

Bulk Material Collection Service Contract

by and between

Northeast Maryland Waste Disposal Authority

and

to Provide

**Collection and Transportation Services
for Bulk Material**

for Baltimore County, Maryland

Dated as of:

[_____]

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THIS BULK MATERIAL COLLECTION SERVICE CONTRACT (this "Service Contract") is made as of _____, 202__ between the Northeast Maryland Waste Disposal Authority (the "Authority") and _____ (the "Contractor").

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

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

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

Section 1.2 Rules of Interpretation.

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

- (a) All reference in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed.
- (b) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.
- (c) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.
- (d) The table of contents and the headings or captions used in this Service Contract are for convenience of reference only and do not define, limit or describe any of the provisions hereof or the scope or intent hereof.
- (e) References to agreements or contracts include all amendments, modifications and supplements thereto.

ARTICLE II

SCOPE OF WORK AND GENERAL REQUIREMENTS

Section 2.1 Collection and Transportation of Bulk Materials.

2.1.1 For Service Area Bulk Material Collection:

- (a) The Contractor will provide for the collection of bulk materials from residential properties in Baltimore County, Maryland (the “County”). The Contractor will provide such services using the Service Area Bulk Material Collection for approximately 957+/- residences daily as set forth in this Service Contract. There is no guarantee of usage by the County or Authority for this Service.
- (b) The Authority shall cause Baltimore County to provide to the Contractor a Service Area Bulk Material Collection Service Calendar no later than December 1, 2021, which will break the County down into 254+/- Service Areas. As the County has 243,000+/- residential units and there are 254+/- Service Days, each of the Service Areas will consist of approximately 957+/- residential units requiring Service daily (the County reserves the right to set the Service Areas at its sole discretion). Each Service Area will be adjacent to the previous Service Day’s area and will follow along/roll throughout the County sequentially. The Service Areas will start in the Southwest area of the County (Lansdowne), progressively move Northward (Maryland Line), and then to the Southeast Area (Fort Howard) in the Southeast area of the County.
- (c) The Contractor shall go to the designated Service Area(s) on a daily basis and collect the curbside set-out from each of the participating residents. The Contractor will pick up only curbside set out materials that are specifically defined in the County Service Area Bulk Material Collection program guide. The Contractor will not enter onto or into private property (will not go beyond the limits of curbside set-out). The Contractor shall not collect Municipal Solid Waste, but Bulk Materials only.
- (d) The Contractor will not work, and shall not be paid, for the following holidays when the County Acceptance Facilities are closed (it is the Contractor’s responsibility each year to verify the exact day that the County Acceptance Facilities are closed):
 - New Year’s Day
 - Memorial Day
 - 4th of July
 - Labor Day
 - Thanksgiving Day
 - Christmas Day

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The Contractor will not work, and will not be paid for work, on Saturdays and Sundays. During inclement weather, the Bureau will advise residents to leave their Bulk Material out until Bulk Material Collection occurs. The Contractor will be required to collect the Bulk Material(s) as soon as feasible.

- (e) The Contractor may choose how to collect the Bulk Materials, including 1) individually collecting Bulk Divertables/Recyclables requiring diversion and recycling, as well as Bulk Trash requiring disposal in separate designated trucks, or 2) commingling/intermingling Bulk Divertables/Recyclables and Bulk Trash in the same truck. However, if Bulk Materials are commingled/intermingled, they must be separated at the County Acceptance Facility (Bulk Divertables/Recyclables to diversion/recycle areas and Bulk Trash to disposal areas).
- (f) The Authority and the County may add to/increase the frequency of Service Area Bulk Material Collection with thirty (30) days' written notice. Compensation will be adjusted accordingly. Upon any such increase, the Authority and the County reserves the right to determine in which Service Area of the County the Service Area Bulk Material Collection will start. The County and Authority will maintain Service Area Bulk Material Collection with sequential, adjacent areas that progressively move day to day.
- (g) The Specifications for Service Area Bulk Material Collection are set forth in Schedule 1 to this Service Contract.

2.1.2 For Special Collection:

- (a) The Contractor will provide bulk collection service on a Special Collection basis within the geographic borders of the County. This will be a material collection on-call request by the County Bureau of Solid Waste Management (Bureau) to be performed within one week of the request. There is no guarantee of usage by the County or Authority for this Service.
- (b) The Contractor shall send a truck and crew to a specific destination in Baltimore County, at the direction of a Baltimore County supervisor, perform the collection, take the collected material to a County Acceptance Facility, and tip the materials as required. A Special Collection is only at the written request of Baltimore County and the Authority and is not for the performance of any other collection (such as a missed pickup, a call back, etc.).
- (c) A Special Collection is not limited to Bulk Materials and includes any kind of waste/material type that is accepted at a County Acceptance Facility (i.e., non-hazardous solid waste as defined in the County Acceptance Facilities' operating permits – see Section 2.7). A Special Collection is also not limited to curbside collection Service. The Contractor's crew may be required to carry the materials being collected from a location to the Contractor's truck/equipment.

Section 2.2 Quality of Service.

The Contractor and its subcontractors must provide high-quality Collection Service. To this end, all complaints received by the County and reported to the Contractor must be promptly resolved pursuant to the provisions of this Service Contract. The County, Authority and the Contractor agree that quantifying losses arising due to the Contractor's failure to perform or for violations of this Service Contract are difficult to ascertain and may impact the County's reputation of providing high quality Service Area Bulk Material Collection Services and Special Collection Services to its residents/customers. Therefore, the County, Authority and the Contractor further stipulate that the agreed upon sum is not a penalty, but a reasonable measure of damages intended to cover reputational and other losses suffered by the County, given the nature of the losses that may result from Contractor's failure to perform or for violations of this Service Contract. Such administrative charges will be separate and apart from any fines or penalties imposed by federal, state, or local governments, including those imposed under Baltimore County Code.

If the Contractor fails to perform in a satisfactory manner, as determined by the County and Authority, deductions for performance may be made by the County and Authority from payment due.

Performance deductions will be applied, after notification by the County and Authority, in a tiered system as set forth in Schedule 1, Section 2.0.

Section 2.3. Equipment.

- (a) At the commencement of this Service Contract, Service Area Bulk Material Collection and Special Collection equipment, including spares, must pass an inspection by the County's Environmental Protection and Sustainability Department (EPS), and maintain a valid permit issued by the County's Permits, Acquisitions, and Inspection Department (PAI).
- (b) The Contractor must always have on hand, and in good working order, sufficient equipment, including spares, that will permit the Contractor to adequately and efficiently perform the contractual duties specified in this Service Contract. The Contractor is responsible for the purchase and maintenance of all Service Area Bulk Material Collection and Special Collection vehicles.
- (c) Prior to commencement of Services under this Service Contract, the Contractor must submit a list of all vehicles to be used in the Service of this Service Contract. The Authority and the County must be notified of any new or replacement equipment purchased by the Contractor and any sub-contractor during the term of this Service Contract.
- (d) The Contractor must notify the Authority and the County in writing in the event any Service Area Bulk Material Collection or Special Collection equipment on the Service Area Bulk Material Collection and Special Collection equipment list is out of Service for more than five (5) consecutive days and must provide the details of the vehicle that will be used as its

replacement. Any vehicle that is permanently removed from Service, must be replaced within thirty (30) days and the Service Area Bulk Material Collection and Special Collection equipment list must be amended.

- (e) All Service Area Bulk Material Collection and Special Collection equipment and vehicles must comply with the requirements of all federal, state, and local laws and regulations including the Baltimore County Code, Article 13, Title 4. All licenses, permits, and tags must be current and clearly displayed.
- (f) All Service Area Bulk Material Collection and Special Collection equipment must be painted with the name of the Contractor, County provided customer service telephone number, and the number of the vehicle. The vehicles' records must be kept up to date to each vehicle number that is assigned, and the records, including when updated, must be provided to the County and Authority by the Contractor.
- (g) All of the Contractor's equipment must pass an annual inspection performed by the EPS, and maintain a valid permit issued by PAI.
- (h) The County, Authority or their designated agent has the right to inspect the equipment and vehicles used in the performance of this Service Contract, and the Contractor must grant access to the County and Authority or their designated agent, at any location during normal business hours without prior notice by the County or Authority. The County and Authority, as necessary, may order the Contractor to repair, modify, or replace any equipment found in noncompliance. In addition to any inspections performed by the County, Authority or their agent, the Contractor shall have an inspection performed on all Service Area Bulk Material Collection and Special Collection vehicles to be used by the Contractor in the provision of Services prior to the commencement of Services under this Service Contract, and no less than once every twelve (12) months on all Service Area Bulk Material Collection and Special Collection vehicles by an authorized State of Maryland Inspection Station. The results of these inspections must be provided by the Contractor to the County and Authority no more than ten (10) days from the date of the inspection.
- (i) The Contractor shall not use equipment that is not compliant with all state, federal, and municipal regulations. The Contractor shall keep all Service Area Bulk Material Collection and Special Collection equipment in proper repair and in a clean, sanitary, and presentable condition. All vehicles must be secure, preventing any leakage of fluids or littering of materials.
- (j) When traveling to and from their Service Area Bulk Material Collection and Special Collection Routes, all Service Area Bulk Material Collection and Special Collection equipment must be covered to protect its contents from exposure to wind and weather and prevent material from escaping the vehicle.

- (k) All Service Area Bulk Material Collection and Special Collection equipment must be equipped with a broom and dustpan to clean up any spilled material, and a spill kit to clean up any liquid spills. Leaks and spills must be cleaned in accordance with regulations set forth by the Maryland Department of the Environment (MDE) no more twenty-four (24) hours after the occurrence and reported immediately to the County and Authority.

Section 2.4 Administration.

- (a) Scales and Weighing Records: The County will weigh all of the Contractor's vehicles arriving at one of the County Acceptance Facilities on the County's owned and operated scales (County Scales). Tare weights for each vehicle may be predetermined and utilized with mutual agreement by the parties with the determined net weight. Otherwise, the Contractor's vehicles shall weigh out to determine net weight on the County Scales located at the applicable County Acceptance Facility.
- (b) The County's records will include at least the following information: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck, decal, and/or permit number).
- (c) The Contractor's vehicles will be individually identified with County-supplied and affixed decals. There will be no charge to the Contractor for such decal. Decals must be readily visible from scale house window.
- (d) The County may require each vehicle operator to present to the County a card, permit, identification and/or license to verify data. The County may require, at its sole discretion, anytime, revalidation of the tare weight of any vehicle or the reweighing of unloaded vehicles.
- (e) The County at its expense, shall inspect, test, and calibrate each County Scale, as required by applicable law, but no less frequently than once per year. All scale certifications shall be filed at the respective County Acceptance Facility and be made available upon request by the Contractor. At the written request of the Contractor, the County, in the presence of the Contractor's representative, will make additional tests of all vehicle scales. The cost of these additional tests shall be borne by the Contractor. If any test proves that a County Scale registers farther above or below the correct reading than permitted by applicable law, the charges and calculations based on scale readings made within ten (10) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the County Scale has already been performed during the preceding ten (10) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.
- (f) The Contractor's drivers shall receive scale tickets/receipts containing the information described for the record transaction as well as the load type.

- (g) The County shall supply to the Contractor reports compiling the County Scale data for tracking, management, and other purposes if requested by the Contractor. The Contractor shall advise the County and Authority of the types of reports required and frequency for submission, and the County shall use good faith efforts to supply such to the extent feasible.
- (h) The County and Authority reserve the right to advertise the Bulk Material Collection in any manner or frequency in which they see fit.

Section 2.5 Acceptable/Unacceptable Material.

- (a) Bulk Material Collection Acceptable Material means residential bulk solid waste, (material as described in Section 4.14), that falls under the Resource Conservation and Recovery Act of 1976, Subtitle D, (Solid Waste Disposal Facility Criteria) at 40 CFR §258.1, as amended, that is permitted to be disposed of at licensed disposal facilities under applicable law and permits, and that is not Unacceptable Material as defined in this Section. Acceptable Material includes material collected or disposed of, or caused to be collected or disposed of, by the County transfer stations. In no event shall Acceptable Material include any materials that are Unacceptable Material as defined below. At any time, the County and Authority may, in their discretion, determine that any materials initially defined as Unacceptable Material be reclassified as Acceptable Material.
- (b) Special Collection Acceptable Material includes the above description, however, is not limited to Bulk Materials, and includes any kind of waste/material type that is accepted at a County Acceptance Facility (i.e., non-hazardous solid waste as defined in the County Acceptance Facilities' operating permits, and as detailed above. Special Collection Acceptable Material is also not limited to material obtained from curbside collection Service.
- (c) Bulk Material Unacceptable Material and Special Collection Unacceptable Material means: and material as described in Section 4.15, and any material that by reason of its composition, characteristics or quality is ineligible for disposal at licensed disposal facilities pursuant to the provisions of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 *et seq.*, and the regulations thereunder, or any other applicable federal, state or local law, as amended; any waste that licensed disposal facilities are precluded from accepting pursuant to any permit or governmental plan; tires; and any other material that requires special handling or presents an endangerment to the licensed disposal facilities, the public health or safety, or the environment. Unacceptable Material shall include hazardous materials, combustible materials and explosive materials, pathological and biological waste, radioactive materials, ashes, foundry sand, sewage sludge, cesspool and other human waste, "red bag" or other types of infectious medical waste, human and animal remains, motor vehicles, including such major motor vehicle parts as automobile transmissions, engines and rear ends, agricultural and farm machinery and equipment, marine vessels and major parts thereof, any other large vessels, machinery or equipment and used tires.

See also Schedule 1, Section 1 for additional details regarding the specifications for Acceptable/Unacceptable Material.

Section 2.6 Maintenance.

- (a) The Contractor will retain off-site office, fueling, maintenance, and repair facilities, as well as truck and trailer parking and terminal space for its entire fleet and operation. Equipment may be kept at a County Acceptance Facility only with the express written permission of the County Acceptance Facility manager.
- (b) The Contractor shall provide on-site and on-road repair and maintenance for its fleet. Emergency repair may only be performed at a County Acceptance Facility at previously approved designated locations onsite. Routine maintenance must be performed at the Contractor's shop(s).
- (c) The County, Authority or their designated representative may, if necessary, suspend Services, at any time, to make repairs or perform maintenance at the County Acceptance Facilities. The Contractor shall be notified in writing of the work and the work schedule as soon as practical by the County or Authority or their designated representative. If a site is suspended, the Contractor will have to use another County site.
- (d) In the event of partial damage to any of the County Acceptance Facilities by fire, other casualty, or an Uncontrollable Circumstance, the County, Authority or their designated representative may, if necessary, suspend the Services until such a time the County Acceptance Facility is operational again. The Contractor shall not be paid for any suspended Services (i.e., non-operational periods of time). Per written County/Authority direction, the Contractor may be diverted to one of the other County Acceptance Facilities in order to continue Services.
- (e) The Contractor is required to coordinate and work with other Contractors/contractors who also use the County Acceptance Facilities (e.g., the Contractor must follow the traffic ques/lines/patterns, same as all the other users of the County Acceptance Facilities). Any issues, disputes, or concerns which may arise from the day-to-day operations should be immediately referred to the site supervisor.

Section 2.7 Subcontractors; Performance Security.

- (a) The Contractor shall not enter into or maintain any contract or subcontract with any person other than an Affiliate of the Contractor for the performance of any of the Contractor's obligations under this Service Contract without the prior written consent of the Authority.
- (b) No contract or subcontract between the Contractor and any other person or entity will affect the Contractor's obligation under this Service Contract.

- (c) Prior to the Operations Date the Contractor shall provide a Performance Bond or Letter of Credit (LOC) from a surety, insurance company, or financial institution acceptable to the Authority. The Performance Bond or LOC shall be equal to the value of an estimated six (6) months of estimated compensation as determined by Article III and Schedule 3 and name the Authority and Baltimore County, Maryland as beneficiaries. The Performance Bond or LOC shall be in the form set forth in Schedule 4. The Contractor shall provide the Performance Bond or LOC until released by the Authority. The Authority shall release the Performance Bond or LOC upon termination of this Service Contract as long as the Contractor is not in default and the Performance Bond or LOC is not being drawn upon by the Authority.
- (d) All contracts with subcontractors will be made available for review by the Authority upon request.

Section 2.8 Regulatory Requirements.

The Contractor shall perform its obligations under this Service Contract in accordance with all requirements of Applicable Law, regulations, and permits. The Contractor 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 Contractor will not breach its obligations under this Section if (i) the Contractor is contesting the Applicable Law in good faith by appropriate proceedings conducted with due diligence and the Applicable Law allows continued operations by the Contractor pending resolution of the contest or (ii) the Contractor is diligently seeking to comply with such Applicable Law or to obtain or maintain any such permit or license and Applicable Law allows continued operations by the Contractor.

ARTICLE III

PAYMENT PROVISIONS

Section 3.1 Service Fees

- (a) From and after the Operations Date, the Contractor may charge and collect from the Authority Service Fees for the collection of Bulk Material as set forth below:

1. Bi-Weekly Price Per Service Area Bulk Material Collection: \$ _____ X 26 periods: \$ _____. Annual Price:

The fees above include Service to approximately 957 households per day for 10 days of Service. The County and Authority do not guarantee Participation Rates.

2. Special Collection: \$ _____ per hour.

The County and Authority do not guarantee usage of this Special Collection Service.

The Service Fees shall be full and complete payment to the Contractor for the Services provided under this Service Contract.

- (b) The Authority will provide written notice regarding any damages to be retained or set-off from any amounts due to the Contractor. If the Contractor disputes any amounts owed, parties in good faith may attempt to resolve any dispute pursuant to Section 9.15 of the Service Contract.
- (c) If, in a given month, the Authority has assessed damages pursuant to Section 3.1(b), and/or the company has incurred Approved Pass through Costs, the Service Fees for that month shall be paid pursuant to Schedule 3.

Section 3.2 Inflation Adjustor

Beginning on January 1, 2022, and each January 1 thereafter through the end of the Service Contract, the "Inflation Index" shall adjust the Service Fees set forth in Schedule 3 on an annual basis. The Inflation Index shall be 75% of any increases in the Bureau of Labor Statistics' CPI for all urban consumers Baltimore- Columbia-Towson, MD Area, using the most recently reported index before each adjustment date. The first adjustment shall compare January 1, 2023 to the Operations Date. Thereafter, the adjustment shall be calculated by the latest index as of January 1 to the same index from twelve (12) months prior. The final adjustment calculation shall be rounded to the nearest tenth of a percentage point.

The Inflation Adjustor shall be calculated as shown below. The resulting percent change shall be the CPI adjustment for the contract year and shall not exceed 1.03.

CPI for current period less CPI for previous period equals the index point change. The index point change shall be divided by the previous period CPI and add 1 to equal the Inflation Adjustor. The Inflation Adjustor will be rounded at the second decimal place.

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

Example Timeline:

Operations Date, January 1, 2022 (November 2021 CPI reference month)
First CPI Adjustment, January 1, 2023 (November 2022 CPI reference month)
Second CPI Adjustment, January 1, 2024 (November 2023 CPI reference month)
Etc.

Example Calculation:

CPI for current period – 120.8
CPI for the previous period – 117.2

Index Point Change = $120.8 - 117.2 = 3.6$
Inflation Adjustor = $(3.6 / 117.2 * 75\%) + 1 = 1.02$

Section 3.3 Bi-Weekly Payments.

- (a) The County is designated as the Authority’s billing and collection agent. The Contractor shall provide the Authority and the County with a statement or invoice for all amounts payable by the 15th day and the 30th day of the calendar month immediately succeeding the calendar month for which service was provided.
- (b) Any amounts invoiced are due fourteen (14) days after receipt of a correct invoice. Each invoice shall set forth the Service Fees together with supporting documentation including scale records, sufficient to allow the recipient of the invoice to verify the Contractor's calculations of the Service Fee and other charges for such period.

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

Invoices shall be submitted to:

Baltimore County Maryland
Chief Bureau of Solid Waste Management,
Department of Public Works and Transportation
Baltimore County, Maryland
111 West Chesapeake Ave
Towson, Maryland 21204
Attention: Mike Beichler
(410) 887-3188
MBeichler@baltimorecountymd.gov

With a Copy to:

Northeast Maryland Waste Disposal Authority
Tower II, Suite 402
100 South Charles Street
Baltimore, MD 21201-2705
Authority@nmwda.org

Section 3.4 Pass Through Costs.

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

Section 3.5 Late Payment.

Any amounts payable under this Service Contract by the Authority or the Contractor that are not paid when due in accordance with this Service Contract 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 Contractor or the Authority disputes any amount owed as the Service Fee or the amount of Damages claimed by the Authority, the disputed portion of such adjustment is not effective until resolution of a dispute pursuant to Section 9.15 of this Service Contract. Immediately after the resolution of a dispute, the party whose position does not prevail shall reimburse the other party for the aggregate amount of any underpayment or overpayment, plus interest at the Late Payment Rate.

Section 3.7 Books and Records, Audit and Reports.

- (a) The Contractor shall maintain all books, records and accounts necessary to record all matters affecting the Service Fee, applicable damages or other amounts payable by or to the Authority or the Contractor under this Service Contract, including, but not limited to, Certificates of Insurance for Required Insurance. The Contractor shall maintain all such books, records and accounts in accordance with the current GAAP. The Contractor's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the Contractor's dealings and transactions under this Service Contract 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 Contractor shall make all such books, records and accounts available for inspection and photocopying by the Authority within five (5) business days of a written request by the Authority.
- (b) The Contractor certifies that all information the Contractor has provided, or will provide to the Authority, is true and correct and can be relied upon by the Authority and in awarding, modifying, making payments, or taking any other action with respect to this Service Contract. Any material, false or misleading information is a ground for the Authority to terminate this Service Contract for cause, without opportunity to cure, and to pursue any other appropriate remedy.

Section 3.8 Accounting.

Within sixty (60) days following June 30, 2022, and the end of each succeeding Fiscal Year (if applicable), the Contractor shall provide an accounting to the County and the Authority of all payments made by the Authority for the Fiscal Year and all amounts payable to the Authority for such Fiscal Year.

ARTICLE IV

UNCONTROLLABLE CIRCUMSTANCES

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

(a) Effect of Uncontrollable Circumstances.

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

(b) Changes Necessitated by Uncontrollable Circumstances.

- (i) As soon as possible after an Uncontrollable Circumstance occurring on or after the Operations Date, the Contractor shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Contractor), and a description of the conditions preventing the performance of the Contractor's obligations.
- (ii) The Contractor shall answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and shall provide them with such information as they reasonably request. Upon the request of the Authority Representative, a consulting engineer, at the Authority's expense, may review the Contractor's estimate of the time schedule for repairing a facility or the alleged causes of the Uncontrollable Circumstance.

Section 4.2 Change of Law.

- (a) Notwithstanding anything to the contrary set forth herein or otherwise, in the event of a change in Applicable Law that increases the cost of the Contractor's services provided to the Authority hereunder, the Contractor shall provide notice of such to the Authority, along with the Contractor's proposed adjustment to the prices charged the Authority for the services performed hereunder.
- (b) No Service Fee adjustment shall be made until the parties have agreed, in writing, to the adjusted Service Fee. If the adjusted Service Fee exceeds 110% of the current Service Fee prior to the adjustment, the Authority may elect not to pay the adjustment, and may terminate this Service Contract within ninety days (90) of the notice supplied by the Contractor.

ARTICLE V

INSURANCE AND INDEMNIFICATION

Section 5.1 Types of Insurance for the Contractor.

The Contractor shall obtain and maintain, or cause to be obtained and maintained, the Required Insurance (as set forth in Schedule 5) in the forms approved by the Authority. The Contractor shall procure and maintain any additional insurance coverage requested by the Authority that is available on commercially reasonable terms and such other insurance required by Applicable Law if the Authority agrees that the cost of the additional insurance may be added to the Service Fee. Insurance required to be obtained by the Contractor pursuant to this Section 5.1 is "Required Insurance" for all purposes of this Service Contract. The Contractor must maintain the insurance coverage required by the County and Authority while the Service Contract is in force, including renewal terms, and shall provide documentation of such insurance in a form satisfactory to the County and Authority when required

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

- (a) The Contractor will be required to provide verification of insurance coverage to include Endorsement Page(s), certificates of insurance and the additional insured endorsement for Required Insurance pursuant to the Notice Provision in Section 9.3 of this Service Contract for each carrier in accordance with the attached requirements. The Contractor will have fifteen (15) calendar days from receipt of notice of intent to award in which to comply with this requirement, excluding County holidays and non-work days, if applicable. 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 of any Required Insurance. The Contractor shall provide to the Authority sixty days' prior written notice of any material change in coverage or deductibles with respect to the Required Insurance. In the event the Contractor changes its insurance carrier, new verification of insurance coverage and Endorsement Page(s) must be provided to the County and Authority by the new insurance carrier within ten (10) days of the change of policy.
- (b) The Contractor shall use only responsible insurance companies of recognized standing which are authorized to do business in Maryland as providers of all Required Insurance. The Contractor shall carry all Required Insurance with insurance companies rated at least "A-" or its equivalent by Best's Key Rating or another national rating organization. The Contractor may affect Required Insurance by endorsement of blanket insurance policies.
- (c) The Contractor shall not take out separate insurance concurrent in form or contribution in the event of loss with Required Insurance if the existence of such insurance reduces amounts payable under Required Insurance. The Contractor shall immediately notify the

Authority whenever it applies for any separate insurance and shall promptly deliver the policy or policies evidencing the separate insurance to the Authority.

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

Section 5.3 Indemnification.

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

The Contractor shall also indemnify, defend, hold harmless and hereby waives any claim for contribution against the Authority, the State of Maryland, the County or their respective directors, officers, agents and employees, for any Environmental Claim to the extent arising from the performance of the Contractor or its officers, employees, agents or subcontractors, under this Service Contract, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Service Contract. For purposes of this section of the Service Contract, the following definitions apply:

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

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

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

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

"Hazardous Waste" has the meaning given in Schedule 2 to this Service Contract.

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

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

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

ARTICLE VI

DEFAULT AND TERMINATION

Section 6.1 Remedies for Default.

- (a) If the Authority breaches any of its obligations under this Service Contract, the right of the Contractor to recover damages ordinarily constitutes an adequate remedy. Therefore, the Contractor may not terminate its obligations under this Service Contract for cause or any breach unless an Event of Default (as defined in Section 6.3 of this Service Contract) on the part of the Authority has occurred and is continuing.
- (b) The Contractor acknowledges that a breach of this Service Contract or an Event of Default by the Contractor entitles the Authority to recover, to the extent proven, all of its damages, as set forth in this Service Contract, caused by such default or Event of Default, as well as any other remedy provided by this Service Contract or by law for breach or failure to perform.

Section 6.2 Events of Default by the Contractor.

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

- (a) The failure or refusal by the Contractor to fulfill any of its material obligations to the Authority or the County in accordance with the Service Contract documents as described in Schedule 1, unless such failure or refusal is excused or justified pursuant to this Service Contract.
- (b) If, by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of the Contractor or of a major part of its property is appointed and is not discharged within sixty days, or if, by decree of such a court, the Contractor is adjudicated insolvent or a major part of either of their property is sequestered and such decree has continued undischarged and unstayed for sixty days after the entry of such decree, or if a petition to reorganize the Contractor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Contractor, as now or hereinafter in effect, is filed against the Contractor and is not dismissed within sixty days after such filing; or
- (c) If the Contractor is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against the Contractor under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Contractor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Contractor, as now or hereinafter in effect; or

- (d) If the Contractor makes an assignment for the benefit of creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of the Contractor or of a major part of its property; or
- (e) If the Contractor provides or has provided materially false or misleading information to the Authority; or
- (f) The failure of the Contractor to comply with Applicable Law in any material fashion; or
- (g) The failure of the Contractor to provide a fully operational Service by the Operations Date.

Section 6.3 Events of Default by the Authority.

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

- (a) The failure by the Authority to pay any amount in excess of \$100,000 that the Authority is required to pay to the Contractor under this Service Contract within sixty days after receipt by the Authority of written demand from the Contractor accompanied by notice stating that unless such amount is paid within sixty days after such demand the failure shall constitute an Event of Default; or
- (b) The failure or refusal by the Authority substantially to fulfill any of its material obligations to the Contractor in accordance with this Service Contract, other than as provided in subparagraph (a) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Service Contract, provided that no such failure or refusal constitutes an Event of Default unless and until:
 - (i) the Contractor has given prior written notice to the Authority and the Authority Representatives stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected, constitute a material breach of this Service Contract on the part of the Authority and gives the Contractor a right to terminate this Service Contract for cause under this Section 6.3(b) unless such default is corrected within a reasonable period of time; and
 - (ii) The Authority has not corrected such default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) business days from the date of the notice given pursuant to clause (i) of this Section 6.3(b)), provided that if the Authority has commenced to take reasonable steps to correct such default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct it; and

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

Notwithstanding the foregoing provisions, in no event shall the Authority's failure to provide Acceptable Material to be collected by the Contractor constitute an Event of Default under this Service Contract, nor shall it be considered an Uncontrollable Circumstance.

Section 6.4 Termination on Default.

The Authority (and County) shall have the right upon the happening of any default, without providing notice to the Contractor, in addition to other available rights and remedies, to terminate the Service Contract immediately, in whole or in part. 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 or Non-Appropriation of Funds.

- (a) Notwithstanding any other provision of this Service Contract to the contrary and subject to State law, the Authority may terminate this Service Contract and its obligations to the Contractor under this Service Contract at any time by giving the Contractor ninety days' notice of such termination. Termination procedures and costs are those described in COMAR 21.07.01.12, set forth in Schedule 6. The Contractor acknowledges that the absence of a reciprocal right of termination for convenience does not render this Service Contract illusory or unenforceable.
- (b) If funds are not appropriated or otherwise made available to support Service Contract continuation in any fiscal year, the County and Authority shall have the right to terminate the Service Contract without any obligation or penalty, per the ninety (90) day written notice provided above.

Section 6.6 Default Termination Damages Payable to the Authority.

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

Section 6.7 Survival of Certain Rights and Obligations.

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

Section 6.8 Alternate Collection Damages.

If the Contractor refuses or fails to collect and transport Bulk Material as required pursuant to the Service Contract, Alternate Collection Damages, as defined in Schedule 2, will be assessed. These damages may be withheld from a bi-weekly payment as set forth in Section 3.1.

ARTICLE VII

TERM; OPTIONS TO RENEW

Section 7.1 Term.

The term of this Service Contract for the collection of Bulk Material begins on January 1, 2022, or as directed by the County's Board of Estimates, and ends December 31, 2022, with two optional 12-month renewal terms, at the Authority's sole discretion.

Section 7.2 Option to Renew.

This Service Contract may be extended at the Authority's sole option as set forth above in Section 7.1 with two, 12-month renewal periods, through December 31, 2024. All renewal terms shall be at the financial terms set forth in Article III and Schedule 3.

The Authority shall give the Contractor thirty (30) days' written notice of its intent to renew this Service Contract for each option year.

During any option year, all terms of this Service Contract 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 Service Contract, to and for the benefit of the Contractor:

- (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 Service Contract.
- (b) The Authority has duly authorized the execution and delivery of this Service Contract and this Service Contract 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 Service Contract, 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 Service Contract (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 Service Contract except those that have been duly obtained or made.

Section 8.2 Representations and Warranties of the Contractor.

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

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

- (b) Prior to the Operations Date the Contractor shall provide a certificate of good standing from the Maryland State Department of Assessments and Taxation pursuant to the notice provisions in Section 9.3
- (c) The Contractor has duly authorized the execution and delivery of this Service Contract and this Service Contract has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor, enforceable against the Contractor in accordance with its terms.
- (d) Neither the execution or delivery by the Contractor of this Service Contract, nor the performance by the Contractor of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the Contractor of the terms or conditions of this Service Contract (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 Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor.
- (e) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Service Contract by the Contractor, except such as have been duly obtained or made.
- (f) Except as disclosed to the Authority, in writing, prior to the Operations Date there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Contractor's knowledge, threatened, against the Contractor, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Service Contract, or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Authority Representative, County Representatives and Contractor Representative.

- (a) The Authority Representative is the Executive Director of the Authority or the Executive Director's designee.
- (b) The County Representative is the Chief of the Bureau of Solid Waste Management for the County, or the County Representative's designee.
- (c) The Contractor Representative is the President of the Contractor company or any other employee of the company or its affiliates whom the Contractor designates as the Contractor Representative and who is authorized to contractually bind the Contractor.
- (d) Any party may change its authorized representative upon five (5) business days' written notice to the other parties. Only the Authority Representative or the Contractor Representative may make the approvals, requests and notices by a party to the other party under this Service Contract unless otherwise agreed in writing by the parties.

Section 9.2 Assignment.

- (a) The Contractor may not assign this Service Contract without the prior written consent of the Authority.
- (b) The Authority may assign this Service Contract to Baltimore County, Maryland, or its successor, without the written consent of the Contractor.

Section 9.3 Notices.

All notices, designations, consents, approvals, and other communications required, permitted or otherwise delivered under this Service Contract shall be in writing and may be sent by email, 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

Recycled Paper

Phone: 410-333-2730, Fax: 410-333-2721
Authority@nmwda.org

With a copy to:

Chief of the Bureau of Solid Waste Management,
Department of Public Works and Transportation
Baltimore County, Maryland
111 West Chesapeake Ave
Towson, Maryland 21204
Attention: Mike Beichler
(410) 887-3188
MBeichler@baltimorecountymd.gov

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 Service Contract.

This Service Contract consists of 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 Service Contract. The Schedules to this Service Contract are an integral part of this Service Contract and shall be afforded full force and effect as though incorporated in their entirety in the Articles of this Service Contract.

Section 9.5 Binding Effect.

This Service Contract binds and inures to the benefit of the parties to this Service Contract 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 Service Contract.

Section 9.7 Governing Law and Venue.

The laws of the State of Maryland govern the validity, interpretation, construction and performance of this Service Contract. The parties agree that any action arising out of or related to this Service Contract shall be brought by the parties in the appropriate court in Baltimore County, Maryland.

Section 9.8 Counterparts.

The Authority and the Contractor may execute this Service Contract 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 Contractor may change, modify, amend or waive this Service Contract or any provision of this Service Contract except by a written instrument signed by both parties.

Section 9.10 Relationship of the Parties.

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

Section 9.11 Confidential Information.

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

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

Section 9.12 Severability.

If a court of competent jurisdiction determines any provision of this Service Contract 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 Service Contract, 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 Service Contract shall, as so amended, modified or supplemented, or otherwise affected by such action, remain in full force and effect.

Section 9.13 Damages.

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

Section 9.14 Effect of Authority Approvals.

- (a) No review, comment or approval by the Authority under this Service Contract affects the rights, remedies, powers or privileges of the Authority in connection with (i) licenses, permits, reviews or approvals pursuant to Applicable Law, (ii) the enactment, interpretation or enforcement of any Applicable Law, (iii) any of its other governmental functions, or (iv) matters not related to this Service Contract.
- (b) No review, comment or approval, nor any failure to review, comment or give approval, by the Authority under this Service Contract relieves the Contractor of any of its obligations under this Service Contract or imposes any liability upon the Authority.

Section 9.15 Dispute Resolution.

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

Section 9.16 Limitation of Liability and Defenses.

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

- (c) Continuation of this Service Contract is contingent upon the subsequent appropriation of funds and encumbrance of those appropriated funds for this Service Contract by the County; if funds are not appropriated and encumbered for future years of this Service Contract, this Service Contract will become null and void. The Contractor acknowledges that the County has no obligation to appropriate or encumber funds for the subsequent years of the Service Contract. The Authority enters into this Service Contract on behalf of Baltimore County, Maryland. The Authority's sole source of funding for payment for Services in this Service Contract is from appropriated funds from the County

Section 9.17 County as Third-Party Beneficiary.

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

Section 9.18 Nondiscrimination.

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

Section 9.19 Public Ethics.

- (a) The Authority may terminate the right of the Contractor to proceed under this Service Contract if it is found by the Authority that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Authority or the County with a view toward securing this Service Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Service Contract; the facts upon which the Authority makes such findings may be reviewed in any competent court.
- (b) In the event this Service Contract is terminated as provided in paragraph (a), above, the Authority shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Service Contract by the Contractor, and (ii) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Service Contract.
- (d) No employee of the State of Maryland, the Authority, or the County, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Service Contract, shall, while such employee, become or be an employee of the party or parties hereby contracting with the State, the Authority, or any department, commission, agency or branch thereof.

IN WITNESS WHEREOF, The Authority and the Contractor have executed and sealed this Service Contract as of the date first written above.

WITNESS:

**NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY**

By: _____

Name: Andrew Kays

Title: Executive Director

Date: _____

WITNESS:

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1
DESCRIPTION OF THE SERVICE

The Service Contract documents consist of this Service Contract and the following documents:

1. The Request for Proposals (“RFP”) issued _____
2. Addenda and Clarifications to the RFP issued on the following dates:
Addendum No. 1 issued on _____
Addendum No. 2 issued on _____
3. The Contractor’s Technical and Financial Proposals received on _____

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

The detailed Specifications for the Scope of Service are set forth below:

1.0 SPECIFICATIONS FOR SERVICE AREA BULK MATERIAL COLLECTION.

- 1.1 The curbside set-out shall consist of both Bulk Trash and Bulk Divertables/Recyclables only, with a limit of three (3) Bulk Materials total of either Bulk Trash and/or Bulk Divertables/Recyclables. If more than three Bulk Materials are set out, the Contractor will take the three largest qualifying Bulk Materials by volume (not by weight).
- 1.2 The Service Area Bulk Material Collection shall start on the street no earlier than 7:00 a.m. and shall be completed, and all Bulk Materials delivered to the County Acceptance Facility, before the County Acceptance Facilities close at 3:30 p.m.
- 1.3 The Bulk Trash and Bulk Divertables/Recyclables shall be collected by the Contractor and transported to one of the three County Acceptance Facilities.
- 1.4 Upon arrival at a County Acceptance Facility, the Contractor shall scale in at the County Acceptance Facility scale house and give the following information:

Route Number
Baltimore County Truck/Decal Number
Material Type

- 1.5 After scaling in at the County Acceptance Facility, the Contractor shall proceed and deliver the Bulk Materials to their appropriate locations (Bulk Divertables/Recyclables to the designated diversion/recycling area and Bulk Trash to the designated disposal area). No Bulk Divertables/Recyclables are to be discarded (unless directed to do so in writing by site supervision).
- 1.6 The Contractor may then leave the County Acceptance Facility if the Contractor's vehicle is properly registered with a tare weight. If a tare weight is required, or at the direction of a weighmaster or site supervision, the Contractor's truck is required to return to the scale house.
- 1.7 Baltimore County will be responsible for the diversion/recycling and/or final disposal of the materials collected by the Contractor. The Contractor will not be charged a disposal or transfer fee as part of this Contract.
- 1.8 The Contractor shall take care in handling Bulk Materials containing chlorofluorocarbons (CFC's), such as air conditioners, refrigerators, etc., so as not to break the lines or damage the equipment carrying this refrigerant which when released into the atmosphere would constitute a violation of the Federal Clean Air Act. All air conditioners must be transported in the upright position, and all refrigerators must be transported in the upright position, and secured properly, so as not to tip over. These CFC containing Bulk Materials shall be placed at the appropriate collection area as designated at the County Acceptance Facilities.
- 1.9 The Contractor will, at its sole expense, provide, maintain, and replace as necessary the trucks and equipment for the Service Area Bulk Material Collection Services.
- 1.10 The Contractor can only collect Baltimore County Bulk Materials in the Contractor's dedicated trucks during the contracted Bulk Material runs with the Bulk Materials described herein. Only after the Contractor's trucks finish their County Service Area Bulk Material Collection runs, may they be used for other business not covered in this Contract.
- 1.11 The County and Authority do not guarantee the amount of Bulk Material that will be set out by the individual residences in the Service Areas. The Contractor is responsible for removing any amount of Bulk Materials (within the three (3) Bulk Materials per residence limit) that are set out in the Service Area by 7:00 a.m. of the Service Day.
- 1.12 The Contractor shall have a designated supervisor available in the field and on the Route. The supervisor shall be available and responsive telephonically, through e-mail, and by text. The supervisor shall work closely with the County's supervision and management to ensure a smooth Service Area Bulk Material Collection Service.

1.13 The Contractor shall document (with photographs if applicable) any issues that may arise during their appointed rounds and forward them to the County Solid Waste Supervisor.

1.14 Bulk Material Acceptable Material for set out is as follows:

- Residential appliances (includes but is not limited to washers, dryers, irons, dishwashers, refrigerators, freezers, stoves, wall ovens, toasters, microwaves, convection ovens, blenders, electronic mixers, vacuums, steamers, air conditioners, fans, heat pumps, trash compactors, humidifiers, dehumidifiers, air purifier filtration systems, water heaters, well water holding tanks (not cast iron), furnaces (not cast iron).
- Household furniture (includes but is not limited to tables, chairs, ottomans, buffets, hutches, couches, sofas, benches, chests, love seats, mattresses, box springs, bed frames, cribs, highchairs, armoires, wardrobes, entertainment centers, dressers, bookshelves/bookcases, shelving, lawn/patio furniture, desks, filing cabinets, cabinets).
- Miscellaneous household items/housewares (includes but is not limited to sinks, toilets, bathtubs, awnings, lumber, wood, pipes, ducts, counter tops, showers, carpets/rugs/linoleum (must be rolled/bundled/tied and no longer than 8'), carpet/wood/linoleum floor padding (must be rolled/bundled/tied and no longer than 8'), flooring, floor/wall and ceiling tile, wallpaper, gypsum wallboard or sheetrock (drywall), shingles, roofing material, felt or other structural fabrics, banisters, stairs, corbels, windows, moldings, insulation, ping pong and foosball tables, large electronic games such as Pacman, sewing machines, doors, mops and brooms).
- Electronic material (the Contractor shall be obligated to collect the residential electronic material set out, no matter the size, and either small or large items are acceptable).

Electronic material shall include, but is not limited to, televisions, monitors, and all electronic material included in the Baltimore County electronic material recycling program such as central processing units, computer mice, keyboards, landline or cell phones, answering machines, printers, power supplies, portable computers (laptops), hard drives, servers, scanners, copiers, fax machines, cables, cords and communication wire (e.g. copper wire, phone wire, coaxial cable, computer wire and fiber optic cable), miscellaneous circuit boards, chips, and cards, typewriters, calculators, alarm clocks, radios, audio equipment, stereos, cameras, video cameras, music playing devices such as record players, cassette players, recorders or MP3 players, headphones and wireless technology such as

Bluetooth, OPS, electronic reading devices and tablets, radar detectors, VCR/DVR/DVD or Blu-ray players, computer discs and DVDs/CDs/Blu-ray discs, electronic 'smartwatches' and activity/fitness trackers such as wristbands or chips (e.g. a wearable or implanted computing device that offers functionality and capabilities similar to those of a smartphone). These devices, either on their own or when paired with a smartphone, provide features like connecting to the internet, running mobile apps, making calls, messaging via text or video, checking caller ID, accessing stock and weather updates, providing fitness monitoring capabilities, offering OPS coordinates and location directions), video game consoles and other electronic toys and games, holiday string lights, electronic power generators like solar panel electronic accessories and light fixtures, projectors, digital home thermostats, home security systems, diagnostic/sensing/control equipment, cable/satellite boxes and devices and other computer or electronic related accessories.

- Other Materials:
 - Awnings – must be broken down
 - Clothes-line poles/clothes trees – must be free of concrete
 - Carpets, rugs and linoleum, and wood/tile/linoleum floor padding (must be rolled, bundled and tied and not over 8')
 - Metal sheds (broken down, bundled, and not over 8')
 - Metal playhouses (broken down, bundled, and not over 8')
 - Lawn mowers (gas tanks and wheels removed by the resident)
 - Swing/play sets/jungle gyms (metal only, dismantled, not over 8')
 - Per Section 3.2, any waste which is non-hazardous solid waste type as defined in the County Acceptance Facilities' operating permits.

1.15 Unacceptable Material are as follows:

- Items over 8' in length
- Pianos
- Boats
- Pool Tables
- Cast Iron Furnaces
- Concrete Sinks
- Compressed gas tanks or any pressure vessels
- Drums, fuel, and oil tanks
- Mirrors/plate glass
- Stumps and logs
- Tires
- Items containing liquids
- Any large item that is not disassembled (e.g., swing and play sets)

Recycled Paper

- Municipal solid waste that is part of the County’s normal, weekly and bi-weekly residential, municipal solid waste curbside collection program (for trash, recycling and yard material collection).
- 1.16 Bulk Divertible Materials are to be placed in diversion/recycling areas at the County Acceptance Facility, unless otherwise directed in writing by the County and/or Authority, and shall include, but not be limited to the following:
- Items with scrap metal value are to be placed in their respective recycling collection area (items containing CFC’s must be placed in the appropriate areas for CFC material removal).
 - Reusable/donatable household appliances, building material, furniture and household items/housewares are to be placed in the appropriate marked trailers for donation/diversion collection.
 - Other items, such as electronics, are to be placed in their respective recycling collection areas.
- 1.17 Any Unacceptable Material will be stickered by the Contractor as to why it was not collected. The Contractor and the Bureau will develop a mutually acceptable sticker to be applied to uncollected/Unacceptable Material. The County will supply the stickers to the Contractor and the Contractor will affix the sticker to the uncollected Bulk Material or Unacceptable Material not collected.
- 1.18 If the Contractor is uncertain whether an item set out for pickup should be collected or not, the Contractor shall contact the County Bulk Material Collection Supervisor for a determination. The determination of whether to collect an item as Acceptable Material is at the sole discretion of the County Bulk Material Collection Supervisor.

2.0 PERFORMANCE DEDUCTIONS

- 2.1 In accordance with Section 2.2 of the Contract, performance deductions will be applied, after notification by the County and Authority, in a tiered system as detailed here:

TIER 1 (\$100) – These deductions will be applied for the following Service Contract violations:

- Multiple missed collections at one or more Dwelling Unit(s) on a scheduled Service Area Bulk Material Collection day or Special Collection day.
- Failure to respond to complaints.
- Operating outside of the specified hours of operation.
- Failure to equip trucks with absorbents for cleaning up liquid leaks and/or spills.
- Failure to clean up spilled materials and/or littering.

Recycled Paper

- Failure of employees to wear safety vests and/or safety attire.
- Failure to provide the required type and quantity of collection vehicles to complete assigned Service Area Bulk Material Collection or Special Collection on the scheduled day.
- Failure to deliver materials to the designated County Acceptance Facility on the scheduled day.
- Failure to respond to claims of property damage within twenty-four (24) hours or in a timeframe acceptable to the County and Authority.
- Causing damage to private property on more than one occasion.
- Failure to leave a Rejection Tag provided by the County to explain why material was left uncollected.

TIER 2 (\$300) – These deductions will be applied for the following Service Contract violations:

- Failure to follow Federal, State, or local traffic laws. Additionally, Residents making a complaint will be advised to contact the police.
- Collection crews making collections from both sides of the street on a double-yellow line street.
- Collection crews participating in unacceptable behavior (e.g., public urination/defecation, creating excessive noise and/or a public nuisance, engaging Residents in an unprofessional manner, soliciting gratuities, etc.).
- Failure to follow directions of site staff at designated County Acceptance Facilities and/or failure to follow policies, procedures, and signage at designated County Acceptance Facilities.
- Unnecessary delay in collecting missed Service Area(s)/Routes (or missed portions of Routes) following any interruption in Service due to inclement weather or other emergency.

TIER 3 (\$1,000+) (Assessed at the discretion of the County and Authority on a case-by-case basis):

- Collection of Bulk Material or other material from any source other than the Dwelling Units designated by the County and Authority for collection.
- Mixing non-designated commercial properties Bulk Materials/materials in with the County and/or out-of-County Bulk Materials/materials in the same collection vehicle as County/Authority designated Bulk Material.
- Failure to perform that results in costs incurred by the County/Authority to remedy the failure (e.g., the County/Authority needing to using County resources to complete collection of a Service Area/Route). Charges may include costs for equipment, personnel, mileage, and other resources utilized by the County/Authority, including administrative overhead to be determined by the County and Authority.

- 2.2 The County and Authority may, at their sole discretion, issue a warning prior to performance deductions. In addition to the performance issues detailed here, the County and Authority reserves the right to assess performance deductions for any other failures of Service as determined by the County and Authority and provided in writing to the Contractor.
- 2.3 Subject to the approval of the County Bureau Chief of Solid Waste Management (Bureau Chief) and the Authority, the County and Authority may assess administrative charges monthly, in connection with this Contract, and will, at the time of applying charges/deductions to the Contractor's payment, include in writing, a listing of the administrative charges assessed and the basis for each assessment. Administrative charges will be deducted from the Contractor's upcoming payment and following notice.
- 2.4 Chronic violations of three (3) or more similar violations or similar administrative or operational violations of this Service Contract within a twelve (12) month period, will be subject to administrative charges as defined in this Contract. Violations are deemed cumulative and can be subject to administrative charges as defined in this Service Contract until the termination of this Service Contract.
- 2.5 In the event the Contractor wishes to contest the assessment of administrative charges, it must provide written objections to the Bureau Chief and Authority for each contested assessment or charge and, within five (5) calendar days after receiving the notice, request in writing an opportunity to be heard and present its written defense to the administrative assessment. The County and Authority will notify the Contractor in writing of any action taken with respect to Contractor's claims.
- 2.6 The assessment of administrative charges, is a supplementary remedy and does not replace any other remedies available to the County and Authority under this Contract, or otherwise, for failure of the Contractor to provide a high-quality level of Service.
- 2.7 In the event the Contractor's failure to perform under this Service Contract necessitates the County and Authority to procure the services of another collection Contractor (or other contractor) to provide Service Area Bulk Material Collection or Special Collection Service ("Alternate Collection Damages"), the compensation for the alternate Contractor/contractor will be deducted by the County and Authority from the Contractor's next payment, and the Contractor will not receive compensation during the period that the alternate Contractor/contractor performs the work.
- 2.8 Costs incurred by the County and Authority as a result of the following situations shall be recovered through deductions from the Contractor's payments:

- 2.8.1 The Contractor's failure to perform, including the resultant costs incurred by the County and Authority to provide Services.
- 2.8.2 Keeping the designated County Acceptance Facilities open beyond normal operating hours to allow the Contractor to unload its material.

SCHEDULE 2

DEFINITIONS

“Acceptable Material” has the meaning set forth in Section 2.5 and in Schedule 1 of this Service Contract.

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

“Alternate Collection Damages” are damages incurred by the Authority and the County as a result of the failure of the Contractor to fulfill its obligations under this Service Contract. These damages are limited to the difference between the cost of Services under the Service Contract and the cost of the alternative method of collecting Acceptable Material chosen as a substitute by the Authority.

“Applicable Law” means any law, regulation, requirement or order of any Federal, State or local agency, court or other governmental body (including, without limitation, the Baltimore County Comprehensive Solid Waste Management Plans and all permits, licenses and governmental approvals required as of the date of this Service Contract), applicable to: 1) the County Acceptance Facility; 2) the Service Contract; or 3) the performance of any obligations under the Service Contract or any other agreement entered into in connection with the Service Contract.

“Billing Period” means each calendar month during the term of this Service Contract except that the first Billing Period shall begin on the Operations Date and shall end on the last day of the month in which the Operations Date occurs and the last Billing Period shall end on the last day of the term of this Service Contract.

“Bi-Weekly” means every two (2) weeks.

“Bulk Material” means any Acceptable Material as described in Section 1.14 of Schedule 1.

“Bulk Trash” means Acceptable Material as described in Section 1.14 of Schedule 1 and to be disposed of.

“Bulk Divertables/Recyclables” means Acceptable Material as described in Section 1.14 of Schedule 1 to be segregated for placement in diversion/recycling area of a County Acceptance Facility.

“Bulk Material Collection” means the Contractor’s pickup and hauling away of any Acceptable Material as described in this Service Contract to the applicable County Acceptance Facilities.

“Bulk Material Collection Supervisor” means the person, or such person’s designee, as designated, in writing, by the County.

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

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

"Contractor" means _____, and its permitted successors and assigns.

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

"County" means Baltimore County, Maryland and its successors and permitted assigns.

"County Acceptance Facility": Any one of the three (3) Baltimore County facilities described in Section 1.3 of Schedule 1 to the Service Contract as follows:

- Central Acceptance Facility ("CAF"), 10275 Beaver Dam Road, Cockeysville, MD 21030.
- Eastern Sanitary Landfill ("ESL"), 6259 Days Cove Road, White Marsh, MD 21162.
- Western Acceptance Facility ("WAF"), 3310 Transway Road, Halethorpe, MD 21227.

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

"Curbside Set Out" means the area of property directly adjacent to the roadway.

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

"Facility" means a County Acceptance Facility.

"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 County Acceptance 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 Wastes, special nuclear Wastes or nuclear by-product Wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.
- B. Any other Waste which any Governmental Body or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the Service because of the harmful, toxic, or dangerous composition or characteristics of the Waste or substance. Any such designation would, under the Contract, be considered an Uncontrollable Circumstance as defined in the Contract.

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

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

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

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

"Missed Set Out" means a resident, household, or unit that has requested and received a Bulk Material Collection day for the pickup of their Acceptable Materials, but then the resident, household, or unit fails to set out the Acceptable Material

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

"Notice of Termination" means a written notice requiring the termination of this Service Contract 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 Service Contract will terminate pursuant to Article VI hereof.

"Operations Date" means January 1, 2022, or as directed by the County's Board of Estimates, the date the Contractor begins the Services.

"Participating Residents" a resident, household, or unit that has set Bulk Material out for collection on Bulk Material Collection day.

"Participation Rate" means the number of residential units participating divided by the number of residential units not participating.

"Performance Bond" means the performance bond relating to the provision of the Service in substantially the form set forth in Schedule 4.

"Performance Letter of Credit" means the letter of credit relating to the provision of the Service in substantially the form set forth in Schedule 4.

"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 Contract.

"Required Insurance" means the types and amounts of insurance set forth in Schedule 5 of this Contract.

"Residential Unit" means a qualifying household.

"Service" means the collection and transportation work that shall be performed by the Contractor pursuant to the Contract.

"Service Contract" means this Bulk Material Collection Service Contract between the Authority and the Contractor (including all Schedules to this Service Contract).

"Service Day" means the days on which Service will be provided. Monday – Friday except for Holidays.

"Service Area Bulk Material Collection" means the Service that will be provided in a designated area for one day.

“Service Area Bulk Material Collection Service Calendar” means the County wide schedule prepared by the Bureau of when and where Service Area Bulk Material Collection occurs.

“Tare Weight” means the weight of a Bulk Material Collection vehicle when it is empty.

“Specifications” means the quality and condition of the Bulk Materials as further set forth Schedule 1.

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

“Unacceptable Material” has the meaning set forth in Section 2.5 of this Service Contract and Schedule 1. Unacceptable Material also includes:

- (a) Hazardous Waste; and
- (b) Any material that (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 County Acceptance Facility.

“Uncontrollable Circumstance” means an event or condition listed in this definition, whether affecting the Authority, the County or the Contractor, 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 Facility), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, epidemic, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a Facility by a Person other than an employee or agent of, or visitor invited by, the Contractor or its Affiliates, or the Contractor'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 Facility to provide and maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Facility for operation of the Facility, provided they are essential to the Facility;
- (c) A non-Contractor or non-subcontractor Labor Action.

No other costs of any kind shall be considered an Uncontrollable Circumstance for the purposes of this Contract.

In no event will Subcontractor Default or a Contractor 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.

SCHEDULE 3

SERVICE FEES

Service Fees:

1. Bi-Weekly Price Per Service Area Bulk Material Collection: \$_____ X 26 periods: \$_____. Annual Price:

The fees above include Service to approximately 957 households per day for 10 days of Service. The County and Authority do not guarantee Participation Rates.

2. Special Collection: \$_____ per hour.

The County and Authority do not guarantee usage of the Special Collection Service.

The Service Fees may be adjusted on an annual basis per Section 3.2 (a) Inflation Adjustor.

SCHEDULE 4

PERFORMANCE AGREEMENTS

FORM OF PERFORMANCE BOND

FORM OF PERFORMANCE LETTER OF CREDIT

FORM OF PERFORMANCE BOND

PERFORMANCE BOND

Bond No. _____

Principal

Business Address of Principal

Surety

Obligees: NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY and BALTIMORE COUNTY, MARYLAND,
a body corporate and politic

A Corporation of the State of _____ and authorized to do business in Maryland

Penal Sum of Bond (express in words and figures) DOLLARS \$ _____

Contract Name _____ **Date of Contract** 20 _____

Contract Number _____ **Date Bond Executed** 20 _____

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL, above-named, and SURETY, above-named, and authorized to do business in the State of Maryland, are held and firmly bound unto the OBLIGEES, above-named, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, THE PRINCIPAL entered into a certain contract with the OBLIGEES described and dated as shown above, and is required to provide this bond pursuant to Maryland state law and/or County law and the contract.

NOW, THEREFORE, if the aforesaid Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the OBLIGEES with or without notice to the SURETY, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the SURETY being hereby waived, then, this obligation to be void; otherwise to remain in full force and effect.

THE SURETY FURTHER GUARANTEES that it is rated "B" or better by the A.M. Best Company, and the contract bid amount must be less than or equal to the underwriting limitation contained in the Department of Treasury Circular 570 as amended at the time of underwriting.

IN WITNESS WHEREOF, the above-bounded parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In Presence of:

Individual Principal

Witness: _____ **as to:** _____ (SEAL)

Print Name: _____ **Print Name:** _____

Attest:

Corporate Principal

(Name of Corporation)

Witness: _____ **By:** _____

Print Name: _____ **Print Name:** _____ (SEAL)

Title: _____

Recycled Paper

Attest:

Surety

(Name of Surety)

Business Address: _____

Witness: _____

By: _____ Affix

Print Name: _____

Print Name: _____ Corporate

Title: _____ Seal

Reviewed for Baltimore County Requirements

Office of the County Attorney

FORM OF PERFORMANCE LETTER OF CREDIT

Date: _____

The Northeast Maryland Waste Disposal Authority
100 South Charles Street
Tower II- Suite 402
Baltimore, MD 21201

Ladies and Gentlemen:

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

2. The Letter of Credit is being issued in support of the performance by the Contractor of its obligation to provide solid waste disposal services to the Authority as set forth in the “**BULK MATERIAL COLLECTION SERVICE CONTRACT BY AND BETWEEN NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY AND COMPANY TO PROVIDE COLLECTIONS AND TRANSPORTATION SERVICES FOR BALTIMORE COUNTY,**” dated _____, 20__ (the “Agreement”).

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

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

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

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

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

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

8. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the Disposal Agreement), except only the Draft referred to herein; and any such reference shall not (unless otherwise provided herein) be deemed to incorporate by reference any such document, instrument or agreement except for such Draft.

Very truly yours,
[NAME OF FINANCIAL INSTITUTION]

By: _____
Name: _____
Title: _____

SCHEDULE 5

REQUIRED INSURANCE

1. GENERAL REQUIREMENTS

1.1 Coverage Required:

Unless otherwise required by the specifications or the contract, the Contractor shall purchase and maintain the insurance coverages listed herein.

Insurance Companies must be acceptable to Baltimore County and have an A.M. Best Rating of A-, Class X or better.

1.2 Verification of Insurance:

Before starting work on the Service Contract or prior to the execution of the Service Contract, the Contractor shall provide the Authority and Baltimore County, Maryland with verification of insurance coverage evidencing the required coverages.

1.3 The Authority and Baltimore County as Additional Insureds:

The coverage required, excluding Worker's Compensation and Employers' Liability and Medical Malpractice Liability/ Professional Liability/ Errors and Omissions Liability, must include the Authority and Baltimore County, Maryland as an additional insureds.

1.4 Contractor's Responsibility:

The providing of any insurance herein does not relieve the Contractor of any of the responsibilities or obligations the Contractor may be liable by law or otherwise.

1.5 Failure to Provide Insurance:

Failure to provide and continue to force the required insurance shall be deemed a material breach of the contract.

2. INSURANCE COVERAGES

2.1 General Liability Insurance

2.1.1 Minimum Limits of Coverage:

Personal Insurance Liability and Property Damage Liability Combined Single Limit – \$500,000 each occurrence.

2.1.2 Such insurance shall protect the Contractor from claims which may arise out of, or result from, the Contractor's operation under the contract, whether such operation be by the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts any of the above may be liable.

2.1.3 Minimum Coverages to be Included:

- (a) Independent Contractor's Coverage:
- (b) Completed Operations and Products Liability coverage; and
- (c) Contractual Liability coverage.

2.1.4 Damages not to be Excluded:

Such insurance shall contain no exclusions applying to operations by the Contractor or any subcontractor in the performance of the Service Contract including but not limited to: (a) Collapse of, or structural injury to, any building or structure; (b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

2.2 Automobile Liability Insurance

2.2.1 Minimum Limits of Coverage:

Bodily Injury Liability and Property Damage Liability Combined Single Limit - \$500,000 any one accident.

2.2.2 Minimum Coverage to be Included:

Such insurance shall provide coverage for all owned, non-owned and hired automobiles.

2.3 Workers' Compensation and Employers' Liability Insurance

Such insurance must contain statutory coverage, including:

Employers' Liability insurance with limits of at least:

Bodily Injury by Accident - \$500,000 each accident

Bodily Injury by Disease - \$500,000 policy limit

Bodily Injury by Disease - \$500,000 each employee

2.4 Other

Such other insurance in form and amount as may be customary for the type of business being undertaken by the Contractor.

3. ADDITIONAL INSURANCE PROVISIONS

- (a) The Authority shall be included as an additional insured on the above Commercial General Liability. Baltimore County shall also be identified as an additional insured entity on these policies.
- (b) All losses under the required insurance shall be adjusted to the satisfaction of the Authority.
- (c) All claims made policies shall provide a minimum of five (5) years' discovery period or Contractor shall provide continuous coverage through regular policy renewals.
- (d) The Authority shall be advised promptly in writing of the following change in the insurance policies:
 - (i) Setting up a new retro date.
 - (ii) Exhausting any aggregate limit under any of the above policies.
 - (iii) Switching occurrence, based coverage to claims made coverage or vice versa.
- (e) The Contractor shall assure that all subcontractors performing services in accordance with this Service Contract carry identical coverages as required above, either individually or as an additional insured on the policies of the Contractor.

SCHEDULE 6

TERMINATION FOR CONVENIENCE, PROCEDURES AND COSTS

1. If the Authority exercises its right to terminate this Service Contract for convenience pursuant to Section 6.5, the provisions of COMAR 21.07.01.12 shall apply. As of the Operations Date, COMAR 21.07.01.12 reads as follows:

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