

STATE OF NORTH CAROLINA
COUNTY OF MACON

**EXTENSION AND MODIFICATION
of the
EXCLUSIVE FRANCHISE AGREEMENT FOR THE COLLECTION AND DISPOSAL
OF SOLID WASTE OUTSIDE OF THE INCORPORATED CITIES AND TOWNS
WITHIN MACON COUNTY, NORTH CAROLINA**

THIS EXTENSION AND MODIFICATION OF FRANCHISE AGREEMENT is effective on the 1st day of July, 2022, by and between Macon County, a North Carolina County body politic, existing by virtue of the laws of the State of North Carolina, (hereinafter “County”) and J & B Disposal, Inc., a North Carolina Business Corporation, (hereinafter “J & B”):

WITNESSETH:

THAT WHEREAS, County has a Solid Waste Ordinance, set forth in Chapter 50 of the Macon County Code of Ordinances, which authorizes the Macon County Board of Commissioners to grant the right to collect, transport, recycle and/or dispose of solid waste for compensation by franchise or long-term contract pursuant to law; and

WHEREAS, County may by Ordinance regulate the storage, collection, transportation, use, disposal, and disposition of solid wastes pursuant to provisions of N.C. Gen. Stat. §153A-136; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. §153A-136, County may by such Ordinance grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the County and prohibit any other person from commercially collecting or disposing of solid wastes within that area; and

WHEREAS, the County initially granted an Exclusive Franchise Agreement for the Collection and Disposal of Solid Waste for areas outside the incorporated municipalities in Macon County to J&B on November 10, 2015; and

WHEREAS, J & B has the equipment, staff, knowledge, and proven good customer service to provide the services contained herein; and

WHEREAS, this Agreement is intended to and shall replace in its entirety the original Franchise Agreement previously granted on November 10, 2015.

WHEREAS, the Macon County Board of Commissioners agreed to Extend and Modify the Exclusive Solid Waste Franchise to J & B Disposal, Inc., at the regularly scheduled meeting of the Macon County Board of Commissioners held on May 10, 2022 and again on June 14, 2022, pursuant to N.C. Gen. Stat. §153A-46.

NOW THEREFORE, the Parties hereto do agree as follows:

1. Macon County does hereby extend unto J & B Disposal, Inc., pursuant to Chapter 50 of the Macon County Code of Ordinances and the provisions of N.C. Gen. Stat. § 153A-136, the exclusive franchise, license, and permit to collect and dispose of solid waste (NOT INCLUDING RECYCLABLES), for compensation as set hereby, or may from time-to-time hereafter be established. The area in which the agreement shall apply is hereby expanded and shall include:

The entirety of Macon County, North Carolina, with the exception of the municipal limits of the Town of Franklin and the Town of Highlands.

2. Effective June 1, 2022, J & B Disposal, Inc., may charge fees for the collection and disposal of such solid waste, NOT INCLUDING RECYCLABLES, in the following amounts:
 - A. The sum of \$14.85 per month for regular once per week curbside removal service rendered to private homes (the same to be paid by the owner or occupier of the private home who makes arrangements with J & B Disposal, Inc., for the same);
 - B. The sum of \$18.70 per month for regular once per week back door removal services rendered to private homes other than those set forth in 2.C. below (the same to be paid by owner or occupier of the private home who makes arrangements with J & B Disposal, Inc., for the same);
 - C. The sum of \$20.35 per month for regular one per week backdoor removal services rendered to private homes in the Highlands Township o Macon County, NC, excluding private homes in the Town of Highlands Corporate Limits (the same to be paid by the owner or occupier o the private home who makes arrangements with J & B disposal, Inc., for the same);
 - D. A proportionately higher charge may be made for more frequent removal;
 - E. The sum of \$2.60 per cubic yard of solid waste plus the then established and applicable Macon County fee per ton tipping fee for commercial solid waste, which at the time of the entry of the Agreement is calculated at \$4.58 per cubic yard of solid waste (NOT INCLUDING RECYCLABLES), collected from and disposed of for business establishments which make arrangements with J & B Disposal, Inc., for the same (the same to be paid by the business establishment). (This amount includes the present tipping fee which had previously been assessed against the solid waste producer and, therefore, J & B Disposal, Inc., shall pay the tipping fee for all commercial solid waste delivered to the Macon County Landfill.); and
 - F. J & B Disposal may further charge each customer a monthly fuel surcharge based upon the market price of Diesel fuel per gallon as follows:
 - i. a \$1.00 surcharge when the market price of Diesel fuel is between \$2.00 and \$3.50 per gallon;

- ii. a \$2.00 surcharge when the market price of Diesel fuel is between \$3.51 and \$5.00 per gallon;
- iii. a \$3.00 surcharge when the market price of Diesel fuel is between \$5.01 and \$6.50 per gallon;
- iv. a \$4.00 surcharge when the market price of Diesel fuel is between \$6.51 and \$8.00 per gallon; and
- v. a \$5.00 surcharge when the market price of Diesel fuel is between greater than \$8.01 per gallon.

Macon County is not responsible for the payment of any such fees.

The aforementioned rates apply only to the ordinary solid waste collection and disposal services and contemplates the use of practical garbage containers such as regular garbage cans, green boxes, roll-off containers, and other similar receptacles. Charges for unusual services are not set hereby and are left to the negotiations between the parties involved, subject, however to the approval of the amount thereof, by the Macon County Board of Commissioners.

3. This exclusive franchise, license, and permit to collect and dispose of solid waste previously granted to J&B Disposal, Inc. (November 10, 2015 through November 9, 2023) shall be extended for an additional 7 years and shall now **extend through November 9, 2030**, provided however, that J & B Disposal, Inc., shall at all times operate its solid waste collection and disposal business in accordance with good business practices and those rules, regulations and specifications which may, from time to time, be adopted by the Macon County Board of Commissioners, and in accordance with the regulations for the collection and disposal of garbage and solid waste as shall from time to time be adopted by the State of North Carolina and Federal Government. Should J & B Disposal, Inc. at any time fail to comply with the requirements hereof (all of which are deemed by the parties to be material) and/or the regulations adopted from time to time by the State of North Carolina and Federal Government, then and in that event, upon the failure of J & B Disposal, Inc. to cure any such defect or default within (30) days after written notice of the defect or default shall have been given to J & B Disposal, Inc., Macon County may withdraw and cancel this exclusive franchise, license, and permit to collect and dispose of solid waste without compensation therefor to J & B Disposal, Inc. and without further notice to J & B Disposal, Inc.
4. J & B Disposal, Inc. shall utilize the Macon County Landfill in the disposal of the solid waste collected pursuant to this exclusive franchise, license, and permit to collect and dispose of solid waste, without additional charge for the use thereof, so long as a landfill use fee has been paid by each of the customers from whom solid waste is collected. **However, notwithstanding the foregoing**, J & B Disposal, Inc. shall pay Macon County the then applicable tipping fee, which is from time to time established by Macon County for all commercial solid waste delivered to the Macon County Landfill. Should the County at any time in the future change its method of collecting for solid waste disposal, then and in that event, a corresponding change may be made with respect to payment by J & B Disposal, Inc. for use of the Macon County Landfill.

5. J & B Disposal, Inc. shall encourage recycling and will assist all of its customers in implementing a recycling program. Recyclables, when separated for recycling, are not part of the exclusive franchise hereby granted. This exclusive franchise, license, and permit to collect and dispose of solid waste may be amended by Ordinance to include recyclables. J & B Disposal Inc. will comply with all current and future Ordinances of Macon County as they apply to recycling and will require its customers to separate recyclables from other solid waste which is the subject matter of this Franchise Agreement.

J & B Disposal, Inc. may make arrangements between itself and its customers to pick up transport and properly dispose of recyclables for such rates and fees as may be agreed upon from time-to-time by J & B Disposal Inc. and their customers, and this Agreement does not govern such rates, fees, or arrangements; provided that Macon County incurs no costs or expenses related to J & B Disposal, Inc.'s pick up, transport, and disposal of such recyclables; further provided, such recyclables do not enter the solid waste stream of Macon County; further provided, it is understood and agreed that this agreement in no way grants unto J & B Disposal, Inc. a franchise of any variety to pick up, transport, and properly dispose of recyclables or any exclusive right to pick up, transport, and dispose of recyclables. This Agreement does authorize such pickup, transport, and proper disposal of recyclables authorized hereunder.

6. J & B Disposal, Inc. shall be solely responsible for all costs involved in the enforcement of this Franchise Agreement, the Ordinance which authorizes the same and the protection of the exclusive right and franchise conferred hereby. J& B Disposal, Inc. shall be responsible for filing complaints, temporary restraining orders or injunctions for any entity believed to be in violation of the Franchise Agreement or the Ordinance authorizing the same. The County will cooperate, as necessary. J & B Disposal, Inc. shall indemnify hold harmless the County, its Board of Commissioners, employees, agents, and representatives from any and all liabilities and claims of every kind, including reasonable attorney's fees, to which County may be subject to on account of loss, destruction, or damage of property , or on account of injury to or death of persons, to the extent caused by the negligence or willful misconduct of J & B Disposal, Inc. in the performance of this Agreement. The provisions of this paragraph shall not be applicable to loss or damage caused solely by the negligent act or omission of the County or its employees.
7. This exclusive franchise, license, and permit to collect and dispose of solid waste is not assignable in whole or in part unless the County has first consented to the same in writing, which consent may be withheld for any reason deemed sufficient by the County, in its sole discretion.
8. As a material part of this Franchise Agreement, and as a condition hereof, it is further required that Bonita Hamstra, individually, personally guarantees and endorses the performance by J & B Disposal, Inc. of all requirements imposed pursuant to this Franchise Agreement, in the form attached hereto as **Exhibit A**, the same being incorporated herein by reference as if more fully set forth herein.

9. The rights and privileges to collect and dispose of solid waste hereunder shall be subject to all the terms and conditions of the Macon County Code of Ordinances as set forth in Chapter 50 of the Macon County Code of Ordinances and any amendments thereto which have been made or which may be made in the future.
10. J & B Disposal, Inc. agrees to make solid waste collection and disposal services available to all owners and/or occupiers of private residences and all business establishments within the areas of the County to which this Franchise Agreement applies. All owners and/or occupiers of private residences and all business establishments retain the right to haul their own solid waste using their own equipment and personnel, so long as they do not provide such services to others for compensation.
11. J & B Disposal, Inc. shall carry adequate liability insurance, with minimum limits of \$1,000,000.00 each occurrence and \$2,000,000.00 general aggregate for General Liability Insurance, and \$1,000,000.00 combined single limit for Automobile Liability Insurance, to protect against loss or damage by reason of negligent operation of its vehicles, or negligent actions by its agents or employees, which said insurance shall be issued so as to name Macon County as an additional insured. J & B Disposal, Inc. shall also provide Workers Compensation Insurance as required by law.
12. During the term of this agreement, J & B Disposal, Inc. shall maintain a business storefront presence within Macon County, North Carolina, and be open between 7:00 a.m. to 5:00 p.m. on Monday through Friday, and 7:00 a.m. to 1:00 p.m. on Saturday.
13. J & B Disposal, Inc. shall use enclosed collection vehicles for all subscription solid waste removal services provided for hereunder.
14. In the event of a change in ownership of J & B Disposal, Inc. involving a sale or transfer of more than fifty percent (50%) of the common stock of J & B Disposal, Inc., to shareholders other than current J & B Disposal, Inc., shareholder(s), or in the event of a merger of J & B Disposal, Inc. with any other company or entity, where J & B Disposal, Inc. is not the surviving entity, J & B Disposal, Inc. must notify the County in writing as far in advance as is practical of such sale, transfer, or merger. The written consent of the County to such sale, transfer, or merger, shall be required and if not given, the County shall have the option to terminate this Franchise Agreement. Such consent shall not be unreasonably withheld. In the event of a change in ownership the new owners shall be bound by the terms of this Franchise Agreement. If the County does not approve the change in ownership and elects to terminate this Franchise Agreement, J & B Disposal, Inc., and the new ownership shall be obligated to abide by the terms of this Franchise Agreement for a period of up to twelve months at the discretion of the County.
15. This Franchise Agreement shall be in place and lieu of any other presently existing Franchise Agreements for the collection and disposal of solid waste in Macon County, and all such other presently existing Franchise Agreements for the collection and disposal of solid waste in Macon County for such Franchise Agreements are hereby terminated, cancelled, and abolished.

IN WITNESS WHEREOF, the parties have executed this Franchise Agreement in duplicate originals, the day and year first above written.

Macon County

By: _____
James Tate, Chairman
Macon County Board of Commissioners

ATTEST: _____
Derek Roland, Clerk
Macon County Board of Commissioners

(COUNTY SEAL)

J & B Disposal, Inc.

By: _____
Bonita Hamstra, President

ATTEST: _____
Secretary of J & B Disposal, Inc.

(CORPORATE SEAL)

EXHIBIT A

NORTH CAROLINA
MACON COUNTY

UNCONDITIONAL GUARANTY OF PERFORMANCE

The undersigned, Bonita Hamstra, unconditionally guarantees the performance of and the payment of any and all losses, damages, costs, including attorney's fees, arising from or in anywise related to J & B Disposal, Inc.'s failure to comply with the terms and conditions of the Exclusive Franchise Agreement for the Collection and Disposal of Solid Waste Outside of the Incorporated Cities and Towns within Macon County, North Carolina, a copy of which is attached hereto and incorporated herein;

With respect thereto, the undersigned does hereby unconditionally guarantee the performance and payment of any and all of said losses or costs, including attorney fees, which may from time to time be owing, due or payable pursuant to said Exclusive Franchise Agreement for the Collection and Disposal of Solid Waste Outside of the Incorporated Cities and Towns within Macon County, North Carolina, together with all interest, penalties, attorney fees, premiums or costs assessed in connection therewith, in the event of default in performance by J & B Disposal, Inc.

The undersign waives notice of acceptance of this guaranty, acknowledges herself as fully bound by all provisions of said Agreement and expressly agrees to pay all amounts owing thereunder by reason of default therein, upon demand, without requiring any action or proceeding against J & B Disposal, Inc. or any foreclosure or action against any collateral, if any, secured by said Agreement.

The undersign further authorizes the said J & B Disposal, Inc. without notice to guarantor, to obtain an extension or any extensions in whole or in part, and waive protest, demand, and notice of protest; and the undersigned does further hereby consent that any collateral to said Agreement, if any, in whatever form, may be exchanged or surrendered, either wholly or in part, free or under any agreement from time to time, all without notice to or further assent from the undersigned who will remain fully bound upon this guaranty notwithstanding any such changes, surrender or extensions.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand and seal, this agreement being executed and delivered on the date upon which I have set my hand and seal, the Guarantor adopting as her seal, the word "seal" appearing beside her signature, for the purpose of entering into and delivering this instrument under seal.

Date

Guarantor: Bonita Y. Hamstra
Address: 131 Franklin Plaza PMB 101
Franklin, NC 28734

Witness