

STATE OF ALABAMA)
COUNTY OF BALDWIN)

LICENSE AND USE AGREEMENT

THIS LICENSE AND USE AGREEMENT (“Agreement”) is entered into effective the 18th day of June, 2019 (the “Effective Date”), between the BALDWIN COUNTY COMMISSION, the duly formed governing body in and for Baldwin County, Alabama (the “County”), and BALDWIN COUNTY SEWER SERVICE, LLC, an Alabama limited liability company (“BCSS”):

WHEREAS, the County owns and operates Magnolia Landfill, which is located at the intersection of County Road 28 and County Road 49 in Baldwin County, Alabama (the “Landfill”);

WHEREAS, BCSS provides sewer services throughout Baldwin County, Alabama;

WHEREAS, BCSS desires to construct a lift station upon a certain 40’x40’ portion of land located in the northwest corner of the Landfill and identified herein; and

WHEREAS, the County is willing to grant access to and non-exclusive use of said 40’x40’ portion of the Landfill identified herein for the construction and installation of a lift station in exchange for the monetary consideration expressed herein; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the County and BCSS do hereby agree as follows:

1. Exclusive License. This Agreement is intended to, and shall, provide an exclusive license to BCSS for the construction and installation of a lift station (the “Lift Station”) on that certain 40’x40’ portion of land identified as “Lift Station Area” on Exhibit “A” attached hereto and incorporated herein.

2. Consideration. BCSS’s consideration to the County for this Agreement shall be a payment to the County of FIFTEEN THOUSAND AND NO/100 DOLLARS (\$15,000.00) within two (2) days of the Effective Date and ONE AND NO/100 DOLLAR (\$1.00) payable every year thereafter on the 18th day of June during the term of this Agreement.

3. Term. The term of this Agreement shall be for **thirty (30) years** from the Effective Date with automatic renewal terms of ten (10) years each unless cancelled in writing by one or more parties no later than 180 days prior to the end of the term then in effect, unless terminated sooner in accordance with Paragraph 9 below.

4. Use of the Lift Station Area.

A. The Lift Station Area shall be used by BCSS for the sole purpose of constructing, installing, operating, maintaining, repairing, disconnecting, replacing and removing the Lift Station.

B. The County retains and shall have the right to use the Lift Station Area as it deems necessary as long as such use is temporary and does not result in any improvements or obstructions that interfere with BCSS's use and operation of the Lift Station and the Lift Station Area, including without limitation BCSS's maintenance, replacement, and cleaning of the Lift Station which may require the entire Lift Station Area for material, trucks, employees, pumps, generators, or other equipment.

C. During the term of this Agreement, BCSS hereby covenants and agrees to comply with all federal, state and municipal laws, orders, rules and regulations applicable to BCSS's construction, installation, ownership, operation, use, maintenance, repair, disconnection, replacement and/or removal of the Lift Station.

5. Construction. BCSS shall: (a) perform all construction of the Lift Station and work in a safe and workmanlike manner; (b) obtain, prior to the commencement of any construction and work, all necessary federal, state and municipal permits, licenses and approvals; and (c) keep the Lift Station in good order, repair and condition. The Lift Station shall be constructed at the sole cost and expense of BCSS, with BCSS being responsible for the means and methods of such construction.

6. Ownership of Lift Station. BCSS shall construct, install, own and maintain the Lift Station described in this Agreement in accordance with all applicable regulations and codes. All parts of the Lift Station shall remain the personal property of BCSS, and shall not be considered a fixture to the real estate. At the termination of this Agreement, BCSS shall at its option or upon the request of the County remove, at BCSS's sole cost and expense, the Lift Station and all improvements and repair all damage caused by such removal, reasonable wear and tear excepted.

7. Insurance. During the term of this Agreement and any extension or renewal, BCSS shall maintain, at its sole expense, commercial general liability and property damage insurance with respect to the use and operations allowed pursuant to this Agreement with policy limits of \$1,000,000.00 for protection and indemnity insurance, excess limits of \$1,000,000.00 and total protection and indemnity insurance limits of \$1,000,000.00. Such policy shall name the County as an additional insured, and shall provide that the insurer may not change or cancel such insurance without giving 30 days prior written notice to the County. BCSS shall promptly provide the County with a certificate of insurance reasonably acceptable to the County and complying with the aforementioned requirements.

8. Waiver and Indemnification.

A. BCSS, for itself and its employees, agents, representatives, successors and assigns, waives and releases the County from any claims for injury to persons (including death) or damage to any real or personal property by reason of the operation or condition

of the Landfill, including environmental conditions, or by reason of designs, improvements, work, property, product, and services of BCSS or otherwise related to or arising out of this Agreement. During the term of this Agreement, BCSS shall defend, indemnify, and hold the County, including its Commissioners, officers, directors, employees, representatives and agents, harmless from and against all demands, actions, and claims of any description whatsoever for property damage, personal injury (including death), actions in trespass, and all other claimed loss, injury or damage, including, but not limited to, attorneys' fees and costs, arising out of relating to or resulting from any and all acts or omissions of BCSS, its officers, directors, employees, agents or contractors related to this Agreement or BCSS's acts or omissions. BCSS's agreement to defend, indemnify and hold the County harmless specifically includes, without limitation, any and all losses, damages, claims, costs, fees, penalties, charges, taxes fines or expenses, including attorney's fees, arising out of any claim asserted by any person, entity, agency, organization or body against BCSS, as a result of the use, storage, disposal, discharge of any "Hazardous Substances" or "Hazardous Wastes" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S. 9602(14), pollutants or contaminants as defined in CERCLA, 42 U.S.C. 9604 (A) (2), or hazardous wastes as defined in the Resource Conservation and Recovery Act ("RCRA"), 43 U.S.C. Section 6903 (5), or other similar applicable federal or state laws and regulations.

B. All representations, assurances, payment obligations and indemnity obligations contained within this Agreement shall survive and exist beyond the date of termination or expiration of this Agreement.

C. Nothing contained herein shall be construed to limit or modify the laws of the State of Alabama as the same may apply to the County regarding any immunity, absolute or qualified, or limitations of liability to which the County is otherwise entitled by law.

9. Termination. Either party may terminate this Agreement upon a breach of any obligation hereunder that remains uncured for a period of thirty (30) days following notice of termination to the defaulting party.

10. Notice. All notices required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the addresses set forth below. Notice shall be deemed to be served upon deposit in an office of the United States Postal Service, or successor governmental agency, registered or certified mail, return receipt requested, or upon receipt by a reputable overnight courier service (such as Federal Express), receipt requested.

To BCSS:

Baldwin County Sewer Service, LLC
c/o Gerry McManus
14147 Underwood Road
Summerdale, AL 36580

To the County:

Baldwin County Commission
c/o Chairman
312 Courthouse Square, Suite 12
Bay Minette, AL 36507

11. Miscellaneous.

A. Entire Agreement: This Agreement represents the entire and integrated agreement between the County and BCSS and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.

B. Both Parties Contributed Equally to the Agreement: This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both the County and BCSS have contributed substantially and materially to the preparation of this Agreement.

C. Severability: Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

D. Failure to Strictly Enforce Performance: The failure of either party to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute a default or be construed as a waiver or relinquishment of the right of a party to thereafter enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

E. No Assignment: Neither this Agreement nor any interest herein shall be assigned, transferred or otherwise encumbered without a prior written agreement providing for such assignment, transfer, or other encumbrance, signed by the parties.

F. No Agency: This Agreement shall not give rise to the creation of an agency relationship or a partnership relation between the parties hereto.

G. Choice of Law; Venue: The parties acknowledge and agree that this Agreement shall in all respects be governed by the law of the State of Alabama, including without limitation all issues relating to capacity, formation, interpretation, and available

remedies, without regard to Alabama conflict of law principles. Proper venue for any action arising hereunder shall lie in Baldwin County.

H. Non-Waiver of Default: the failure of the County to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Agreement shall not constitute or be construed as a waiver or relinquishment of the rights of the County to enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

I. Counterparts: This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date first written above.

COUNTY:

BALDWIN COUNTY COMMISSION

By: _____
CHARLES F. GRUBER
Its: Chairman

ATTEST:

WAYNE DYESS
County Administrator

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that CHARLES F. GRUBER, as Chairman of the Baldwin County Commission, and WAYNE DYESS, as County Administrator, of the Baldwin County Commission, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they, as such officers and with full authority, executed the same voluntarily for and as the act of said Baldwin County Commission.

Given under my hand and official seal this the _____ day of _____, 2019.

Notary Public
My Commission Expires: _____

BCSS:

BALDWIN COUNTY SEWER SERVICE, LLC

By: _____

Its: _____

STATE OF ALABAMA)
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____, as _____ of Baldwin County Sewer Service, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the _____ day of _____, 2019.

Notary Public
My Commission Expires: _____