

WASTE DISPOSAL AGREEMENT

by and between

Northeast Maryland Waste Disposal Authority

and

Frederick County, Maryland

**Solid Waste Disposal Services
for Frederick County, Maryland**

Waste Disposal Agreement

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Waste Disposal Agreement

THIS WASTE DISPOSAL AGREEMENT (“Agreement”) is made as of _____ between the Northeast Maryland Waste Disposal Authority ("Authority") and Frederick County, Maryland ("County").

RECITALS

- A. The Authority is an instrumentality of the State of Maryland created to assist with the preservation, improvement and management of the quality of air, land and water resources and to promote the health and welfare of the citizens of the State by providing dependable, effective and efficient disposal of solid wastes, including the recovery of useable resources from such waste. The County has requested that the Authority provide for the disposal of certain solid waste materials received by the County.
- B. In connection with this Agreement, the Authority is entering into an agreement with Blue Ridge Landfill Company (“Service Agreement”) for the provision of the services required by this Agreement.

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 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

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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 Agreements include all amendments, modifications and supplements thereto.

ARTICLE II

**OBLIGATIONS RELATING TO
DISPOSAL OF WASTE**

Section 2.1 Acceptance, Processing, and Disposal of Waste.

- (a) The Authority has sole responsibility for the provision and operation of all facilities, personnel, equipment and sites necessary to provide the Service as described in this Agreement and all Documents stated in Schedule 1. The Authority is entering into an agreement with Blue Ridge Landfill Company (the “Company”) for the provision of the services required by this Agreement. The Authority Representative shall be available daily to ensure the day-to-day coordination of activities. Upon request of the County Representative and the Authority’s Representative, the Company shall meet with County.

Beginning on the Operations Date and continuing throughout the term of this Agreement the Authority (through the Company) shall provide the service in accordance with this Service Agreement and Applicable Law.

- (b) The Authority is obligated to accept and dispose of all Acceptable Waste delivered to the Authority by the County. If a natural disaster, or other disaster occurs, the Authority and the County will coordinate the processing of large amounts of disaster debris which meets the definition of Acceptable Waste. The Authority will list the tonnage on subsequent invoices as a separate line item. The fee for the processing of disaster debris resulting from a natural disaster will be the applicable Service Fee as stated in Schedule 3 of Service Agreement.
- (c) The County will be responsible for the operation and maintenance of the Transfer Station and loading of waste into the Authority’s trailers. The Authority shall provide labor and equipment necessary to contain, jockey, transport, and dispose of Acceptable Waste.

Section 2.2 Refusal of Deliveries.

Acceptable Waste rejected by the Authority for any reason (e.g. due to daily permitted Disposal Facility capacity limit) other than as permitted pursuant to this Agreement constitutes Wrongfully Diverted Material. Wrongfully Diverted Material is subject to Alternate Disposal Damages as described in Section 6.9.

Section 2.3 Holidays.

Acceptable Waste will not be delivered by the County on the following holidays. The County shall designate the dates on which holidays are to be observed.

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New Year's Day
Memorial Day
Independence Day
Veterans Day

Labor Day
Thanksgiving Day
Christmas Day

Section 2.4 Scales and Weighing Records.

The County will weigh all Authority transportation subcontractor(s) vehicles arriving at the Transfer Station on the County's owned and operated scales and departing from the Transfer Station on the County's owned and operated scales. The County'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 Transfer Station are not working properly or are being tested, the County may use portable scales at the Transfer Station. 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 County shall use the difference between the stored average gross weight differential of the inbound (empty) and outbound (loaded) trailers for the two weeks prior to the scale outage for the Authority's vehicles to determine the billable load.

The County, at its expense, shall obtain approval of, inspect and test the vehicle scales as required by Applicable Law but no less frequently than once per year. At the written request of the Authority, the County, 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 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.

The County shall transmit by email the daily transfer vehicle scale records to the Company.

The County shall keep copies of all weight tickets for at least three years, which shall be available for inspection by the Authority upon request, at the Frederick County Reich's Ford Landfill Administration Building.

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

Section 2.5 Hazardous Waste.

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

- (b) If Hazardous Waste delivered to the Transfer Station is not identified until the disposal process at the Disposal Facility, the parties shall proceed as follows. The Authority shall segregate and isolate the Hazardous Waste at the Disposal Facility.

The Authority shall arrange for the immediate removal of the hazardous waste through Authority resources. The Authority shall use commercially reasonable efforts to segregate and isolate the Hazardous Waste at the Disposal Facility. The County will provide reasonable assistance in identifying the hauler and/or original entities responsible for delivering the Hazardous Waste to the Transfer Station. If the Authority has provided documentation sufficient to show that the chain of custody has not been breached in the acceptance and disposal of the waste at the Disposal Facility, the County shall be responsible for all costs (Hazardous Waste Costs) associated with the preparation, loading, and disposal of the Hazardous Waste, including any costs incurred by the Authority in initially segregating and isolating the hazardous waste at the Disposal Facility. If the Authority cannot provide sufficient documentation to show the chain of custody, then the Authority shall be responsible for all costs associated with the preparation, loading, and disposal of the Hazardous Waste, including any costs incurred by the Authority in initially segregating and isolating the hazardous waste at the Disposal Facility.

The foregoing shall not be considered to be a waiver of any claim the County or the Authority may have against any third party responsible for the generation or delivery of the Hazardous 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.

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Section 2.6 **RESERVED**

Section 2.7 **Subcontractors; Performance Security.**

- (a) Prior to the Effective Date of this Agreement the Authority shall obtain from the Company a Performance Bond or a Letter of Credit from a surety or insurance company acceptable to the Authority, covering the performance obligations of the Company under Article II of this Agreement. The Performance Bond shall be equal to the value of one year of services and name the Authority and the County as beneficiaries, and shall meet the requirements set forth in the Service Agreement.

- (b) The Authority will ensure that all agreements between the Company and any subcontractor providing service under the Service Agreement will be made available for review by the County upon request.

Section 2.8 **County Access.**

The County, its respective agents, licensees and invitees may visit or inspect the operation at any reasonable time during the term of this Agreement. The County Representative or its designees, may inspect the operation at any time and from time to time with at least 24 hours prior notice. The County, and its respective agents, licensees and invitees may conduct visits to the Facilities in a manner that does not cause unreasonable interference with the Company's operations. To the extent practical, the County shall provide the names of all invitees to the Authority in advance. 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 2.9 **RESERVED**

Section 2.10 **Regulatory Requirements.**

The Authority shall perform its obligations under this Agreement and provide for the operation of the Facilities in accordance with all requirements of Applicable Law, regulations, and permits. The County will obtain or cause to be obtained all permits for the Acceptance Facility. The Authority 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 Authority will not breach its obligations under this Section if (i) the Authority 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 Authority 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.

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Section 2.11 Appropriations.

The County's fiscal obligations under the Service Agreement are subject to the availability of funds appropriated under this Agreement. The County's Funds will be available only if the County remains a Member Jurisdiction of the Authority. If the County or other funding source fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period or part thereof of this Agreement, this Agreement, upon 90 days' notice, shall be cancelled as of the beginning of the fiscal year or part thereof for which funds were not appropriated or otherwise made available; provided, however, that this will not affect the County's rights under any termination clause in this Agreement.

ARTICLE III

**SERVICE FEE;
DAMAGES; PAYMENTS**

Section 3.1 Service Fees, Damages, and Payments.

- (a) From and after the Operations Date, the Company may charge and collect from the County a Service Fee as shown in Schedule 3 of Service Agreement for each ton of Acceptable Waste accepted by the Authority from the County, for Disposal hereunder adjusted by the Inflation Index. The calculation of the Service Fee will be the Disposal Fee multiplied by the difference in weight between a loaded and empty tractor-trailer based upon the tickets from the County's Scales;

This Service Fee shall be full and complete payment to the Authority/Company for the services provided under this Agreement.

The County's designated scale (the County's landfill scale or the Transfer Station scale, if such scale is certified for commercial transactions by the State of Maryland or other regulatory authority records), shall be the basis for payment.

- (b) The County may retain or set-off from any amounts due to the Authority/Company, Alternate Disposal Damages, Alternate Procurement Damages, or damages to pay for repair of the facilities caused by the Authority, the Company or the Company's Sub-Company(s). If the Authority disputes any amounts owed, parties in good faith may attempt to resolve any dispute pursuant to Section 9.15 of this Agreement.
- (c) The County reserves the right to pay the Service Fees using a credit card, directed wire payment (ACH) or a direct payment claim, upon reasonable written notice to the Authority and subject to approval by the Authority, which shall not be unreasonably withheld. Notwithstanding the foregoing, the County may make payment directly to the Company for Services rendered under this Service Agreement and, when the County makes direct payments to the Company, no payment shall be due to the Authority for said amount.

Section 3.2 Inflation Adjustor.

- (a) Beginning on the Operations Date, and every July 1 thereafter, the Service Fee shall be adjusted according to the appropriate Annual Inflation Adjustor. The inflation adjustor shall be 75% of any change in the Bureau of Labor Statistics Consumer Price Index ("CPI") for the Washington-Arlington-Alexandria Area (series id: CUURS35ASA0; Base Period: 1982-84=100). The first adjustment shall compare the most recent reported CPI-U (the March 2026 published CPI-U) as of July 1, 2026 to the reported CPI-U nearest to the Operations Date (the March 2025 published CPI-U). Thereafter the most recent CPI-U reported on July 1st of current year (the March reference month) will be compared to the CPI-U used from previous period. The most recent reported CPI-U as of July 1st of current

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year less the CPI-U used from previous year equals the index point change. Divide 75% of the index point change by the CPI-U used in the previous year and add 1 to equal the inflation adjustor. The inflation adjustor shall be rounded to the second decimal place.

The maximum Inflation Index increase, for each one-year period, shall not exceed 1.04, or 4%.

Examples of Inflation Adjustor Calculation:

CPI-U for July 1, 2026 (the March 2026 published CPI-U)
CPI-U on the Operations Date (the March 2025 published CPI-U)

Using a *DRAFT* Operations Date CPI 155.198 and a *DRAFT* July 1, 2026 CPI of 158.201:
Index Point Change: $158.201 - 155.198 = 3.003$
Inflation Adjustor: $(3.003 * .75) / 155.198 + 1 = \mathbf{1.01}$ (rounded to second decimal place)

Using a Draft Operations Date CPI of 151.0 and a Draft July 1, 2026 CPI of 155.198

Index Point Change: $151.000 - 155.198 = (4.198)$
Inflation Adjustor: $(4.198 * .75) / 155.198 + 1 = \mathbf{.98}$ (rounded to second decimal place)

Using a Draft CPI for July 1 of current year 165.200 and Draft CPI for July of previous year 155.198

Index Point Change: $165.200 - 155.198 = 10.002$
Inflation Adjustor: $(10.002 * .75) / 155.198 + 1 = 1.05$ (rounded to second decimal place)
(Inflation adjustor would be **1.04** because the adjustor cannot be greater than 1.04.)

Section 3.3 **Monthly Payments.**

- (a) The Authority shall provide the County with a statement or invoice for the Service Fee, in a format approved by the County, payable hereunder by the twenty-fifth (25th) day of the calendar month immediately succeeding the calendar month for which such amounts are payable. Amounts invoiced are due forty-five (45) days after receipt of the correct invoice by the County. Each invoice shall set forth the applicable Service Fee and other charges payable to the Authority/Company for the applicable period, together with supporting documentation including scale records, sufficient to allow the recipient of the invoice to verify the Authority's/Company's calculations of the Service Fee and other charges for such period. The amounts payable monthly, in accordance with Sections 3.1 and 3.2, are calculated as follows:
- (i) The amount due for Service Fee payments; MINUS
 - (ii) The amount of Alternate Disposal Damages and Alternate Procurement Damages, PLUS

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- (iii) Approved pass-through costs

All Authority/Company invoices and statements shall be delivered by hand or mailed first class, postage prepaid, or electronically submitted to:

**Frederick County
Division of Solid Waste and Recycling
9031 Reich's Ford Road
Frederick, MD 21704
Attention: Director
Phone: 301-600-1848**

Section 3.4 Pass Through Costs.

Pass-through costs are any costs approved, in writing, by the County. The Authority Management Fee for this project shall be an approved pass-through cost.

Section 3.5 Late Payment.

Any amounts payable under this Agreement by the Authority or the County 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 Fee or Other Charges.

If the Authority or the County disputes any amount owed as the Service Fee(s) or the amount of Damages claimed by the County under Section 3.3(iii) or elsewhere herein, the disputed portion of such adjustment is not effective until resolution of a dispute pursuant to Section 9.15. Pending resolution of any dispute, the Authority is obligated to continue performance of the Agreement. Immediately after the resolution of a disagreement about a Service Fee(s), or amount of Damages, 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.

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Section 3.7 Books and Records, Audit and Reports.

- (a) The Authority shall maintain all books, records and accounts necessary to record all matters affecting the Service Fee(s), applicable damages or other amounts payable by or to the Authority or the County under this Agreement or other agreements, including, but not limited to, policies for Required Insurance, policy amendments and all other related insurance documents. The Authority shall maintain all such books, records and accounts in accordance with GAAP. The Authority's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the Authority'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 Authority shall make all such books, records and accounts available for inspection and photocopying by the County within five (5) Business Days of a written request by the County.
- (b) The Authority shall provide the County with the reports and information set forth in Schedule 4 of Service Agreement at the times required by Schedule 4 of Service Agreement. The report format can be modified with approval of the County to reflect the facilities used by the Authority to provide the Service.
- (c) The Authority certifies that all information the Authority has provided, or will provide to the County, is true and correct and can be relied upon by the County and 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 County 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, 2026 and the end of each succeeding Fiscal Year (July 1 through June 30), the Authority shall provide an accounting to the County of all payments made by the County for the Fiscal Year pursuant to this Agreement and all amounts payable by the County 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 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 (UC) occurring on or after the Operations Date, the Authority shall give the County Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Authority), and a description of the conditions preventing the performance of the Authority's obligations.
- (ii) If a Facility is unavailable due to an Uncontrollable Circumstance, the Authority must diligently pursue finding an alternate facility. Alternate disposal facilities must be approved by the County. The Facilities presented in the Company's proposal [Date of Proposal] are deemed approved by the County. The Authority may seek pre-approval of an alternate disposal facility.
- (iii) The Authority shall answer any inquiries of the County 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 County Representative, a consulting engineer, at the County's expense, may review the Authority's estimate of the time schedule for repairing a Facility or the alleged causes of the Uncontrollable Circumstance.
- (iv) This Section 4.1 (b) (iv) constitutes the emergency provision for the UC clause. In the event of inclement weather that may impact operations the County and the Authority shall cooperate to ensure continuation of the Service. This may include the County taking reasonable efforts to allow the Authority to stage additional tractors and trailers at the Landfill. This clause 4.1 (b)(iv) shall not be construed as guarantee that the County will extend obligations beyond current permit limits.

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Section 4.2 Change of Law.

The County shall not be liable for additional costs incurred by the Authority due to a Change of Law, as defined in Schedule 2 of this Agreement, except in the event that Frederick County or the State of Maryland promulgates a law, ordinance, regulation or fee related to the Acceptance Facility.

ARTICLE V

INSURANCE AND INDEMNIFICATION

Section 5.1 Types of Insurance for the Company.

The Authority shall obtain and maintain, or cause to be obtained and maintained, the Required Insurance described in Schedule 6 of the Service Agreement. The Authority shall procure and maintain any additional insurance coverage requested by the County that is available on commercially reasonable terms and such other insurance required by Applicable Law if the County agrees that the cost of the additional insurance may be added to the Service Fee. 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) The Authority shall deliver to the County copies of all certificates of insurance for Required Insurance pursuant to the Notice Provision in Section 9.3 of this Agreement within 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 insured and require the insurer to provide the Authority sixty days' prior written notice of termination or cancellation or of any material change in coverage or deductibles under such Policy.
- (b) The Authority shall require the Company to use only responsible insurance companies of recognized standing which are authorized to do business in Maryland as providers of all Required Insurance. The Authority shall require the Company to 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 Authority shall require that the Company 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 Authority or Company shall immediately notify the County whenever the Company applies for any separate insurance and shall promptly deliver the policy or policies evidencing the separate insurance to the County.
- (d) The Authority shall require submission 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 Authority shall promptly give the County copies of all notices and claims of loss and any documentation or correspondence related to such losses. The Authority shall make all insurance certificates for Required Insurance, available for inspection and photocopying by the County on reasonable notice.

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Section 5.3 Indemnification.

The Authority will provide to the County indemnification from the Company in accordance with Section 5.3 of the Service Agreement.

ARTICLE VI

DEFAULT AND TERMINATION

Section 6.1 **Remedies for Default.**

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

The failure or refusal by the Authority to fulfill any of its material obligations to the County in accordance with this Agreement shall constitute an Event of Default on the part of the Authority, unless such failure or refusal is excused or justified pursuant to this Agreement, or unless the failure to fulfill material obligations is caused by the failure of the County to perform its obligations.

No failure or refusal on the part of the Authority shall constitute an “Event of Default” unless and until: (A) the County has given Notice to the Company specifying with particularity the existence of such default; and (B) The Authority has failed to cure such default within thirty (30) days after receipt of such Notice.

Section 6.3 **Events of Default by the County.**

Each of the following constitutes an Event of Default on the part of the Authority, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the Company to perform its obligations hereunder:

- (a) The failure by the County to pay any amount in excess of \$75,000, that the County is required to pay to the Authority under this Agreement within sixty (60) days after receipt by the County of written demand from the Authority accompanied by notice stating that unless such amount is paid within sixty (60) days after such demand the failure shall constitute an Event of Default; or
- (b) The failure or refusal by the County substantially to fulfill any of its material obligations to the Authority in accordance with this Agreement, other than as provided in subparagraph

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(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 Authority has given prior written notice to the County and the County 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 County and gives the Authority 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 County 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 (30) Business Days from the date of the notice given pursuant to clause (i) of this Section 6.3(b)), provided that if the County 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 County is continuing to take reasonable steps to correct it; and
- (iii) There exists no reasonable expectation that the Authority 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 County default.

Notwithstanding the foregoing provisions, in no event shall the County's failure to deliver Acceptable Waste constitute an Event of Default under this Agreement.

Section 6.4 Termination on Default.

The right of termination for cause may be exercised only by a Notice of Termination (the "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, the Disposal Facility is closed for 10 (ten) or more consecutive days, then the County may terminate this Agreement upon notice to the Authority. If this Agreement is so terminated, 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 Waste actually delivered prior to the effective date of the termination and (ii) amounts due in accordance with Section 5.3 "Indemnification."

Section 6.6 Termination for Convenience.

Notwithstanding, any other provision of this Agreement to the contrary and subject to State law,

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The County may terminate this Agreement and its obligations to the Company under this Agreement at any time by giving the Authority ninety (90) days' notice of such termination. Termination procedures and costs are described in COMAR 21.07.01.12.

Section 6.7 Default Termination Damages Payable to the Authority.

If this Agreement is terminated by the County for cause as a result of an Event of Default by the Authority, the Authority shall immediately pay, without duplication, to the County (i) all amounts necessary to provide for the excess costs to the County 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 Disposal Damages during the then remaining term of this Agreement, and (iii) Alternate Procurement Damages.

Section 6.8 Survival of Certain Rights and Obligations.

The rights and obligations of the parties under Section 5.3 and Articles I and 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 Disposal Damages.

If the Authority refuses or fails to accept and dispose of Acceptable Waste to the Disposal Facility (or Alternative Disposal Facilities), damages of \$200 per ton, as defined in Schedule 2, will be assessed. These damages will be withheld from the monthly payment as set forth in Section 3.3.

ARTICLE VII

TERM; OPTIONS TO RENEW

Section 7.1 **Term for Service**

The initial term of this Agreement begins on July 1, 2025 (the “Operations Date”) and ends on June 30, 2030, with five (5), optional 12-month renewal terms, at the Authority’s sole discretion, at the rates set forth in Schedule 3 of the Service Agreement.

Section 7.2 **Option to Renew**

The County shall give the Authority 45 days’ notice of its intent to renew the Service Agreement for each annual option term.

During any option term 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 County:

- (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 County.

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

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

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- (b) The signatory is authorized to execute and deliver this Agreement and this Agreement has been duly executed and delivered by the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.
- (c) Neither the execution or delivery by the County of this Agreement, nor the performance of the County's obligations in connection with the transactions contemplated hereby, nor the County'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 County is a party or by which the County 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 of this Agreement by the County, except such as have been duly obtained or made.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Authority Representative and County Representatives.

- (a) The Authority Representative is the Executive Director of the Authority or his/her designee.
- (b) The County Representative is the Director of the Division of Solid Waste and Recycling for the County or his/her designee.
- (c) Any party may change its authorized representative upon five (5) Business Days written notice to the other parties.

Section 9.2 Assignment.

- (a) Neither the Authority nor the County may assign this Agreement without the prior written consent of the other Party.

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**

If to the County:

**Frederick County
Division of Solid Waste and Recycling
9031 Reich's Ford Road
Frederick, MD 21704
Attention: Director
Phone: 301-600-1848**

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**Frederick County
County Attorney
Winchester Hall
12 East Church Street
Frederick, Maryland 21701
301-600-1030
FAX 301-600-1161**

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 (5) 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.

The Agreement documents are those documents described in Schedule 1 and 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 County 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.

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Section 9.9 **Amendment or Waiver.**

Neither the Authority nor the County may change, modify, amend or waive this Agreement or any provision of this Agreement except by a written instrument signed by the party against whom enforcement of such change, modification, amendment or waiver is sought.

Section 9.10 **RESERVED.**

Section 9.11 **RESERVED.**

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 agreement, tort or otherwise, arising out of the performance or nonperformance by the a party to this Agreement of any obligation under this Agreement, is the either party 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 County under this Agreement affects the rights, remedies, powers or privileges of the County 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 County under this Agreement relieves the Company of any of its obligations under this Agreement or imposes any liability upon the County.

Section 9.15 **Dispute Resolution.**

The Authority and the County 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 courts of competent jurisdiction in the State of Maryland, venue

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Frederick County, and in accordance with the laws of the State of Maryland. Pending resolution of any dispute, the Authority is obligated to continue performance of the Agreement.

Section 9.16 Limitation of Liability and Defenses.

Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Authority to the County under this Agreement are limited to the obligations of the Authority under the Service Agreement, to the extent such obligations are satisfied. The execution and delivery of this Agreement by the Authority and the County shall not impose any personal liability on the members, directors, officers, employees or agents of the Authority or the County. No recourse will be had by a party to this Agreement for any claims based on this Agreement against any member, director, officer, employee or agent of the other party to this Agreement in his or her individual capacity, all such liability, if any, being expressly waived by the Authority and the County.

IN WITNESS WHEREOF, The Authority and the County have executed this Agreement.

WITNESS:

**NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY**

By: _____
Executive Director

Date: _____

WITNESS:

FREDERICK COUNTY, MARYLAND

By: _____
County Executive

Date: _____

Waste Disposal Agreement

SCHEDULE 1

[Copy of Service Agreement]

SCHEDULE 2

DEFINITIONS

“Acceptable Waste” means all Waste which is not Unacceptable Waste and typically includes:

- A. Household garbage, trash, rubbish and refuse of the kinds normally generated by residential housing units and commercial establishments, including, without limitation:
 - 1. large household items such as beds, mattresses, sofas, bicycles, baby carriages, automobile parts, tires and roofing waste of the types that are generally collected by the municipal and private haulers from residential housing units located in the County, or which are delivered to drop-off locations operated by the County; and
 - 2. brush, branches, leaves, twigs, grass and plant cuttings, mixed in with waste and not separately collected.
- B. Commercial and light industrial Waste normally generated by governmental, commercial and light industrial and manufacturing establishments.
- C. Construction and demolition debris.
- D. Residue from a Materials Resource Recovery Facility, or Composting Facility.
- E. Temporarily buried waste at the Landfill face.
- F. Disaster debris.
- G. Land-clearing debris (LCD);

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

“Alternate Disposal Damages” are damages incurred by the County as a result of the failure of the Authority to fulfill its obligations under this agreement. These damages are liquidated at \$200 per ton and subject to the annual CPI adjuster.

“Alternate Procurement Damages” means an amount equal to the reasonable and direct costs estimated to be incurred by the County to procure another company to provide the Service. In no event may Alternate Procurement Damages exceed actual costs incurred by the County in procuring another Company for this Agreement.

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"**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 Frederick 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 and the Disposal 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**" means the Northeast Maryland Waste Disposal Authority and its successors and permitted assigns.

"**Authority Management Fee**" means the Fees for Services set forth in the Authority's Funding Policy dated July 1, 2013, or as amended by the Authority subsequent to the Effective Date.

"**Business Day(s)**" 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.

"**Change of Law**" means a change of law or regulation that could cause an increase in a fee to dispose of Acceptable Waste imposed by any state or local government, which the Company or the Authority is obligated to pay. Change of Law does not include any Federal or State regulations that has been added, interpreted and/or enforced to offset any misinterpretation of the law.

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

"**County**" means Frederick County, Maryland and its successors and permitted assigns.

"**County Representative**" means the Director of the Division of Solid Waste and Recycling for the County or his/her designee.

"**Disposal Facility**" means the solid waste Disposal Facility identified by the Company as the facility for final disposal of Acceptable Waste delivered by the County under the Agreement.

"**Effective Date**" means the date on which the Agreement between the Authority and the County is endorsed by both parties. The Effective Date is [Date].

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

"**Facility or Facilities**" means any component of the Company's system, which receives, processes, and/or disposes of Waste and any residue or byproduct of processing Waste.

"**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

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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 Acceptance or Disposal Facility 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 Waste, special nuclear Waste or nuclear by-product Waste, 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.

"Hazardous Waste Costs" means with respect to Hazardous Waste proven to have been delivered to a Facility by the Authority, the actual costs of the removal and disposal of such Hazardous Waste and all other costs and liabilities associated with or arising from the delivery, removal, or disposal of such Hazardous Waste; provided, that Hazardous Waste Costs do not include:

- (a) any costs or liabilities incurred due to the Company's negligence, willful misconduct or failure to adhere to Applicable Law or the Hazardous Waste Protocol in connection with any Waste it knows or should know to be Hazardous Waste;
- (b) any costs incurred by the Company for the operation or maintenance of a Facility as a result of the discovery of Hazardous Waste; and

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(c) any costs or liabilities paid by any third party or insurance policy.

Hazardous Waste Costs also include the cost, if approved in writing by the Authority, of any repairs or alterations to a Facility necessitated by the presence or inadvertent Acceptance of such Hazardous Waste and all liabilities, damages, claims, demands, expenses, suits or actions including reasonable appeals, fines, penalties and attorney's fees in connection with any civil or administrative proceeding arising from the presence of such Hazardous Waste at a Facility or the removal or disposal of such Hazardous Waste including, without limitation, any suit for personal injury to, or death of, any person or persons, or loss or damage to property resulting from the presence, removal, disposal or inadvertent processing of such Hazardous Waste.

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

New Year's Day	Memorial Day	Veterans Day
Fourth of July	Labor Day	
Thanksgiving Day	Christmas Day	

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

"Landfill" means the Frederick County Landfill, located at 9031 Reich's Ford Road, Frederick, MD 21704.

"Late Payment Rate" means an amount equal to Bank of America N.A. prime rate of interest, as adjusted from time-to-time, plus two percent.

"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.

"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, 2025 or the date the Authority begins to transfer Acceptable Waste from the Frederick County Transfer Station to the Disposal Facility.

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

"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.

"Process" means to separate, combine, compost, compact, load or otherwise handle Waste delivered to a Facility in accordance with the Applicable Law.

"Required Insurance" means the types and amounts of insurance set forth in Schedule 6 of the

Waste Disposal Agreement

Service Agreement.

"Service" means the acceptance, processing, disposal of Acceptable Waste delivered to the Authority pursuant to this Agreement.

"Service Agreement" means the agreement between the Authority and COMPANY dated _____.

"Service Fee" has the meaning set forth in Article III of this Agreement.

"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.

"Transfer Station" means the Transfer Station at the Frederick County Landfill, located at 9031 Reich's Ford Road, Frederick, MD 21704.

"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; provided, however, that if such Unacceptable Waste (other than Hazardous Waste) is delivered in quantities and concentrations as determined by the Authority and as part of normal collections so as not to have the effect described in clauses (i), (ii) and (iii) above, it shall constitute Acceptable Waste unless otherwise directed by State or federal regulatory authorities. 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 Waste; and
 - (4) Radioactive Waste 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

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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 and the Disposal Facility), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, 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) a noncompany or non-Subcontractor Labor Action.

No other costs 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 County shall not be liable for the loss of any tax benefits relating to the Service for any reason whatsoever, if any.

“Waste Disposal Agreement” means this Agreement between the Authority and the County dated _____.

“Wrongfully Diverted Material” means any Acceptable Waste delivered to the Authority, but which is rejected by the Authority for any reason other than as permitted pursuant to the Service Agreement.