**Solid Waste Service Agreement**

 **by and between**

 **Northeast Maryland Waste Disposal Authority**

 **and**

 **[COMPANY]**

 **to Provide**

**Transfer Station Operations and**

**Transportation and Disposal of Solid Waste and Sludge**

**for Carroll County, Maryland**

 **Dated as of:**

**[DATE]**

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**THIS SERVICE AGREEMENT** is made as of [DATE] between the Northeast Maryland Waste Disposal Authority (the "Authority") and [COMPANY] (the "Company").

**NOW, THEREFORE**, in consideration of the mutual promises and covenants of each to the other contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties to this Service Agreement agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions .

Capitalized terms used in this Agreement have the meanings set forth in Schedule 2.

Section 1.2 Rules of Interpretation .

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) All reference in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.

(b) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(d) The table of contents and the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.

(e) References to agreements or contracts include all amendments, modifications and supplements thereto.

ARTICLE II

OBLIGATIONS RELATING TO OPERATIONS OF TRANSFER STATION, TRANSPORTATION AND DISPOSAL OF WASTE, AND TRANSPORTATION AND DISPOSAL OF SLUDGE

Section 2.1 Operations & Maintenance of Transfer Station.

1. The Company will be responsible for the operation and maintenance of the Waste area of Northern Landfill Transfer Station (“Transfer Station”) related to the loading, transfer, and disposal of Waste delivered to the Waste area of Transfer Station. Operation and maintenance of the Transfer Station includes management of tipping floor operations and management of the Waste loading operations. The Company Representative shall be available daily to ensure the day-to-day coordination of activities. Waste delivered to the Transfer Station by the Authority shall be loaded by the Company into Company trailers. The Company is responsible for all deliveries received on the tipping floor of Waste area of Transfer Station. The Company shall notify the County promptly if the Company receives any full or partial Recovered Material deliveries. The Company shall cooperate and provide reasonable assistance to the Authority and its contractors related to Recovered Material inadvertently delivered to the Waste area of Transfer Station. Recovered Material shall be accepted and managed by the Authority and its contractor(s) on the tipping floor of Recovered Material area of Transfer Station.
2. The Company is responsible for the neat and orderly appearance of the Transfer Station and surrounding areas at all times, including the clean-up of Waste which is spilled or blown as a result of the tipping and reloading process. The Company shall keep the Transfer Station and surrounding areas free from accumulation of wastes or rubbish caused by transfer operations (e.g., the jockeying of trailers to and from the Transfer Station, tarping activity, the movement of trailers to and from the Transfer Station) and shall maintain and operate its equipment so as to prevent the Transfer Station from becoming unsightly or a nuisance under Applicable Law. The Company will take measures to minimize waste in the surrounding areas of the Transfer Station. Such measures will include, and not be limited to, tarping all trucks when leaving the Transfer Station and periodic litter pick-up in and around the Transfer Station and on the road leading from the scale house to the Transfer Station. The Company shall cooperate with the Authority to ensure that all Waste on the Transfer Station tipping floor and surrounding areas are placed in a trailer and covered prior to leaving the Transfer Station at the end of each operating day. Except for Uncontrollable Circumstances or situations beyond the Company’s reasonable control, if during any 60 day period the Company leaves Waste on the tipping floor or surrounding areas of the Transfer Station at the end of the day, the Authority will assess Loading Damages per Section 6.10.
3. Notwithstanding anything to the contrary in this Agreement, the Company shall not be liable in any way for ordinary wear and tear to the Transfer Station, including but not limited to all Transfer Station floor surfaces, and roadways and curbing into and out of the Transfer Station. The Company will be liable for damages caused by the Company, its subcontractor(s) and or agent(s), if the damages are not caused by ordinary wear and tear.
4. The Company shall finalize an Authority approved Operations and Maintenance (O&M) Plan prior to Operations Date. Roadway, utilities, building structures, and safety systems at the Transfer Station shall be used in a manner that helps ensure that peak operating conditions are sustained. Shoulder erosion, tire wear and damage caused by Company operations shall be repaired by the Company at its sole cost and expense.
5. The Authority shall maintain the Transfer Station including, without limitation, the building, access roads, scale facilities, parking areas and related yard areas at its sole cost and expense. Such maintenance shall include, but shall not be limited to, structural maintenance, snow and ice removal, landscape maintenance, maintenance of signs and calibration of the landfill scales. The Authority's maintenance activities shall be conducted in a manner so as not to cause any material adverse effect on the operation of the Transfer Station by Company.
6. The Authority shall be responsible for providing, at its sole cost and expense, all necessary utilities for the operation of the Transfer Station including, without limitation, heating, cooling, electricity, water, sewer, and sanitary facilities. All utility charges incurred in the operation of the facility shall be invoiced from the utilities directly to the Authority and shall be timely paid directly by the Authority. The Company shall have no responsibility for any such utility charges, unless such charges reflect a repair or a burden as the result of the Company’s negligent act.
7. Upon reasonable notification from the Authority, the Authority and the County shall have the right to perform a complete inspection of the general mechanical safety condition of all vehicles and Transfer Station equipment at reasonable times during the term of the Agreement. The Company shall have the right to be present during the inspection. Should any vehicle or equipment, when inspected, not comply with the requirements of the applicable local and state inspection regulations, the Authority shall require such vehicle or equipment to meet these standards before it is placed back in service. The Company shall provide backup equipment as needed for Company supplied equipment. In the case of a breakdown of a major piece of Company supplied equipment critical to operation, the Company shall provide backup within 48 hours.
8. The County owns and has available an office trailer with a cooling system for Company use. This trailer shall be shared by employees of Company and employees of company responsible for recycling area of Transfer Station. The trailer will be maintained by the County. The Company will be liable for any damages it causes to the interior or exterior of the trailer.
9. If the Company fails to maintain the Transfer Station as required under this Agreement, and any other applicable federal, state, or local regulations, upon 48 hours prior notice to the Company, the Authority may make take the required corrective measures and the Authority may recover its costs from the Company as a deduction from amounts owed to the Company.
10. Payment of penalties or fines assessed by the Maryland Department of the Environment or other regulatory agency or body, for Company operations not in compliance with Federal, State, or local permits or requirements, is the sole responsibility of the Company.
11. The Company shall use commercially reasonable efforts to minimize odors associated with Waste. The Company shall respond promptly to all odor complaints.
12. The Company shall use commercially reasonable efforts to minimize noise from Transfer Station equipment by maintaining such equipment properly and complying with all federal, state and local laws, regulations, rules, ordinances and orders concerning noise control.
13. Protection of buildings, structures, equipment and the site from fires shall be accomplished through cooperative efforts by the County and the Company through coordination of qualified fire prevention programs. The Company shall be responsible for fire safety procedure training to its employees operating the Transfer Station. The Company shall provide fire extinguishers at the Waste area of the Transfer Station. In addition the Company shall provide appropriate fire extinguishers for all its equipment and vehicles and ensure their operability.
14. The Company is responsible for maintaining and repairing all Company supplied equipment and fire suppression systems on equipment that it uses to perform services under this Agreement.
15. The Company shall establish an accident prevention and safety policy which shall be incorporated in the Operations and Maintenance Manual for its Service. Such policy shall emphasize the following goals:
* To furnish a workplace free from recognized hazards, which, could cause death, injury or illness.
* To comply fully with Applicable Law regarding employee safety and health.
* To provide a professional staff to support safety and health factors even when such factors compete with economic factors.
* To hold each employee accountable for the safe performance of his activity and regularly measure his achievement in controlling accidents and losses.
* To train employees in safety procedures and required compliance with safety regulations and procedures.
* To develop and use better methods for reducing human and economic costs of accidents and other losses.
* To monitor progress towards a safer and healthier work environment basis.
1. The Company shall establish a plan for the identification, handling and disposal of Unacceptable Waste and Hazardous Waste discovered at the Transfer Station which shall be incorporated in the Operations and Maintenance Manual. The Company shall segregate and isolate all Unacceptable Waste and Hazardous Waste discovered at the Transfer Station in accordance with Applicable Law. The Authority shall be solely responsible for all costs associated with the preparation, loading, and disposal of Unacceptable Waste and Hazardous Waste identified at the Transfer Station.
2. A copy of the Operations and Maintenance Plan shall be kept on site at the Transfer Station at all times.
3. Upon request of the Authority Representative or of the County’s Representative, the Company shall meet with the Authority or County.
4. Services requested under this Agreement shall begin on July 1, 2018 (Operations Date).
5. The Authority will provide the weighing of all Company transfer trailers. The Transfer Station has an area for the spotting of trailers (full or empty) overnight to ensure continuity of service for Waste transfer. The Company shall not stage more than five (5) full trailers overnight. Loaded trailers must be covered and may be stored at a staging area a maximum of one (1) business day.

## **Section 2.2 Acceptance, Processing, Transportation, and Disposal of Waste.**

1. The Company shall accept, transport, and dispose of Acceptable Waste delivered to the Transfer Station, as described in this Agreement and in the documents identified in Schedule 1. Except as set forth in this Agreement, the Company has sole responsibility for the provision and operation of all facilities, personnel, vehicles and sites necessary to provide the Waste Disposal Service.

Beginning on the Operations Date and continuing throughout the term of this Agreement the Company shall provide the Waste Disposal Service in accordance with this Agreement and Applicable Law.

1. The Company is obligated to accept Waste at the Transfer Station, and transport and dispose of the Acceptable Waste at an Authority approved and permitted Disposal Facility.
2. The Company will be responsible for the loading of Acceptable Waste into the Company’s trailers. The Company shall provide labor and equipment necessary to load, contain, jockey, transport, and dispose of the Acceptable Waste.
3. The Authority will direct Waste to the Transfer Station. It shall be the Company’s responsibility to load and transport the Acceptable Waste to the permitted Disposal Facility.

(e) The Authority guarantees [**40,000 or 50,000**] tons of Acceptable Waste per Contract Year delivered to the Transfer Station for acceptance by the Company. The Authority does reserve the right to bypass waste deliveries direct to the Northern Landfill.

Section 2.3 Acceptance Processing, Transportation and Disposal of Sludge.

1. The Company shall accept, transport, and dispose of Sludge generated at the County owned Sludge Generator Facilities, as described in the Agreement and in the documents identified in Schedule 1. The Authority will make available to the Company all Sludge generated at the Sludge Generator Facilities, and the Company will transport and dispose of all Sludge, which the Authority makes available to the Company. The Authority may direct the Company to transport the Sludge for County disposal at the County’s Northern Landfill.
2. The Authority will be responsible for the operations of the Sludge Generator Facilities including the jockeying and loading of Sludge into Company owned or municipal owned trailers or containers.
3. Minimum Sludge Generator Facility Requirements of Company:
	1. Westminster Sludge Generator Facility: The Company shall provide a jockey truck and trailer for Authority use onsite. The Company shall be responsible for providing fuel for the jockey truck.
	2. Mount Airy Sludge Generator Facility: The Company shall provide, at minimum, either a 30 cubic yard roll-off container or a trailer for Authority use. If the Company provides a trailer in lieu of a 30 cubic yard roll-off container, the Company shall provide a jockey truck for Authority use. The operator of the Sludge Generator Facility will provide the fuel for the jockey truck.
	3. Manchester Sludge Generator Facility: The Company may use the roll-off containers provided by the County or the Company may provide its own roll-off containers for the transfer and disposal of Sludge. The Company is not required to provide a jockey truck.
4. The Authority makes no representation or guarantee as to the quantity of Sludge generated by the Sludge Generator Facilities or provided to Company for transportation and disposal.
5. The Company shall coordinate with the operators of the Sludge Generator Facilities as needed to provide for the Sludge transfer and disposal service.
6. The Company shall accept available Sludge at the Sludge Generator Facilities, transport, and dispose of (or process for beneficial use) the Sludge at an approved permitted Disposal Facility, Alternate Facility, or at the County’s option, transport the Sludge to the County owned Northern Landfill for disposal.
7. The Company shall provide labor and equipment necessary to contain, jockey as needed, transport, and process all Sludge made available to Company by the Authority. The Company may stage trailers or containers at the Sludge Generator Facilities upon approval from the County. The Company shall not stage municipal owned containers at the Disposal Facilities for more than two business days unless approved by the operators of the Sludge Generator Facilities.
8. All trailers and containers used for the transfer of Sludge shall have plastic liners.
9. The Company shall be responsible for maintenance of their jockey trucks used in performance of Service. Except for normal wear and tear, costs related to jockey truck damages caused by Sludge Generator Facility operators shall be the Authority’s responsibility. The Company shall provide the Authority with written notice within 48 hours of any damage caused by Sludge Generator Facility operators. The Company further shall provide the Authority with appropriate documentation of any damages caused by Sludge Generator Facility operators and required jockey truck repairs. Reasonable repair costs for the jockey trucks will pass through to the Authority.
10. All trucks and trailers shall be suitable for the transfer of Sludge and in compliance with Applicable Law. The Company shall prepare all permitting documentation as required by Applicable Law for the acceptance of Sludge at the Sludge Generator Facilities and the transportation and disposal of Sludge at the Company’s Disposal Facility. The Authority will provide reasonable assistance with permitting.
11. The Company may store trailers and/or roll-offs at each waste water treatment plant upon written approval from the Authority.

Section 2.4 Refusal of Deliveries .

The Company must accept deliveries of Acceptable Material delivered at hours established under Section 2.5. Acceptable Material rejected by the Company for any reason other than as permitted pursuant to this Section 2.4, Section 2.13 or any other provision of this Agreement constitutes Wrongfully Diverted Material. Wrongfully Diverted Material is subject to Alternate Material Damages as described in Section 6.9.

Section 2.5 Receiving Hours .

(a) The Transfer Station Receiving Hours and Sludge Generator Facilities Receiving Hours are defined in Schedule 2.

(b) Waste will not be delivered to the Transfer Station by the Authority and the Authority will not load Sludge at the Sludge Generator Facilities on the following holidays. The Authority shall designate the dates on which holidays are to be observed.

New Year's Day Labor Day

Memorial Day Thanksgiving Day

Independence Day Christmas Day

Section 2.6 Scales and Weighing Records .

1. For Waste:

The Authority shall operate the main Northern Landfill scales and shall submit to Company, on a weekly basis, weight tickets or other appropriate documentation sufficient to reliably determine the tonnage of Waste delivered to and transferred from the Transfer Station. The Authority shall be responsible for collecting fees from haulers who deliver Waste to the Transfer Station. The Authority shall weigh all Company vehicles arriving at the Transfer Station on the County’s owned and operated in-bound Northern Landfill scale and departing from the Transfer Station on the County’s owned and operated out-bound Northern Landfill scale. The Authority’s record shall include the following: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck or permit number).

The Authority may require each vehicle operator to present to the scale operator a card, permit, identification or license. The Authority may require from time to time the revalidation of the tare weight of any vehicle or the reweighing of unloaded vehicles.

If the permanent vehicle scales at the Northern Landfill are not working properly or are being tested, the County may use portable scales at the Northern Landfill. If portable scales or other alternate weighing facilities and equipment meeting the requirements of Applicable Law are not available, a "scale outage" will occur, and the Company shall record weights at the Company’s Disposal Facility or Alternate Facility.

The Authority, at its expense, shall obtain approval of, inspect and test the vehicle scales at the Northern Landfill as required by Applicable Law but no less frequently than once per year. At the written request of the Company, the Authority, in the presence of the Company Representative, shall make additional tests of all vehicle scales. The cost of these additional tests shall be borne by the Company if the scales meet the accuracy requirements of Applicable Law.

If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on scale readings made within thirty days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

The Authority shall transmit by email on a weekly basis, the daily scale records to the Company.

The Authority shall keep electronic records of weight tickets for at least three years. Such records shall be available for inspection by the Company upon written request.

The Company shall track the transportation and disposal of the Waste each month.

The Company will provide to the Authority, as part of Section 3.3 for invoicing, electronic copies of all weigh tickets from the Disposal Facility and/or Alternate Facility as part of the monthly invoicing. The tickets shall show, at a minimum, the truck number, driver name and or ID, date and time of delivery, name and address of the disposal site, and tonnage.

1. For Sludge Generator Facilities:

If Sludge is being transferred and disposed of at the Company’s Disposal Facility, the Company shall weigh all trailers used for the transfer of Sludge on the Company owned and operated inbound and outbound scales located at the Disposal Facility or Alternate Facilities and shall submit to the Authority and County on a weekly basis weight tickets or other appropriate documentation sufficient to reliably determine the tonnage of Sludge transferred from the Sludge Generator Facilities. The Company’s record shall include the following: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck or permit number).

If the permanent vehicle scales at the Disposal Facility or Alternate Facility are not working properly or are being tested, the Company may use portable scales at the Disposal Facility or Alternate Facility. If portable scales or other alternate weighing facilities and equipment meeting the requirements of Applicable Law are not available, a “scale outage” will occur, and the Authority shall use the difference between the stored gross weight differential of the inbound (empty) and outbound (loaded) trailers for the two weeks prior to the scale outage for the Company’s vehicles to determine the billable load of Sludge from the applicable Sludge Generator Facility or Facilities. The Company’s scales shall be tested and calibrated as required by Applicable Law at least once per year or as requested by the Authority.

At the written request of the Authority, the Company shall make additional tests of all vehicle scales. The cost of these additional scales shall be borne by the Authority if the scales meet the accuracy requirements of Applicable Law. If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on scale readings made within thirty (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

If Sludge is being transferred to the Northern Landfill, the Authority shall weigh all trailers used for the transfer on the County owned and operated inbound and outbound scales located at the Northern Landfill and shall submit to the Company, on a weekly basis, weight tickets or other appropriate documentation sufficient to reliably determine the tonnage of Sludge transferred from the Sludge Generator Facilities. The Authority’s record shall include the following: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck or permit number).

If the permanent vehicle scales at the Northern Landfill are not working properly or are being tested, the Authority may use portable scales at the Northern Landfill or waste water treatment facilities.

The Company shall keep copies of all weight tickets for at least three years. Such records shall be available for inspection by the Authority and County upon written request.

The Company shall be in compliance with all Applicable Law, including any permits and approvals required to accept and transfer Sludge from the Sludge Generator Facilities and to dispose of Sludge at the Disposal Facility or Alternate Facility. The Company will maintain all records and submit all reports required by all permits necessary for the transportation and disposal of Sludge.

Section 2.7 Manner of Deliveries; Vehicle Size; Rules and Regulations .

The Company shall comply with the rules and regulations for the Acceptance Facilities that are provided by the Authority, which include regulations regarding vehicular movement on the site of Acceptance Facilities and the County roads leading to and from the Acceptance Facilities and operations of Transfer Station. These regulations also include the observance of posted speed limits on all roads used for the Service.

## **Section 2.8 Subcontractors; Performance Security.**

(a) The parties acknowledge that the dependable operation and maintenance of the Facilities providing Service under this Agreement is in the interests of the parties to this Agreement. The Company shall not enter into or maintain any contract or subcontract with any person other than an Affiliate of the Company for any substantial portion of the operation, management or control of a Facility or the performance of any of the Company's obligations under this Agreement, not described in the documents identified in Schedule 1, without the prior written consent of the Authority.

(b) No contract or subcontract between the Company and any other person will affect the Company's obligation under this Agreement.

(c) Prior to the Operations Date the Company shall provide a Performance Bond or Letter of Credit (LOC) from a surety, insurance company, or financial institution acceptable to the Authority, covering the performance obligations of the Company under this Agreement. The Performance Bond or LOC shall be equal to the value of one year of services, and name the Authority and the County as beneficiaries. The Performance Bond or LOC shall be in the form set forth in Schedule 5. The Company shall provide the Performance Bond or LOC until released by the Authority. The Authority shall release the Performance Bond or LOC upon the Company’s completion of performance of its obligations under this Agreement or upon the earlier termination of this Agreement as long as the Company is not in default of any obligations under this Agreement and only to the extent the Performance Bond or LOC is not being drawn upon by the Authority.

(d) All contracts with subcontractors will be made available for review by the Authority upon request.

## **Section 2.9 Authority and County Access.**

The Authority and the County, and their respective agents, licensees and invitees may visit or inspect the operation during normal business hours, without notice, during the term of this Agreement. The Authority and the County, and their respective agents, licensees and invitees shall conduct visits to the Facilities in a manner that does not cause unreasonable interference with the Company's operations. The Authority and County shall provide a list of invitees for a tour (if other than Authority Representative or its designee, or the County Representative or its designee) to the Company for approval. The Company shall not unreasonably withhold approval for site visits.

The Company may require any Person on a Facility site to comply with its reasonable rules and regulations and to sign a statement agreeing (i) to assume the risk of the visit but not the risk of injury due to the intentional or negligent acts or omissions of the Company or any of its subcontractors, agents or employees and (ii) not to disclose or use any Confidential Information of the Company other than for the purpose for which it was furnished or, in the case of Authority or County employees and agents, except in accordance with Section 9.11.

Section 2.10 Regulatory Requirements.

The Company shall perform its obligations under this Agreement and operate the Facilities in accordance with all requirements of Applicable Law, regulations, and permits. The Authority will obtain or cause to be obtained all permits for the Northern Landfill, Transfer Station, and Sludge Generator Facilities. The Company shall obtain and maintain, or cause to be obtained and maintained, all permits and licenses required by Applicable Law to perform its obligations hereunder, provided that the Company will not breach its obligations under this Section if (i) the Company is contesting the Applicable Law in good faith by appropriate proceedings conducted with due diligence and the Applicable Law allows continued operation of the Facilities pending resolution of the contest or (ii) the Company is diligently seeking to comply with such Applicable Law or to obtain or maintain any such permit or license and Applicable Law allows continued operation of the Facilities.

Section 2.11 Equipment.

Equipment used to transport and dispose of Acceptable Material shall be provided by the Company. The Authority will not provide transport equipment. The Company's equipment must be suitable for the proposed transport method and must be rigid, durable, corrosion resistant, nonabsorbent, easily cleanable and suitable for handling with no sharp edges or other hazardous conditions. The Company's equipment must be capable of withstanding the hard use typically associated with handling the Acceptable Material, and must be designed, engineered and rated to perform satisfactorily and safely at all times in accordance with generally accepted waste industry procedures.

All of the vehicles proposed to be used for the performance of the transportation and disposal of Acceptable Material for this project must have a suitable water tight, leak proof, metal body designed for the collection of solid waste and have a suitable tightly fitting cover which shall be in place at all times, except when loading or unloading. The body shall be so mounted on the chassis that when fully loaded, the axle load shall fall within the maximum axle load limit prescribed by law. The Company will be responsible for any Acceptable Material falling out of the transfer vehicles on the grounds of the Acceptance Facilities and all public roads used for transportation of the Acceptable Material.

Section 2.12 Disposal Facilities.

Facilities shall, at a minimum be sited, designed, and constructed and available to receive Acceptable Material by the date the Company submitted a proposal to be awarded to this Service Agreement. Facilities shall be sited, constructed, operated, monitored, closed and otherwise maintained in a manner that is protective of human health and the environment and are operated in compliance with Applicable Laws.

If a Facility is located in a jurisdiction that is required to prepare a Comprehensive Solid Waste Management Plan (or its equivalent if the facility is located outside the State of Maryland) the plan of the receiving jurisdiction shall allow Acceptable Material import from other States to the Facility.

**Section 2.13** **Hazardous Waste and Unacceptable Waste delivered to Transfer Station.**

1. The Company shall provide during all operational hours, a trained spotter for the primary purpose of traffic control and to help prevent the delivery of Hazardous Waste or Unacceptable Waste. The Company shall inspect all material received at the Transfer Station for Hazardous Waste or Unacceptable Waste. If the Company identifies Hazardous Waste or Unacceptable Waste at the Transfer Station, the Company shall notify the County and Authority designated representatives within two (2) hours of Hazardous Waste or Unacceptable Waste being tipped and identified as Hazardous Waste or Unacceptable Waste.

(b) If Hazardous Waste or Unacceptable Waste is delivered to the Transfer Station by a third party, the Company shall be solely responsible to segregate and isolate the Hazardous Waste or Unacceptable Waste and attempt to identify the hauler and/or source of the Hazardous Waste or Unacceptable Waste and arrange for its immediate removal from the Transfer Station by that hauler and/or source. The Authority shall provide reasonable assistance in the identification of the hauler and/or source upon request by the Company. If the hauler and/or source of the Hazardous Waste or Unacceptable Waste cannot be identified by the Company, or the hauler/source refuses for any reason to remove immediately the Hazardous Waste or Unacceptable Waste, the Authority shall be solely responsible for all costs associated with the proper preparation, loading, and disposal of the Hazardous Waste or Unacceptable Waste. The foregoing shall not be considered to be a waiver of any claim the Company or the Authority may have against any third party responsible for the generation or delivery of the Hazardous Waste or Unacceptable Waste to the Transfer Station.

(c) If Hazardous Waste or Unacceptable Waste delivered to the Transfer Station is not identified until transferred to the Disposal Facility, or Alternate Facility, the Company shall segregate and isolate the Hazardous Waste or Unacceptable Waste at the applicable Facility.

The Company shall be responsible for all costs associated with the preparation, loading, and disposal of the Hazardous Waste or Unacceptable Waste identified at the Facility, including any costs incurred by the Company in initially segregating and isolating the Hazardous Waste or Unacceptable Waste at the Facility.

The foregoing shall not be considered to be a waiver of any claim the Authority or the Company may have against any third party responsible for the generation or delivery of the Hazardous Waste or Unacceptable Waste. The party responsible for the costs according to this subparagraph shall also be solely responsible for any penalty or fine assessed by any state or federal agency resulting from the delivery of the Hazardous Waste or Unacceptable Waste.

## **Section 2.14 Hazardous Waste and Unacceptable Waste from Sludge Generator Facilities.**

1. The Authority shall segregate and isolate all Hazardous Waste or Unacceptable Waste discovered at the Sludge Generator Facilities in accordance with Applicable Law. The Authority shall be solely responsible for all costs associated with the preparation, loading, and disposal of Hazardous Waste or Unacceptable Waste identified at the Sludge Generator Facilities.
2. If Hazardous Waste or Unacceptable Material delivered to the Sludge Generator Facilities is not identified until transferred to the Disposal Facility or Alternate Facility, the Company shall segregate and isolate the Hazardous Waste or Unacceptable Waste at the applicable Facility. If the Company can provide reasonable documentation sufficient to show that the chain of custody (e.g. hauling records for the material and receipt of the material at a facility permitted to receive the material sufficient to demonstrate that the Company had control of the material from the Sludge Generator Facilities to the Disposal Facility) of the Hazardous Waste or Unacceptable Material had not been breached in either the transportation or the disposal of the Sludge, then the Authority shall be responsible for all costs associated with the preparation, loading, and disposal of the Hazardous Waste or Unacceptable Waste, including any costs incurred by the Company in initially segregating and isolating the Hazardous Waste or Unacceptable Material at the Disposal Facility. If the Company cannot provide such documentation to show that the chain of custody of the Hazardous Waste or Unacceptable Material has not been breached, then the Company shall be responsible for all such costs associated with the preparation, loading, and disposal of the Hazardous Waste or Unacceptable Material.
3. The foregoing shall not be considered to be a waiver of any claim the Authority or the Company may have against any third party responsible for the generation or delivery of the Hazardous Waste or Unacceptable Waste. The party responsible for the costs according to this subparagraph shall also be solely responsible for any penalty or fine assessed by any state or federal agency resulting from the delivery of the Hazardous Waste or Unacceptable Material.

# **ARTICLE III**

# **PAYMENT PROVISIONS**

Section 3.1 Service Charges and Damages.

1. From and after the Operations Date, the Company may charge and collect from the Authority Service Charges for each ton of Acceptable Material accepted by the Company from the Authority for Transfer Station operations and the transfer and disposal of Acceptable Material hereunder. The calculation of the Service Charges will be determined as follows:

(i) Waste Service Charge

Waste Service Charge consists of the number of tons of Acceptable Waste received by the Company during the month multiplied by the Waste Service Fee. The Waste Service Fee includes the Waste Operations Fee plus the Waste Transportation Fee, plus the Waste Disposal Fee.

(ii) Sludge Service Charge

Sludge Service Charge consists of the number of tons of Sludge received by the Company during the month multiplied by the Sludge Service Fee. The Sludge Service Fee includes the Sludge Transportation Fee plus the Sludge Disposal Fee (if Sludge is being disposed at the Company’s Disposal Facility or Alternate Facility).

 The Service Charges shall be full and complete payment to the Company for the services provided under this Agreement. The Service Charges shall be paid in accordance with Section 3.3

 The County's designated scale (the County's landfill scale) shall be the basis for payment for the Acceptable Waste Material.

(b) The Authority may retain or set-off from any amounts due the Company, Alternate Material Damages, Loading Damages or damages to pay for repair of the facilities caused by the Company or the Company’s Sub-contractor(s). If the Company disputes any amounts owed, parties in good faith may attempt to resolve any dispute pursuant to Section 9.15 of Agreement.

(c) If, in a given month, the Authority has assessed damages pursuant to Section 3.1(b), and/or the company has incurred Approved Pass through Costs, the Service Payment for that month shall be paid pursuant to Schedule 3.

Section 3.2 Inflation Adjustor and Fuel Adjustment.

(a) Beginning on July 1, 2019 and each July 1 thereafter through the end of the term of the Agreement (and any extensions or renewals thereof), the “Inflation Adjustor” shall adjust the Service Fees set forth in Schedule 3 on an annual basis. The Inflation Adjustor shall be 75% of any increases in the Bureau of Labor Statistics' Consumer Price Index ("CPI"), CPI-U, Consumer Price Index Washington Baltimore Area, using the most recently reported index before each adjustment date.  The first adjustment shall compare the latest CPI index as of July 1, 2019 (May 2019) to the latest CPI index as of the Operations Date.  The second adjustment shall compare the latest CPI index as of July 1, 2020 (May 2020) to the latest CPI index as of July 1, 2019 (May 2019).  Thereafter, the adjustment shall be calculated by the latest index as of July 1 to the same index from twelve (12) months prior.

 The Inflation Adjustor shall be calculated as shown below. The resulting percent change shall be the CPI adjustment for the Contract Year and shall not exceed 1.03. The CPI to use is the CPI-U for the Washington-Baltimore Area (Washington-Baltimore All Items, November 1996=100 - CUURA311SA0).

 CPI for current period less CPI for previous period equals the index point change. Multiply the index point change by 0.75 and then divide that number by the previous period CPI and add 1 to equal the Inflation Adjustor. The Inflation Adjuster will be rounded at the second decimal place.

 The maximum Inflation Adjustor increase, for each one-year period, shall not exceed 1.03, or 3%.

 Example Timeline:

 Operations Date, July 1, 2018

 First CPI Adjustment, July 1, 2019

 Second CPI Adjustment, July 1, 2020

 Etc.

 Example Calculation:

 CPI for current period – 120.8

 CPI for the previous period – 117.2

 Index Point Change = 120.8-117.2 = 3.6

 Inflation Adjustor = (3.6x.75)/117.2+1 = 1.02

(b) Fuel Cost Adjustment: The fuel cost adjustment applies only to the transportation component of the Service.

1. The monthly fuel surcharge will be as follows:
	1. The threshold fuel price for the Agreement will be $3.25 per gallon.
	2. The fuel prices will be taken on the first Monday of the month for which the service will be provided. A fuel surcharge will be applied when the price of diesel fuel is greater than or equal to $3.26 per gallon on the weekly Central Atlantic diesel fuel price index (Weekly Central Atlantic (PADD 1B) No 2 Diesel Retail Sales by All Sellers) maintained by the United States Energy Information Administration (EIA).
	3. In calculating the fuel surcharge, the Authority will assume a transfer trailer load of 22 tons and transfer trailer fuel mileage of 4.5 miles per gallon.
	4. The fuel surcharge per ton will be the product of the Excess Cost above the threshold fuel price as outlined in chart (f) below and the fuel usage (gallons) per ton transferred. The roundtrip distance (miles) from the Northern Landfill to the Disposal Facility will be divided by 4.5 miles per gallon to determine the gallons of fuel used per load. The gallons of fuel used per load will be divided by 22 tons to get the gallons per ton. This “X” value, gallons per ton, is then multiplied by the appropriate Excess Cost factor from the chart (f) below to derive the additional cost per ton.
	5. Company may dispose of Carroll County Acceptable Material in any of the approved Disposal Facilities per Agreement. However, the Fuel Surcharge calculation for the roundtrip distance used for the calculation shall not be greater than [200] miles.

|  |  |  |
| --- | --- | --- |
| Diesel Fuel Cost | Excess Cost | Fuel Surchargeper Ton |
| Base + up to $0.10 | None | None |
| Base + $0.11 to $0.20 | $.10 | $0.10 \* X |
| Base + $0.21 to $0.30 | $.20 | $0.20 \* X |
| Base + $0.31 to $0.40 | $.30 | $0.30 \* X |
| Base + $0.41 to $0.50 | $.40 | $0.40 \* X |
| Base + $0.51 to $0.60 | $.50 | $0.50 \* X |
| Base + $0.61 to $0.70 | $.60 | $0.60 \* X |
| Base + $0.71 to $0.80 | $.70 | $0.70 \* X |
| Base + $0.81 to $0.90 | $.80 | $0.80 \* X |
| Base + $0.91 to $1.00 | $.90 | $0.90 \* X |
| Continues | Same formula | Same formula |

1. Example, Showing the fuel surcharge calculation:

If the Fuel Cost is $3.37 per gallon the calculation is as follows:

Calculation for X (gallons per ton)

Lord Farquhar Landfill: 150 miles round trip; (150/4.5 miles per gallon)/22 tons = 1.515 gallons per ton

New Fuel Price – Base Fuel (Threshold fuel price) = $3.37 - $3.25 = $.12 therefore an excess of $.10

$0.10 \* X = $0.10 \* 1.515 = 0.152 per ton charge (rounded to the third decimal point)

Section 3.3 Monthly Payments.

1. The County is designated as the Authority’s billing and collection agent. The Company shall provide the Authority and the County with a statement or invoice for all amounts payable as well as payments of the Service Charges by the fifth day of the calendar month immediately succeeding the calendar month for which service was provided.
2. Any amounts invoiced are due thirty days after receipt of the invoice. Each invoice shall set forth the Service Charges together with supporting documentation including scale records, sufficient to allow the recipient of the invoice to verify the Company's calculations of the Service Charges and other charges for such period. An Authority approved summary report shall be included with each invoice stating the tons of Acceptable Material per load, final disposal facility location per load, the date of disposal for each load, and any Unacceptable Material received and disposed. The Company must describe how Unacceptable Material was handled, including copies of any manifests required by Applicable Law. Approved Manifests for each load of Acceptable Material shall be sent electronically to the Authority and County with the invoice on a monthly basis.

All payments shall be delivered by hand or mailed first class, postage prepaid, by ACH or by wire transfer. Invoices shall be submitted to:

 Carroll County Maryland Department of Public Works

 Bureau of Solid Waste

 225 N. Center Street

 Westminster, MD 21157-5194

With a Copy to:

 Northeast Maryland Waste Disposal Authority

 Tower II, Suite 402

 100 South Charles Street

 Baltimore, MD 21201-2705

## **Section 3.4 Pass Through Costs.**

Pass through costs are any costs approved in writing, in advance of incurring the costs, by the County and the Authority.

## **Section 3.5 Late Payment**

## **.**

Any amounts payable under this Agreement by the Authority or the Company that are not paid when due in accordance with this Agreement shall, unless otherwise specifically provided, bear interest, to the extent permitted by Applicable Law, at the Late Payment Rate.

Section 3.6 Disputes as to Service Charges or Other Charges .

If the Company or the Authority disputes any amount owed or the amount of damages claimed by the Authority, the disputed portion of such adjustment is not effective until resolution of a dispute pursuant to Section 9.15 of this Agreement. Immediately after the resolution of a dispute, the party whose position does not prevail shall reimburse the other party for the aggregate amount of any underpayment or overpayment, plus interest at the Late Payment Rate.

Section 3.7 Books and Records, Audit and Reports .

(a) The Company shall maintain all books, records and accounts necessary to record all matters affecting the Service Charges, applicable damages or other amounts payable by or to the Authority or the Company under this Agreement, including, but not limited to, Certificates of Insurance for Required Insurance. The Company shall maintain all such books, records and accounts in accordance with GAAP. The Company's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the Company's dealings and transactions under this Agreement and other agreements and shall contain sufficient data to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. The Company shall make all such books, records and accounts available for inspection and photocopying by the Authority within five (5) business days of a written request by the Authority.

(b) The Company shall provide the Authority with the reports and information set forth in Schedule 4 of this Agreement at the times required by Schedule 4. The report format can be modified with the prior written approval of the Authority to reflect the facilities used by the Company to provide the Service.

(c) The Company certifies that all information the Company has provided, or will provide to the Authority, is true and correct and can be relied upon by the Authority in awarding, modifying, making payments, or taking any other action with respect to this Agreement. Any material false or misleading information is a ground for the Authority to terminate this Agreement for cause, without opportunity to cure, and to pursue any other appropriate remedy.

Section 3.8 Accounting .

Within sixty (60) days following June 30, 2019 and the end of each succeeding Fiscal Year, the Company shall provide an accounting to the County and the Authority of all payments made by the Authority for the Fiscal Year and all amounts payable to the Authority for such Fiscal Year.

# **ARTICLE IV**

# **PROCESSING CAPACITY REDUCTIONS**

# **AND UNCONTROLLABLE CIRCUMSTANCES**

Section 4.1 Effect of, and Changes Necessitated by, Uncontrollable Circumstances

(a) **Effect of Uncontrollable Circumstances .**

A party to this Agreement shall not be in default under this Agreement or liable to the other party for its failure to perform obligations under this Agreement, if such failure results from an Uncontrollable Circumstance. The Company and the Authority shall diligently overcome or remove such Uncontrollable Circumstance as soon as possible.

(b) **Changes Necessitated by Uncontrollable Circumstances .**

 (i) As soon as possible after an Uncontrollable Circumstance occurring on or after the Operations Date, the Company shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Company), and a description of the conditions preventing the performance of the Company's obligations.

 (ii) If a Facility is unavailable due to an Uncontrollable Circumstance, the Company must diligently pursue finding an Alternate Facility. Alternate Facilities must be approved by the Authority. Facilities presented in the Company’s proposal dated [DATE] are deemed approved by the Authority. The Company may seek pre-approval of an Alternate Facility.

 (iii) The Company shall answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and shall provide them with such information as they reasonably request. Upon the request of the Authority Representative, a consulting engineer, at the Authority's expense, may review the Company's estimate of the time schedule for repairing a Facility or the alleged causes of the Uncontrollable Circumstance.

Section 4.2 Change of Law.

1. Notwithstanding anything to the contrary set forth herein or otherwise, in the event of a change in Applicable Law that increases the cost of the Company’s services provided to the Authority hereunder, the Company shall provide written notice of such to the Authority, along with the Company’s proposed adjustment to the prices charged to the Authority for the services performed hereunder.
2. A change in the tip fee at the Northern Landfill does not constitute a change in law.  No Service Charge adjustment shall be made until the parties have agreed in writing to the adjusted Service Charge.  If the adjusted Service Fee exceeds 110% of the current Service Fee prior to the adjustment, the Authority may elect not to pay the adjustment, and may terminate the parties’ contract within ninety days of the notice supplied by the Company.

# **ARTICLE V**

# **INSURANCE AND INDEMNIFICATION**

Section 5.1 Types of Insurance for the Company .

The Company shall obtain and maintain, or cause to be obtained and maintained, the Required Insurance in the forms approved by the Authority. The Company shall procure and maintain any additional insurance coverage requested by the Authority that is available on commercially reasonable terms and such other insurance required by Applicable Law if the Authority agrees that the cost of the additional insurance may be added to the Service Charges. Insurance required to be obtained by the Company pursuant to this Section 5.1 is "Required Insurance" for all purposes of this Agreement.

Section 5.2 Delivery of Evidence of Insurance; Certain Required Provisions .

(a) Within ten business days of execution of this Agreement by the Authority, and at any time thereafter, the Company shall deliver to the Authority copies of all certificates of insurance for Required Insurance pursuant to the Notice Provision in Section 9.3 of this Agreement upon ten business days after receipt by the Company. Except for Worker's Compensation Insurance, each policy shall include the Authority and the County as additional insureds and require the insurer to provide the Authority sixty days' prior written notice of termination or cancellation under such Policy. The Company shall provide the Authority sixty days’ prior written notice of any material change in coverage or deductibles under such policy.

(b) The Company shall use only responsible insurance companies of recognized standing which are authorized to do business in Maryland as providers of all Required Insurance. The Company shall carry all Required Insurance with insurance companies rated at least "A-" or its equivalent by Best's Key Rating or another national rating organization. The Company may affect Required Insurance by endorsement of blanket insurance policies.

(c) The Company shall not take out separate insurance concurrent in form or contribution in the event of loss with Required Insurance if the existence of such insurance reduces amounts payable under Required Insurance. The Company shall immediately notify the Authority whenever it applies for any separate insurance and shall promptly deliver the policy or policies evidencing the separate insurance to the Authority.

(d) The Company shall submit to the appropriate insurer timely notices and claims of all losses insured under any Required Insurance policy which occur during the performance of the Services described herein, pursue such claims diligently and comply with all terms and conditions of Required Insurance policies. The Company shall promptly give the Authority copies of all notices and claims of loss and any documentation or correspondence related to such losses. The Company shall make all insurance certificates for Required Insurance, available for inspection and photocopying by the Authority on reasonable notice.

## **Section 5.3 Indemnification .**

Company agrees to indemnify, hold harmless and defend the Authority, the County and their respective officers, directors, members, employees and agents, from and against any and all liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys' fees), which they, individually or collectively, may incur, become responsible for or pay to the extent resulting from the death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, to the extent caused, in whole or in part, by a breach of any term, provision, representation or warranty of this Agreement or any negligent act or omission or willful misconduct of the Company, or its officers, employees or agents. This indemnification is not to be deemed as a waiver of any immunity which may exist in any action against the Authority or the County.

The Company shall also indemnify, defend, hold harmless and hereby waives any claim for contribution against the Authority, the State of Maryland, the County or their respective officers, directors, members, agents and employees, for any Environmental Claim to the extent arising from the performance of the Company or its officers, employees, agents or subcontractors, under this Agreement, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Agreement.

Notwithstanding the foregoing, the obligations of the Company in this Section 5.3 shall not apply to the extent that any such liabilities, claims, penalties, forfeitures, suits and the costs and expenses incident thereof (including costs of defense, settlement and reasonable attorneys’ fees) result or arise from or are caused by the gross negligent acts or omissions or willful misconduct of the Authority, the County or any of their respective officers, directors, members, employees or agents.

For purposes of this section of the Agreement, the following definitions apply:

**"Environmental Claim"** means any investigation, notice, violation, demand, allegation, action, suit, injunction, judgment, order, consent decree, penalty, fine, lien, proceeding or claim against the Company to the extent arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

**"Environmental Law"** shall mean any current or future Legal Requirement pertaining to (a) the protection of health, safety and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water or groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation or handling of, or exposure to, any Hazardous Waste or (e) pollution (including any release to air, land, surface water and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq., Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251, et seq., Clean Air Act, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601 et seq., Hazardous Wastes Transportation Act, 49 U.S.C. App. §§ 1801 et seq., Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq., Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq., National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) et seq., any similar, implementing or successor law, including, without limitation, laws enacted by the State of Maryland or any other State, and any amendment, rule, regulation, order, or directive issued thereunder.

**"Governmental Approval"** means any permit, license, variance, certificate, consent, letter, clearance, closure, exemption, decision or action or approval of a "Governmental Authority."

**"Governmental Authority"** means any international, foreign, federal, state, regional, county, or local person or body having governmental or quasi-governmental authority or subdivision thereof.

**“Hazardous Waste"** has the meaning given in Schedule 2 to this Agreement.

**"Hazardous Waste Activity"** shall mean any activity, event, or occurrence involving any Hazardous Waste, including without limitation, the manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, Release, threatened Release, abatement, removal, remediation, handling of or corrective or response action to any Hazardous Waste.

**"Legal Requirement"** means any treaty, convention, statute, law, regulation, ordinance, Governmental Approval, injunction, judgment, order, consent decree, permit, Notice of Violation (NOV), or other requirement of any Governmental Authority.

**"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks or other receptacles containing or previously containing any Hazardous Waste.

# **ARTICLE VI**

# **DEFAULT AND TERMINATION**

Section 6.1 Remedies for Default .

(a) If the Authority breaches any of its obligations under this Agreement, the right of the Company to recover damages ordinarily constitutes an adequate remedy. Therefore, the Company may not terminate its obligations under this Agreement for cause or any breach unless an Event of Default (as defined in Section 6.3 of this Agreement) on the part of the Authority has occurred and is continuing.

(b) The Company acknowledges that a breach of this Agreement or an Event of Default by the Company entitles the Authority to recover, to the extent proven, all of its damages, as set forth in this Agreement, caused by such default or Event of Default, as well as any other remedy provided by this Agreement or by law for breach or failure to perform.

Section 6.2 Events of Default by the Company .

Each of the following constitutes an Event of Default on the part of the Company.

(a) The failure or refusal by the Company to fulfill any of its material obligations to the Authority in accordance with the Contract documents as described in Schedule 1, unless such failure or refusal is excused or justified pursuant to this Agreement. No such failure or refusal on the part of the Company shall constitute an Event of Default unless and until:

(i) The Authority has given written notice to the Company stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exist that shall, unless corrected, constitute a material breach of this Agreement on the part of the Company and that give the Authority a right to terminate its obligations to the Company under this Agreement for cause under this Section unless such default is corrected within a reasonable period of time; and

(ii) the Company has neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (a reasonable period of time, for purposes of this paragraph, shall in any event be not less than thirty Business Days from the date of the notice given pursuant to clause (i) of this Section for any obligation other than one related to a failure by the Company to accept Acceptable Material pursuant to the terms of this Agreement, for which obligation a reasonable period of time shall in any event be not less than five Business Days from the date of the notice given pursuant to clause (i) of this Section 6.2(a)), provided that if the Company has commenced to take reasonable steps to correct such default within such reasonable period of time, the default shall not constitute an Event of Default for as long as the Company is continuing to take reasonable steps to correct it and is maintaining progress in actually correcting it; or

(b) If, by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of the Company or of a major part of its property is appointed and is not discharged within sixty days, or if, by decree of such a court, the Company is adjudicated insolvent or a major part of its property is sequestered and such decree has continued undischarged and unstayed for sixty days after the entry of such decree, or if a petition to reorganize the Company pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company, as now or hereinafter in effect, is filed against the Company and is not dismissed within sixty days after such filing; or

(c) If the Company is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against the Company under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Company pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company, as now or hereafter in effect; or

(d) If the Company makes an assignment for the benefit of creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Company or of a major part of its property; or

(e) If the Company provides or has provided materially false or misleading information to the Authority; or

(f) The failure of the Company or other Facility operators to comply with Applicable Law in any material fashion; or

(g) The failure of the Company to provide a fully operational Service by the Operations Date.

Section 6.3 Events of Default by the Authority

 .

Each of the following constitutes an Event of Default on the part of the Authority:

(a) The failure by the Authority to pay any amount in excess of $160,000 that the Authority is required to pay to the Company under this Agreement within sixty days after receipt by the Authority of written demand from the Company accompanied by notice stating that unless such amount is paid within sixty days after such demand the failure shall constitute an Event of Default; or

(b) The failure or refusal by the Authority substantially to fulfill any of its material obligations to the Company in accordance with this Agreement, other than as provided in subparagraph (a) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Agreement, provided that no such failure or refusal constitutes an Event of Default unless and until:

(i) the Company has given prior written notice to the Authority and the Authority Representatives stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected, constitute a material breach of this Agreement on the part of the Authority and gives the Company a right to terminate this Agreement for cause under this Section 6.3(b) unless such default is corrected within a reasonable period of time; and

(ii) The Authority has not corrected such default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty Business Days from the date of the notice given pursuant to clause (i) of this Section 6.3(b)), provided that if the Authority has commenced to take reasonable steps to correct such default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct it; and

 (iii) There exists no reasonable expectation that the Company can obtain relief other than by termination of this Agreement for such default sufficient to compensate it for any loss incurred as a result of such Authority default.

Notwithstanding the foregoing provisions, in no event shall the Authority's failure to deliver Acceptable Material constitute an Event of Default under this Agreement, nor shall it be considered an Uncontrollable Circumstance.

Section 6.4 Termination on Default .

The right of termination for cause may be exercised only by a Notice of Termination given to the party in default. The proper exercise of the right of termination is in addition to and not in substitution for, such other remedies, whether damages or otherwise, pursuant to Section 9.13, of the party exercising the right of termination.

Section 6.5 Termination for Certain Uncontrollable Circumstances .

If, as a result of the occurrence of one or more Uncontrollable Circumstances, a Facility is closed for ten or more consecutive days, then the Authority may terminate this Agreement upon notice to the Company. If, as a result of the occurrence of one or more Uncontrollable Circumstances, the Facility is closed for ten or more consecutive days, the Company will have the option to use a permitted and licensed facility as an alternative facility, without accruing any additional charges to the Authority. If the Company decides not to consider an alternative facility or does not respond in ten days, the Authority may terminate this agreement upon notice to the Company. The Company shall make all efforts to move the Acceptable Material to a permitted facility for processing. At no time shall the Authority pay costs. Furthermore, the Authority shall not unreasonably withhold, condition or delay approval of a Facility. If this Agreement is terminated pursuant to this Section 6.5, then neither party shall owe or be liable to the other party for any amounts otherwise due hereunder, except for (i) Service Fee amounts due for Acceptable Material actually delivered prior to the effective date of the termination, (ii) amounts due in accordance with Section 5.3 of this Agreement "Indemnification," and (iii) any damages assessed prior to the effective date of termination.

Section 6.6 Termination for Convenience .

Notwithstanding any other provision of this Agreement to the contrary and subject to State law, the Authority may terminate this Agreement and its obligations to the Company under this Agreement at any time by giving the Company ninety days' notice of such termination. Termination procedures and costs are those described in COMAR 21.07.01.12, set forth in Schedule 7.

Section 6.7 Default Termination Damages Payable to the Authority .

If this Agreement is terminated by the Authority pursuant to Section 6.4 for cause as a result of an Event of Default by the Company, the Company shall immediately pay, without duplication, to the Authority (i) all amounts necessary to provide for the excess costs to the Authority of substitute performance by another firm, during the Service Agreement's term, not including renewal terms, had the Agreement not been terminated for default, (ii) an amount equal to Alternate Material Damages during the then remaining term of this Agreement and (iii) all other costs incurred by the Authority as a result of the Company’s default.

Section 6.8 Survival of Certain Rights and Obligations .

The rights and obligations of the parties under Section 5.3 and Article VIII shall survive any termination of this Agreement. No termination of this Agreement limits or otherwise affects the rights and obligations of any party that have accrued before the date of such termination.

Section 6.9 Alternate Material Damages.

If the Company refuses or fails to accept, transport and process Acceptable Material delivered to the Facilities, Alternate Material Damages, as defined in Schedule 2, will be assessed. These damages may be withheld from a monthly payment as set forth in Section 3.1.

Section 6.10 Loading Damages.

Except for Uncontrollable Circumstances or situations beyond the Company’s reasonable control, if during any 90 day period the Company leaves Waste on the Transfer Station Tipping Floor or surrounding areas of Transfer Station site, Loading Damages, as defined in Schedule 2, may be withheld from the Waste Service Charge as set forth in Section 3.1. Loading damages (2nd offense and 3rd offense) apply when it has been less than 90 days since the last offense.

# **ARTICLE VII**

# **TERM; OPTIONS TO RENEW**

Section 7.1 Term .

The term of this Agreement begins on July 1, 2018, and ends June 30, 2021.

Section 7.2 Option to Renew .

This Agreement may be extended beyond the Term, at the Authority's sole option, for a maximum of seven, 12-month periods, at the financial terms set forth in Article III and Schedule 3.

The Authority shall give the Company ninety days’ written notice of its intent to renew the Service Agreement for each option year.

During any option year all terms of this Agreement shall remain in full force and effect.

# **ARTICLE VIII**

# **REPRESENTATIONS AND WARRANTIES**

Section 8.1 Representations and Warranties of the Authority .

The Authority hereby makes the following respective representations and warranties, as of the date of execution and delivery of this Agreement, to and for the benefit of the Company:

(a) The Authority is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The Authority has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.

(c) Neither the execution or delivery by the Authority of this Agreement, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority's fulfillment of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

(d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Authority of this Agreement except those that have been duly obtained or made.

Section 8.2 Representations and Warranties of the Company .

The Company hereby makes the following representations and warranties to and for the benefit of the Authority:

(a) The Company is duly organized and validly existing under the laws of the state of its organization or incorporation with full legal right, power and authority to enter into and perform its obligations under this Agreement, and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned by it therein or in which the transaction of its business makes such qualification necessary, including, but not limited to, the State of Maryland.

(b) Prior to the Operations Date, the Company shall provide a certificate of good standing from the Maryland State Department of Assessments and Taxation pursuant to the notice provisions in Section 9.3

(c) The Company has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

(d) Neither the execution or delivery by the Company of this Agreement, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the Company of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Company is a party or by which the Company or any of its properties or assets are bound, or constitutes a default thereunder or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Company.

(e) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Agreement by the Company, except such as have been duly obtained or made.

(f) Except as disclosed to the Authority, in writing, prior to the Operations Date there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Company's knowledge, threatened, against the Company, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Company of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

# **ARTICLE IX**

# **MISCELLANEOUS**

Section 9.1 Authority Representative, County Representative and Company

 Representative .

(a) The Authority Representative is the Executive Director of the Authority or the Executive Director’s designee.

(b) The County Representative is the Deputy Director of Department of Public Works for the County or the Director’s designee.

(c) The Company Representative is the President of the Company or any other employee of the Company or its affiliates whom the Company designates as the Company Representative and who is authorized to contractually bind the Company.

(d) Any party may change its authorized representative upon five Business Days' written notice to the other parties. Only the Authority Representative or the Company Representative may make the approvals, requests and notices by a party to the other party under this Agreement unless otherwise agreed in writing by the parties.

Section 9.2 Assignment and Participation in Agreement by Other Authority

 Member Jurisdictions .

1. The Company may not assign this Agreement without the prior written consent of the Authority, which consent shall not be unreasonably withheld, conditioned or delayed. The Authority may assign this Agreement to the Board of County Commissioners of Carroll County, Maryland, or its successor, without the written consent of the Company.
2. The Authority may, at its option, offer the terms of this Agreement to other Authority Members, with written notice to the Company.  The Company agrees, at the request of the Authority, to provide the services contained in this Agreement, at the prices contained in this Agreement, as adjusted, to other Authority Members, provided, however, that the Company may adjust the Service Fees related to transportation and operations to account for any increased costs due to operating requirements and any change in distance for which transportation is provided.  If the Authority notifies the Company that it intends to offer the services to another Authority Member, the Company agrees to make such amendments or modifications to this Agreement as are necessary to provide the services, and to provide information as requested by the Authority to substantiate any change in the Service Fees requested.  The only basis for the Company to decline to provide the services to another Authority Member is lack of available Facility capacity, and the Company bears the burden of proving to the Authority that it lacks the capacity to provide the additional services requested.
3. If a local jurisdiction that is not an Authority Member (including a county, municipality, or other governmental entity) adopts this procurement as an intergovernmental cooperative purchasing agreement, or adopts this procurement under a similar local law that permits the jurisdiction to bypass a competitive procurement process, the Company agrees to provide as a credit to the Authority under this Agreement $1.00 for each ton of Acceptable Material processed under a contract or agreement with such a non-member jurisdiction.  The Company agrees to inform the Authority if the Company enters into any such contracts or agreements with non-member jurisdictions, and to provide to the Authority satisfactory evidence of the amount of any such credit due to the Authority.

Section 9.3 Notices .

All notices, designations, consents, approvals, and other communications required, permitted or otherwise delivered under this Agreement shall be in writing and may be sent by facsimile or delivered by hand or mailed by first class registered or certified mail, return receipt requested, postage prepaid, and in any case shall be addressed as follows:

If to the Authority:

 **Northeast Maryland Waste Disposal Authority**

 **Tower II, Suite 402**

 **100 South Charles Street**

 **Baltimore, MD 21201-2705**

 **Attention: Executive Director**

**Phone: 410-333-2730, FAX: 410-333-2721**

 **Email: authority@nmwda.org**

With a copy to the County:

 **Carroll County Maryland Department of Public Works**

 **Bureau of Solid Waste**

 **225 N. Center Street**

 **Westminster, MD 21157-5194**

**With a copy to:**

 **Department of the County Attorney**

 **225 N. Center Street**

 **Westminster, MD 21157**

**If to the Company:**

 **[COMPANY ADDRESS]**

**With a copy to:**

 **[COMPANY LEGAL COUNSEL]**

Any party entitled to receive communications under this agreement may change the address to which its communications are delivered by notice to the other parties. Any communications given by mail in accordance with this Section 9.3 shall be deemed to have been given five Business Days after the date of mailing; communications given by any other means shall be deemed to have been given when delivered.

## **Section 9.4 Entire and Complete Agreement .**

This Agreement together with those documents described in Schedule 1, constitute the entire and complete agreement of the parties with respect to its subject matter and supersedes all prior or contemporaneous understandings, arrangements, commitments and representations, all of which, whether oral or written, are merged into this Agreement. The Schedules to this Agreement are an integral part of this Agreement and shall be afforded full force and effect as though incorporated in their entirety in the Articles of this Agreement.

Section 9.5 Binding Effect .

This Agreement binds and inures to the benefit of the parties to this Agreement and any successor or assignee acquiring an interest hereunder permitted by Section 9.2.

Section 9.6 Further Assurances and Amendments .

Each party shall execute and deliver any instruments and perform any acts necessary and reasonably requested by the other party in order to give full effect to this Agreement.

Section 9.7 Governing Law .

The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Agreement.

Section 9.8 Counterparts .

The Authority and the Company may execute this Agreement in counterparts, each of which is deemed an original, and all of which, when executed and delivered, together constitute one and the same instrument.

Section 9.9 Amendment or Waiver .

Neither the Authority nor the Company may change, modify, amend or waive this Agreement or any provision of this Agreement except by a written instrument signed by both parties.

Section 9.10 Relationship of the Parties .

No party to this Agreement has any responsibility whatsoever with respect to services provided or contractual obligations assumed by any other party and nothing in this Agreement is deemed to constitute one party a partner, agent or legal representative of any of the other parties or to create any fiduciary relationship between the parties.

Section 9.11 Confidential Information .

The rights and obligations of the parties set forth herein with respect to Confidential Information are subject to Applicable Law, including Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland, as amended.

To the extent permitted by Applicable Law, the Authority shall hold Confidential Information in strict confidence and take all reasonable precautions to prevent disclosure to third parties. The Authority shall promptly notify the Company of the identity of any Person who requests a disclosure of Confidential Information. The Authority in its sole discretion shall determine the response to any request for disclosure of Confidential Information and is not required to withhold disclosure of Confidential Information that is required by law to be disclosed. The Authority shall consider any information or legal arguments presented by the Company before the disclosure of the requested information.

## **Section 9.12 Severability .**

If a court of competent jurisdiction determines any provision of this Agreement is, for any reason, invalid, illegal or unenforceable in any respect, the parties hereto shall negotiate in good faith and make such amendments, modifications or supplements of or to this Agreement, that to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

Section 9.13 Damages .

Notwithstanding the foregoing, in no event, whether based upon contract, tort or otherwise, arising out of the performance or nonperformance by the Authority of any obligation under this Agreement, is the Authority liable or obligated in any manner to pay special, consequential or indirect damages, or any other amount except as specifically provided in this Agreement.

Section 9.14 Effect of Authority Approvals .

(a) No review, comment or approval by the Authority under this Agreement affects the rights, remedies, powers or privileges of the Authority in connection with (i) licenses, permits, reviews or approvals pursuant to Applicable Law, (ii) the enactment, interpretation or enforcement of any Applicable Law, (iii) any of its other governmental functions, or (iv) matters not related to this Agreement.

(b) No review, comment or approval, nor any failure to review, comment or give approval, by the Authority under this Agreement relieves the Company of any of its obligations under this Agreement or imposes any liability upon the Authority.

Section 9.15 Dispute Resolution .

The Authority and the Company shall in good faith attempt to resolve any dispute or matter in controversy under this Agreement. All disputes under this Agreement, if not resolved by the parties, shall be resolved by the Circuit Court for Carroll County, Maryland and in accordance with the laws of the State of Maryland. Pending resolution of any dispute, the Company and the Authority are obligated to continue performance of the contract.

Section 9.16 Limitation of Liability, Defenses and Obligations .

(a) The execution and delivery of this Agreement by the Authority shall not impose any personal liability on the members, officers, directors, employees or agents of the Authority. No recourse shall be had by the Company for any claims based on this Agreement against any member, officer, director, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by the Company by the execution of this Agreement.

(b) Unless specifically excused by this Agreement, the Company shall not assert impossibility or impracticability of performance, the existence, nonexistence, occurrence or nonoccurrence of a foreseen or unforeseen fact, event or contingency that may be a basic assumption of the Company, or commercial frustration of purpose as a defense against any claim by the Authority against the Company. The execution and delivery of this Agreement by the Company shall not impose any personal liability on the shareholders, officers, directors, employees or agents of the Company. No recourse shall be had by the Authority for any claims based on this Agreement against any shareholder, officer, employee or other agent of the Company in his or her individual capacity, all such liability, if any, being expressly waived by the Authority by the execution of this Agreement.

(c)Notwithstanding anything herein to the contrary, all obligations to be undertaken by the Authority pursuant to this Agreement shall not constitute general obligations of the Authority and shall not pledge the full faith and credit of the Authority, but shall be limited obligations of the Authority only, payable solely from funds provided by the County pursuant to the County agreement, which County funds are subject to appropriation. The Authority shall be required to make payments and to perform such of its obligations under this Agreement as require the expenditure of funds only to the extent that there are funds available to the Authority from the County in accordance with the terms and conditions of the County agreement.

Section 9.17 County as Third Party Beneficiary .

The County is a third-party beneficiary of all of the obligations of the Company under this Agreement. The County has the right, but not the obligation, to enforce rights, remedies, powers and privileges of the Authority under this Agreement if the County provides ten days' prior written notice to the Authority and the Company. Unless such prior notice is given by the County, it is understood by all parties that the Authority Representative shall have the authority to direct the Company with respect to the Authority’s and County’s rights herein and the Company shall have the right to rely on such direction.

Section 9.18 Nondiscrimination .

The Company shall not discriminate or permit discrimination against a Person because of race, color, religion, national origin or sex, and shall comply with all Applicable Laws regarding equal opportunities and non-discrimination. This provision is a material term of this Agreement.

Section 9.19 Public Ethics .

(a) The Authority may terminate the right of the Company to proceed under this Agreement if it is found by the Authority that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Company, or any agent or representative of the Company, to any officer or employee of the Authority or the County with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Agreement; the facts upon which the Authority makes such findings may be reviewed in any competent court.

(b) In the event this Agreement is terminated as provided in paragraph (a), above, the Authority shall be entitled (i) to pursue the same remedies against the Company as it could pursue in the event of a breach of the Agreement by the Company, and (ii) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall be not less than three nor more than ten times the costs incurred by the Company in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

(d) No employee of the State of Maryland, the Authority, or the County, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while such employee, become or be an employee of the party or parties hereby contracting with the State, the Authority, or any department, commission, agency or branch thereof.

**IN WITNESS WHEREOF**, The Authority and the Company have executed and sealed this Agreement as of the date first written above.

**WITNESS: NORTHEAST MARYLAND WASTE**

 **DISPOSAL AUTHORITY**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Date:**

**WITNESS: [COMPANY]**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Date:**

SCHEDULE 1

DESCRIPTION OF THE SERVICE

The Contract Documents consist of this Agreement and the following documents:

1. The Request for Proposals (“RFP”) issued [DATE] for the Agreement.

2. Addenda and Clarifications to the RFP issued [DATES]

3. The Company’s Technical and Financial Proposals dated [DATE]

In the event of a conflict among these contract documents, the Service Agreement shall prevail over the RFP, Addenda, and the Company’s proposals. The RFP and Addenda shall prevail over the Company’s Proposals.

SCHEDULE 2

DEFINITIONS

**“Acceptance Facilities”** mean the Transfer Station and the Sludge Generator Facilities.

**“Acceptable Material”** means Acceptable Waste, and Sludge.

**“Acceptable Waste”** means residential and commercially generated waste, excluding Unacceptable Waste. Acceptable Waste includes, but is not limited to, household waste, large household items such as beds, mattresses, sofas, bicycles, baby carriages which are collected from residential housing units or which are delivered to drop-off locations operated by the County; commercial and light industrial waste; construction and demolition debris; residue from a Materials Recovery Facility (MRF) or composting facility; and is defined as acceptable in the Northern Landfill Transfer Station Refuse Disposal Permit, and applicable COMAR regulations; and Acceptable Waste previously deposited in the County's landfills. The origin of all waste will be in compliance with the County's 10-year plan and any applicable Federal, State, or local ordinances.

**"Affiliate"** means any other Person who controls, is controlled by, or is under common control with the Company.

**"Agreement"** means this Service Agreement between the Authority and the Company (including Schedules 1 through 9 to this Agreement).

**“Alternate Facility”** means an Authority approved alternate disposal facility for disposal of Waste and Sludge.

**"Alternate Material Damages"** are damages incurred by the Authority and the County as a result of the failure of the Company to fulfill its obligations under this Agreement. These damages are limited to the difference between the cost of Services under the Agreement and the cost of the most reasonable alternative method of delivering and processing the Acceptable Material chosen as a substitute by the Authority.

**"Applicable Law"** means any law, regulation, requirement or order of any Federal, State or local agency, court or other governmental body (including, without limitation, the Carroll County Comprehensive Solid Waste Management Plans and all permits, licenses and governmental approvals required as of the date of this Agreement), applicable to: 1) the acquisition, design, construction, equipping, testing, financing, ownership, possession or operation of the Transfer Station, Sludge Generator Facilities, Processing Facility, Disposal Facility, Alternate Facility, or any other facility used to provide the Service 2) the Agreement; or 3) the performance of any obligations under the Agreement or any other agreement entered into in connection with the Agreement.

**“Authority Members”** means participating jurisdictions in the Authority.

**"Business Day"** means any day other than Saturday, Sunday or a day on which either state or national banks in Maryland are not open for normal banking business.

**"Company”** means [COMPANY] and its permitted successors and assigns.

**"Company Representative"** means the authorized representative of the Company designated in accordance with Section 9.1.

**"Confidential Information"** means proprietary information of the Company related to Solid Waste disposal given to the Authority by the Company in connection with this Agreement that (1) the Authority is not required to disclose under Applicable Law, (2) is not in the public domain, (3) is in tangible form, (4) is identified as confidential by the word "confidential" conspicuously marked on the upper right hand corner of each page thereof, and (5) is annotated to reference the provisions of Applicable Law that authorize nondisclosure of such material and information to the public.

**“Contract Year”** means the Authority’s fiscal year (July 1st through June 30th)

**"County"** means the Board of County Commissioners of Carroll County, Maryland and its successors and permitted assigns.

**"County Representative"** means the Person designated by the County in accordance with Section 9.1.

**“Disposal Facility”** means the Company’s primary disposal facility or facilities for performing the Waste Service

**"Event of Default"** means an Event of Default as defined in Article VI.

**"Facility or Facilities"** means the Disposal Facility or Alternate Facilities.

**"Fiscal Year"** means the year commencing on July 1 of any calendar year and ending on June 30 of the succeeding calendar year.

**"GAAP"** means those principles of accounting set forth in pronouncements to the Financial Accounting Standards Board, the American Institute of Certified Public Accountants, or which have other substantial and nationally recognized authoritative support and are applicable in the circumstances as of the date of a report, as such principles are from time to time supplemented and amended.

**"Hazardous Waste"** means:

A. Any Waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the Waste or substance, is unlawful to treat, store or dispose of at the Transfer Station, Disposal Facility, Processing Facility, Sludge Generator Facilities, or other facilities to be used in providing the Service and is considered hazardous Waste under Applicable Law, including, without limitation, Wastes that are:

1. regulated as a toxic or Hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or

2. Low level nuclear Wastes, special nuclear Wastes or nuclear by-product Wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.

B. Any other Waste which any Governmental Body or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the Service because of the harmful, toxic, or dangerous composition or characteristics of the Waste or substance. Any such designation would, under the Agreement, be considered an Uncontrollable Circumstance as defined in the Service Agreement.

**"Holiday"** means the following days for which an observance date is established by the County:

 New Year’s Day Christmas Day

 Memorial Day Fourth of July

 Labor Day Thanksgiving Day

**"Labor Action"** means a strike, lockout or other similar work shutdown or stoppage by workers.

**"Late Payment Rate"** means an amount equal to Bank of America N.A. prime rate of interest, as of the first Business Day of each month as adjusted monthly, plus two percent.

**“Loading Damages”** means liquidated damages when the Company leaves Waste on the tipping floor of Transfer Station or surrounding areas. The Company agrees that these are a reasonable liquidation of the damages incurred.

 1st Offense: Verbal warning following by written notice

 2nd Offense: $500 damage

 3rd and each subsequent Offense(s): $1,000 damage

**"Non-performing Party"** means a party to this Agreement who fails to perform any obligation or comply with any requirement of such party under this Agreement.

**“Northern Landfill"** means the Carroll County Northern Landfill, located at 1400 Baltimore Boulevard, Westminster, MD 21157.

**"Notice of Termination"** means a written notice requiring the termination of this Agreement due to an Event of Default pursuant to Article VI hereof that specifies the factual basis for such termination and the date on which this Agreement will terminate pursuant to Article VI hereof.

**“Operations Date”** means July 1, 2018, the date the Company begins to provide the Service.

**"Performance Bond"** means the performance bond relating to the provision of the Service in substantially the form set forth in Schedule 5.

**"Person"** means any individual, corporation, partnership, joint venture, association, joint‑stock company or unincorporated organization, or any government unit or agency or political subdivision not otherwise expressly named in this Agreement.

“**Recovered Materials**” means recyclable materials collected by or on behalf of Carroll County that are separated from the waste stream prior to arriving at the Transfer Station.

**"Required Insurance"** means the types and amounts of insurance set forth in Schedule 6 of this Agreement.

**"Service"** means the Company’s obligations related to the operations, acceptance, transportation and disposal of Acceptable Material delivered to the Company pursuant to this Agreement.

**“Service Charges”** means the Waste Service Charge and the Sludge Service Charge.

“**Service Fees”** means the $/ton service fees including the Waste Operations Fee, Waste Transportation Fee, Waste Disposal Fee, Sludge Transportation Fee, and the Sludge Disposal Fee.

**“Sludge”** means Carroll County municipal wastewater treatment plant sludge generated at the Sludge Generator Facilities, but excluding any Unacceptable Waste.

**“Sludge Disposal Fee”** means the $/ton service fee to dispose of Sludge at the Disposal Facility or Alternate Facility.

**“Sludge Generator Facilities”** means the wastewater treatment plants located at 3286 Beaver Street, Manchester, MD 21102, 1829 Reading Court, Mt. Airy, MD 21771, and 1161 Old Windsor Pike, Westminster, MD 21157, which are owned and operated by Manchester, Mt. Airy, and Westminster, respectively.

**“Sludge Generator Facilities Receiving Hours”** means from 7:00 a.m. until 4:30 p.m. Monday through Friday, and 7:00 a.m. through 3:00 p.m. Saturday, except on County Holidays. The Authority will only load Sludge into Company trailers during the Sludge Generator Facilities Receiving Hours.

**“Sludge Service Charge”** means the number of tons of Sludge receive by the Company during the month multiplied by the Sludge Service Fee.

**“Sludge Service Fee”** is the Sludge Transportation Fee plus the Sludge Disposal Fee.

**“Sludge Transportation Fee”** means $/ton service fee for transporting sludge from the Sludge Generator Facilities to the Disposal Facility, Alternate Facility, or Northern Landfill.

**"Subcontractor Default"** means the failure of any Subcontractor that is not an Affiliate of the Company or other subcontractor or supplier (except an Affiliate of the Company) selected with reasonable care to furnish labor, services or equipment.

**"Ton"** means a "short ton" of two thousand (2,000) pounds.

**"TPD"** means Tons per Day.

**"TPY"** means Tons per Year.

**“Transfer Station**” means the Transfer Station located at the Northern Landfill.

**"Transfer Station Receiving Hours"** means from 7:00 a.m. until 4:30 p.m. Monday through Friday, and 7:00 a.m. through 3:00 p.m. Saturday, except on County Holidays. Company shall have access to the Transfer Station 24 hours per day.

**"Unacceptable Waste"** means:

(A) Hazardous Waste; and

(B) That portion of solid waste the disposal of which (i) may present a substantial endangerment to public health or safety, or (ii) would cause Applicable Law to be violated, or (iii) is likely to materially adversely affect the operation of a Facility. The Unacceptable Waste described in this paragraph (b) shall include:

(1) Pathological and biological Waste, explosives, medical and infectious Waste, cesspool and other human Waste, human and animal remains;

(2) Large automobile and vehicular parts, trailers, agricultural equipment, marine vessels;

(3) Oil sludge or liquid Wastes; and

(4) Radioactive Wastes as defined in COMAR 26.15.02.

**"Uncontrollable Circumstance"** means an event or condition listed in this definition, whether affecting the Authority, the County or the Company, that has, or may reasonably be expected to have, a material adverse effect on the operation of a Facility, if such event or condition is beyond the reasonable control, and not the result of willful or negligent action or a lack of due diligence, of the Non-performing Party relying thereon as justification for not performing any obligation or complying with any condition required of such party hereunder, for delaying such performance or compliance. The following events or conditions, and no others, shall constitute Uncontrollable Circumstances if they meet the requirements of the preceding sentence:

(a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Transfer Station, Sludge Generator Facilities, the Processing Facility, Disposal Facility, and Alternate Facilities), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, epidemic, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a Facility by a Person other than an employee or agent of, or visitor invited by, the Company or its Affiliates, or the Company's subcontractors of any tier;

(b) the failure of the jurisdiction in which a facility is situated or the appropriate federal or state agencies or public utilities having operational jurisdiction in the area or location of the Acceptance Facilities to provide and maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Acceptance Facilities for operation of the Acceptance Facilities, provided they are essential to the Acceptance Facilities; and

(c) A non‑Company or non-subcontractor Labor Action.

No other events or conditions of any kind shall be considered an Uncontrollable Circumstance for the purposes of this Agreement.

In no event will Subcontractor Default or a Company Labor Action constitute an Uncontrollable Circumstance.

The term "reasonable control" includes investigation or planning that is required by sound management or industry practices. No change in any Applicable Law imposing or increasing any tax, fee, assessment or charge shall constitute an Uncontrollable Circumstance. The Authority shall not be liable for the loss of any tax benefits relating to the Service for any reason whatsoever, if any.

**"Waste"** means solid waste delivered to the Transfer Station including Acceptable Waste.

**“Waste Disposal Fee”** means the $/ton service fee to dispose of Waste at the Disposal Facility or Alternate Facility.

**“Waste Disposal Service”** means the operations, acceptance, transportation, and disposal of Acceptable Waste.

**“Waste Operations Fee”** means the $/ton service fee for accepting and loading Waste at the Transfer Station.

**“Waste Service Charge”** means the number of tons of Acceptable Waste receive by the Company during the month multiplied by the Waste Service Fee.

**“Waste Service Fee”** is Waste Operations Fee plus the Waste Transportation Fee plus the Waste Disposal Fee.

**“Waste Transportation Fee”** means the $/ton service fee to transport Waste from the Transfer Station to the Disposal Facility or Alternate Facility.

**"Wrongfully Diverted Recovered Materials"** means any Acceptable Material rejected by the Company for any reason other than as permitted under any provision of this Service Agreement.

SCHEDULE 3

**SERVICE FEES**

**[INSERT PRICE PROPOSAL FORM(S)]**

# **SCHEDULE 4**

# **REPORTING REQUIREMENTS**

The Company shall give the Authority Representative the following reports and information at the times indicated below.

The Company shall deliver the following information:

A. Pre-Operations Date Documents

|  |
| --- |
| **PRE-OPERATIONS DATE REPORTS** |
|  **INFORMATION** | **DELIVERY DATE** |
| Operations & Maintenance Manual | Prior to Operations Date |
| Copies of Required Insurance and Performance Bond | Prior to Service AgreementExecution Date |

B. Periodic Reports during Operations

|  |
| --- |
| **PERIODIC REPORTS DURING OPERATIONS** |
|  **REPORT** | **DELIVERY DATE** |
|  |  |

|  |
| --- |
| **PERIODIC REPORTS DURING OPERATIONS** |
| **OTHER INFORMATION** | **DELIVERY DATE** |
| Copies of permits and permit renewals subsequent to the permits submitted as part of the proposal submittal.  |  Within 5 (five) business days of receipt by or delivery to the Company. |
| Copies of all compliance reports and notices submitted to or received from authorities regulating the Facilities. Any notices of violation or potential violation at the Facilities.  | Within 5 (five) business days of receipt by or delivery to the Company. |
| Copies of all reports and notices submitted to or received from a host community pursuant to a host community agreement. Copies of any amendments to any host community agreement for the Processing Facility. | Within 5 (five) business days of receipt by or delivery to the Company. |
| Reports or notices of environmental violations of Applicable Law or citations related to violations of Applicable Law relating to the Facilities providing the Service. | Within 5 (five) business days of receipt by or delivery to the Company. |
| Reports of lawsuits requesting declaratory, injunctive or other equitable relief and lawsuits in excess of $1,000,000 in which the Company, its parent company, or affiliates is a party related to Facilities providing the Service. If the litigation involves any issue relating to the environment, the dispute must be reported without regard to monetary amount. |  Within 5 (five) business days of receipt by or delivery to the Company. |
| Any material adverse change in the financial condition of the Company. | Within 5 (five) business days of receipt by or delivery to the Company. |
| Notice of any proposed transfer of ownership, possession, or control of the Company, or Facilities must be given to the Authority. The notice must include identification of the transferee.  | The later of 60 (sixty) days prior to effective date of action or as soon as allowed by law. |
| Monitoring well quality analysis and assessment monitoring reports for the Disposal Facility or Alternate Facility | Semi-annually. |

 SCHEDULE 5

Performance Agreements

FORM OF PERFORMANCE BOND

**FORM OF PERFORMANCE BONDS**

**PERFORMANCE BOND**

Principal

Business Address of Principal

Surety

a corporation of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and authorized to do business in the State of Maryland.

 Obligee

 Northeast Maryland Waste Disposal Authority

 and

 Carroll County, Maryland

 Penal Sum of Bond

 (express in words and figures)

Date of Contract: , 20\_\_\_

Date Bond Executed: , 20\_\_\_

Service Agreement to provide Transfer Station Operations and the Transportation and Disposal of Solid Waste and Sludge.

Contract Number:

**KNOW ALL MEN BY THESE PRESENTS**, that we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co‑sureties, we, the co‑sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co‑surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such ability shall be the full amount of the Penal Sum.

**WHEREAS**, Principal has entered into or will enter into a contract with the Northeast Maryland Waste Disposal Authority (the "Authority"), which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Agreement."

**NOW, THEREFORE**, during the term of said Agreement, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and

2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Authority to be in default under the Agreement, the Surety may within fifteen (15) days after notice of default from the Authority notify the Authority of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Authority thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

**IN WITNESS WHEREOF**, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: Individual Principal

 as to (SEAL)

 Witness

...........................................................................................................................................................

In Presence of: Partnership Principal

 Witness

 (SEAL)

 Name of Partnership

 (SEAL)

 (SEAL)

 (SEAL)

...........................................................................................................................................................

 Corporate Principal

Attest: (Name of Corporation)

 Corporate Secretary President

 AFFIX

 CORPORATE

 SEAL

........................................................................................................................................................

 (Surety)

Attest:

 By:

 Signature

Title:

 AFFIX

 CORPORATE

 SEAL

Business Address of Surety:

Bonding Agent's name:

Agent's Address:

Approved as to legal form and sufficiency this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ 20\_\_.

**FORM OF PERFORMANCE LETTER OF CREDIT**

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Northeast Maryland Waste Disposal Authority

100 South Charles Street

Tower II- Suite 402

Baltimore, MD 21201

Ladies and Gentlemen:

1. We hereby establish, at the request of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NAME OF PROPOSER] (“the Company”), in your favor and for the account of The Northeast Maryland Waste Disposal Authority, a public body corporate and politic organized and existing under the laws of the State of Maryland (the “Authority”), our Irrevocable Letter of Credit, No. \_\_\_\_\_\_\_\_\_\_ (the “Letter of Credit”), in the amount of \_\_\_\_\_\_\_\_\_\_\_\_\_ ($\_\_\_\_\_\_\_\_\_) DOLLARS (the “Letter of Credit Amount”), effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and expiring on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Expiration Date”).

2. The Letter of Credit is being issued in support of the performance by the Company of its obligation to provide solid waste disposal services to the Authority as set forth in the “**Service Agreement by and between Northeast Maryland Waste Disposal Authority and COMPANY to Provide Transfer Station Operations, and the Transportation and Disposal of Solid Waste and Sludge** **for CARROLL County,**” dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “Agreement”).

3. We hereby irrevocably authorize you to draw on us, at sight and in one or several drawings, an amount up to the Letter of Credit Amount. Such draft(s) shall be in writing and signed by your authorized representative and shall be accompanied by a completed certificate in the form attached hereto as Exhibit 1 (such draft accompanied by such certificate being collectively your “Draft”). The Draft shall be payable by us on-sight in accordance with paragraph 4 below. Funds under this Letter of Credit are available to you against your Draft (referring thereon to the number of this Letter of Credit) upon the occurrence of an Event of Default by the Company and the subsequent exercise by the Authority of its rights under the Disposal Agreement, all in accordance with the terms of such Disposal Agreement.

4. The Draft shall be dated the date of its presentation, and shall be presented to our office located at [NAME OF FINANCIAL INSTITUTION] and [ADDRESS OF FINANCIAL INSTITUTION]. If we receive your Draft at such office, in conformance with the terms and conditions hereof, on or prior to the Expiration Date, we will honor the same in accordance with

Name of Bidder \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The provisions hereof and your payment instructions by 5:00 p.m. on the next succeeding Business Day after presentation of your Draft. For purposes of this Letter of Credit, “Business Day” shall mean any day other than a Saturday, Sunday or public holiday under the laws of the [STATE]. If requested by you, payment under this Letter of Credit may be made by wire transfer of immediately available Federal Funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into a designated account that you may establish with us. All drawings under the Letter of Credit will be paid with our own funds.

5. If a demand for payment delivered to us pursuant to the foregoing paragraph does not conform to the terms and conditions of this Letter of Credit, we will notify you of our intention to dishonor the same after presentation of the Draft by 5:00 p.m. on the next succeeding Business Day. Such notice of dishonor shall be promptly confirmed by written notice, specifying the number of this Letter of Credit, the date of the non-conforming Draft and the reasons that we are not honoring the same. Upon being notified that the Draft was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment prior to the Expiration Date.

6. Upon the earlier to occur of (a) payment to you or your account of the Letter of Credit Amount, or (b) the Expiration Date, we shall be fully discharged of our obligation under this Letter of Credit with respect to such Draft, and we shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such Draft to you or to any other person.

7. This Letter of Credit shall be governed by the International Code of Uniform Customs and Practices for Documentary Credits, Publication No. 500 (1993 Revision), including any amendments, modifications or revisions thereto. Communications with respect to this Letter of Credit shall be in writing and shall be addressed to [BANK], [ADDRESS OF BANK], specifically referring to the number of this Letter of Credit. We shall address communications to you at the address noted on the first page of this Letter of Credit unless otherwise advise by you in writing.

8. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Agreement by and between the Northeast Maryland Waste Disposal Authority and Board of County Commissioners of Carroll County, Maryland, dated [DATE]), except only the Draft referred to herein; and any such reference shall not (unless otherwise provided herein) be deemed to incorporate by reference any such document, instrument or agreement except for such Draft.

Very truly yours,

[NAME OF FINANCIAL INSTITUTION]

By:

Name:

Title:

# **SCHEDULE 6**

# **REQUIRED INSURANCE**

On and after the Operations Date, the Company shall obtain and keep in force the following insurance with insurance companies licensed and qualified to do business in the State of Maryland rated at least "A-" or its equivalent by Best's Key Rating Guide, evidenced by a certificate of insurance. Board of County Commissioners of Carroll County, Maryland will be identified as additional insured on the General Liability policy.

Certificate Holder needs to be "Board of County Commissioners of Carroll County, Maryland."

(a) Workers' Compensation

The Company shall maintain such insurance as required by Maryland Law covering all of its employees as will protect them and save the Authority and Authority harmless from claims. The Company shall maintain Employers' Liability Coverage in the following amounts: $500, 000 for each accident; $500,000 for each disease per employee; $500,000 for bodily injury by disease policy aggregate and shall save the Authority and the County harmless from claims.

(b) Commercial General Liability Insurance

The Company shall arrange and pay for a general liability policy which will protect the Authority, the Company and the County from public liability for any personal injury, including death or property damage which may arise from the operations of the Company and Subcontractors or by anyone directly or indirectly employed in the work by either of them under this Agreement, as follows:

 $1,000,000 per occurrence for bodily injury and property damage

 $1,000,000 aggregate for products and completed operations

 $2,000,000 general aggregate (on a per project basis)

 $1,000,000 per occurrence for personal & advertising injury liability

There shall be no exclusions for explosion, collapse or underground exposures; the Company shall obtain contractual liability coverage, independent contractors’ coverage, broad form property damage coverage.

(c) Business Automobile Liability Coverage

The Company shall maintain coverage, which extends to all owned, leased, rented or borrowed automobiles in the amount of $1,000,000 for each accident involving bodily injury and or property damage. Coverage must extend to include all monetary state and federal regulations as well as respects uninsured/underinsured motorists coverage, ICC, PUC filings and financial responsibility requirements.

(d) Umbrella/Excess Liability coverage must be obtained in minimum amounts of $10,000,000 per occurrence and in the aggregate. Coverage must at a minimum follow form with applicable underlying insurance.

(e) Environmental Impairment Liability covering the Facilities

Company shall acquire and maintain Environmental Impairment Liability Insurance including sudden, non-sudden and gradual exposure, for all of Company's operations hereunder, including but not limited to disposal of Recovered Materials pursuant to this Agreement. Company shall purchase limits of $1,000,000 per occurrence and $2,000,000 annual aggregate for any release of toxics or hazardous Waste or other hazardous substance requiring monitoring, cleanup or corrective action under the Comprehensive environmental Response Compensation Liability Act (CERCLA) and the Resource Conservation Recovery Act (RCRA). A combination of primary and excess coverage is acceptable, provided that there are no pollution exclusions in either policy

(f) All Companies and subcontractors must submit evidence of Required Insurance prior to performance.

(g) Each Company must carry property damage insurance for all property owned, leased or loaned by the Company whether to be used in this project or not. Limits should equal the replacement value of such equipment and coverage must be on an "all risk."

(h) The Company must provide the Authority with evidence that any non-municipally owned disposal site owner carries insurance for site property damage. In addition, the Company must provide the Authority with evidence that the non-municipally owned disposal site, if a landfill, carries environmental impairment liability insurance for that site of at least $10,000,000.

Section 2. General

(a) The Authority shall be included as an additional insured on the above Commercial General Liability and Environmental Impairment policies. Board of County Commissioners of Carroll County shall also be identified as an additional insured entity on these policies.

(b) All losses under the Required Insurance shall be adjusted to the satisfaction of the Authority.

(c) All claims made policies shall provide a minimum of five (5) years' discovery period or Company shall provide continuous coverage through regular policy renewals.

(d) The Authority shall be advised promptly in writing of the following change in the insurance policies:

(i) Setting up a new retro date.

(ii) Exhausting any aggregate limit under any of the above policies.

(iii) Switching occurrence based coverage to claims made coverage or vice versa.

 (e) The Company shall assure that all subcontractors performing services in accordance with this Agreement carry identical coverages as required above, either individually or as an additional insured on the policies of the Company.

(f) The Company shall complete and return to the Authority OMB Form No. 2125-0074 below reflecting the coverage required by subsections (c) Business Automobile Liability Coverage and (d) Umbrella/Excess Liability Coverage.

# **SCHEDULE 7**

# **TERMINATION FOR CONVENIENCE, PROCEDURES AND COSTS**

1. If the Authority exercises its right to terminate this Agreement for convenience pursuant to Section 6.6, the provisions of COMAR 21.07.01.12 shall apply. As of the Operations Date, COMAR 21.07.01.12 reads as follows:

"The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2)."

# **SCHEDULE 8**

# **OPERATIONS & MAINTENANCE PLAN**