

Recycling Service Agreement

by and between

Northeast Maryland Waste Disposal Authority

and

[COMPANY]

to Provide

Recovered Materials Transportation, Processing

and Recycling

for Frederick County

Dated as of:

[DATE]

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

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

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

Section 1.1 Definitions.

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

Section 1.2 Rules of Interpretation.

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

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

ARTICLE II

OBLIGATIONS RELATING TO TRANSPORTATION AND RECYCLING OF RECOVERED MATERIALS

Section 2.1 Acceptance, Processing, Transportation, and Recycling of Recovered Materials

- (a) The Company shall accept, transport, process, and recycle all Recovered Materials directed to the Company by the Authority, as described in this Agreement and in the documents identified in Schedule 1. The Authority reserves the right under this Service Agreement to import and process through the Acceptance Facility, Recovered Materials from locations outside the confines of Frederick County, if approved by the Company. The Company has sole responsibility for the provision and operation of all facilities, personnel, vehicles and sites necessary to provide the Service as described in Schedule 1. The Company Representative shall be available daily to ensure the day-to-day coordination of activities. Upon request of the Authority Representative or of the County's Representative, the Company shall meet with the Authority or County. Services requested under this Agreement shall begin on July 1, 2019 (Operations Date).

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

- (b) The Company is obligated to accept, transport, and process all Recovered Material directed to the Company by the Authority.
- (c) The Authority will be responsible for the operation and maintenance of the Transfer Station and loading of Recovered Materials into the Company's trailers. The Company shall provide labor and equipment necessary to, jockey, transport, and process Recovered Materials.
- (d) The Authority will direct all Recovered Materials received at the Acceptance Facility to the Company. Delivery of the Recovered Materials to the Company shall be made at the Acceptance Facility. It shall be the Company's responsibility to transport the Recovered Materials to the Processing Facility.
- (e) The Authority makes no representation or guarantee as to the quantity of Recovered Materials provided. The Company shall be the sole vendor awarded a contract for the scope of work described in this Agreement, and shall have the exclusive right to perform such scope of work.

- (f) The Authority will provide loading and weighing of all transfer trailers. The Acceptance Facility has an area for the spotting of trailers (full or empty) overnight to ensure continuity of service for waste and recycling transfer. The Company will provide trailers and a truck AND driver for jockeying trailers for the term of the Service. The Company shall insure that a minimum of five trailers are available on-site at all times for the loading of Recovered Materials.

Section 2.2 Refusal of Deliveries.

- (a) Extent of Refusal Rights

The Company must accept deliveries of Recovered Materials delivered at hours established under Section 2.3. Recovered Material rejected by the Company for any reason other than as permitted pursuant to this Section 2.2 or any other provision of this Agreement constitutes Wrongfully Diverted Recovered Material. Wrongfully Diverted Recovered Material is subject to Alternate Recycling Damages as described in Section 6.9.

- (b) Unacceptable Material.

The Company shall be permitted to reject any load containing Unacceptable Material. The Company must notify the Authority within 2 hours of receiving full or partial loads of Unacceptable Material at the Processing Facility and provide appropriate documentation including but not limited to photo documentation, scale tickets, and trailer and truck identification of applicable load(s) containing the Unacceptable Material.

If the Company rejects a load containing Unacceptable Material delivered to the Processing Facility and provides the appropriate documentation to the Authority, the Authority may at its option hire the Company to dispose of such Unacceptable Material on terms mutually agreeable by the Authority and the Company. The Authority shall be responsible for the Residue Transportation Fee and the Residue Disposal Fee associated with Unacceptable Material rejected by the Company and disposed of at an Authority approved Disposal Facility.

Section 2.3 Receiving Hours and Waiting Time.

- (a) The Receiving Hours of the Acceptance Facility or Company access to Acceptance Facility are defined in Schedule 2. The County will load Company trailers from 7:00 a.m. until 4:30 p.m. Monday through Saturday (except Holidays).
- (b) Recovered Materials will not be delivered by the Authority on the following holidays. The Authority shall designate the dates on which holidays are to be observed.

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

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Section 2.4 **Scales and Weighing Records.**

The Authority shall weigh all Company vehicles arriving at the Acceptance Facility on the County's owned and operated in-bound scale and departing from the Acceptance Facility on the County's owned and operated out-bound scale. The Authority's record shall include the following: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck or permit number). The Company's vehicles shall incorporate a computer interface system and use software compatible to the County's system.

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

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

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

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

The Authority shall transmit by fax or electronically the daily scale records to the Company.

The Authority shall keep copies of all weight tickets for at least three years, which shall be available for inspection by the Company upon request, at the Acceptance Facility.

The Company shall track the transportation and recycling of the Recovered Materials each month and furnish the Authority and County a compilation of such information for each month, within 20 days after the end of the month, in substantially the form of Exhibit A to Schedule 4. The tickets shall show at minimum the truck number, driver name and or ID, date and time of delivery, name and address of the recycling site and tonnage.

Section 2.5

Hazardous Waste.

- (a) If Hazardous Waste is delivered to the Acceptance Facility by a third party, and the Hazardous Waste is or should have been identified while at the Acceptance Facility, the Authority shall be solely responsible to segregate and isolate the Hazardous Waste and attempt to identify the hauler and/or source of the Hazardous Waste and arrange for its immediate removal from the Acceptance Facility by that hauler and/or source. The Company shall provide reasonable assistance in the identification of the hauler and/or source upon request by the Authority. If the hauler and/or source of the Hazardous Waste cannot be identified by the Authority, or the hauler/source refuses for any reason to remove immediately the Hazardous Waste, or if the hauler becomes subject to RCRA manifest requirements to transport and/or remove the hazardous waste, the Authority shall be solely responsible for all costs associated with the proper preparation, loading, transportation and disposal of the Hazardous Waste. The foregoing shall not be considered to be a waiver of any claim the Authority may have against any third party responsible for the generation or delivery of the Hazardous Waste to the Acceptance Facility.
- (b) If Hazardous Waste delivered to the Acceptance Facility is not identified until the disposal process at the Processing Facility then the parties shall proceed as follows. The Company shall segregate and isolate the Hazardous Waste. The Company will document the Hazardous Waste and contact the Authority and provide detail on how the situation is being managed.

The Company shall attempt to identify the hauler and/or original entities responsible for delivering the hazardous waste to the transfer station and arrange for its immediate removal either by the hauler from which the hazardous waste originated from or through Company resources. The Authority will provide reasonable assistance in identifying the hauler and/or original entities responsible for delivering the hazardous waste to the Acceptance Facility. If the hauler and/or original entities responsible for delivering the hazardous waste to the Acceptance Facility cannot be identified, and the Company has provided documentation sufficient to show that the chain of custody (e.g., hauling records for the material and receipt of the material at a facility permitted to receive the material sufficient to demonstrate that the Company had control of the material from the Acceptance Facility to the Facility) of the hazardous waste had not been breached in either the transportation or the disposal of the waste, then the Authority shall be responsible for all costs associated with the preparation, loading, and disposal of the hazardous waste, including any costs incurred by the Company in initially segregating and isolating the hazardous waste at the disposal site. If the Company cannot provide sufficient documentation to show the chain of custody, then the Company shall be responsible for all costs associated with the preparation, loading, and disposal of the hazardous waste, including any costs incurred in initially segregating and isolating the hazardous waste at the disposal site.

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

Section 2.6 **Manner of Deliveries; Vehicle Size; Rules and Regulations.**

The Company shall comply with the rules and regulations for the Recovered Material that are provided by the Authority, which include regulations regarding vehicular movement on the Acceptance Facility site and the County roads leading to and from the Acceptance Facility (Routes and map included in RFP and incorporated by reference). These regulations include the observance of posted speed limits on all roads used for the Service. The Company will be assessed Transportation Violation Damages, as defined in Schedule 2, for any documented infractions.

Section 2.7 **Subcontractors; Performance Security.**

- (a) The parties acknowledge that the dependable operation and maintenance of the Processing Facility and other Facilities providing the Service is in the interests of the parties to this Agreement. The Company shall not enter into or maintain any contract or subcontract with any person other than an Affiliate of the Company or Company's designated third-party hauling subcontractor for any substantial portion of the operation, management or control of a Facility or the performance of any of the Company's obligations under this Agreement without the prior written consent of the Authority.
- (b) No contract or subcontract between the Company and any other person will affect the Company's obligation under this Agreement.
- (c) Prior to the Operations Date the Company shall provide a Performance Bond or Letter of Credit (LOC) from a surety, insurance company, or financial institution acceptable to the Authority, covering the performance obligations of the Company under this Agreement. The Performance Bond or LOC shall be equal to the value of one year of services and name the Authority and the County as beneficiaries. The Performance Bond or LOC shall be in the form set forth in Schedule 5. The Company shall provide the Performance Bond or LOC until released by the Authority. The Authority shall release the Performance Bond or LOC upon termination of this Agreement as long as the Company is not in default and the Performance Bond or LOC is not being drawn upon by the Authority.
- (d) All contracts with transportation subcontractors will be made available for review by the Authority upon request.

Section 2.8 **Authority and County Access.**

The Authority and the County, and their respective agents, licensees and invitees may visit or inspect the operation during normal business hours, upon reasonable notice that in no instance shall be less than 24 hours, notwithstanding inspection of rejected loads that may have a shorter notification time, during the term of this Agreement. The Authority and the County, and their respective agents, licensees and invitees shall conduct visits to the Facilities in a manner that does not cause unreasonable interference with the Company's operations. The Authority and County shall provide a list of invitees for a tour (if other than Authority Representative or its designee, or the County Representative or its designee) to the Company for approval. The Company shall not unreasonably withhold approval for site visits.

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

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

- (a) The Company shall cooperate with the Authority to keep the Acceptance Facility and surrounding areas free from accumulation of Wastes or rubbish (except in appropriate locations) caused by transfer operations (e.g., the jockeying of trailers in the Acceptance Facility parking lots, tarping activity and the movement of trailers through the Acceptance Facility) and shall maintain and operate its equipment so as to prevent the Acceptance Facility from becoming unsightly or a nuisance under Applicable Law. The Company will take measures to minimize Waste in the lot areas. Such measures will include and not be limited to tarping all trucks when leaving the transfer station and periodic litter pick-up in the staging area. The Company shall cooperate with the Authority to ensure that all Recovered Materials on the Acceptance Facility tipping floor and in the tunnels are placed in a trailer and covered prior to leaving the Acceptance Facility at the end of each operating day.
- (b) Notwithstanding anything to the contrary in this Agreement, the Company shall not be liable in any way for ordinary wear and tear to the Acceptance Facility, including but not limited to all Acceptance Facility floor surfaces, and roadways and curbing into and out of the Acceptance Facility. The Company will be liable for damages caused by the Company, its subcontractor(s) and or agent(s), if the damages are not caused by ordinary wear and tear.
- (c) The Company approves the County to jockey the Company's trailers in the event that the Company does not have a driver available and is not able to coordinate through the onsite hauling contractor. The Company shall hold the Authority and the County harmless if the County jockeys the Company's trailers, unless the damages are caused by the gross

negligence or willful misconduct of the Authority or the County. Should the Authority have to jockey the Company's trailers, the Company shall reduce the transportation fee for Authority jockeyed loads by \$2 per ton.

Section 2.10 **Regulatory Requirements.**

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

Section 2.11 **Appropriations.**

The Authority's fiscal obligations under the Service Agreement are subject to the availability of funds appropriated by Frederick County, Maryland, or its successors. The County shall promptly notify the Authority and the Company in the event that requisite funds are not appropriated by the County for the performance of this Agreement.

Section 2.12 **Equipment**

Equipment used to transport Recovered Material shall be provided by the Company. The Authority will not provide transport equipment. The Company's equipment must be suitable for the proposed transport method and must be rigid, durable, corrosion resistant, nonabsorbent, easily cleanable and suitable for handling with no sharp edges or other hazardous conditions. The Company's equipment must be capable of withstanding the hard use typically associated with handling solid waste, and must be designed, engineered and rated to perform satisfactorily and safely at all times in accordance with generally accepted waste industry procedures. Trailers must have a minimum height of 12 feet 6 inches, a minimum length of 48 feet and a minimum capacity of 120 cubic yards.

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

The Company shall deliver empty trailers, and may store empty and loaded trailers at a County designated staging area. Loaded trailers must be covered and may be stored at a staging area a maximum of 24 hours. The Company may store a maximum of fifteen empty and loaded trailers in the staging area at any one time. Heavy maintenance and repair of tractors is not allowed at the Acceptance Facility.

The Authority provides front end loaders and permanently fixed materials handling cranes at each pit for distribution and compaction of Recovered Material in the transfer trailers. The Authority will be responsible for the operation and maintenance of the Acceptance Facility and loading of Recovered Materials into the Company's trailers. The Company shall provide transfer equipment, and transportation.

Section 2.13 Materials Recovery Facilities

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

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

ARTICLE III

PAYMENT PROVISIONS

Section 3.1 **Net Recycling Credit, Education Grant, Damages, Recycling Revenue, and Payments.**

The Company shall pay the Authority a monthly Net Recycling Credit as calculated in Schedule 3. The Market Price Index (“MPI”) will be set by using the first monthly published index values for single stream material for the commodities identified in the Company’s proposal and listed in Exhibit B of Schedule 8 to this Agreement. The Company shall use the percent (%) composition presented in Appendix E-2 of the Request for Proposals dated [DATE] (the “RFP”) for this Agreement until a new sort of the Recovered Materials is requested by the Authority or the Company and a new percent (%) composition is determined. Exhibit A of Schedule 8 to this Agreement shows a sample MPI Calculation.

The County's designated scale (Acceptance Facility scale) records shall be the basis for payment.

- (b) The Authority may retain or set-off from any amounts due the Company, Alternate Recycling Damages, Delivery Delay Damages, Transportation Violation Damages, Loading Damages, or damages to pay for repair of the facilities caused by the Company or the Company’s Sub-contractor(s).
- (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 Recycling Revenue for that month shall be paid pursuant to Schedule 3.
- (d) Every July 1 while this Service Agreement is in effect, the Company shall deliver to the Authority a Recycling Outreach and Education grant (“Grant”) in the amount of \$25,000. The Authority shall deliver confirmation to the Company that the County directed the Grant to recycling outreach and education. This confirmation will occur at the end of the Fiscal Year that the Grant was supplied.

Section 3.2 **Price Adjustments.**

Except as set forth in this Agreement, including section 4.2 hereof, there shall be no adjustment to the prices charged the Authority by the Company.

Section 3.3 **Monthly Payments.**

- (a) The County is designated as the Authority’s billing and collection agent. All Recycling Revenue and payments should be directed to the County as detailed below. The Company shall provide the Authority and the County with a statement or invoice for all amounts payable as well as payments of the Net Recycling Credit by the twenty-fifth day of the calendar month immediately succeeding the calendar month for which service was provided.
- (b) Any amounts invoiced are due thirty days after receipt of the invoice by the Authority. Each invoice shall set forth the amount of the Transportation Fee and other charges payable to the Company for the applicable period as separate line items, together with supporting documentation including scale records, sufficient to allow the recipient of the invoice to verify the Company's calculations of the Service Fee and other charges for such period.

All Company payments (Net Recycling Credit and annual Education and Outreach grant) shall be delivered by hand or mailed first class, postage prepaid, or by wire transfer. Until such written direction of the Authority, any payments will be made through hard copy payable to the County.

**Frederick County
Department of Solid Waste Management
9031 Reich’s Ford Road
Frederick, MD 21704
Attention: Department Head
Phone: 301-600-1848**

With a Copy to:

**Northeast Maryland Waste Disposal Authority
Tower II, Suite 402
100 South Charles Street
Baltimore, MD 21201-2705
Attention: Accounts Payable
Phone: 410-333-2730 Fax: 410-333-2721
Email: 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 Agreement by the Authority or the Company that are not paid when due in accordance with this Agreement shall, unless otherwise specifically provided, bear interest, to the extent permitted by Applicable Law, at the Late Payment Rate.

Recycled Paper

Section 3.6 **Disputes as to Service Fee or Other Charges.**

If the Company or the Authority disputes any amount owed as the Service Fee, Net Recycling Credit, Recycling Revenue, the classification of Recovered Materials made by the Company, or the amount of Damages claimed by the Authority, the disputed portion of such adjustment is not effective until resolution of a dispute pursuant to Section 9.15 of this Agreement. Immediately after the resolution of a dispute, the party whose position does not prevail shall reimburse the other party for the aggregate amount of any underpayment or overpayment, plus interest at the Late Payment Rate.

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

- (a) The Company shall maintain all books, records and accounts necessary to record all matters affecting the Net Recycling Credit, Service Fee, applicable damages or other amounts payable by or to the Authority or the Company under this Agreement or other agreements, including, but not limited to, Certificates of Insurance for Required Insurance. The Company shall maintain all such books, records and accounts in accordance with GAAP. The Company's books, records and accounts shall accurately, fairly and in reasonable detail reflect all the Company's dealings and transactions under this Agreement and other agreements and shall contain sufficient data to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards. The Company shall make all such books, records and accounts available for inspection and photocopying by the Authority within five (5) business days of a written request by the Authority.
- (b) The Company shall provide the Authority with the reports and information set forth in Schedule 4 of this Agreement at the times required by Schedule 4. The report format can be modified with approval of the Authority to reflect the facilities used by the Company to provide the Service.
- (c) The Company certifies that all information the Company has provided, or will provide to the Authority, is true and correct and can be relied upon by the Authority and in awarding, modifying, making payments, or taking any other action with respect to this Agreement. Any material false or misleading information is a ground for the Authority to terminate this Agreement for cause, without opportunity to cure, and to pursue any other appropriate remedy.

Section 3.8 **Accounting.**

Beginning July 1, 2020, within sixty (60) days following June 30, 2020 and the end of each succeeding Fiscal Year, the Company shall provide an accounting to the Authority of all payments made by the Authority for the Fiscal Year, pursuant to this Agreement, and all amounts payable to the Authority for such Fiscal Year.

ARTICLE IV

PROCESSING CAPACITY REDUCTIONS AND UNCONTROLLABLE CIRCUMSTANCES

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

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

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

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

- (i) As soon as possible after an Uncontrollable Circumstance occurring on or after the Operations Date, the Company shall give the Authority Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to the Company), and a description of the conditions preventing the performance of the Company's obligations.
- (ii) If a Facility is unavailable due to an Uncontrollable Circumstance, the Company must diligently pursue finding an alternate facility. Alternate facilities must be approved by the Authority. Facilities presented in the Company's proposal dated [DATE] are deemed approved by the Authority. The Company may seek pre-approval of an alternate Processing Facility.
- (iii) The Company shall answer any inquiries of the Authority Representative regarding the conditions caused by the Uncontrollable Circumstance and shall provide them with such information as they reasonably request. Upon the request of the Authority Representative, a consulting engineer, at the Authority's expense, may review the Company's estimate of the time schedule for repairing a Facility or the alleged causes of the Uncontrollable Circumstance.

Section 4.2 Change of Law.

- (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 Company's services provided to the Authority hereunder, the Company shall provide notice of such to the Authority, along with the Company's proposed adjustment to the prices charged the Authority for the services performed hereunder. Any adjustment to the prices charged the Authority for the services performed hereunder shall be agreed upon in writing and signed by the parties.

- (b) Neither a change in the tip fee at the RFLF nor a change to the System Benefit Charge in Frederick County constitutes a change in law. 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 terminate the parties' contract within ninety days of the notice supplied by the Company.

ARTICLE V

INSURANCE AND INDEMNIFICATION

Section 5.1 Types of Insurance for the Company.

The Company shall obtain and maintain, or cause to be obtained and maintained, the Required Insurance in the forms approved by the Authority. The deductible limits contained in Schedule 6 shall not be increased. The Company shall procure and maintain any additional insurance coverage requested by the Authority that is available on commercially reasonable terms and such other insurance required by Applicable Law if the Authority agrees that the cost of the additional insurance may be added to the Service Fee. Insurance required to be obtained by the Company pursuant to this Section 5.1 is "Required Insurance" for all purposes of this Agreement.

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

- (a) Within ten business days of execution of this Agreement by the Authority, and at any time thereafter, the Company shall deliver to the Authority copies of all certificates of insurance for Required Insurance pursuant to the Notice Provision in Section 9.3 of this Agreement upon ten business days after receipt by the Company. Except for Worker's Compensation Insurance, each policy shall include the Authority and the County as additional insured and require the insurer to provide the Authority sixty (60) days' prior written notice of termination or cancellation. The Company shall provide the Authority sixty (60) days' prior written notice of any material change in coverage or deductibles under each such Policy.
- (b) The Company shall use only responsible insurance companies of recognized standing which are authorized to do business in Maryland as providers of all Required Insurance. The Company shall carry all Required Insurance with insurance companies rated at least "A-" or its equivalent by Best's Key Rating or another national rating organization. The Company may affect Required Insurance by endorsement of blanket insurance policies.
- (c) The Company shall not take out separate insurance concurrent in form or contribution in the event of loss with Required Insurance if the existence of such insurance reduces amounts payable under Required Insurance. The Company shall immediately notify the Authority whenever it applies for any separate insurance and shall promptly deliver the policy or policies evidencing the separate insurance to the Authority.
- (d) The Company shall submit to the appropriate insurer timely notices and claims of all losses insured under any Required Insurance policy which occur during the performance of the Services described herein, pursue such claims diligently and comply with all terms and conditions of Required Insurance policies. The Company shall promptly give the Authority copies of all notices and claims of loss and any documentation or correspondence related to such losses. The Company shall make all insurance certificates for Required Insurance, available for inspection and photocopying by the Authority on reasonable notice.

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Section 5.3 Indemnification.

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

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

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

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

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11001 et seq., National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f) et seq., any similar, implementing or successor law, including, without limitation, laws enacted by the State of Maryland or any other State, and any amendment, rule, regulation, order, or directive issued thereunder.

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

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

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

"Hazardous Waste Activity" shall mean any activity, event, or occurrence involving 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 Agreement, the right of the Company to recover damages ordinarily constitutes an adequate remedy. Therefore, the Company may not terminate its obligations under this Agreement for cause or any breach unless an Event of Default (as defined in Section 6.3 of this Agreement) on the part of the Authority has occurred and is continuing.
- (b) The Company acknowledges that a breach of this Agreement or an Event of Default by the Company entitles the Authority to recover, to the extent proven, all of its damages, as set forth in this Agreement, caused by such default or Event of Default, as well as any other remedy provided by this Agreement or by law for breach or failure to perform.

Section 6.2 **Events of Default by the Company.**

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

- (a) The failure or refusal by the Company to fulfill any of its material obligations to the Authority in accordance with the Contract documents as described in Schedule 1, unless such failure or refusal is excused or justified pursuant to this Agreement, or the failure or refusal by the Guarantor to fulfill any of its obligations in accordance with the Guaranty Agreement. No such failure or refusal on the part of the Company or Guarantor shall constitute an Event of Default unless and until:
 - (i) The Authority has given written notice to the Company stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exist that shall, unless corrected, constitute a material breach of this Agreement on the part of the Company and that give the Authority a right to terminate its obligations to the Company under this Agreement for cause under this Section unless such default is corrected within a reasonable period of time; and
 - (ii) the Company or the Guarantor, as the case may be, have neither corrected such default nor initiated reasonable steps to correct it within a reasonable period of time (a reasonable period of time, for purposes of this paragraph, shall in any event be not less than thirty business days from the date of the notice given pursuant to clause (i) of this Section for any obligation other than one related to a failure by the Company to accept Recovered Materials pursuant to the terms of this Agreement, for which obligation a reasonable period of time shall in any event be not less than five business days from the date of the notice given pursuant to clause (i) of this Section 6.2(a)), provided that if the Company or the Guarantor has commenced to

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take reasonable steps to correct such default within such reasonable period of time, the default shall not constitute an Event of Default for as long as the Company or the Guarantor, as the case may be, is continuing to take reasonable steps to correct it and is maintaining progress in actually correcting it; or

- (b) If, by the order of a court of competent jurisdiction, a receiver, liquidator, custodian or trustee of either the Company or the Guarantor or of a major part of either of their property is appointed and is not discharged within sixty days, or if, by decree of such a court, the Company or the Guarantor 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 Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereinafter in effect, is filed against the Company or the Guarantor and is not dismissed within sixty days after such filing; or
- (c) If either the Company or the Guarantor 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 either the Company or the Guarantor under any such law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Company or the Guarantor pursuant to the Federal Bankruptcy Code or any other similar statute applicable to the Company or the Guarantor, as now or hereafter in effect; or
- (d) If either the Company or the Guarantor 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 either the Company or the Guarantor or of a major part of either of their property; or
- (e) If the Company provides or has provided materially false or misleading information to the Authority; or
- (f) The failure of the Company or other Facility operators to comply with Applicable Law in any material fashion; or
- (g) The failure of the Company to provide a fully operational Service by the Operations Date.

Section 6.3 Events of Default by the Authority.

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

- (a) The failure by the Authority to pay any amount exceeding \$10,000 that the Authority is required to pay to the Company under this Agreement within thirty (30) days after receipt by the Authority of written demand from the Company accompanied by notice stating that unless such amount is paid within thirty (30) days after such demand the failure shall

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constitute an Event of Default (Amounts exceeding \$10,000 that are disputed shall be handled through the formal dispute resolution as set forth in Section 9.15 of this Agreement); or

- (b) The failure or refusal by the Authority substantially to fulfill any of its material obligations to the Company in accordance with this Agreement, other than as provided in subparagraph (a) above, unless such failure or refusal is excused or justified pursuant to the provisions of this Agreement, provided that no such failure or refusal constitutes an Event of Default unless and until:
 - (i) the Company has given prior written notice to the Authority and the Authority Representatives stating that in its opinion a particular default or defaults (described in reasonable detail in such notice) exists and unless corrected, constitute a material breach of this Agreement on the part of the Authority and gives the Company a right to terminate this Agreement for cause under this Section 6.3(b) unless such default is corrected within a reasonable period of time; and
 - (ii) The Authority has not corrected such default nor initiated steps to correct it within a reasonable period of time (a reasonable period of time for purposes of this paragraph shall in any event not be less than thirty (30) 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.

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

Section 6.4 Termination on Default.

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

Section 6.5 Termination for Certain Uncontrollable Circumstances.

If, as a result of the occurrence of one or more Uncontrollable Circumstances, the Processing Facility is closed for ten or more consecutive days, then the Authority may terminate this Agreement upon notice to the Company. If, as a result of the occurrence of one or more Uncontrollable Circumstances, the Processing Facility is closed for ten or more consecutive days, the Company will have the option to use a permitted and licensed facility as an alternative facility, without accruing any additional charges to the Authority. If the Company decides not to consider an alternative facility or does not respond in ten days, the Authority may terminate this agreement

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upon notice to the Company. The Company shall make all efforts to move the Recovered Material to a permitted facility for processing. At no time shall the Authority pay additional transportation or processing costs. Furthermore, the Authority shall not unreasonably withhold approval of a Facility. If this Agreement is terminated pursuant to this Section 6.5, then neither party shall owe or be liable to the other party for any amounts otherwise due hereunder, except for (i) Net Recycling Credit and, if applicable, Transportation Fee amounts due for Recovered Materials actually delivered prior to the effective date of the termination, (ii) amounts due in accordance with Section 5.3 of this Agreement "Indemnification," and (iii) any damages assessed prior to the effective date of termination.

Section 6.6 Termination for Convenience.

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

Section 6.7 Default Termination Damages Payable to the Authority.

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

Section 6.8 Survival of Certain Rights and Obligations.

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

Section 6.9 Alternate Recycling Damages.

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

Section 6.10 Delivery Delay Damages.

The Authority is entitled to assess Delivery Delay Damages in an amount equal to twenty-five percent (25%) of the applicable Service Fee for every ton of Recovered Material delivered by any vehicle delivering Recovered Materials at the Acceptance Facility for which the waiting time

exceeds forty minutes due to the Company's failure to provide a trailer at the transfer station. The waiting time shall be measured by taking the difference between the time recorded on the scale ticket on arrival at the Acceptance Facility, and the time recorded on the scale ticket at the outbound scale of the Acceptance Facility. The Company will not be assessed damages if the delay is the result of an unrelated third party hauler delivering Recovered Materials to the Acceptance Facility. The Company will only be liable for Delay Delivery Damages if the Company's actions cause the delay.

Section 6.11 Transportation Violation Damages.

The Authority is entitled to assess Transportation Violation Damages if any vehicle used for the performance of the Services is operated in an unsafe manner. This includes exceeding the posted speed limits on the Acceptance Facility grounds and all roads used for the Service. This also includes (1) using access and egress roads, that are not approved by the County, within the County and (2) leaving the Acceptance Facility with an uncovered trailer, or trailer covered in manner that does not prevent Recovered Materials from spilling onto public roads. These damages may be withheld from monthly payment as set forth in Section 3.1.

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

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

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

Section 6.12 Loading Damages

In the event the Company does not provide the necessary amount of trucks to ensure all Recovered Materials on the Acceptance Facility tipping floor and in tunnels is placed in a trailer and covered prior to 4:30pm (Monday through Saturday, except Holidays), Loading Damages in the amount of \$300 per day shall be assessed.

Section 6.13 **Performance Guarantee.**

Guarantor has guaranteed the performance of the obligations of the Company under this Agreement, including all obligations during the extension period and otherwise. The Performance Guarantee is in Schedule 5.

ARTICLE VII

TERM; OPTIONS TO RENEW

Section 7.1 **Term.**

The term of this Agreement begins on July 1, 2019, and ends June 30, 2021, with three optional 12-month terms, at the Authority's sole discretion.

Section 7.2 **Option to Renew.**

This Agreement may be extended, at the Authority's sole option, for a maximum of three, 12-month periods, at the financial terms set forth in Article III and Schedule 3. The Authority shall give the Company ninety (90) days' notice of its intent to renew the Service Agreement for each option year.

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

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties of the Authority.

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

- (a) The Authority is a body politic and corporate validly existing under the Constitution and laws of Maryland, with full legal right, power and authority to enter into and perform its obligations under this Agreement.
- (b) The Authority has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms.
- (c) Neither the execution or delivery by the Authority of this Agreement, nor the performance of the Authority's obligations in connection with the transactions contemplated hereby nor the Authority's fulfillment of the terms or conditions of this Agreement (i) conflicts with, violates or results in a breach of any Applicable Law, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.
- (d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery by the Authority of this Agreement except those that have been duly obtained or made.

Section 8.2 Representations and Warranties of the Company.

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

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

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

ARTICLE IX

MISCELLANEOUS

Section 9.1 **Authority Representative, County Representatives and Company Representative.**

- (a) The Authority Representative is the Executive Director of the Authority or the Executive Director's designee.
- (b) The County Representative is the Director of the Division of Utilities and Solid Waste Management for the County or the Director's designee.
- (c) The Company Representative is the President of the Company or any Vice President of the Company whom the Company designates as the Company Representative and who is authorized to contractually bind the Company.
- (d) Any party may change its authorized representative upon five Business Days' written notice to the other parties. Only the Authority Representative or the Company Representative may make the approvals, requests and notices by a party to the other party under this Agreement.

Section 9.2 **Assignment and Participation in Agreement by Other Authority Member Jurisdictions.**

- (a) The Company may not assign this Agreement without the prior written consent of the Authority. The Authority may assign this contract to Frederick County, Maryland without the written consent of the Company.
- (b) The Authority may, at its option, offer the terms of this Agreement to other Authority Members, with written notice to the Company. The Company agrees, at the request of the Authority, to provide the services contained in this Agreement, at the prices contained in this Agreement, to other Authority Members, provided, however, that the Company may adjust the Transportation Fee component of the Service Fee to account for any increased costs due to any change in distance for which transportation is provided. If the Authority notifies the Company that it intends to offer the services to another Authority Member, the Company agrees to make such amendments or modifications to this Agreement as are necessary to provide the services, and to provide information as requested by the Authority to substantiate any change in the Transportation Fee requested. The only basis for the Company to decline to provide the services to another Authority Member is lack of available Processing Facility capacity, and the Company bears the burden of proving to the Authority that it lacks the capacity to provide the additional services requested.

Section 9.3 Notices.

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

If to the Authority:

**Northeast Maryland Waste Disposal Authority
Tower II, Suite 402
100 South Charles Street
Baltimore, MD 21201-2705
Attention: Executive Director
Phone: 410-333-2730, FAX: 410-333-2721
Email: authority@nmwda.org**

With a copy to:

**Frederick County
Department of Solid Waste Management
9031 Reich's Ford Road
Frederick, MD 21704
Attention: Department Head
Phone: 301-600-1848**

**Frederick County
Division of Utilities and Solid Waste Management
4520 Metropolitan Court
Frederick, MD 21704
Attention: Director
Phone: 301-600-2078
FAX: 301-600-2180**

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

If to the Company:

[COMPANY INFO]

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With a copy to:

[COMPANY INFO]

With a copy to:

[COMPANY INFO]

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

Section 9.4 **Entire and Complete Agreement.**

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

Section 9.5 **Binding Effect.**

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

Section 9.6 **Further Assurances and Amendments.**

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

Section 9.7 **Governing Law.**

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

Section 9.8 **Counterparts.**

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

Section 9.9 **Amendment or Waiver.**

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

Section 9.10 **Relationship of the Parties.**

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

Section 9.11 **Confidential Information.**

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

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

Section 9.12 **Severability.**

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

Section 9.13 **Damages.**

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

Section 9.14 **Effect of Authority Approvals.**

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

Section 9.15 **Dispute Resolution.**

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

Section 9.16 **Limitation of Liability and Defenses.**

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

Section 9.17 **County as Third Party Beneficiary.**

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

Section 9.18 **Nondiscrimination.**

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

Section 9.19 **Public Ethics.**

- (a) The Authority may terminate the right of the Company to proceed under this Agreement if it is found by the Authority that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Company, or any agent or representative of the Company, to any officer or employee of the Authority or the County with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this Agreement; the facts upon which the Authority makes such findings may be reviewed in any competent court.
- (b) In the event this Agreement is terminated as provided in paragraph (a), above, the Authority shall be entitled (i) to pursue the same remedies against the Company as it could pursue in the event of a breach of the Agreement by the Company, and (ii) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall be not less than three nor more than ten times the costs incurred by the Company in providing any such gratuities to any such officer or employee.
- (c) The rights and remedies of the Authority provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- (d) No employee of the State of Maryland, the Authority, or the County, or any department, commission, agency or branch thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while such employee, become or be an employee of the party or parties hereby contracting with the State, the Authority, or any department, commission, agency or branch thereof.

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

WITNESS:

**NORTHEAST MARYLAND WASTE
DISPOSAL AUTHORITY**

By: _____

Date: _____

WITNESS:

[COMPANY

By: _____

Date: _____

SCHEDULE 1

DESCRIPTION OF THE SERVICE

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

1. The Request for Proposals (“RFP”) issued for this contract.
2. Addenda and Clarifications to the RFP issued as follows:

Addendum	Date
----------	------
3. The Company’s Technical and Financial Proposals including Company’s response letters

In the event of a conflict among these contract documents, the order of precedence is as follows:
Service Agreement, Addenda, RFP, and Company Proposals.

SCHEDULE 2

DEFINITIONS

"Acceptance Facility" means the Transfer Station located at the RFLF.

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

"Agreement" means this Service Agreement between the Authority and the Company (including Schedules 1 through 8 to this Agreement).

"Alternate Recycling Damages" are damages incurred by the Authority and the County as a result of the failure of the Company to fulfill its obligations under this Agreement. These damages are limited to the difference between the cost of Services under the Agreement and the cost of the alternative method of delivering and processing the Recovered 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 Frederick County Comprehensive Solid Waste Management Plans and all permits, licenses and governmental approvals required as of the date of this Agreement), applicable to: 1) the acquisition, design, construction, equipping, testing, financing, ownership, possession or operation of the Acceptance Facility and the Disposal Facility or any other Facility used to provide the Service 2) the Agreement; or 3) the performance of any obligations under the Agreement or any other agreement entered into in connection with the Agreement.

"Authority Members" means participating jurisdictions in the Authority.

"Billing Period" means each calendar month during the term of this Agreement 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 Agreement.

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

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

"Commodity Share" means a commodity's proportionate share, expressed as a percentage, of an established mix of processed Recovered Material as identified herein and adjusted according to periodic recycling sorts.

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

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

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

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

"Delivery Delay Damages" The Authority is entitled to assess Delivery Delay Damages in an amount equal to twenty-five percent (25%) of the applicable Service Fee for every ton of Recovered Material delivered by any vehicle delivering Recovered Materials at the Acceptance Facility for which the waiting time exceeds forty (40) minutes due to the failure of the Company to supply empty trailers.

"Disposal Facility" means the [COMPANY'S PROPOSED DISPOSAL FACILITY] for the disposal of residue

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

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

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

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

"Guarantor" means [_____] None Designated

"Hazardous Waste" means:

- A. Any Waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the Waste or substance, is unlawful to treat, store or dispose of at the Acceptance or Disposal Facility or other facilities to be used in

Recycled Paper

providing the Service and is considered hazardous Waste under Applicable Law, including, without limitation, Wastes that are:

1. regulated as a toxic or Hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or
 2. Low level nuclear Wastes, special nuclear Wastes or nuclear by-product Wastes, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.
- B. Any other Waste which any Governmental Body or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal through facilities of the type being used to provide the Service because of the harmful, toxic, or dangerous composition or characteristics of the Waste or substance. Any such designation would, under the Agreement, be considered an Uncontrollable Circumstance as defined in the Service Agreement.

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

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

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

injury to, or death of, any person or persons, or loss or damage to property resulting from the presence, removal, disposal or inadvertent processing of such Hazardous Waste.

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

New Year's Day	Christmas Day
Memorial Day	Fourth of July
Labor Day	Thanksgiving Day
Veteran's 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 adjusted from time-to-time, plus two percent.

"Loading Damages" means liquidated damages in the amount of \$300/day for days when the Company does not provide the necessary amount trucks to ensure all Recovered Materials on the Acceptance Facility tipping floor and in tunnels is placed in a trailer and covered prior to 4:30 p.m. (Monday through Saturday, except Holidays).

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

"Materials Recovery Facility or MRF" means a facility that is designed and operated to accept, process, and prepare recyclable material for further processing into products for reuse in the general market.

"Market Price Index" means the single stream values as reported on the indices in the Company's Proposal. The Market Indices can be found in Exhibit B to Schedule 8 of this Agreement. The MPI will be set by using the first monthly published index values for single stream material for the commodities identified in the Company's proposal and listed in Schedule 8 to this Agreement.

"Net Recycling Credit" means the Monthly Recycling Credit as calculated in Schedule 3.

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

"Operations Date" means July 1, 2019, the date the Company begins to transfer Recovered Material from FCLF.

"Pass Through Costs" means any costs approved in writing, in advance of incurring the costs, by the County and the Authority.

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

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

"Process or Processing" means the preparation necessary to render Recyclables acceptable to markets and/or designated buyers and may include, but not be limited to, sorting, cleaning, shredding, baling, crushing, and densifying.

"Processing Facility" means the Recovered Materials Processing Facility identified by the Company as the facility for final processing of Recovered Material delivered by The Authority under the Agreement.

"Processing Fee" means the fee charged against the MPI for the processing of the Recovered Materials. This fee does not include the Transportation Fee and is not subject to the monthly fuel surcharge calculations.

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

"Receiving Hours" means the Company access to the Acceptance Facility, which is from 6:30 a.m. until 10:30 p.m. Monday through Saturday (except Holidays), or such other hours as may be established in writing from time to time by the Authority Representative and the Company Representative.

"Recovered Materials" means recyclable materials that are separated from the waste stream prior to arriving at the Acceptance Facility. Exhibit C of Schedule 8 lists the acceptable Recovered Materials under this contract. This list may be updated by addition or subtraction, from time to time, with mutual consent by both parties, of materials that apply to all MRF customers.

"Recyclables" means the following materials and any future materials that have useful physical or chemical properties including and not limited to those items presented in Schedule 8, Exhibit C and other such materials as the Authority may designate as Recyclables, or that the Company may market. The Authority encourages the recycling of non-designated Recyclables.

"Recycling Agreement" means the Agreement between the Authority and the County.

"Recycling Credit" means the Total Market Price Index.

"Recycling Revenue" means the Net Recycling Credit plus any damages assessed by the Authority minus Approved Pass through Costs payable to the County on a monthly basis as set forth in Section 3 and Schedule 3 of this Agreement.

“Residue Transportation Fee” means the fee stated in Company’s proposal related to transportation of Residue from the Processing Facility to the Disposal Facility.

“Residue Disposal Fee” means the fee stated in the Company’s proposal related to the disposal of the Residue transferred from the Processing Facility.

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

“Residue” means non-recyclable material or Unacceptable Material recovered from the Company’s processing technologies. No material under List of Recovered Material Accepted through the Service Agreement (Schedule 8) can be defined as Residue.

“Service” means the acceptance, processing, transportation and disposal of Recovered Material delivered to the Company pursuant to this Agreement.

“Service Fee” means the sum of the Transportation Fee and the Processing Fee.

“System Benefit Charge” is a Frederick County Charge paid by residential and nonresidential property owners for the purpose of supporting the County’s solid waste and recycling programs.

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

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

“TPD” means Tons per Day.

“TPY” means Tons per Year.

“Transportation Fee” means the fee charged against the MPI for the transportation of the Recovered Materials from RFLF to Company’s Facilities.

“Transportation Violation Damages” are understood to compensate the Authority for costs incurred and subjective damages to the Authority that cannot easily be measured for the Company’s failure to adhere to speed limits, noise laws and other safety rules, and the costs and damages associated with litter leaving the Company’s vehicles. The Company agrees that these are a reasonable liquidation of the damages incurred.

1 st Offense	Verbal warning followed by written notice
2 nd Offense	\$100 damage
3 rd Offense	\$200 damage
4 th Offense	\$400 damage
5 th and any successive Offenses	\$800 damage

Recycled Paper

These amounts are in addition to any civil penalty assessed.

"Unacceptable Material" means:

- (A) Hazardous Waste; and
- (B) That portion of solid Waste the disposal of which (i) may present a substantial endangerment to public health or safety, or (ii) would cause Applicable Law to be violated, or (iii) is likely to materially adversely affect the operation of a Facility, or iv) excessive materials or substances not specifically included on the list of Recovered Materials (greater than 25% of trailer load).

"Unacceptable Material Disposal Cost" if applicable, the Authority will reimburse the Company for the cost of transportation and disposal of Unacceptable Material in accordance with Section 2.2.

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

- (a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Acceptance Facility and the Disposal Facility), hurricane, landslide, earthquake or similar occurrence, fire, explosion or other casualty, an act of the public enemy, war, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, or sabotage committed at a Facility by a Person other than an employee or agent of, or visitor invited by, the Company or its Affiliates, or the Company's subcontractors of any tier;
- (b) the failure of the jurisdiction in which a Facility is situated or the appropriate federal or state agencies or public utilities having operational jurisdiction in the area or location of the Acceptance Facility to provide and maintain and assure the maintenance of all utilities services (excluding sewerage and water lines) to the Acceptance Facility for operation of the Acceptance Facility, provided they are essential to the Acceptance Facility, and to provide road access and ingress/egress from the Acceptance Facility;
- (c) A non-Company or non-subcontractor Labor Action.

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

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

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

"Waste" means solid waste delivered to the Acceptance Facility.

"Wrongfully Diverted Recovered Materials" means any Recovered Material delivered to the Company, but which is rejected by the Company for any reason other than as permitted pursuant to Section 2.2(a) or any other provision of the Service Agreement.

SCHEDULE 3

NET RECYCLING CREDIT and REVENUE PAYMENT

The Monthly Recycling Credit consists of

- (i) The number of tons of Recovered Materials received by the Company – less the volume of any Unacceptable Material - during the month multiplied by the Market Price Index for the month, based on the procedures and percentage composition described in Section 3.1 (Credit per Ton of Recovered Materials Accepted); minus
- (ii) the Processing Fee; minus
- (iii) the Transportation Fee.

The Monthly Recycling Revenue due to the Authority shall be, as appropriate, the Monthly Recycling Credit

- (i) plus the amount of Alternate Recycling Damages, Delivery Delay Damages, Loading Damages, and Transportation Violation Damages if any;
- (ii) minus Approved Pass through Costs.

SCHEDULE 4

REPORTING REQUIREMENTS

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

The Company shall deliver the following information:

A. Pre-Operations Date Documents

PRE-OPERATIONS DATE REPORTS	
INFORMATION	DELIVERY DATE
Copies of Required Insurance and Performance Bond	Prior to Service Agreement Execution Date

B. Periodic Reports during Operations

PERIODIC REPORTS DURING OPERATIONS	
REPORT	DELIVERY DATE
Monthly Performance Report (see Exhibit A to this Schedule)	Accompany Monthly Invoice for payment

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

EXHIBIT A

TO SCHEDULE 4

MONTHLY PERFORMANCE REPORT FORMS

The Company must complete the Monthly Tonnages Report substantially in the form of Schedule 4 and submit the form to the Authority and a copy to the County with the monthly invoice for payment.

1. TONNAGE FINAL DISPOSAL/RECYCLING MONTH YTD FACILITY
LOCATION

Recovered Material Received (tons)

Recovered Material Recycled (tons)
Residuals Disposed (tons)

Unacceptable Material Received (tons) ⁽¹⁾

Unacceptable Material Disposed (tons) ⁽¹⁾

⁽¹⁾ Describe how the Unacceptable Material was handled, including copies of any manifests required by Applicable Law.

EXHIBIT B

TO SCHEDULE 4

MARYLAND RECYCLING ACT MATERIALS CATEGORIES

Commingled Containers	
Compost/Mulch (yard)	Grass Leaves Brush and Branches Mixed Yard Waste
Compost/Mulch Other	Wood Waste Solid Waste Compost Other: Mulch/Compost
Glass	Mixed Glass Green Glass Brown Glass Clear Glass
Metals	Aluminum Cans Mixed Cans (Al and Tin/Steel) Tin/Steel Cans White Goods Lead Acid Batteries Other:
Paper	Newspaper Old Corrugated Cardboard Office/Computer Paper Magazines Mixed Paper Other:
Plastic	Mixed Plastic Plastic Code 1 Plastic Code 2
Other Materials	Food Waste Tires
Scrap Metal	
C&D	
Non-C&D	

Recycled Paper

EXHIBIT C

TO SCHEDULE 4

ANNUAL MARKET DEVELOPMENT REPORT

1. The report shall be addressed to the Executive Director of the Northeast Maryland Waste Disposal Authority with copies to the Superintendent, Frederick County Department of Solid Waste Management and the Director, Frederick County Division of Utilities and Solid Waste Management per section 9.3.
2. The report shall briefly describe efforts made to create or expand recyclable material markets (e.g., contacts with manufactures who may take additional materials above what is collected, opportunities to encourage new business development in the area due to a sufficient, stable source of material, opportunities for the County and the Company to work together to create new markets, etc.). The intent of the report is to provide assistance to the County in expanding and improving its recycling program. **At no time should the report contain pricing or confidential information.**
3. The report shall briefly detail the assistance needed from the County in expanding the list of materials to be recycled. This may include in-kind services such as making waste audit data available, new services advertising, preparation of notices to residents or planning for a media launch. The assistance will not include direct payment of County funds to partially or completely support a business to manage the material.

SCHEDULE 5

PERFORMANCE AGREEMENTS

FORM OF PERFORMANCE BOND

FORM OF PERFORMANCE LETTER OF CREDIT

GUARANTEE AGREEMENT

FORM OF PERFORMANCE BONDS

PERFORMANCE BOND

Principal

Business Address of Principal

Surety

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

Obligee
Northeast Maryland Waste Disposal Authority
and
Frederick County, Maryland

Penal Sum of Bond
(express in words and figures)

Date of Contract: _____, 20__

Date Bond Executed: _____, 20__

Service Agreement to provide Recovered Materials acceptance, processing, transportation and disposal.

Contract Number:

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

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

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

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

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

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

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

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

In Presence of: Individual Principal
_____ as to _____ (SEAL)
Witness

.....

In Presence of: Partnership Principal
Witness

_____ (SEAL)
Name of Partnership

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Corporate Principal

Attest:

(Name of Corporation)

Corporate Secretary

President

AFFIX
CORPORATE
SEAL

.....

(Surety)

Attest:

Signature

By: _____

Title:

AFFIX
CORPORATE
SEAL

Business Address of Surety:

Bonding Agent's name:

Agent's Address:

Approved as to legal form and sufficiency this _____ day of _____ 20__.

FORM OF PERFORMANCE LETTER OF CREDIT

Date: _____

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

Ladies and Gentlemen:

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

2. The Letter of Credit is being issued in support of the performance by the Company of its obligation to provide solid waste disposal services to the Authority as set forth in the **“RECYCLING SERVICE AGREEMENT BY AND BETWEEN NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY AND COMPANY TO PROVIDE RECOVERED MATERIALS TRANSPORTATION, PROCESSING AND RECYCLING FOR FREDERICK COUNTY,”** dated _____, 20__ (the “Agreement”).

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

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

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

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

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

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

8. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein (including, without limitation, the 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: _____

GUARANTEE AGREEMENT

made by

COMPANY

and

THE NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

Dated: _____



THIS GUARANTEE AGREEMENT, dated as of _____ (the “Guarantee Agreement”) made by [COMPANY] (the “Guarantor”) for the benefit of The Northeast Maryland Waste Disposal Authority (the “Authority”), a public body corporate and politic of the State of Maryland

ARTICLE I

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any capitalized word or term used but not defined herein is used as defined in the Service Agreement.

“Obligations” means the amounts payable by, and the covenants and agreements of, the Company pursuant to the terms of the Service Agreement.

SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement Authority. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the Authority and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the Applicable Laws of the State of Maryland.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provisions, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the sole discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR. The Guarantor hereby represents and warrants that:

(1) Existence and Powers. The Guarantor is duly organized and validly existing as a corporation under the laws of the _____, with full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(2) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally.

(3) No Conflict. Neither the execution or delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (a) to the Guarantor's knowledge conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, (b) conflicts with, violates or results in a material breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby or by the Service Agreement.

(4) No Governmental Approval Required. 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 Guarantor of this Guaranty, except such as shall have been duly obtained or made.

(5) No Litigation. Except as disclosed in the Guarantor's filings with the Securities and Exchange Commission pursuant to the requirements of the Securities Exchange Act of 1934, as amended, there is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty, which would materially and adversely affect the performance by the Guarantor of its obligations hereunder.

(6) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty.

(7) Consent to Agreements. The Guarantor is fully aware of and consents to the terms and conditions of the Service Agreement.

(8) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

ARTICLE III

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE AUTHORITY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the Authority for the benefit of the Authority (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Service Agreement (including all amendments and supplements thereto) to, or for the account of, the Authority, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty. Guarantor shall have the right to perform Company's obligations through an affiliate or subsidiary that is (i) authorized to transact business in the State of Maryland, (ii) is in Good Standing with the Maryland State Department of Assessments and Taxation and (iii) meets the same standards required in the Request for Proposals dated March 5, 2019.

SECTION 3.2. RIGHT OF AUTHORITY TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the Authority shall have the right to proceed first and directly

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against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the Authority may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the Authority (1) file suit or proceed to obtain a personal judgment against the Company, (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any notice of such payment or performance as may be required by the terms of the Service Agreement or required to be given to the Company under Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations, or (4) exercise any other right or remedy to which the Authority is or may be entitled in connection with the Obligations or any security therefore or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Company or to the enforcement of remedies under the Service Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company as may be required in connection with such Obligation, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the Authority's right to proceed directly against the Guarantor, the Authority (or any successor) shall not be entitled to more than a single full performance of the obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL. The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Company shall have fully discharged the Obligations in accordance with their respective terms, and except as provided in Section 3.4 hereof, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Company, the Authority or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by or further consent of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Service Agreement;
- (2) any exercise or failure, omission or delay by the Authority in the exercise of any right, power or remedy conferred on the Authority with respect to this Guaranty or the Service Agreement except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under the Service Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in, to or under the Service Agreement;
- (4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the Authority or any other person in the Service Agreement;

- (5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of the Service Agreement;
- (6) any failure of title with respect to all or any part of the respective interests of any person in the Waste Disposal Facilities;
- (7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Company or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or the Service Agreement in any such proceeding (it is specifically understood, consented and agreed that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);
- (8) except as permitted by Sections 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Company now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Company;
- (9) any failure on the part of the Company for any reason to perform or comply with any agreement with the Guarantor;
- (10) the failure on the part of the Authority to provide any notice to the Guarantor which is not required to be given to the Company as a condition to the enforcement of Obligations pursuant to the Service Agreement;
- (11) any failure of any party to the Service Agreement to mitigate damages resulting from any default by the Company or the Guarantor under the Service Agreement;
- (12) the merger or consolidation of any party to the Service Agreement into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;
- (13) any legal disability or incapacity of any party to the Service Agreement; or
- (14) the fact that entering into the Service Agreement by the Company or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Company pursuant to the terms of the Service Agreement and not merely a guarantor and shall be paid by the Guarantor forthwith. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Company's rights, benefits, duties or obligations under the Service Agreement. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Company's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES SET-OFFS AND COUNTERCLAIMS. Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Company may have under the Service Agreement or under Applicable Law (other than bankruptcy or insolvency of the Company and other than any defense which the Company has expressly waived in the Service Agreement), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Company is permitted to assert pursuant to the Service Agreement if any. The Guarantor reserves the right to bring independent claims against the Authority not arising from the Service Agreement, provided however, any such claims shall not be used to set-off or deduct from any claims which the Authority may have against the Guarantor arising from this Guaranty.

SECTION 3.5. WAIVERS BY THE GUARANTOR. The Guarantor hereby unconditionally and irrevocably waives:

- (1) notice from the Authority of its acceptance of this Guaranty;
- (2) notice of any of the events referred to in Section 3.3 hereof except to the extent that notice is required to be given as a condition to the enforcement of Obligations;
- (3) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Company required pursuant to the Service Agreement or Applicable Law as a condition to the performance of any Obligation;
- (4) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (5) any right to require a proceeding first against the Company;
- (6) any right to require a proceeding first against any person or the security provided by or under the Service Agreement except to the extent such Service Agreement specifically requires a proceeding first against any person (except the Company) or security;

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(7) any requirement that the Company be joined as a party to any proceeding for the enforcement of any term of any Service Agreement;

(8) the requirement of, or the notice of, the filing of claims by the Authority in the event of the receivership or bankruptcy of the Company; and

(9) all demands upon the Company or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the Authority on demand all reasonable costs and expenses, legal or otherwise (including counsel fees), incurred by or on behalf of the Authority in successfully enforcing by legal proceeding observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the costs and expenses that the Authority incurs in performing any of its obligations under the Service Agreement, where such obligations are a condition to performance by the Company of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the Authority hereunder and under the Service Agreement and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS: REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by Applicable Law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor and (3) apply irrespective of any indulgence granted from time to time by the Authority. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Company is rescinded or must be otherwise restored by the Authority, whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Service Agreement, or the Company's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

ARTICLE IV

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE. (A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor and the conditions contained in clause (2) below are satisfied; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State, and (b) delivers to the Authority an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws, and (2) any such transaction does not result in a Material Decline in the Credit Standing of the Guarantor, as defined in Section 14.1 of the Service Agreement or if such transaction results in a Material Decline in Credit Standing of the Guarantor, as defined in Section 14.1 of the Service Agreement, the Successor Guarantor provided credit enhancement as required by Section 14.1 of the Service Agreement.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section 4.1 and if such transaction results in a Material Decline in Credit Standing of the Guarantor as defined in Section 14.1 of the Service Agreement, the Successor Guarantor shall provide credit enhancement as required by Section 14.1 of the Service Agreement.

SECTION 4.2. ASSIGNMENT. Without the prior written consent of the Authority, this Agreement may not be assigned by the Guarantor, except pursuant to Section 4.1 hereof.

SECTION 4.3. QUALIFICATION IN MARYLAND. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State.

SECTION 4.4. BINDING EFFECT. This Guaranty shall inure to the benefit of the Authority and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.5. CONSENT TO JURISDICTION. The Guarantor irrevocably: (1) agrees that any suit, action or other legal proceeding arising out of this Guaranty shall be brought in the courts of

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the State of Maryland; (2) consents to the jurisdiction of such court in any such suit, action or proceeding; (3) waives any objection which it may have to the laying of the jurisdiction of any such suit, action or proceeding in any of such courts.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the Authority and of the Guarantor.

SECTION 4.7. LIABILITY. It is understood and agreed to by the Authority that nothing contained herein shall create any obligation of or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES. Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if faxed (with acknowledgment of receipt and followed by mailing of hardcopy), delivered in person, or sent by overnight courier to the following addresses, or to such other addresses as any of the recipients may from time to time designate by notice given in writing.

If to the Guarantor:
[COMPANY]

If to the Authority:
Northeast Maryland Waste Disposal Authority
Tower II - Suite 402
100 South Charles Street
Baltimore, MD 21201-2705
Attention: Executive Director
Phone: 410-333-2730, FAX: 410-333-2721
Email: authority@nmwda.org

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

_____,
as Guarantor

By
Printed Name:
Title:

SEAL
(IMPRESSED ON
EXECUTION COPIES)

Accepted and Agreed to by:
THE NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY

By:
Title:

SCHEDULE 6

REQUIRED INSURANCE

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

Certificate Holder needs to be "Board of County Commissioners of Frederick County, Maryland, 12 East Church Street, Frederick, Maryland 21701".

(a) Workers' Compensation

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

(b) Commercial General Liability Insurance

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

- \$1,000,000 per occurrence for bodily injury and property damage
- \$1,000,000 aggregate for products and completed operations
- \$2,000,000 general aggregate (on a per project basis)
- \$1,000,000 per occurrence for personal & advertising injury liability

There shall be no exclusions for explosion, collapse or underground exposures; the Company shall obtain contractual liability coverage, independent contractors coverage, broad form property damage coverage, and shall name the facility operator as an additional insured.

(c) Business Automobile Liability Coverage

The Company shall maintain coverage, which extends to all owned, leased, rented or borrowed automobiles in the amount of \$1,000,000 for each accident involving bodily injury and or property damage. Coverage must extend to include all monetary state and federal regulations as well as

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uninsured/underinsured motorists coverage, ICC, PUC filings and financial responsibility requirements as required by law.

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

(e) Environmental Impairment Liability covering the Facilities

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

(f) All Companies and subcontractors must submit evidence of required insurance prior to performance.

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

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

Section 2. General

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

(b) All losses under the required insurance shall be adjusted to the satisfaction of the Authority.

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

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

- (i) Setting up a new retro date.
 - (ii) Exhausting any aggregate limit under any of the above policies.
 - (iii) Switching occurrence based coverage to claims made coverage or vice versa.
- (e) The Company shall assure that all subcontractors performing services in accordance with this Agreement carry identical coverages as required above, either individually or as an additional insured on the policies of the Company.
- (f) The Company shall complete and return to the Authority OMB Form No. 2125-0074 below reflecting the coverage required by subsections (c) Business Automobile Liability Coverage and (d) Umbrella/Excess Liability Coverage.

**ENDORSEMENT FOR
MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY
UNDER SECTIONS 29 AND 30 OF THE MOTOR CARRIER ACT OF 1980**

Form Approved
OMB No. 2125-0074

Issued to _____ of _____

Dated at _____ this _____ day of _____, 19 _____

Amending Policy No. _____ Effective Date _____

Name of Insurance Company _____

Telephone Number (_____) _____ Countersigned by _____

Authorized Company Representative

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "", for the limits shown:

This insurance is primary and the company shall not be liable for amounts in excess of \$ _____ for each accident.

This insurance is excess and the company shall not be liable for amounts in excess of \$ _____ for each accident in excess of the underlying limit of \$ _____ for each accident.

Whenever required by the Federal Highway Administration (FHWA) or the Interstate Commerce Commission (ICC), the company agrees to furnish the FHWA or the ICC a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FHWA or the ICC, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the ICC's jurisdiction, by providing thirty (30) days notice to the ICC (said 30 days notice to commence from the date the notice is received by the ICC at its office in Washington, D.C.).

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

MOTOR VEHICLE means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

BODILY INJURY means injury to the body, sickness, or disease to any person, including death resulting from any of these.

ENVIRONMENTAL RESTORATION means restitution for the loss,

damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation

thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately, to each accident, and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

The Motor Carrier Act of 1980 requires limits of financial responsibility according to the type of carriage and commodity transported by the motor carrier. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.

THE SCHEDULE OF LIMITS SHOWN ON THE REVERSE SIDE DOES NOT PROVIDE COVERAGE.

The limits shown in the schedule are for information purposes only.

SCHEDULE 7

TERMINATION FOR CONVENIENCE, PROCEDURES AND COSTS

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

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

SCHEDULE 8
TO SERVICE AGREEMENT

Exhibit A: Sample MPI Calculation

Exhibit B: Market Indices

Exhibit C: List of Recovered Materials Accepted through the Service Agreement

Exhibit D: Recycling Sorts

SCHEDULE 8

TO SERVICE AGREEMENT

Exhibit A: Sample MPI Calculation

Item	Commodity Share Percentage	Values (per ton)	Adjusted Values (MPI per ton)
Mixed Paper ⁵⁴	52.94%	-\$2.50	\$36.64700
OCC 11	18.00%	\$72.50	\$19.17000
Aluminum	0.99%	\$520.00	\$6.30000
Steel	2.12%	\$12.50	\$0.33900
Natural HDPE	1.24%	\$810.00	\$9.24000
Colored HDPE	1.50%	\$360.00	\$5.44000
PET	3.20%	\$315.00	\$10.23000
Plastics (3-7)	0.33%	\$30.00	\$0.35000
Bulk Plastic	0.53%	\$30.00	\$0.28000
Mixed Glass	11.27%	-\$12.50	\$0.00000
RESIDUE (Transfer and Disposal)	7.88%	Assumption: -\$51.50 (Company Price Proposal)	-\$0.91670
TOTAL	100.00%		\$37.45455

The Net Recycling Credit is the Total MPI net of Transportation and Processing Fees

SCHEDULE 8

TO SERVICE AGREEMENT

Exhibit B: Proposed Market Indices

Mixed Paper (54) Southeast Region (Regional Average Price) as reported by Pulp & Paper Week

OCC (11) Southeast Region (Regional Average Price) as reported by Pulp & Paper Week

New York (NE USA / Maritimes) Metals Steel Cans (Sorted, Loose, \$/Gross ton, dropped off at RC) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

New York (NE USA / Maritimes) Metals Aluminum Cans (Loose, ¢/lb., dropped off at RC) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

New York (NE USA / Maritimes) Plastics PET (Baled, ¢/lb., picked up) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

Plastics 3-7: New York (NE USA / Maritimes) Plastics Commingled (#3-7, Baled, ¢/lb, picked up) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

Bulk Plastic: New York (NE USA / Maritimes) Plastics Mixed Bulky Rigid (Baled, ¢/lb, picked up) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

Natural HDPE: New York (NE USA / Maritimes) Plastics Natural HDPE (Baled, ¢/lb., picked up) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

Colored HDPE: New York (NE USA / Maritimes) Plastics Colored HDPE (Baled, ¢/lb., picked up) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

All glass bottles and jars: New York (NE USA / Maritimes) 3 Mix (\$/ton del. As Recyclable or Disposable) Regional Average Price as reported by RecyclingMarkets.net, Secondary Materials Pricing

Residue: transportation and disposal cost of the Company to transport and dispose of Unacceptable Material received by the Company from the Authority. See Price Proposal.

SCHEDULE 8

TO SERVICE AGREEMENT

Exhibit C: List of Recovered Materials Accepted through the Service Agreement

- Newspapers (including all inserts)
- Magazines and catalogs
- Junk mail
- Cardboard and paperboard (including cereal boxes without liners)
- Corrugate boxes
- Computer printouts
- Books (including paperbacks, textbooks and hardbacks)
- Colored Paper
- Empty Aerosol cans
- Office paper (including typing, fax, copy, letterhead, NCR) and envelopes
- Brown paper bags (Kraft)
- Glass containers such as bottles and jars, Ferrous and bimetal food and beverage containers
- Non-metallic wrapping paper
- Aluminum food and beverage containers
- Aluminum foil and aluminum pie pans
- Narrow-neck plastic containers (other than for motor-oil) carry plastic resin codes 1 through 7
- Wide-mouth containers such as peanut butter, margarine/butter tubs, yogurt, cottage cheese, yogurt, sour cream mayonnaise, whipped topping ,peanut butter, and prescription bottles (please note that the lids and caps do not need to be removed)
- Rigid plastics which include plastic milk/soda crates, plastic buckets with metal handles, plastic laundry baskets, plastic lawn furniture, plastic totes, plastic drums, plastic coolers, plastic flower pots, plastic drinking cups/glasses, plastic 5 gallon water bottles, plastic pallets, plastic toys, and empty plastic garbage/recycling bins
- Aseptic/gable top milk and juice cartons
- Shredded paper contained in a sealed or tied paper bag

SCHEDULE 8
TO SERVICE AGREEMENT

Exhibit D: Recycling Sorts

The Authority and the Company may request recycling sorts to identify the Commodity Share Percentages of Recyclable components identified in Exhibit 4. Both parties will work together in the months prior to the sorts to schedule acceptable dates and times. The Authority reserves the right to observe the sort and to supervise how it is conducted. Each Party may request one (1) annual sort (full trailer load of Acceptable Material) processed through the Processing Facility system. As an alternative to the annual full trailer load sort, the parties may agree that the Company shall perform weekly hand sorts at the Processing Facility tipping floor. The weekly hand sort results of the applicable commodity share percentages may be averaged from previous year (or a time period agreed by both Parties) to determine the commodity share percentages going forward until the next annual sort and/or a new composition is approved by the Parties. The Company shall provide the Authority with data results from a sort within thirty (5) business days following completion.

The Company shall submit a plan to the Authority and the protocol for handling Recyclables and conducting the sorts. The current Commodity Share Percentages shall be used until the next recycling sort is completed. Thereafter, the Authority shall, within thirty (30) days from receipt of the data, calculate revised Commodity Share Percentages. The revised percentages shall then be applied to the next Monthly Invoice.

In the event of a dispute between the Company and the Authority concerning the Commodity Sort, the Authority Representative may direct the Company to conduct another sort test to establish or verify Commodity Share Percentages..

The Company shall work to identify and develop new markets for recyclables. Items may be added to the list of Recovered Materials as defined herein, upon mutual agreement between the Authority and the Company. Newly identified recyclables shall be included in one (1) of the existing Commodity Share Percentages until such time that a recycling sort is performed to identify its actual constituent of the total tonnage.