

# **SERVICE AGREEMENT**

**by and between**

**Northeast Maryland Waste Disposal Authority**

**and**

**[Company]**

**to Provide**

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

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**Service Agreement**

**THIS SERVICE AGREEMENT** is made as of \_\_\_\_\_ between the Northeast Maryland Waste Disposal Authority ("Authority") and [Name of Company] ("Company"), hereafter referred to as the "Parties" or "Party".

**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 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 Agreements include all amendments, modifications and supplements thereto.

**ARTICLE II**

**OBLIGATIONS RELATING TO  
TRANSPORTATION AND DISPOSAL OF WASTE**

**Section 2.1           Acceptance, Processing, Transportation and Disposal of Waste.**

- (a) 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 this Agreement and all Documents stated 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.

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

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

**Section 2.2           Refusal of Deliveries.**

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

**Section 2.3           Receiving Hours and Waiting Time.**

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

**Service Agreement**

(b) Acceptable Waste 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
Veterans Day	

**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 scales and departing from the Acceptance Facility on the County's owned and operated scales. The Authority's record shall include the following: gross weight, tare weight, date, time of arrival, time of departure, and vehicle identification (truck or permit number).

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

If the permanent vehicle scales at the Acceptance Facility are not working properly or are being tested, the County may use portable scales at the Acceptance Facility. If portable scales or other alternate weighing facilities and equipment meeting the requirements of Applicable Law are not available, a "scale outage" will occur, and the Authority shall use the difference between the stored average gross weight differential of the inbound (empty) and outbound (loaded) trailers for the two weeks prior to the scale outage for the Company's vehicles to determine the billable load.

The Authority, at its expense, shall obtain approval of, inspect and test the vehicle scales as required by Applicable Law but no less frequently than once per year. At the written request of the 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 (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

The Authority shall transmit by email or fax the daily transfer vehicle 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 Frederick County Reich's Ford Landfill Administration Building.

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

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

- (a) If Hazardous Waste is delivered to the Transfer Station by a third party, and the Hazardous Waste is or should have been identified while at the Transfer Station, the 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 Transfer Station 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, the Authority shall be solely responsible for all costs associated with the proper preparation, loading, and disposal of the Hazardous Waste. The foregoing shall not be considered to be a waiver of any claim the 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 Disposal Facility, the parties shall proceed as follows. The Company shall segregate and isolate the Hazardous Waste at the Disposal Facility.

The Company shall attempt to identify the hauler and/or original entities responsible for delivering the hazardous waste to the Acceptance Facility and arrange for its immediate removal either by the hauler in 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 Disposal 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 Facility. 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 by the Company in initially segregating and isolating the hazardous waste at the Disposal Facility.



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

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

The Company shall comply with all Applicable Laws (as defined in Schedule 2), regulations, and rules for the Acceptable Waste that are provided by the Authority. Such Applicable Laws, regulations and rules, may include vehicular movement on the Acceptance Facility Site and the County roads leading to and from the Landfill (routes and map included in RFP and incorporated by reference). The Company must observe posted speed limits on all roads and will be assessed Transportation Violation Damages, as defined in Schedule 2, for any documented infractions.

### **Section 2.7                    Subcontractors; Performance Security.**

- (a) The parties acknowledge that the dependable operation and maintenance of the Disposal 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 agreement or subcontract with any person other than an Affiliate of the Company for any substantial portion of the operation, management or control of a Facility or the performance of any of the Company's obligations under this Agreement without the prior written consent of the Authority, except that the Authority's approval is not required for the transportation subcontract.
- (b) No agreement or subcontract between the Company and any other person will affect the Company's obligation under this Agreement.
- (c) Prior to the Effective Date of this Agreement the Company shall provide a Performance Bond or a Letter of Credit from a surety or insurance company acceptable to the Authority, covering the performance obligations of the Company under Article II of this Agreement. The Performance Bond shall be equal to the value of one year of services, and name the Authority as beneficiary. The Performance Bond or Letter of Credit shall be in the form set forth in Schedule 5. The Company shall provide the Performance Bond until released by the Authority. The Company shall provide the Performance Bond for the initial term of Agreement and each option year. The Authority shall release the Performance Bond upon termination of this Agreement as long as the Company is not in default and the Performance Bond is not being drawn upon by the Authority.
- (d) All Agreements between the Company and the transportation subcontractor providing service under this Agreement will be made available for review by the Authority upon request.

**Section 2.8**                    **Authority and County Access.**

The Authority and the County, their respective agents, licensees and invitees may visit or inspect the operation at any reasonable time during the term of this Agreement. The Authority Representative or its designees, or the County Representative or its designees may inspect the operation at any time and from time to time with at least 24 hours prior notice. The Authority and the County, and their respective agents, licensees and invitees may conduct visits to the Facilities in a manner that does not cause unreasonable interference with the Company's operations. To the extent practical, the Authority and the County shall provide the names of all invitees to the Company in advance. The Company may require any Person on a Facility site to comply with its reasonable rules and regulations and to sign a statement agreeing (i) to assume the risk of the visit but not the risk of injury due to the intentional or negligent acts or omissions of the Company or any of its subcontractors, agents or employees and (ii) not to disclose or use any Confidential Information of the Company other than for the purpose for which it was furnished or, in the case of Authority or County employees and agents, except in accordance with Section 9.11.

**Section 2.9**                    **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 waste or rubbish (except in appropriate locations) caused by Transfer Operations (e.g., the jockeying of loading trailers in the Acceptance Facility parking lots, during tarping activities and the movement of loaded trailers through the Acceptance Facility). The Company shall maintain and operate its equipment so as to prevent the Acceptance Facility from becoming unsightly or a nuisance under Applicable Law. The Company shall cooperate with the Authority to ensure that all refuse on the Acceptance Facility tipping floor and in the tunnels is placed in a trailer and that trailers are covered prior to the end of each operating day.
- (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 floor surfaces, and roadways and curbing into and out of the Acceptance Facility.
- (c) Notwithstanding anything to the contrary in this Agreement, the Company shall be liable for extraordinary physical damages, as documented by the County and/or the Authority, to the Acceptance Facility, including but not limited to all floor surfaces, and roadways and curbing into and out of the Acceptance Facility and any associated equipment.

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

The 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 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

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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 under the Waste Disposal Agreement with Frederick County, Maryland. The Authority's Funds will be available only if the County remains a Member Jurisdiction of the Authority.

**ARTICLE III**

**SERVICE FEE;  
DAMAGES; PAYMENTS**

**Section 3.1            Service Fees, Damages, and Payments.**

- (a) From and after the Operations Date, the Company may charge and collect from the Authority a Service Fee as shown in Schedule 3 for each ton of Acceptable Waste accepted by the Company from the Authority, for Transfer and Disposal hereunder adjusted by the Inflation Index. The calculation of the Service Fees will be determined as follows:
  - (i) for the transportation of the Acceptable Waste, by the difference in weight between a loaded and empty tractor-trailer unless a scale outage occurs;  
PLUS
  - (ii) for the disposal of the Acceptable Waste, the tickets from the County's Scales;

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

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

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

**Section 3.2            Inflation Adjustor.**

- (a) Beginning on the Proposal Date the Service Fee shall be adjusted according to the appropriate Annual Inflation Adjustor. The inflation adjustor shall be 75% of any change in the Bureau of Labor Statistics Consumer Price Index ("CPI") for the Washington-

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Arlington-Alexandria Area (series id: CUURS35ASA0; Base Period: 1982-84=100). The first adjustment shall compare the most recent reported CPI-U as of the Operations Date (the March, 2020 published CPI-U) to the reported CPI-U nearest to the final and complete Proposal Date (TBD), which was published in (TBD). The Proposal Date CPI is (TBD) (TBD published CPI-U). The second adjustment shall compare the most recent reported CPI-U (the March 2021 published CPI-U) as of July 1, 2021 to the reported CPI-U nearest to the Operations Date (the March 2020 published CPI-U). Thereafter the most recent CPI-U reported on July 1<sup>st</sup> of current year will be compared to the CPI-U used from previous period. The most recent reported CPI-U as of July 1<sup>st</sup> of current year less the CPI-U used from previous year equals the index point change. Divide 75% of the index point change by the CPI-U used in the previous year and add 1 to equal the inflation adjustor. The inflation adjustor shall be rounded to the second decimal place.

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

### Examples of Inflation Adjustor Calculation:

Operations Date adjustor:

CPI-U for Operations Date (the March 2020 published CPI-U): 158.201  
CPI-U on the Proposal Date: 155.198

For Example: using the *DRAFT* Proposal Date CPI (155.198) and a *DRAFT* Operations Date CPI of 158.201:

Index Point Change:  $158.201 - 155.198 = 3.003$

Inflation Adjustor:  $(3.003 * .75) / 155.198 + 1 = \mathbf{1.01}$  (rounded to second decimal place)

Operations Date adjustor:

CPI for current year: (most recent reported index as of Operations Date) 151.0  
CPI nearest the last Proposal Date: 155.198

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

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

Operations Date adjustor:

CPI for current year: (most recent reported index as of Operations Date) 164.200  
CPI nearest the last Proposal Date: 155.198

Index Point Change:  $164.200 - 155.198 = 9.002$

Inflation Adjustor:  $(9.002 * .75) / 155.198 + 1 = 1.04$  (rounded to second decimal place)  
(Inflation adjustor would be **1.03** because the adjustor cannot be greater than 1.03.)

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

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

- a.) The threshold fuel price for the Agreement will be \$4.20 per gallon.
- b.) The fuel prices will be taken on the first Monday of the month for which the service will be provided. A fuel surcharge will be applied when the price of diesel fuel is greater than or equal to \$4.31 per gallon on the weekly Central Atlantic diesel fuel price index (Weekly Central Atlantic (PADD 1B) No 2 Diesel Retail Sales by All Sellers) maintained by the United States Energy Information Administration (EIA)..
- c.) In calculating the fuel surcharge, the Authority will assume a transfer trailer load of 22 tons and transfer trailer fuel mileage of 4.5 miles per gallon.
- d.) The Fuel Surcharge per ton will be the product of the Excess Cost above the threshold fuel price as outlined in chart (f) below and the fuel usage (gallons) per ton transferred. The roundtrip distance (miles) from the Reich’s Ford Landfill to the Disposal Facility will be divided by 4.5 miles per gallon to determine the gallons of fuel used per load. The gallons of fuel used per load will be divided by 22 tons to get the gallons per ton. This “X” value, gallons per ton, is then multiplied by the appropriate Excess Cost factor from the chart (f) below to derive the additional cost per ton.
- e.) Company may dispose of Frederick County Solid Waste in any of the approved Disposal Facilities per Agreement. However, the Fuel Surcharge calculation for the roundtrip distance used for the calculation shall not be greater than 200 miles.
- f.)

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

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g.) Example, Showing the Fuel Surcharge Calculation:

If a load is taken to Lord Farquhar Landfill and the Fuel Cost is \$4.35 per gallon the calculation is as follows:

Calculation for X (gallons per ton)

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

New Fuel Price – Base Fuel (Threshold fuel price) = \$4.35 - \$4.20 = \$.15 or an excess of \$.10

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

### Section 3.3 Monthly Payments.

- (a) The Company shall provide the Authority with a statement or invoice for all amounts payable hereunder by the twenty-fifth (25th) day of the calendar month immediately succeeding the calendar month for which such amounts are payable. Amounts invoiced are due thirty (30) days after receipt of the correct invoice by the Authority. Each invoice shall set forth the applicable Service Fees and other charges payable to the Company for the applicable period, 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. The amounts payable monthly, in accordance with Sections 3.1 and 3.2, are calculated as follows:
- (i) The amount due for Service Fee payments; PLUS
  - (ii) The amount of Alternate Disposal Damages, Alternate Procurement Damages, Delivery Delay Damages, and Transportation Violation Damages if any, PLUS
  - (iii) Approved pass through costs

All Company invoices and statements shall be delivered by hand or mailed first class, postage prepaid, 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](mailto:authority@nmwda.org)**

## Service Agreement

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**

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

Pass through costs are any costs approved, in writing, by the County and the Authority. The Company shall include the Authority Management Fee for this project on its monthly statement and shall remit payment to the Authority within 15 days of receipt of said payment.

### **Section 3.5**            **Late Payment.**

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

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

If the Company or the Authority disputes any amount owed as the Service Fee(s) or the amount of Damages claimed by the Authority under Section 3.3(iii) or elsewhere herein, the disputed portion of such adjustment is not effective until resolution of a dispute pursuant to Section 9.15. Pending resolution of any dispute, the Company is obligated to continue performance of the Agreement. Immediately after the resolution of a disagreement about a Service Fee(s), or amount of Damages, the party whose position does not prevail shall reimburse the other party for the aggregate amount of any underpayment or overpayment, plus interest at the Late Payment Rate.

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

- (a) The Company shall maintain all books, records and accounts necessary to record all matters affecting the Service Fee(s), applicable damages or other amounts payable by or to the Authority or the Company under this Agreement or other agreements, including, but not limited to, policies for Required Insurance, policy amendments and all other related insurance documents. 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.



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- (b) The Company shall provide the Authority with the reports and information set forth in Schedule 4 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.**

Within sixty (60) days, following June 30, 2020 and the end of each succeeding Fiscal Year (July 1 through June 30), the Company shall provide an accounting to the Authority of all payments made by the Authority for the Fiscal Year and all amounts payable by 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 shall diligently overcome or remove such Uncontrollable Circumstance as soon as possible.

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

- (i) As soon as possible after an Uncontrollable Circumstance (UC) occurring on or after the Operations Date, the 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 disposal facilities must be approved by the Authority. The Facilities presented in the Company's proposal dated [insert Date] are deemed approved by the Authority. The Company may seek pre-approval of an alternate disposal 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.
- (iv) This Section 4.1 (b) (iv) constitutes the emergency provision for the UC clause. In the event of inclement weather that may impact operations the Authority and the Company shall cooperate to ensure continuation of the Service. This may include the Authority taking reasonable efforts to allow the Company to stage additional tractors and trailers at the Landfill. This clause 4.1 (b)(iv) shall not be construed as guarantee that the Authority will extend obligations beyond current permit limits.

**Service Agreement**

**Section 4.2 Change of Law.**

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

## ARTICLE V

### INSURANCE AND INDEMNIFICATION

#### **Section 5.1**            **Types of Insurance for the Company.**

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

**Section 5.3**                    **Indemnification.**

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

The Company shall also indemnify, defend, hold harmless and hereby waives any claim for contribution against the Authority, the State of Maryland, the County or their respective officers, directors, members, agents and employees, for any Environmental Claim to the extent arising from the performance of the Company or its officers, employees, agents or subcontractors, under this Agreement, irrespective of whether such performance is negligent or willful or breaches any term or provision of this Agreement. 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 to the extent arising (a) pursuant to, or in connection with, an actual or alleged violation of, any Environmental Law, (b) in connection with any Hazardous Waste or actual or alleged Hazardous Waste Activity, (c) from any abatement, removal, remedial, corrective, or other response action in connection with a Hazardous Waste, Environmental Law or other order of a Governmental Authority or (d) from any actual or alleged damage, injury, threat, or harm to health, safety, natural resources, or the environment.

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

## **Service Agreement**

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.

### **Section 5.4 Waiver of Subrogation**

Subject to the Company's covenants of indemnification provided for in this Agreement, the Company releases the Authority and County and their respective officials, directors, officers, employees, representatives and agents, from claims for damage to any person or to the Facility or any other property thereon caused by, or that result from, risks insured against under any insurance policies carried by the Company and in force at the time of any such damage. The Company must cause each insurance policy obtained by the Company to provide that the insurance company waives all right of recovery by way of subrogation against the Authority and County and their respective officials, directors, officers, employees, representatives, and agents in connection with any damage covered by any policy. Deductibles and self-insured retentions shall be considered covered amounts under insurance policies.

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

- (a) The failure or refusal by the Company to fulfill any of its material obligations to the Authority in accordance with this Agreement, the RFP, and the proposal submittal unless such failure or refusal is excused or justified pursuant to this Agreement; or
- (b) If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Company (or any guarantor of the Company's obligation hereunder) or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Company (or any guarantor of the Company's obligation hereunder) is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Company (or any guarantor of the Company's obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Company (or any guarantor of the Company's obligation hereunder), as now or hereinafter in effect, is filed against the Company (or any guarantor of the Company's obligation hereunder) and is not dismissed within sixty (60) days after such filing, or if the Company (or any guarantor of the Company's obligation hereunder) is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against the Company (or any guarantor of the Company's obligation hereunder) under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Company (or any guarantor of the Company's obligation hereunder) pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable

## Service Agreement

to the Company (or any guarantor of the Company's obligation hereunder), as now or hereafter in effect; or

- (c) If the Company makes an assignment for the benefit of creditors, or admits, in writing, an inability to pay debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of either the Company or of a major part of its property; or
- (d) If the Company assigns its rights or obligations under this Agreement or any part thereof to any person, company, partnership, corporation or other entity except as otherwise permitted hereunder; or
- (e) If any representation or warranty made by the Company herein or in any payment invoice or related documentation submitted hereunder is false or misleading in any material respect when made; or
- (f) If the Company fails to provide and maintain in full force and effect the Letter of Credit or bonds, as applicable, as required pursuant to this Agreement; or
- (g) If the Company fails to provide and maintain in full force and effect the insurance policies required pursuant to this Agreement;
- (h) If the Company provides or has provided materially false or misleading information to the Authority; or
- (i) The failure of the Company or its subcontractor, and their respective agents, licensees, invitees and successors to comply with Applicable Law in any material fashion;
- (j) The failure of the Company to provide a fully operational Service by the Operations Date.

No failure or refusal on the part of the Company described in Section 6.2 shall constitute an "Event of Default" unless and until: (A) the Authority has given Notice to the Company specifying with particularity the existence of such default; and (B) The Company has failed to cure such default within thirty (30) days after receipt of such Notice.

### **Section 6.3**                    **Events of Default by the Authority.**

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

- (a) The failure by the Authority to pay any amount in excess of \$1,000,000, that the Authority is required to pay to the Company under this Agreement within sixty (60) days after receipt by the Authority of written demand from the Company accompanied by notice stating that unless such amount is paid within sixty (60) days after such demand the failure shall constitute an Event of Default; or



## Service Agreement

- (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) Business Days from the date of the notice given pursuant to clause (i) of this Section 6.3(b)), provided that if the Authority has commenced to take reasonable steps to correct such default within such reasonable period of time, it shall not constitute an Event of Default for as long as the Authority is continuing to take reasonable steps to correct it; and
  - (iii) There exists no reasonable expectation that the Company can obtain relief other than by termination of this Agreement for such default sufficient to compensate it for any loss incurred as a result of such Authority default.
- (c) If the Authority 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 Authority or of a major part of the property; or
- (d) If, by order of a court of competent jurisdiction, a receiver or liquidator or custodian or trustee of the Authority or of a major part of its property is appointed and is not discharged within sixty (60) days, or if, by decree of such a court, the Authority is adjudicated insolvent, or a major part of its property is sequestered, and such decree has continued undischarged and unstayed for sixty (60) days after the entry of such decree, or if a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereinafter in effect, is filed against the Authority and is not dismissed within sixty (60) days after such filing, or if the Authority is adjudicated bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy Law or consents to the filing of any bankruptcy or reorganization petition against the Authority under any such Law, or (without limitation of the generality of the foregoing) files a petition to reorganize the Authority pursuant to the Federal Bankruptcy Code (11 U.S.C.) or any other similar statute applicable to the Authority, as now or hereinafter in effect;

## **Service Agreement**

No failure or refusal on the part of the Authority described in Section 6.3 shall constitute an Event of Default unless and until: (A) The Company has given Notice to the Authority specifying with particularity the existence of such default; and (B) the Authority has neither corrected such default nor initiated actions reasonably likely to cure such default within thirty (30) days after receipt of such Notice.

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

### **Section 6.4            Termination on Default.**

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

### **Section 6.5            Termination for Certain Uncontrollable Circumstances.**

If, as a result of the occurrence of one or more Uncontrollable Circumstances, the Disposal Facility is closed for 10 (ten) or more consecutive days, then the Authority may terminate this Agreement upon notice to the Company. If this Agreement is so terminated, then neither party shall owe or be liable to the other party for any amounts otherwise due hereunder, except for (i) Service Fee amounts due for Waste actually delivered prior to the effective date of the termination and (ii) amounts due in accordance with Section 5.3 "Indemnification."

### **Section 6.6            Termination for Convenience.**

Notwithstanding, any other provision of this Agreement to the contrary and subject to State law, The Authority may terminate this Agreement and its obligations to the Company under this Agreement at any time by giving the Company sixty (60) days' notice of such termination. Termination procedures and costs are described in COMAR 21.07.01.12.

### **Section 6.7            Default Termination Damages Payable to the Authority.**

If this Agreement is terminated by the Authority 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 Disposal Damages during the then remaining term of this Agreement, and (iii) Alternate Procurement Damages.

**Service Agreement**

**Section 6.8                    Survival of Certain Rights and Obligations.**

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

**Section 6.9                    Alternate Disposal Damages.**

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

**Section 6.10                  Delivery Delay Damages.**

The Authority is entitled to assess Delivery Delay Damages in an amount equal to fifty percent (50%) of the applicable Service Fee for every ton of Acceptable Waste delivered by any vehicle delivering waste at the Acceptance Facility for which the waiting time exceeds forty (40) minutes due to the Company's failure to provide a trailer at the Acceptance Facility. The waiting time shall be measured by taking the difference between the time recorded on the scale ticket on arrival at the Acceptance Facility and the time recorded on the scale ticket at the outbound scale of the Acceptance Facility.

**Section 6.11                  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 Landfill grounds and all roads used for the Service. This also includes (1) using access and egress roads that are not approved by the County, within the County and (2) leaving the Landfill with an uncovered trailer, or trailer covered in manner that does not prevent waste from spilling onto public roads. These damages will be withheld from the monthly payment as set forth in Section 3.3.

**Section 6.12                  Loading Damages**

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

**ARTICLE VII**

**TERM; OPTIONS TO RENEW**

**Section 7.1**            **Term for Service**

The initial term of this Agreement begins on April 25, 2020 (the “Operations Date”) and ends on June 30, 2025, with three (3), optional 12-month renewal terms, at the Authority’s sole discretion, at the rates set forth in Schedule 3 of the Service Agreement.

**Section 7.2**            **Option to Renew**

The Authority shall give the Company 90 days’ notice of its intent to renew the Service Agreement for each annual option term.

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

**ARTICLE VIII**

**REPRESENTATIONS AND WARRANTIES**

**Section 8.1           Representations and Warranties of the Authority.**

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

## Service Agreement

- (b) 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.
- (c) 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.
- (d) No approval, authorization, order or consent of, or declaration, registration or filing with, any governmental authority is required for the valid execution and delivery of this Agreement by the Company, except such as have been duly obtained or made.
- (e) Except as disclosed to the Authority, in writing, 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 his/her designee.
- (b)    The County Representative is the Director of the Division of Utilities and Solid Waste Management for the County or his/her designee.
- (c)    The Company Representative is the President of the Company or any vice president of the Company who 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 (5) 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 Adoption of Procurement.**

- (a)    The Company may not assign this Agreement without the prior written consent of the Authority. The Authority may assign this Agreement to Frederick County, Maryland, without the written consent of the Company.
- (b)    The Company shall provide immediate notice to the Authority if the Company agrees to provide Services and accept Acceptable Waste from another public entity under a contract created through the adoption of this procurement and resulting Agreement. If the Company enters into additional individual service agreements, the Company hereby represents and warrants that the Services to be provided under this Service Agreement shall not be diminished or adversely affected in any way. Further, the Company shall not create any priority of services under the service agreements. Furthermore, the Company shall provide a \$3.00 per ton credit to the Authority for each ton of Frederick County Acceptable Waste processed after the commencement of the additional service agreements, to the end of the Service Agreement term or extension periods.

**Service Agreement**

**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, Maryland 21704  
Attention: Director  
301-600-2078  
FAX 301-600-2180**

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



## **Service Agreement**

If to the Company:

[TBD]

With a copy to:

[TBD]

Any party entitled to receive communications under this agreement may change the address to which its communications are delivered by notice to the other parties. Any communications given by mail in accordance with this Section 9.3 shall be deemed to have been given five (5) Business Days after the date of mailing; communications given by any other means shall be deemed to have been given when delivered.

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

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

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

### **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.

## Service 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 the party against whom enforcement of such change, modification, amendment or waiver is sought.

### **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 upon a lawful request for information. The Authority shall consider any information or legal arguments presented by the Company before the disclosure of the requested information. The Authority will not be liable for any legal issue associated with the Company's position.

The company should specifically identify confidential information by marking the applicable pages "CONFIDENTIAL." However, the Company understands that the Authority in its sole discretion may determine that disclosure of some information is required under the public disclosure act, COMAR 21.06.01.02 (F) and under the Maryland Public Information Act (MD Gen Provisions Code (Sec. 4-201), and the Company agrees to hold the Authority HARMLESS with respect to any such disclosure. The Authority will give notice to the Company of any requests for disclosure of information identified as confidential.

In addition, any information that is marked by the company as confidential is not confidential if it (a) is now in or after the date hereof has entered the public domain through no fault of the Authority or its Board, (b) was known by the Authority prior to its disclosure hereunder, (c) was obtained by

## **Service Agreement**

a third party who is not known by the Authority to be prohibited from disclosing such information, and (d) is required to be disclosed by the Authority, County or the Authority's Board as a matter of law and or regulation.

### **Section 9.12           Severability.**

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

### **Section 9.13           Damages.**

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

### **Section 9.14           Effect of Authority Approvals.**

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

### **Section 9.15           Dispute Resolution.**

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

### **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

## **Service Agreement**

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 (10) 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. This provision prohibiting discrimination 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 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.

## **Service Agreement**

- (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 Authority, 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 Authority, or any department, commission, agency or branch thereof.

**Service Agreement**

**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:** \_\_\_\_\_  
**Executive Director**

**WITNESS:**

**[COMPANY]**

\_\_\_\_\_

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

**SCHEDULE 1**  
**TO SERVICE AGREEMENT**  
**DESCRIPTION OF THE SERVICE**

The Company shall perform the Services described in this Agreement and in the following documents:

1. The Request for Proposals (“RFP”) issued on \_\_\_\_\_[TBD]\_\_\_\_\_.
2. Addenda and Clarifications to the RFP as follows:  
[TBD]
3. The Company’s Technical and Cost Proposals dated [TBD]

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

**SCHEDULE 2**  
**TO SERVICE AGREEMENT**

**DEFINITIONS**

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

**"Acceptable Waste"** means all Waste which is not Unacceptable Waste and typically includes:

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

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



## Service Agreement

**"Agreement"** means this Service Agreement between the Authority and the Company (including Schedules 1 through 7 to this Agreement).

**"Alternate Disposal 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 liquidated at \$200 per ton and subject to the annual CPI adjuster.

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

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

**"Authority Management Fee"** means the Fees for Services set forth in the Authority's Funding Policy dated July 1, 2013, or as amended by the Authority subsequent to the Effective Date. The Authority shall provide the Company with the succeeding Authority Fiscal Year Management Fee the latter of April 1 of the current Fiscal Year or with the Renewal Notice for the Succeeding Fiscal Year. For renewals of less than 12-months, the Authority will provide the Fiscal Year Authority Management Fee once per Fiscal Year, prior to the start of the succeeding Fiscal Year.

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

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

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

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

## Service Agreement

**"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.

In addition, any information that is marked by the company as confidential is not confidential if it (a) is now in or after the date hereof has entered the public domain through no fault of the Authority or its Board, (b) was known by the Authority prior to its disclosure hereunder, (c) was obtained by a third party who is not known by the Authority to be prohibited from disclosing such information, and (d) is required to be disclosed by the Authority, County or the Authority's Board as a matter of law and or regulation.

**"Continuity of Operations Plan"** means the Company's response to a large scale interruption to normal operations at the Facility (e.g., Pandemic Flu outbreak or severe weather event). The plan should have descriptions of contingencies in the event operations fail for any of the service components, including but not limited to, fire, temporary loss of access to proposed transportation routes. This plan is to include a listing of regional emergency operations contacts, contingency resources and personnel management plans.

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

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

**"Delivery Delay Damages"** The Authority is entitled to assess Delivery Delay Damages in an amount equal to fifty percent (50%) of the applicable Service Fee for every ton of Acceptable Waste delivered by any vehicle delivering waste at the Acceptance Facility for which the waiting time exceeds forty (40) minutes due to the failure of the Company to supply empty trailers. The waiting time shall be measured by taking the difference between the time recorded on the scale ticket on arrival at the Acceptance Facility, and the time recorded on the scale ticket at the outbound scale of the Acceptance Facility. The Company will not be assessed damages if the delay is the result of an unrelated third party hauler delivering waste to the Acceptance Facility. The Company will only be liable for Delay Delivery Damages if the Company's actions cause the delay.

**"Disposal Facility"** means the solid waste Disposal Facility identified by the Company as the facility for final disposal of Acceptable Waste delivered by the Authority under the Agreement. If the Acceptable Waste is delivered to a waste-to-energy facility, composting facility or other processing facility the Company must provide a disposal facility for all residue, non-processible and bypass waste.

## Service Agreement

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

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

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

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

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

**"Hazardous Waste"** means:

- A. Any Waste or substance, the treatment, storage or disposal of which, because of the composition or characteristics of the Waste or substance, is unlawful to treat, store or dispose of at the Acceptance or Disposal Facility or other facilities to be used in providing the Service and is considered hazardous Waste under Applicable Law, including, without limitation, Wastes that are:
  1. regulated as a toxic or Hazardous Waste as defined under either Subtitle C of the Solid Waste Disposal Act, 42 U.S.C. §§ 6921-6939a, or Section 6(e) of the Toxic Substances Control Act, 15 U.S.C. § 2605(e), as replaced, amended, expanded or supplemented, and any rules or regulations promulgated thereunder, or under the Environment Article of the Annotated Code of Maryland, Title 7, Section 7-101 et seq., as replaced, amended, expanded, or supplemented, and any rules or regulations promulgated thereunder; or
  2. low level nuclear Waste, special nuclear Waste or nuclear by-product Waste, all within the meaning of the Atomic Energy Act of 1954, as replaced, amended, expanded or supplemented, and any rules, regulations or policies promulgated thereunder.
- B. Any other Waste which any Governmental Body or unit having appropriate jurisdiction shall lawfully determine, from time to time, to be ineligible for disposal 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.

**Service Agreement**

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

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

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

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

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

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

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

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

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

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

## Service Agreement

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

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

**"Operations Date"** means the date the Company begins to transfer Acceptable Waste from the Acceptance Facility (Frederick County Transfer Station). The Operations Date is **April 25, 2020**.

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

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

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

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

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

**"Service"** means the acceptance, processing, transportation and disposal of Acceptable Waste delivered to the Company pursuant to this Agreement.

**"Service Agreement"** means the agreement between the Authority and COMPANY dated \_\_\_\_\_.

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

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

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

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

**Service Agreement**

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

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

**"Transportation Violation Damages"** are understood to compensate the Authority for costs incurred and subjective damages to the Authority that cannot be readily measured in monetary terms 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.

1 <sup>st</sup> Offense	\$200 damage
2 <sup>nd</sup> Offense	\$400 damage
3 <sup>rd</sup> and any successive Offenses	\$1,000 damage

These amounts are subject to the annual inflation index and are in addition to any civil penalty assessed.

Random visual and radar observation by Department of Utilities and 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 Company's drivers are adequately covering their loads so as to prevent waste from being spilt while in transport onto the landfill complex roads or the surrounding public roads. Trailers should be tarped in a manner that completely covers and contains the waste within the trailers, with no more than 6" of space being allowable between the bottom of the tarp and the top of the trailer body.

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

**"Unacceptable Waste"** means:

- (A) Hazardous Waste; and
- (B) That portion of solid Waste the disposal of which (i) may present a substantial endangerment to public health or safety, or (ii) would cause Applicable Law to be violated, or (iii) is likely to materially adversely affect the operation of a Facility; provided, however, that if such Unacceptable Waste (other than Hazardous Waste) is delivered in quantities and concentrations as determined by the Authority and as part of normal collections so as not to have the effect described in clauses (i), (ii)

## Service Agreement

and (iii) above, it shall constitute Acceptable Waste unless otherwise directed by State or federal regulatory authorities. The Unacceptable Waste described in this paragraph (b) shall include:

- (1) Pathological and biological Waste, explosives, medical and infectious Waste, cesspool and other human Waste, human and animal remains;
- (2) Large automobile and vehicular parts, trailers, agricultural equipment, marine vessels;
- (3) Oil sludge or liquid Waste; and
- (4) Radioactive Waste as defined in COMAR 26.15.02.

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

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

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

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

## Service Agreement

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 Disposal Agreement”** means the Agreement between the Authority and the County dated \_\_\_\_\_.

**“Wrongfully Diverted Material”** means any Waste 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.



**Service Agreement**

**SCHEDULE 3  
TO SERVICE AGREEMENT**

**SERVICE FEES**

**Acceptable Waste: No Guarantee Tonnage**

**Transportation Fee**                    \_\_\_\_\_ \$/ton

**Disposal Fee**                         \_\_\_\_\_ \$/ton

**SCHEDULE 4**  
**TO SERVICE AGREEMENT**  
**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-Effective Date Documents

<b>PRE-OPERATIONS REPORTS</b>	
<b>INFORMATION</b>	<b>DELIVERY DATE</b>
Copies of Required Insurance, Performance Bond, and, if necessary, Payment Bond	Prior to Service Agreement Execution Date
Continuity of Operations Plan (COOP)	Ninety Days Prior to start of operations

B. Periodic Reports during Operations

<b>PERIODIC REPORTS DURING OPERATIONS</b>	
<b>REPORT</b>	<b>DELIVERY DATE</b>

**Service Agreement**

<b>PERIODIC REPORTS DURING OPERATIONS</b>	
<b>OTHER INFORMATION</b>	<b>DELIVERY DATE</b>
Copies of permits and permit renewals subsequent to the permits submitted as part of the proposal submittal.	Within 5 (five) Business Days of receipt by or delivery to the Company.
Copies of all compliance reports and notices submitted to or received from authorities regulating the Facilities. Any notices of violation or potential violation at the Facilities. Any notice designating the Facility as a Superfund Site or notice of potential National Priority List designation.	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 Disposal Facility.	Within 5 (five) Business Days of receipt by or delivery to the Company.
Reports or notices of environmental violations of Applicable Law or citations related to violations of Applicable Law relating to the Facilities providing the Service.	Within 5 (five) Business Days of receipt by or delivery to the Company.
Reports of lawsuits requesting declaratory, injunctive or other equitable relief and lawsuits in excess of \$1,000,000 in which the Company, its parent company, or Affiliates is a party related to Facilities providing the Service. If the litigation involves any issue relating to the environment, the dispute must be reported without regard to monetary amount.	Within 5 (five) Business Days of receipt by or delivery to the Company.
Any material adverse change in the financial condition of the Company.	Within 5 (five) Business Days of receipt by or delivery to the Company.
Notice of any proposed transfer of ownership, possession, or control of the Company or Facilities must be given to the Authority. The notice must include identification of the transferee, and other information as specified in the RFP.	60 (sixty) days prior to effective date of action.
Monitoring well water quality analysis and assessment monitoring reports, if applicable.	Semi-annually.
Reports as Detailed in Schedule 8 for the Operation of the Transfer Station	As required

**SCHEDULE 5**

**TO SERVICE AGREEMENT**

**Performance Agreements**

**FORM OF PERFORMANCE BOND**

**FORM OF PERFORMANCE LETTER OF CREDIT**

**FORM OF PERFORMANCE BONDS**

**PERFORMANCE BOND**

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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 Agreement: \_\_\_\_\_, 20\_\_

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

## Service Agreement

Service Agreement to provide Waste acceptance, processing, transportation and disposal.

Agreement 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 an Agreement with the Northeast Maryland Waste Disposal Authority (the "Authority"), which Agreement is described and dated as shown above, and incorporated herein by reference. The Agreement and all items incorporated into the Agreement, together with any and all changes, extensions of time, alterations, modifications, or additions to the Agreement or to the work to be performed thereunder or any of them, or to any other items incorporated into the Agreement 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 Agreement; 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 Agreement 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 Agreement 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.

**Service Agreement**

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)

**Service Agreement**

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\_\_.



**Service Agreement**

**FORM OF PERFORMANCE LETTER OF CREDIT**

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

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

Ladies and Gentlemen:

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

2. The Letter of Credit is being issued in support of the performance by the Company of its obligation to provide solid waste disposal services to the Authority as set forth in the “**SERVICE AGREEMENT BY AND BETWEEN NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY AND COMPANY TO PROVIDE SOLID WASTE TRANSPORTATION AND DISPOSAL SERVICES FOR FREDERICK COUNTY, MARYLAND,**” 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

**Service Agreement**

available Federal Funds to your account in a bank on the Federal Reserve wire system or by deposit of immediately available funds into a designated account that you may establish with us. All drawings under the Letter of Credit will be paid with our own funds.

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

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

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

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

Very truly yours,  
[NAME OF FINANCIAL INSTITUTION]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 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. Frederick County, Maryland will be identified as additional insured on the General Liability policy.

The Company shall provide two Certificates of Insurance:

(a) Certificate Holder needs to be Frederick County, Maryland, 12 East Church Street, Frederick, Maryland 21701". And

(b) Certificate Holder needs to be "Northeast Maryland Waste Disposal Authority, Tower II, Suite 402, 100 South Charles Street, Baltimore, Maryland 21201."

(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.

## Service Agreement

### (c) Business Automobile Liability Coverage

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

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

### (e) Environmental Impairment Liability covering the Facilities

Company shall acquire and maintain Environmental Impairment Liability Insurance including sudden, non-sudden and gradual exposure, for all of Company's operations hereunder, including but not limited to disposal of Waste 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. Frederick County, Maryland 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.

## **Service Agreement**

- (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.

Service Agreement

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 "X", 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 acci-
dental 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 dam-
age, and environmental restoration.

The insurance policy to which this endorsement is attached pro-
vides 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).

thereof, shall relieve the company from liability or from the pay-
ment 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.

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 terri-
tory authorized to be served by the insured or elsewhere. Such
insurance as is afforded, for public liability, does not apply to in-
jury 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 condi-
tion, provision, stipulation, or limitation contained in the policy, this
endorsement, or any other endorsement thereon, or violation

It is further understood and agreed that, upon failure of the com-
pany 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**

**TO SERVICE AGREEMENT**

**TERMINATION PROCEDURES AND COSTS**

1. If the Authority exercises its right to terminate this Agreement pursuant to Section 6, then the Authority will follow the termination for convenience process as set forth in COMAR 21.07.01.12 below.

"The performance of work under this Agreement 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 Agreement that the Company has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the Company 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)."