordinator who shall communicate such to Rumpke.

10.02 **Free Disposal Day.** During this Agreement Rumpke shall honor the SWC's designation of up to twelve (12) Saturdays per year during which residents of Pendleton County may dispose of solid waste delivered to the Facility, free of charge; notwithstanding, such residents may be required to pay, effectively as a reimbursement to Rumpke for any such cost, any governmental fees, taxes, and/or surcharges. The privilege to utilize such free days is limited as follows:

- a. It shall not apply or be available to person or concerns who are not already regular customers of the holder(s) of Pendleton County trash collection franchise(s)
- b. It shall not apply to:
 - i. Hazardous household wastes
 - ii. Tires and related wastes
 - iii. Construction and/or demolition waste
 - iv. Commercial haulers, roofers, or other persons or concerns that generate waste for disposal as a part of their business.

10.03 During the Term of this Host Agreement, Rumpke shall lease to the county at, for a rent of one dollar (\$1.00) per year, a half-acre site at the landfill to store white goods until collected by an environmental recycling agency retained by the County at the County's expense. Recycling operations will be conducted on this site only during normal business hours.

11.00 Access to the Facility.

11.01 **During Operation.** Any member of the Fiscal Court, 109 Board and/or the Pendleton County Solid Waste Coordinator shall have the right to inspect the Facility at any time without prior notice, to verify compliance with the provisions of this Agreement and any applicable laws. Except in exigent circumstances, all individuals entitled to inspection rights under this section shall show identification and shall sign in at the Facility's administrative office and be accompanied on their inspection by Rumpke personnel. Rumpke will provide an escort within 30 minutes of the request to inspect during operating hours. Rumpke will provide an escort within 90 minutes of the request to inspect during non-operating hours. A copy of any report prepared as a result of such inspection shall be presented to Rumpke.

11.02 **After Closure Inspection.** After closure of the Facility and during the post-closure care period, the County or appointed parties by the Pendleton County Fiscal Court shall have the right to enter the Facility to ensure compliance with any and all post-closure care requirements pursuant to applicable laws or regulations, and with the terms of this Host Agreement.

12.00 **Post Closure Land Use.** Once the Facility is "closed" in practice or under the current law Rumpke shall devote the same to a use or uses consistent with the following:

- a. Such that the integrity of the Facility's cap will not be compromised.
- b. Kentucky Environmental Performance Standards or such successor's criteria or regulations.
- c. Terms and conditions of any and all indemnity and remediation bonds prescribed by the agreement or governmental regulation.
- d. Approval by the Fiscal Court, in the interest of the citizens of Pendleton County; such approval shall not be unreasonably withheld.

13.00 Insurance

13.01 Commercial General Liability Insurance. Rumpke shall maintain during the operation of the Facility a Commercial General Liability Policy (or policies) with aggregate limits of liability of not less than three million dollars (\$3,000,000). The County shall be listed as an additional insured on the policy. The policy shall pay on behalf of Rumpke or the county for any damages for bodily injury or property damage which Rumpke or the County has or will become legally liable to pay as a result of an occurrence arising from Rumpke's construction or operation of, on, or about the Facility. Rumpke shall pay any deductible applicable under the terms of the policy. Rumpke shall provide to the County, upon request, certificates of insurance evidencing that the policy is in effect and, if requested, a copy of the entire policy. The Policy shall provide that the County shall be notified by the insurance company of any cancellation, reduction in coverage or material change in coverage. If the Permit for the Facility is transferred Rumpke shall maintain the policy in effect until the successor or assign of Rumpke has put a like policy (or policies) into effect to comply with this section.

13.02 Pollution Liability Insurance. Rumpke shall maintain during the operation of the Facility and any applicable post-closure care period an Environmental Remediation Legal Liability Policy (or policies) with limits of liability of not less than ten million dollars (\$10,000,000). The County shall be listed as an additional insured on the policy. The policy shall pay on behalf of Rumpke or the County for any losses which Rumpke or the County has or will become legally liable to pay to a third party as a result of pollution conditions on, at, under or emanating from the Facility. Rumpke shall pay any deductible applied under the terms of the policy. Rumpke shall provide to the County, upon request, certificates of insurance evidencing that the policy is in effect and, if requested, a copy of the entire policy. The County shall be notified by the insurance company of any cancellation, reduction in coverage or material change in coverage. If the Permit for the Facility is transferred, Rumpke shall maintain the policy in effect until the successor or assign of Rumpke has put a like policy (or policies) into effect to comply with this section.

13.03 Reference in 13.01 and 13.02 to "insurance" shall not preclude the posting of performance or indemnity contracts in the nature of bonds, with like terms or effect.

13.04 Any insurance policies or bonds provided for in this part 13 shall be issued by insurance or assurance companies which shall remain recognizable, good, and solvent throughout the appropriate periods and be approved by the Kentucky Commissioner of Insurance or the successor to such public servant.

14.00 Indemnification. Rumpke shall indemnify and hold the County harmless from any and all claims, damages, suits or causes of action, including reasonable outside counsel fees actually incurred, resulting from Rumpke's negligence, recklessness or willful misconduct in the design, construction, operation, closure or post-closure activities of the Facility, except to the extent such claims, suits, damages or cause of action are the proximate result of the negligence, recklessness or intentional misconduct of the County, its employees, agents, servants or contractors.

15.00 Force Majeure. In the event Rumpke or the County is rendered unable, wholly or in part, by an event of Force Majeure to carry out any of its obligations under this Agreement, the obligations of Rumpke or the county as the case may be, shall be suspended during the continuation of any inability so caused by the event of Force Majeure, but for no longer period. If Rumpke or the County intends to rely upon an event of Force Majeure to suspend obligations as provided in this section, such party shall notify the other party to this Agreement as soon as practicable, describing in reasonable detail the circumstances of the event of Force Majeure. The party relying upon an event of Force Majeure shall have the duty and obligation to use reasonable business efforts to cure or eliminate such event of Force Majeure and shall, during the period of such Force Majeure, periodically advise the other party of the status of the event of Force Majeure

and the projected duration of the same. Notice shall again be given when the effect of the Force Majeure has ceased.

16.00 **General Provisions.** The following provisions shall also be applicable to the parties during the terms of this agreement.

16.01 **Assignment.** This agreement may not be assigned without the prior written consent of the other party which consent shall not be unreasonably delayed or withheld.

16.02 **Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. The respective party shall provide an acknowledgment from any successor or assignee of the responsibility to comply with the provisions of this Agreement to the other party.

16.03 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and the County of Pendleton.

16.04 **Not Exclusive.** This Agreement is not exclusive, and nothing contained in the Agreement shall limit, restrict or prohibit the County from entering into agreements with third parties concerning any of the subject matter of this Agreement.

16.05 **Severability.** In the event that any provision of this Agreement is found to be unconstitutional or in violation of law, it shall not affect the remaining provisions of this Agreement.

16.06 **Further Assurances.** Each party shall do such acts and execute such further documents as are within its power in order to give full effect to the provisions of this Agreement.

16.07 **Notices.** Any notice, demand or other communication required or permitted to be given hereunder shall be in writing and delivered in person, sent by facsimile, or sent by certified mail, return receipt requested, to the following, or such other address as hereafter may be provided in writing:

a. To County:
Pendleton County Judge-Executive
Pendleton County Courthouse
233 Main Street
Falmouth, KY 41040
(859) 654-4321 (office)
(859) 654-5047 (fax)

and

Pendleton County Solid Waste Coordinator
P.O. Box 181
Falmouth, KY 41040
(859) 654-1000 (office)

b. To Rumpke:
Rumpke of Kentucky, Inc
1374 Bryan Griffin Road
Butler, Ky 41006
(859) 472-7339

With a copy to:
Rumpke of Kentucky, Inc.,
10795 Hughes Road,
Cincinnati, Ohio 45251
Attn: General Counsel.

16.08 **Amendment.** This Agreement may be amended, modified or supplemented only in writing signed by both parties.

16.09 **Waiver.** The waiver by either party of a default or a breach of any provision of the Agreement shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any default or breach.

16.10 **Heading.** The division of this Agreement into sections and subsections and the use of headings are for convenience and reference only and shall not affect the construction or interpretation of the Agreement.

16.11 **Inspection of Books and Records.** Rumpke shall annually provide to the County copies of its fiscal year end financial statements and copies of the audited financial statements of its parent corporation (presently, Rumpke Consolidated Companies, Inc.,) Such financial statements shall be considered confidential and proprietary information, and shall be provided promptly upon the completion of the annual audit of Rumpke's parent corporation. In addition, Rumpke shall provide the County with written notice upon the occurrence of any event that may reasonably be expected to have a material adverse impact upon the financial condition of Rumpke or its parent corporation. Any proprietary or other confidential information obtained through inspections or audits conducted under the terms of this Agreement shall be handled as privileged and confidential and shall not be made available for public inspection and / or publication, except as may be inherent to/or for litigation. All books and records of Rumpke related to the Facility or its operation shall be open to inspection and audit by the County or its agents to review compliance with this agreement.

16.12 **Solid Waste Management Plan.** Nothing contained in the Solid Waste Management Plan, or any additions or modifications thereto, shall be inconsistent with this Agreement. The County further affirmatively agrees to pursue such amendments or revisions to the Solid Waste Management Plan as may be necessary, appropriate and reasonable to allow for expansion of the facility as discussed in Section 3.01 above. . The above notwithstanding, the County reserves the right to review the technical design and standards for construction and operation of the landfill and to comment on or challenge the permit application in order to assure that the design meets applicable regulatory standards.

17.00 **Redress**

17.01 If the Pendleton County Solid Waste Coordinator or other designee of the County determines that Rumpke has violated the provisions of the Agreement, a written warning shall be issued immediately to Rumpke, identifying the provisions that are alleged to have been violated, and specifying the date by which the abatement is to be completed.

17.02 The time period (determined by the Solid Waste Coordinator) specified by the written warning for abatement of the violation shall be a reasonable and practicable time, considering the nature and extent of the violation.

17.03 If Rumpke fails to abate the violation within the time period (determined by the Solid Waste Coordinator) specified in writing, a notice of violation may be issued. The notice of violation may require immediate cessation of the conduct constituting the violation and abatement of the violation.

17.04 In the event a second notice of violation arising out of the same provisions of the agreement is issued within a thirty (30) day period, whether or not subsequently abated by Rumpke, the County may assess penalties in accordance with subsection 17.05.

17.05 If the Solid Waste Coordinator issues a second notice of violation, the County may assess a penalty as follows:

- a. An amount not to exceed Two Hundred and Fifty (\$250.00) Dollars.
- b. For the third violation a penalty not to exceed Five Hundred (\$500.00) Dollars;
or
- c. For the fourth and each subsequent violation a penalty not to exceed as One Thousand (\$1,000.00) Dollars.
- d. Each day during which a violation continues after the issuance of a notice of violation shall constitute a separate violation for purposes of assessment of a penalty.

17.06 If Rumpke believes that a written warning or a notice of violation has been issued in error or that the time period specified by the written warning for abatement of the violation is not reasonable and practicable considering the nature and extent of the violation, Rumpke shall deliver a written response to the written warning within the time period specified in the written warning, or within seven (7) days of delivery of the notice of violation. Delivery of the response shall be pursuant to Section 19.00 of this Agreement, and

17.07 If Rumpke delivers a written response to a written warning or a notice of violation, the alleged violation shall be resolved as provided in Section 19.00 provided, however, that in the event the notice of violation is determined not to have been issued in error or it is determined that the time period specified by the written warning for abatement of the violation was reasonable and practicable, then a penalty may be assessed for each day during which the violation continued after the date of the notice of violation.

17.08 This section shall not preclude either party from seeking any other remedy under the law.

18.00 **Annual Review of Agreement**

18.01 **Review Panel.** The County and Rumpke shall jointly appoint a Review Panel which shall be responsible for overseeing an annual review of the Agreement in accordance with the terms of this Agreement. The review Panel shall consist of the County Solid Waste Coordinator, the County Judge/Executive or his/her appointee, and the president of Rumpke or his/her appointee.

18.02 **General Review.** The Review Panel shall conduct, on an annual basis or such other basis as may be agreed between the parties, a general review of the effective implementation of the terms of this Agreement. The general review shall include, but not be limited to, an evaluation of any changes in law which impact the operation of the Facility, the Solid Waste Management Plan, any term of the Agreement, the progress of any proposed or pending permit applications; and recycling, composting, or other solid waste management needs throughout the County.

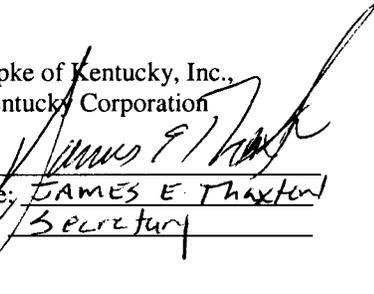
18.03 **Purpose of Review.** The purpose of the annual review conducted under this section shall be to determine whether the terms of this Agreement are being effectively carried out, and to identify amendments, if any, which may be made to this Agreement in order to more effectively carry out the intent of the parties and the provisions of the Solid Waste Management Plan. By the anniversary date of each year in which the Agreement is in effect, the Review Panel shall have conducted its general review and shall submit to Rumpke and the County its recommendations, if any, for amendment to the Agreement. Rumpke and the County, in good faith, shall consider the recommendations and may by mutual consent execute written amendments to this Agreement. The Panel shall annually produce a joint report summarizing any findings and the recommendations of the Panel and actions taken thereon. This report will be submitted to Rumpke and the County.

19.00 **Jurisdiction, venue and choice of law.** Any unresolved disputes shall be resolved in accordance with the laws of the Commonwealth of Kentucky, in a court of competent jurisdiction and specifically venue and jurisdiction shall lie in the courts of Pendleton County, Kentucky, this contract being deemed concluded in Pendleton County, Kentucky.

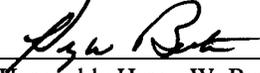
20.00 The term of this Agreement shall be ten (10) years. However, should both parties have an interest in negotiating a new Host Agreement to succeed this one they shall embark in good faith upon negotiations at the beginning of the ninth (9th) year. In the event that a new Host Agreement is not in place at the end of this ten (10) year term, and Rumpke or its successor should still be using the Facility, then the current Host Agreement shall continue to bind the parties in all respects until replaced. Any escalators in fees due to be paid, to wit, by virtue of operation of Paragraph 4.01, shall continue to be effective to adjust such fees.

21.00 **Authority of Representative.** The individuals signing this agreement state that they each have full authority to bind the parties as judge executive, president, or vice-president of the parties.

IN WITNESS WHEREOF, the parties hereto duly execute this Agreement, in duplicate original, as of the date first herein stated above.

Rumpke of Kentucky, Inc.,
A Kentucky Corporation
By: 
Name: JAMES E. THAXTON
Title: Secretary

Fiscal Court of Pendleton County

By: 
The Honorable Henry W. Bertram
Pendleton County Judge/Executive
County of Pendleton, Kentucky