

**WASTE TRANSPORTATION AGREEMENT**

**by and between**

**Northeast Maryland Waste Disposal Authority**

**and**

**Frederick County, Maryland**

**to Provide**

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

**Waste Transportation Agreement**

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**Waste Transportation Agreement**

**THIS WASTE TRANSPORTATION 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 transportation of certain solid waste materials received by the County.
- B. In connection with this Agreement, the Authority is entering into an agreement with 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.

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- (c) 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.
- (d) References to agreements or Agreements include all amendments, modifications and supplements thereto.

**ARTICLE II**

**OBLIGATIONS RELATING TO TRANSPORTATION OF WASTE**

**Section 2.1           Transportation of Waste.**

- (a) The Authority has sole responsibility for the provision and operation of all personnel and vehicles 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 Bousum LLC (“the Company”) for the provision of the services (the “Service Agreement”) required by the 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 transport all Acceptable Waste from the Acceptance Facility to the Disposal Facility (or Disposal Facilities) identified by the County as the facility (or facilities) for final disposal of Acceptable Waste.
- (c) The County will be responsible for the operation and maintenance of the Transfer Station and loading of waste into the selected Authority (or Company) trailers. The County will provide the loading and weighing of all transfer trailers. The Authority shall provide the labor and equipment necessary to contain, jockey, and transport the Acceptable Waste. The Service requires drivers and trucks on site at the Acceptance Facility to jockey the trailers provided by the Authority. The Authority will provide a sufficient number of drivers and trucks to jockey the trailers on site, based on the daily operation needs of the County.
- (d) The Authority must accept deliveries of Acceptable Waste delivered at hours established under Section 2.3 of this Agreement. The County loads material from 7:00 a.m. to 4:30 p.m. Monday through Saturday, except Holidays. The Authority must provide sufficient trailers on a daily basis to ensure that all waste on the Acceptance Facility tipping floor and in the tunnels is placed in a trailer and covered by 4:30 p.m.

**Section 2.2           Refusal Rights.**

The Authority must accept deliveries of Acceptable Waste delivered at hours established under Section 2.3.

**Section 2.3           Receiving Hours.**

- (a) The Receiving Hours are defined in Schedule 2.

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(b) 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.

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day
Veterans Day	

**Section 2.4            Scales and Weighing Records.**

The County shall weigh all Company vehicles arriving at the Acceptance Facility on the County's owned and operated inbound scale and departing from the Acceptance Facility on the County's owned and operated outbound scale. 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).

The County may require each vehicle operator to present to the scale operator a card, permit, identification or license. The County 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 Acceptance Facility are not working properly or are being tested, the County may use portable scales at the Acceptance 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 record weights at the Disposal Facility.

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 Acceptance Facility.

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### **Section 2.5            Hazardous Waste.**

- (a) The Authority shall be permitted to reject any load containing Hazardous Waste. The County shall establish appropriate screening procedures to identify any load containing Hazardous Waste. The County shall be solely responsible for all costs associated with the transportation and disposal of Hazardous Waste.
  
- (b) 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 with the identification of the hauler and/or source 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 make against any third party responsible for the generation or delivery of the Hazardous Waste to the Acceptance Facility.
  
- (c) If Hazardous Waste delivered to the Acceptance Facility is not identified until the disposal process at the Disposal Facility, the Authority will provide reasonable assistance in identifying the hauler and/or original entities responsible for delivering the Hazardous Waste to the Acceptance Facility. If the hauler and/or original entities responsible for delivering the Hazardous Waste to the Acceptance Facility cannot be identified, and the Authority/Company has provided 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 Authority/Company had control of the material from the Acceptance Facility to the Disposal Facility), of the Hazardous Waste had not been breached in the transportation of the waste then the County shall be responsible for all costs associated with the preparation, loading, and disposal of the Hazardous Waste .

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. 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.

### **Section 2.6            Manner of Deliveries; Rules and Regulations.**

The Authority shall comply with all Applicable Laws (as defined in Schedule 2), regulations, and rules for the Acceptable Waste that are provided by the County. Such Applicable Laws, regulations and rules, may include vehicular movement on the Acceptance Facility Site and the County roads leading to and from the Landfill (routes and map included in RFP and incorporated

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by reference). The Company must observe posted speed limits on all roads and will be assessed Transportation Violation Damages, as defined in Schedule 2, for any documented infractions.

### **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 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                    Authority and 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. 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.

### **Section 2.9                    Cleanup and Disposal in the Acceptance Facility.**

- (a) The Authority shall cooperate with the County to keep the Acceptance Facility and Surrounding Areas free from accumulation of waste or rubbish (except in appropriate locations) caused by Transfer Operations (e.g., the jockeying of loading trailers in the Acceptance Facility parking lots, during tarping activities and the movement of loaded trailers through the Acceptance Facility). The Authority shall maintain and operate provided equipment so as to prevent the Acceptance Facility from becoming unsightly or a nuisance under Applicable Law. The Authority will take measures to minimize Waste in the lot areas. Such measures will include and not be limited to tarping all trailers when leaving the Acceptance Facility and periodic litter pick-up in the staging area. The Authority shall cooperate with the County to ensure that all refuse on the Acceptance Facility tipping floor and in the tunnels is placed in a trailer and that trailers are covered prior to the end of each operating day. Loaded trailers must be removed from Acceptance Facility and Landfill site within 24 hours of being loaded. Holidays and Sundays do not exempt this requirement. All loaded trailers must be removed from the Acceptance Facility by 10:00 p.m. Saturday to maintain permit compliance. Under the County's Acceptance Facility operating permit, Waste cannot be on site more than 24 hours. All partially or fully loaded trailers must be tarped when left on site. Heavy maintenance and repair of trucks and/or trailers is not allowed on site at the Acceptance Facility. Any violations assessed by the Maryland Department of the Environment for leaking trucks/trailers will be passed

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through to the Company.

- (b) Notwithstanding anything to the contrary in this Agreement, the Authority shall not be liable in any way for ordinary wear and tear to the Acceptance Facility, including but not limited to all floor surfaces, and roadways and curbing into and out of the Acceptance Facility.
- (c) Notwithstanding anything to the contrary in this Agreement, the Authority shall be liable for extraordinary physical damages, as documented by the County, to the Acceptance Facility, including but not limited to all floor surfaces, and roadways and curbing into and out of the Acceptance Facility and any associated equipment.

### **Section 2.10 Regulatory Requirements.**

The Authority shall perform its obligations under this Agreement 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.

### **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 Authority may charge and collect from the County a Service Fee as shown in Schedule 3 for each ton of Acceptable Waste accepted by the Authority from the County, for transfer hereunder adjusted by the Inflation Index. The calculation of the Service Fee for the transportation of the Acceptable Waste, is the dollar per ton per mile Transportation Fee multiplied by the distance (one-way) in miles between the Acceptance Facility and the applicable Disposal Facility (or Facilities) multiplied by the difference in weight between a loaded and empty tractor-trailer unless a scale outage occurs.

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 Acceptance Facility 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 Procurement Damages, Loading Damages, Transportation Violation 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 July 1, 2026, and every July 1 thereafter, the Transportation Fee (dollar per ton per mile) shall be adjusted according to the appropriate Annual Inflation Adjustor. The inflation adjustor shall be 100% 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 as of July 1, 2026 (the March 2026 published CPI-U) to the reported CPI-U nearest to the Operations Date (July 1, 2025: the March 2025 published CPI-U). Thereafter the most recent CPI-U reported on July 1<sup>st</sup> of current year will be compared to the CPI-U used from previous period.

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The most recent reported CPI-U as of July 1<sup>st</sup> of current year less the CPI-U used from previous year equals the index point change. The index point change shall be divided by 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:

July 1, 2026, adjustor:

CPI-U for July 1, 2026 (the March 2026 published CPI-U): 158.201

CPI-U on the Operations Date (July 1, 2025: the March 2025 published CPI-U): 155.198

For Example: using the *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:  $3.003 / 155.198 + 1 = \mathbf{1.02}$  (rounded to second decimal place)

July 1, 2026, adjustor:

CPI for current year: (most recent reported index as of July 1, 2026) 151.0

CPI nearest the Operations Date: 155.198

Index Point Change:  $151.000 - 155.198 = -4.198$

Inflation Adjustor:  $-4.198 / 155.198 + 1 = \mathbf{.97}$  (rounded to second decimal place)

July 1, 2026, adjustor:

CPI for current year: (most recent reported index as of Operations Date) 165.200

CPI nearest the Operations Date: 155.198

Index Point Change:  $165.200 - 155.198 = 10.002$

Inflation Adjustor:  $10.002 / 155.198 + 1 = 1.06$  (rounded to second decimal place)  
(Inflation adjustor would be **1.04** because the adjustor cannot be greater than 1.04.)

### (b) Fuel Cost Adjustment:

1.) The monthly fuel surcharge will be as follows:

- a.) The threshold fuel price for the Agreement will be \$5.00 per gallon.
- b.) 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 \$5.11 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).

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- c.) 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.
- d.) 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 distance (miles) from the Reichs Ford 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.
- e.)

Diesel Fuel Cost	Excess Cost	Fuel Surcharge per 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

- g.) Example, Showing the Fuel Surcharge Calculation:

If a load is taken to Lord Farquhar Landfill and the Fuel Cost is \$5.35 per gallon the calculation is as follows:

Calculation for X (gallons per ton)

Lord Farquhar Landfill: 64 miles;  $(64/4.5)/22$  tons = .646 gallons per ton

New Fuel Price – Base Fuel (Threshold fuel price) = \$5.35 - \$5.00 = \$.35 or an excess of \$.30

$\$0.30 * X = \$0.30 * .646 = 0.194$  per ton charge (rounded to the third decimal point)

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**Section 3.3                    Monthly Payments.**

- (a) The Authority shall provide the County with a statement or invoice for all Service Fees (in the 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 Fees 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 Procurement Damages, Loading Damages, Transportation Violation Damages or damages to pay for repair of the facilities caused by the Company or the Company's Sub-Company(s), if any, PLUS
  - (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 Reichs 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.

**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(ii) 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.

**Section 3.7                    Books and Records, Audit and Reports.**

- (a) The Authority shall maintain, or cause to be maintained, 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, or cause to be maintained, 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 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 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) 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.
- (iii) This Section 4.1 (b) (iii) 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)(iii) shall not be construed as guarantee that the County will extend obligations beyond current permit limits.

**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 Section 5.1 of the Service Agreement 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 it 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.

**Waste Transportation Agreement**

**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 Authority 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 County, provided that none of the following shall constitute an Event of Default to the extent caused by the failure of the Authority to perform its obligations hereunder:

- (a) The failure by the County to pay any amount in excess of \$500,000, 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

## **Waste Transportation Agreement**

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 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 Convenience.**

Notwithstanding, any other provision of this Agreement to the contrary and subject to State law, 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 6.6 Default Termination Damages Payable to the County.**

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

## **Waste Transportation Agreement**

terminated for default, and (ii) Alternate Procurement Damages.

### **Section 6.7 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 6.8 Delivery Delay Damages.**

The County is entitled to assess Delivery Delay Damages in an amount of twenty dollars for every ton of Acceptable Waste delivered by any vehicle delivering waste at the Acceptance Facility for which the waiting time exceeds forty (40) minutes due to the Authority's failure to provide a trailer at the Acceptance Facility. The waiting time shall be measured by taking the difference between the time recorded on the scale ticket on arrival at the Acceptance Facility and the time recorded on the scale ticket at the outbound scale of the Acceptance Facility.

### **Section 6.9 Transportation Violation Damages.**

The County is entitled to assess Transportation Violation Damages if any vehicle used for the performance of the Services is operated in an unsafe manner. This includes exceeding the posted speed limits on the Landfill grounds and all roads used for the Service. This also includes (1) using access and egress roads that are not approved by the County and (2) leaving the Landfill with an uncovered trailer, or trailer covered in manner that does not prevent waste from spilling onto public roads. These damages will be withheld from the monthly payment as set forth in Section 3.3.

### **Section 6.10 Loading Damages**

In the event the Authority does not provide the necessary amount of trucks and/or personnel to ensure all Acceptable Waste on the Acceptance Facility tipping floor and in tunnels is placed in a trailer and covered prior to 4:30 pm (Monday through Saturday, except Holidays), Loading Damages in the amount of \$600 per day shall be assessed.

**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.

## **Waste Transportation Agreement**

- (b) The signatory is authorized to execute and delivery of 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](mailto:authority@nmwda.org)**

If to the County:

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

**Waste Transportation Agreement**

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

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.

**Waste Transportation 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.

**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 a party to this Agreement of any obligation under this Agreement, is 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.

**Waste Transportation Agreement**

**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 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.

**Section 9.17            Reserved**

**Section 9.18            Reserved**

**Section 9.19            Reserved**

SIGNATURES APPEAR ON NEXT PAGE

**Waste Transportation Agreement**

**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 Transportation Agreement**

**SCHEDULE 1**

**[Copy of Service Agreement]**

**SCHEDULE 2**

**DEFINITIONS**

**"Acceptance Facility"** means the Transfer Station at the Frederick County Landfill, located at 9031 Reichs Ford Road, Frederick, MD 21704.

**"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. Such material are limited to events where material is temporarily landfilled because sufficient trailers were not provided and the Acceptable Waste had to be (1) covered at the working face or (2) removed from the tip floor of the Acceptance Facility and temporarily placed in the working face and covered.
- 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.

## Waste Transportation Agreement

**"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.

**"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 Acceptance Facility 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 Representative"** means the Executive Director of the Northeast Maryland Waste Disposal Authority or his/her designee.

**"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 that could cause an increase in a fee to transport or dispose of Acceptable Waste imposed by any state or local government, which the Company 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] 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.

**"Delivery Delay Damages"** The County is entitled to assess Delivery Delay Damages in an amount of twenty dollars per ton for every ton of Acceptable Waste delivered by any vehicle delivering waste at the Acceptance Facility for which the waiting time exceeds forty (40) minutes due to the failure of the Authority/Company to supply empty trailers. The waiting time shall be measured by taking the difference between the time recorded on the scale ticket on arrival at the Acceptance Facility, and the time recorded on the scale ticket at the outbound scale of the Acceptance Facility. The Authority will not be assessed damages if the delay is the result of an unrelated third-party hauler delivering waste to the Acceptance Facility. The Authority will only be liable for Delay Delivery Damages if the Authority's/Company's actions cause the delay.

## Waste Transportation Agreement

**"Disposal Facility"** means the solid waste Disposal Facility (or Facilities) identified by the County as the facility for final disposal of Acceptable Waste.

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

**"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, transports and/or disposes of Waste, as applicable, 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 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

## Waste Transportation Agreement

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	Memorial Day	Veterans Day
Independence Day	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 Reichs 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.

**"Letter of Credit"** means the letter of credit relating to the provision of the Service in substantially the form set forth in Schedule 5.

**"Loading Damages"** means liquidated damages in the amount of \$600 per day for days when the Authority/Company does not provide the necessary amount of trucks and/or personnel to ensure all Acceptable Waste on the Acceptance Facility tipping floor and in tunnels is placed in a trailer and covered prior to 4:30pm (Monday through Saturday, except Holidays).

**"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 the date the Authority begins to transfer Acceptable Waste from the Acceptance Facility (Frederick County Transfer Station). The Operations Date is **July 1, 2025**.

**"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.

**"Process"** means to separate, combine, compost, compact, load or otherwise handle Waste

**Waste Transportation Agreement**

delivered to a Facility in accordance with the Applicable Law.

**"Receiving Hours"** means from 7:00 a.m. until 4:30 p.m. Monday through Saturday (except Holidays), or such other hours as may be established in writing from time to time by the Company Representative for the Transfer Station. No trailers may be brought to the Landfill or removed from the Landfill in the period of 10:00 p.m. Saturday to 5:00 a.m. Monday.

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

**"Service"** means the acceptance and transportation of Acceptable Waste from the Acceptance Facility to the Disposal Facility (or Disposal Facilities) identified by the County as the facility for final disposal of Acceptable Waste. 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.

**"Surrounding Areas"** means any roads, areas (e.g., tarping area or roadside) or structures that the Company drives tractors on, over, through, near or on the Landfill property for the performance of the Service.

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

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

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

**"Transportation Violation Damages"** are understood to compensate the County for costs incurred and subjective damages to the County that cannot be readily measured in monetary terms for the Authority's failure to adhere to speed limits, noise laws and other safety rules, and the costs and damages associated with litter leaving the Authority's or Company's vehicles.

1 <sup>st</sup> Offense	verbal warning followed by written notice
2 <sup>nd</sup> Offense	\$200 damage
3 <sup>rd</sup> Offense	\$500 damage
4 <sup>th</sup> and any successive Offenses	\$1,000

These amounts are subject to the annual inflation index and are in addition to any civil penalty assessed. The count for the transportation damages will aggregate for the term of contract, including any applicable renewal years.

## **Waste Transportation Agreement**

Random visual and radar observation by Division of Solid Waste and Recycling staff and/or the Frederick County Sheriff's Office will also be used to ascertain whether the Company's drivers are obeying the posted speed limits or driving in a reckless manner on roads within the landfill complex and surrounding public roads.

Visual observations by Division of Solid Waste and Recycling staff and/or the Frederick County Sheriff's Office will also be performed to ensure the long haul Company's drivers are adequately covering their loads so as to prevent waste from being spilt while in transport onto the landfill complex roads or the surrounding public roads. Trailers should be tarped in a manner that completely covers and contains the waste within the trailers, with no more than 6" of space being allowable between the bottom of the tarp and the top of the trailer body.

Any transportation violation damages withheld from the Company's monthly payment will not be determined through hearsay or unsubstantiated eyewitness accounts. Transportation Violation Damages will only be assessed against the Company based on County Government staff's visual observations and/or reports of violations that can clearly be substantiated to show the Company performed inadequately. The County or Authority will make every effort to advise the Company on secondhand reports or complaints pertaining to inadequate service in these areas so that they can be addressed without the use of transportation violation damages.

**"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

## **Waste Transportation Agreement**

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 Acceptance Facility 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) 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 Facility to provide and maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Acceptance Facility for operation of the Acceptance Facility, provided they are essential to the Acceptance Facility;
- (c) a non-company 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 Authority shall not be liable for the loss of any tax benefits relating to the Service for any reason whatsoever, if any.